I. **CAPITOL OBSERVATIONS**

**LANDMARK SETTLEMENT FOR ALABAMA IN CASE AGAINST BP**

Governor Robert Bentley announced on July 2 that the State of Alabama had reached an agreement in principle with BP to settle the state’s case. This settlement is for damages Alabama incurred as a result of the massive oil spill in 2010. The historic agreement, which is considered by many legal scholars to be the most significant litigation to ever have affected Alabama, is comprised of two key elements: $1 billion in compensation for economic damages in the form of lost revenues, taxes and incurred costs, and an estimated $1.3 billion in compensation for environmental restoration, fines and penalties. In total, the agreement in principle for Alabama is valued at $2.3 billion.

While the imposition of federal Clean Water Act (CWA) fines was most certainly a significant threat to BP, the good progress Alabama was making in its case was weighing heavily on the corporate giant. Alabama was the first state to file suit and was the first state case to be set for trial. Based on how things were developing, our legal team was moving rapidly through discovery and the witnesses were doing even better than expected. Considering the fact that the case would be a jury trial, most likely back in Alabama, with punitive damages a possibility, BP was on a collision course with justice.

The State of Alabama’s settlement is part of a larger settlement, which includes the federal government, the 5 Gulf Coast states and local government entities. The total settlement is valued at $18,732 billion. The settlement, when it becomes final, will be the largest environmental settlement in United States history. This is the breakdown of the settlement:

- $5.5 billion to the United States to resolve Clean Water Act civil penalties, with a certain portion of the penalties being redirected to the States pursuant to the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies (RESTORE) Act.
- $8.1 billion to the Gulf States to resolve natural resource damages.
- $4.9 billion to be paid to the Gulf States in compensation for economic claims.
- Up to $1 billion to resolve economic claims of the vast majority of local governmental entities in Texas, Louisiana, Mississippi, Alabama and Florida.
- $350 million to cover outstanding natural resource damage assessments.
- $250 million to cover the full settlement of outstanding response costs.
- $232 million to be set aside by BP at the end of the payment period for further natural resource damages that are unknown at this time.

Governor Robert Bentley and Attorney General Luther Strange deserve a great deal of credit for this agreement and should be commended for their dedication for aggressively pursuing a just cause. Their cooperation in the unified effort throughout the handling of the case is the primary reason Alabama’s case was the first state case set for trial and ultimately settled. In addition, one cannot say enough about the hard work that Magistrate Judge Sally Sushan put in during the negotiations that resulted in a great settlement for all of the entities mentioned above. This was a monumental effort with numerous political entities involved. Judge Shushan did an amazing job of keeping the parties focused and working hard to resolve the most significant environmental litigation in United States history. Judge Carl Barbier had done a tremendous job in keeping this massive and complicated litigation on track. When the negotiations came about, he kept everybody who was involved focused and he never let anything or anybody hinder the progress that was being made. The fact that a settlement could be reached in record time is a tribute to the efforts of Judge Barbier and Judge Sunshan.

There are still some matters that must be resolved before the agreement in principle becomes a formal settlement, including the entry of a consent decree—which must be finalized by the Court. We are most confident, however, that the agreement will be approved and will become a formal resolution. These funds could not be coming to the State of Alabama at a better time. Alabama’s General Fund budget is in shambles, and the State is faced with many challenges. Importantly, these funds are a one-time occurrence. The Legislature should be extremely careful when determining how to spend this money. These funds represent an incredible opportunity for the State and one that cannot be squandered.

**BEASLEY ALLЕН MADE A DIFFERENCE IN ALABAMA’S CASE AGAINST BP**

It’s most significant that our firm filed the first state government case against BP in the oil spill litigation. At that time, Troy King was Attorney General and he came under unjust criticism and strong opposition from Gov. Bob Riley, who was totally opposed to our filing suit against BP. We knew at the time that BP would not treat Alabama fairly unless forced to do so in court. When the suit was filed, Gov. Riley accused Troy of derailing his unilateral and secret settlement negotiations with BP. We learned that Gov. Riley had been quietly negotiating a $148 million settlement with BP, which because of our involvement, never happened. Everybody knows now what we knew back in 2010 and that was it would take filing suit and aggressively prosecuting it to obtain justice for Alabama. The filing of the lawsuit on behalf of the State of Alabama was the single most important event in the BP litigation because it set things in motion for all that would ultimately follow.

To his credit, the newly elected Attorney General, Luther Strange, took over the lawsuit and quickly realized it was a great opportunity for the state. He was put in a leadership position in the massive litigation by Judge Barbier. From the very beginning, our firm was heavily involved in the State of Alabama’s case. After he took office in 2011, newly
Attorney General Luther Strange. These are deputized as Deputy Attorneys General by in more than 25,000 hours in the case, were all of these lawyers, who as of July 2, had put case from the beginning until the very end. They were:

- **Rhon E. Jones**: Rhon was the lead attorney in the case. He brought a tremendous amount of experience to this litigation. Rhon is our Environmental Section Head and a member of the oil spill Plaintiffs’ Steering Committee (PSC). He was also a member of the negotiating team for the private oil spill settlement, had a tremendous amount of experience in high stakes cases, and he organized and oversaw the Governor’s team. He advised the Governor directly throughout the case. A master negotiator, Rhon was a lead attorney in settlement negotiations that would ultimately yield a $2.3 billion result for the state. Rhon’s influence in the case cannot be underestimated, and his close oversight and involvement in the case is a major reason Alabama’s case progressed as it did.

- **J. Parker Miller**: Parker, a lawyer in our firm, was selected to build the State’s economic and property damages case for Beasley Allen, and to coordinate all litigation matters. His focus was to build a winning case for damages at trial, and he worked tirelessly to assemble a group of some of the foremost experts in the nation on complex economic and property damage matters. Parker organized Alabama’s factual case, and along with Corey Maze from the Attorney General’s office, he was the go-to lawyer for matters before the Court in the litigation. As the case evolved and discovery commenced, Parker took on the additional role of coordinating the State’s discovery efforts. The deposition of the first 30(b)(6) BP witness could be considered one of the turning points in the litigation. Parker joined the negotiation team as settlement negotiations became advanced. His efforts were nothing short of exceptional in this matter.

- **Jenna Day Fulk**: Initially assigned to document review work in late 2013, Jenna quickly rose to play a key role in the State’s case. Jenna did exceptional work in building, then defending in discovery, Alabama’s claims for Departmental costs and losses associated with the spill. Aside from her work on Departmental claims, Jenna worked very closely with Parker Miller on all facets of the case, including discovery, expert development, and economic and property damages. Based on her work, Beasley Allen named her one of its newest associates this past year. Jenna’s future is very bright and we are happy to have her at the firm.

- **Rick D. Stratton**: A very experienced and successful lawyer, Rick played a major role in the development of the State’s case. He spent a significant amount of time helping develop Alabama’s property damages case, including mapping oiling impacts, developing environmental impact reports, and working with the State’s property damage experts and witnesses to help formulate a theory for damages. Rick was also heavily involved in the State’s Natural Resource Damage Assessment team. Rick focused heavily on the societal cost to Alabama as a result of budgetary shortfalls created by the oil spill. Rick was a major asset to our team in this litigation.

There are three other lawyers from our firm who have worked in the BP litigation. While they didn’t actually work in the Alabama case, they worked very hard on the global aspects of this litigation. Those lawyers are:

- **John Tomlinson**: John has worked on the class settlement tirelessly since it was created. He was a key component for our firm and the PSC in working on the creation and implementation of the formula for business loss claims. He handles business loss claims and is one of the most knowledgeable lawyers in this area in the country. He continues to answer questions from class members regarding business loss claims in conjunction with class counsel and works with the PSC to see that business loss claims are processed as efficiently as possible. He did excellent work.

- **Chris Boutwell**: Chris continues to work on business loss and property claims in the class settlement. He has become an expert in all types of property related class claims and worked extensively with the PSC on environmental expert matters that affected the litigation. Chris, too, did excellent work.

- **Grant Cofer**: Grant worked on local government claims for the firm and helped bring those to a successful resolution. Grant also handles business loss and individual loss claims in the class settlement. His work on both of those types of claims has been outstanding. We are especially proud of his work on individual claims in the settlement because those are very important to the process and have resulted in awards for many of our clients who earn hourly wages and were impacted by the Spill. Again, Grant’s work was in the excellent category.

All of the Beasley Allen lawyers have made enormous contributions to this litigation and to our clients. Their efforts and sacrifice were a major reason thousands of individuals and businesses received, and continue to receive, compensation for the devastation that occurred in 2010. Staff members in our firm also played a major role in keeping the discovery on track. Sandra Walters, Tracie Harrison, Dana Simon, Kimberly Youngblood, and a host of other staff members worked many long hours. I was also involved in the case on a weekly basis starting before the state’s lawsuit was filed and that involvement continued all the way through the negotiations that resulted in the settlement.

Rhon Jones and I would meet and discuss litigation plans in the Alabama case each week and I was available at other times when needed so that the other lawyers would have the benefit of my experience over the years in the complex litigation field. I was told by Gov. Bentley that he wanted me on the trial team for Alabama and I had looked forward to trying the case on behalf of the people of Alabama. Even though I really wanted to try the case, I fully realize that the settlement was in the best interest of the people of Alabama.

Our firm also managed Alabama’s document production and retention database for trial, and we dedicated a technical staff to the case to assist with discovery disputes. In total, the firm retained 28 experts over the course of the litigation in the fields of economics, accounting, environmental science, geography, real estate, property development, coastal geology and GIS systems, and dedicated tens of thousands of hours in the litigation in support of the State’s case.

### Complaints About the Agreement Value Are Misguided

Since the agreement in principle between Alabama and BP was reached, there have been some complaints saying that Alabama’s share was too low. Those with an understanding of the case, however, know first hand that such complaints are completely misguided. First, our team evaluated every corner of Alabama’s economy, and we used numerous different economic models and accounting methods to understand the oil spill’s impact on Alabama. Moreover, we looked at every relevant national, regional and state indicator that could help isolate the oil spill’s impact to Alabama. Based on our knowledge of the case and with the assistance of the brightest experts in both Alabama and the nation, we can say without hesitation that this is a great deal for Alabama. People complaining about the deal have no idea of the challenges Alabama would have faced at trial. This type litigation is never as easy as some seem to think.

Second, any trial verdict in Alabama’s favor would most assuredly be appealed to the Eleventh Circuit and then to the United States Supreme Court. Appeals of this nature can oftentimes prove very unpredictable, and ultimately, can take many years to fully resolve. By way of example, appeals from the Exxon Valdez disaster were still in the appellate courts when the Deepwater Horizon oil spill...
II. AN UPDATE ON THE GENERAL MOTORS SAFETY IGNITION SWITCH LITIGATION

GM Victim Compensation Fund Nears Completion

The General Motors (GM) victim compensation fund is said to be winding down. It has now been established that General Motors’ faulty ignition switches were responsible for at least 124 deaths and 266 injuries. I still believe those numbers are low. The information comes from a report from the compensation fund set up by GM. The fund, administered by Ken Feinberg, has finished processing the 4,342 claims it received by the Jan. 31 deadline. According to Mr. Feinberg, 80 percent—or 3,499—of the claims were deemed eligible with 453 being determined to be deficient. As we have mentioned previously, claimants can’t appeal the fund’s decision on eligibility. Based on our experience, I believe the fund has been administered in a fair and efficient manner. There were certain rules put in place by GM at the outset. The lawyers in our firm and in Lance Cooper’s firm, who are handling claims, give Mr. Feinberg high marks. According to Ms. Biros, the program’s Deputy Administrator, the fund has made 280 compensation offers so far. Of those, 209 have been accepted and six have been rejected. Each claimant has 90 days to accept or reject a compensation offer. Persons with deficient claims had until July 31 to provide supporting documents. It was critically important to furnish all of the documentation necessary in order for a claimant to receive maximum settlement amounts. We understand that 24 of the 453 deficient claims contend that the switches caused a death, with the rest being injury claims. As we have reported, GM recalled 2.6 million Chevrolet Cobalts and other small cars last year, but acknowledged it knew about the ignition switch problems for more than a decade. As of March 31, GM had paid $200 million to settle claims filed with Mr. Feinberg. GM has said it expects to pay up to $600 million. Our firm and the Cooper firm have filed 105 claims, and 51 of those have been already been paid and our clients totally satisfied.

Source: Claims Journal

Chancery Judge Dismisses Claims Against GM Directors In Ignition Suit

A Delaware Chancery judge has dismissed derivative claims against General Motors Co. (GM) directors in a case stemming from the high-profile ignition switch defect on certain cars, which has caused dozens of deaths. The judge ruled that the suing shareholders did not adequately show the directors acted in bad faith while overseeing GM’s operations. In the opinion, Vice Chancellor Sam Glasscock III stressed that his findings relate to GM leadership’s liability to the corporation itself, not the automaker’s liability to customers. In that regard, he wrote that GM “has been and will be held liable for any wrongdoing in the engineering and deployment of these ignition switches.” But as far as directors being liable to GM the corporation, the Vice Chancellor ruled that suing shareholders did not adequately plead that the automaker’s directors were consciously acting against the company’s interest or violating their duty of loyalty by acting in bad faith. Vice Chancellor Glasscock wrote: “The conduct at issue here, as pled, falls short of an utter failure to attempt to establish information or reporting systems, a conscious failure to monitor existing systems or conduct otherwise taken in bad faith. Pleadings, even specific pleadings, indicating that directors did a poor job of overseeing risk in a poorly managed corporation do not imply director bad faith.”

The Vice Chancellor added in a footnote that the latter comment refers to the GM presented to him in the shareholders’ pleadings in the suit, not necessarily the real-world company. The Chancery lawsuit, filed in May 2014 by GM investors Burton Z. Cohan and Paul Nash, and later consolidated with several others, is one of a large number of lawsuits, as well as two congressional investigations and a U.S. Department of Justice criminal probe, surrounding the ignition switch defect that caused hundreds of crash-related deaths and injuries. As we have written previously, GM launched its first of what would be 45 recalls in February 2014 covering nearly 30 million vehicles, 13 million of which were pulled back because of issues connected to the igni-
Car recall probes and inquiries by state attorneys in the filing that the investigation, along with said in its SEC filing. The automaker cautioned vehicles that still needed recall repairs as certifiably filing with the Securities and Exchange Commission (SEC) last month.

Vice Chancellor Glasscock wrote that the shareholders conceded in their pleadings that GM indeed had some system of oversight, even if it was not at the "Plaintiffs' hindsight-driven satisfaction." It appears from the opinion that several committees reviewed GM's risk management structure regularly and that the board was given presentations on safety and quality issues. Under Delaware law, for a shareholder to show in a derivative suit that directors failed in their oversight responsibilities, it must be pled that there was "an utter failure" to implement any reporting system or controls, or that there were "red flags" that were consciously disregarded. It appears that the suing shareholders did not plead facts to show either of the requirements. Vice Chancellor Glasscock wrote:

"The every documents the plaintiffs cite demonstrate that the board and its committees were receiving reports relating the quality of GM vehicles. That is short of pleading that the board "utterly failed to implement any reporting or information systems or controls," sufficient to raise a reasonable doubt of the directors' good faith."

Under Delaware law the shareholder Plaintiffs in the case had a very high hill to climb before GM's directors would be held liable for what other persons within the corporate structure did or failed to do. We know from our experience in the product liability cases that directors failed in their oversight responsibilities, it must be pled that there was "an utter failure" to implement any reporting system or controls, or that there were "red flags" that were consciously disregarded. It appears that the suing shareholders did not plead facts to show either of the requirements. Vice Chancellor Glasscock wrote:

"The very documents the plaintiffs cite demonstrate that the board and its committees were receiving reports relating the quality of GM vehicles. That is short of pleading that the board "utterly failed to implement any reporting or information systems or controls," sufficient to raise a reasonable doubt of the directors' good faith."

Under Delaware law the shareholder Plaintiffs in the case had a very high hill to climb before GM's directors would be held liable for what other persons within the corporate structure did or failed to do. We know from our experience in the product liability cases that there was lots of fault to be shared by lots of folks at GM. But that's a totally different matter.

Source: Law360.com

A LOOK AT THE COSTS RELATED TO GM'S RECALL-RELATED LITIGATION

We felt that it might be a good to mention in this issue some facts that come from information revealed by GM recently. General Motors had safety recalls of 36 million vehicles worldwide last year, which is a huge number, and doesn't speak well for any automaker. The following is a by-the-numbers look at the recall issues. Most of this information came from GM's second-quarter earnings release and its report to securities regulators:

• $625 million: This is the latest estimate of how much the company will spend to compensate victims of crashes caused by faulty small-car ignition switches. The old estimate was $400 million to $600 million.

• $280 million: This is the amount paid to ignition switch crash victims and families as of July 17, 2015.

• 124: This is the number of deaths compensation administrator Kenneth Feinberg has determined are eligible for compensation.

• 269: This is the number of injuries deemed eligible for compensation.

• 121: This is the number of lawsuits pending against GM in the U.S. and Canada claiming loss in values of cars due to last year's recalls.

• 181: This is the number of U.S. and Canadian wrongful-death or injury lawsuits pending due to recalls.

• 50: This is the number of state attorneys general who are investigating the company over the ignition switch and other recalls. In addition, the U.S. Attorney's Office, Congress, Securities and Exchange Commission, and Canadian safety regulators also are investigating the automaker.

• 66: This is the percentage of the 2.6 million older small cars recalled for faulty ignition switches that have been repaired as of Tuesday.

• 75: This is the percentage of 2014 recall repairs GM expects to finish by the end of 2015. Hopefully, the automaker will be able to meet this goal.

GM's problems are far from over. But this overview gives us a picture of what has happened so far. I just hope the folks who run GM have learned a lesson about safety and honesty during this ordeal.

FTC PROBING GM DEALERS' ADS FOR USED CARS UNDER RECALL

The Federal Trade Commission (FTC) is now investigating General Motors Co. (GM) over allegations that its dealerships listed used vehicles that still needed recall repairs as certified. The automaker revealed this in its quarterly filing with the Securities and Exchange Commission (SEC) last month. The FTC sent notice of the probe "concerning certified pre-owned vehicle advertising" on June 3, GM said in its SEC filing. The automaker cautioned in the filing that the investigation, along with probes and inquiries by state attorneys general, Congress, the SEC and others, could result in monetary penalties.

On GM's "pre-owned" vehicles website, the company explains how dealers certify those cars for sale. Those subject to a recall are generally not certified until the dealer makes the needed repairs, but "because of timing issues, or because of dealer error," some cars listed as certified may still be in need of recall repairs, the company said. The automaker said in its filing that it is facing 172 suits in state and federal court over injuries and deaths allegedly linked to defects for which GM issued recalls in 2014, as well as nine in Canada. GM is also facing 100 proposed class actions in the U.S. and 21 in Canada by drivers who say the vehicles they leased or bought lost value because of the recalls, according to the automaker. As we have written, the Second Circuit Court of Appeals is reviewing a bankruptcy judge's decision that barred economic loss claims based on the automaker's pre-bankruptcy conduct as well as lawsuits over accidents that occurred before "Old GM" sold its assets to "New GM" but kept the liabilities. Thus far the appeals court has not ruled.

Source: Law360.com

Fiat Chrysler's Hit with Record $105 Million Fine by NHTSA

The National Highway Traffic Safety Administration (NHTSA) on July 26 fined Fiat Chrysler Automobiles $105 million as a civil penalty for failing to complete 23 recalls covering more than 11 million vehicles. This is the largest fine ever levied by NHTSA. In a consent order released on, of all days, a Sunday, Chrysler admitted to violating federal rules requiring timely recalls and notifications to vehicle owners, dealers and regulators and agreed to oversight by a federal monitor for the next three years. Chrysler will pay a $70 million cash penalty and also agreed to spend at least $20 million to meet requirements of the consent order and up to another $15 million for any future violations discovered by the independent monitor. Secretary of Transportation Anthony Foxx and this to say:

"Today's action holds Fiat Chrysler accountable for its past failures, pushes them to get unsafe vehicles repaired or off the roads and takes concrete steps to keep Americans safer going forward. This civil penalty puts manufacturers and dealers on notice that the department will act when they do not take their obligations to repair safety defects seriously.

Chrysler acknowledged in a statement in its Sunday announcement that some of its recall procedures have fallen short. That in my opinion may be the understatement of the decade since the automaker failed miserably to do what was required. This company has lots of work to do to right what looks much like a ship sailing without a rudder when it comes to safety and recall issues.

Source: Law360.com
CHRYSLER NOW RECALLS 1.4 MILLION MORE VEHICLES

Chrysler’s parent company, Fiat Chrysler Automobiles (FCA), has recalled 1.4 million Dodge, Ram and Jeep vehicles to address software hacking vulnerabilities after a media report last month described a Jeep’s radio, windshield wipers and transmission were manipulated remotely by hackers. FCA said it will update the recalled vehicles’ software in order to install new security features and said it has enacted additional network-wide anti-hacking measures.

A Wired Magazine reporter described in an article that his Jeep came to a halt on a highway after hackers commandeered the vehicle and remotely shut off his transmission. The reporter had asked the hackers to access his vehicle’s software for the article. Chrysler said in its recall announcement that it doesn’t know of any instances of its vehicles being hacked, aside from this “media demonstration.”

Following FCA’s announcement, the National Highway Traffic Safety Administration (NHTSA) reported that it has opened an investigation into the effectiveness of the software updates the automaker is offering its customers. NHTSA has opened a recall query investigation to further assess this problem.

NHTSA said opening this investigation “will allow NHTSA to better assess the effectiveness of the remedy proposed by Fiat Chrysler.”

According to the automaker, vehicles affected by the recall include 2013-2015 Dodge Vipers and Dodge Rams, 2014-2015 Dodge Durangos, Jeep Grand Cherokees and Cherokee sport utility vehicles and 2015 Chrysler 200s, Chrysler 300s, Dodge Chargers and Dodge Challengers. All have 8.4-inch touchscreens. In its recall notice, Chrysler said that in addition to the 1.4-million-vehicle software update, it has implemented anti-hacking measures across its network in an attempt to block remote access to certain vehicle systems.

In his Wired article, journalist Andy Greenberg described driving his Jeep Cherokee 70 miles per hour down the highway when the men he asked to hack his car remotely made the vehicles’ vents blast cold air, turned the radio volume all the way up and killed the transmission, causing his car to roll to a stop. The same day Greenberg’s story was published, Sens. Edward J. Markey, D-Mass., and Richard Blumenthal, D-Conn., introduced the Security and Privacy in Your Car Act, or SPY Car Act in Congress. The legislation would direct NHTSA to establish minimum federal safety and privacy standards and a system for rating how well automakers’ vehicles protect against hacking and other privacy concerns.

The SPY Car Act would direct NHTSA, in consultation with the Federal Trade Commission (FTC), to develop cybersecurity standards for vehicles, aimed at preventing and mitigating hacking and ensuring data security. The legislation would also ask federal vehicle safety regulators to create a “cyber dashboard,” which would evaluate how well each vehicle model protects drivers’ security, information that would be displayed on the window sticker of all new cars.

Source: Law360.com

III. MORE AUTOMOBILE NEWS OF NOTE

TAKATA SAYS AIR BAG VICTIMS DON’T NEED A COMPENSATION FUND

Takata Corp. has refused to establish a compensation fund for victims of its air bag defect, which has caused at least eight deaths. The company cites the “limited number of claims” filed so far and the ongoing multidistrict litigation (MDL) over injuries caused by accidents related to the defect. U.S. Senator Richard Blumenthal said the auto-parts manufacturer declined his requests made at a congressional hearing for Takata to set up a compensation fund for victims similar to the one that General Motors (GM) set up for victims of its deadly ignition switch defect.

At the time that GM set up the fund, which is independently overseen by settlement expert Kenneth Feinberg, the automaker had acknowledged only 13 deaths that were linked to the defect. But so far, Feinberg has found that 120 death claims are eligible for compensation. “I am astonished and deeply disappointed by Takata’s refusal to establish a victim’s compensation fund—even after 100 injuries and eight deaths attributed to its defective air bags, numbers almost certain to rise,” Sen. Blumenthal said in a statement. He continued:

Takata is apparently unwilling to acknowledge its responsibility for these tragic deaths and injuries, or do justice for victims and their loved ones. I will press Takata to reconsider this callous misjudgment, and do right by the innocent victims of its harm.

Takata North America executive Kevin Kennedy wrote to Blumenthal on July 7, saying that the company has already resolved a number of cases involving the defect, which causes air bag deflators to rupture, hurling shrapnel-like fragments onto passengers. Kennedy, the executive vice president of Takata’s North American operations, wrote in the letter that the company will “continue to evaluate the possible benefits of such a mechanism to address personal injury claims, as the MDL progresses in federal court in Florida. He wrote in the letter:

At the present time, given the limited number of claims filed and the MDL procedures in place that permit the efficient coordination of related claims, Takata believes that a national compensation fund is not currently required.

The total number of automobiles wrapped up in the recall was estimated at 34 million at the end of May, which makes it the largest recall of its kind. Since that time number has increased.

While we do not believe establishing a general compensation fund is warranted at this time, we will continue to assess our position as we focus on how best to address the needs of individuals affected by an inflator rupture.

I believe that eventually Takata may see fit to establish a compensation fund. There will definitely be many more claims surfacing involving deaths and serious injuries due to the magnitude and scope of the problem. Every day, something new develops with more cars being involved. This matter is far from over.

Source: Law360.com

TOYOTA OWNER ASKS NHTSA TO REVISIT SUDDEN ACCELERATION PROBLEMS

The National Highway Transportation Safety Administration (NHTSA) is now looking into a driver’s claim of sudden unintended acceleration at low speeds in Toyota Motor Corp. vehicles. The driver petitioned the agency for a defect investigation. NHTSA’s Office of Defects Investigation (ODI) is looking into the request by the unnamed petitioner, who claims his 2009 Lexus ES350 accelerated suddenly and crashed while his wife was trying to park the car in February 2015. After analyzing the petition, NHTSA will decide whether or not to investigate.

Up to 42,835 ES350s would be affected if a defect is found, according to NHTSA.

The petitioner pointed to two other complaints involving a 2009 Camry and 2010 Corolla as showing a “troubling similarity” in event data recorders indicating acceleration issues at low speeds. He asked the agency to “acquire all the data on low-speed sudden acceleration that Toyota currently has and constitute a panel to study this problem.” The petition is not the first to call for an investigation of unintentional acceleration at low speeds in Toyota vehicles.

In May, NHTSA turned down a similar request by petitioner Robert Ruginis, saying that it had not been able to replicate a surge at low speed in his 2010 Toyota Corolla. In September 2014, Ruginis asked the agency to look into 2006-10 Corollas after his wife crashed into a parked vehicle. Ruginis claimed that an event data recorder readout showed his Corolla had accelerated after his wife applied the brake.

Ruginis had claimed NHTSA never

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investigated low-speed sudden unintended acceleration, but the agency replied in its denial of the petition that it had been working on the issue for more than a decade.

NHTSA says it conducted three defect investigations from 2003 to 2009 and looked into allegations in five defect investigation requests on sudden unintended acceleration. The agency apparently believed the cause of some of the incidents was a sticky gas pedal or floor mat that could trap the pedal in a depressed position. I heard that theory before in an Oklahoma City courtroom and it gives me some concern. Surely, it couldn’t be a computer problem that is causing the sudden accelerations like we found to be the problem in the Bookout case.

In 2010, NHTSA teamed up with the National Aeronautics and Space Administration (NASA) to further investigate low-speed acceleration incidents. The two agencies released a report in 2011 that found no defect in Toyota’s electronic throttle control system and attributed the incidents to driver error. But Toyota issued recalls of millions of cars and trucks in 2009 and 2010 after reports that several vehicles had experienced unintended acceleration. Our firm was heavily involved in the litigation that exposed Toyota’s wrongful conduct and deliberate cover-up of a known defect in its electronic throttle control system.

After the verdict in the Bookout case, things began to fall in place. In July 2013, Toyota received final approval for the $1.1 billion settlement with a proposed class of 23 million U.S. Toyota drivers, alleging they had suffered economic loss over the acceleration issue. In March 2014, a New York federal judge accepted Toyota’s $1.2 billion deferred prosecution agreement with the U.S. Department of Justice. That was because the automaker had hidden known defects that caused vehicles to accelerate suddenly. The court said the case “demonstrates that corporate fraud can kill.” The Bookout trial in Oklahoma City handled by our firm was the same single event that brought about all of the above. Hopefully, Toyota will change its position in the current sudden acceleration matter and do the right thing. Our experience with this automaker revealed that it is a master of cover up and deceit.

Source: Law360.com

TOYOTA HAS SETTLED 338 CASES SO FAR IN THE ACCELERATION MDL

Toyota Motor Corp. has reached settlements in 338 cases involving sudden unintended acceleration, up from 289 in March. U.S. District Judge James V. Selna, who has presided over the multidistrict litigation (MDL), and who has done a very good job of moving things along, was told in a joint presentation that Toyota has resolved 146 of 171 cases in the MDL, and 60 of the 87 cases in coordinated state proceedings. Outside of the MDL and state proceedings, the parties have resolved 132 cases, according to the status report filed by the parties with the court. The parties wrote in their joint status report:

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

There are only 24 cases left pending in the MDL. Of those, only two did not request the expedited settlement process. There are also 22 cases in state proceedings. Only one of those has not yet requested intensive settlement proceedings.

As I have mentioned before, our Bookout trial in Oklahoma City exposed the massive cover-up by Toyota of a known defect in its electronic throttle control system and paved the way for a successful run of settlements and fines imposed against Toyota. The jury verdict in our case turned the tide of victory toward Toyota’s innocent victims.

Source: Law360.com

TOYOTA SETTLES POWER STEERING DEFECT SUIT

Toyota Motor Sales USA Inc. has reached a settlement with more than 800,000 drivers in a proposed class action lawsuit that was pending in a California federal court. It was alleged in the suit that defects in the power steering systems of some Corollas caused them to drift out of control. In a joint motion the Plaintiffs and Toyota asked the court to preliminarily approve the settlement, which had been agreed to in March. The Plaintiffs, Irene Corson and Susan M. Yacks, had sought to certify a nationwide class of former and current owners and lessees of Corollas.

Under the terms of the settlement, for class members who have complained about the on-center steering feel of their vehicle, the retuned electronic control unit will be installed at no cost. For those who haven’t previously complained, the retuned electronic control unit will be available at a 50 percent discount. Class members who paid out-of-pocket to have the returned electronic control unit installed may be reimbursed up to $695, according to the memorandum of settlement.

The complaint was filed in October by two owners of 2009 Toyota Corollas, Irene Corson of New York and Susan Yacks of Pennsylvania. NHTSA opened an investigation in February 2010 of the electric power steering system in the Corolla and Matrix models and found that related consumer complaints dealt with operational issues, but not with a failure of steering elements. The investigation was closed by May 2011.

Source: Law360.com

A NUMBER OF IGNITION SWITCH CLAIMANTS WERE EXCLUDED FROM THE GM COMPENSATION FUND

Lots of lawyers still don’t realize there are a number of General Motors (GM) vehicles with the defective ignition switch that are not being covered by the GM Compensation Fund. There have been several incidents that put this exclusion issue in a rather clear perspective. One of the cars with the defective ignition switch was being driven by a woman who was involved in a 2005 crash. In 2005, the woman crashed her Pontiac Grand Am. She went into a coma did not recover. She died in March 2012. General Motors recalled her car for a faulty ignition switch. Ben Pillars, her husband, thought the car was included in the compensation fund. So he submitted a claim on his wife’s behalf to the fund. It was rejected because the Pillars’ car was not one of the specific cars covered by the fund.

As we have previously written, the GM Compensation Fund covers only 2.59 million vehicles with the ignition switch defect. GM has consistently said that a similar defect detected in an additional 10 million vehicles, including the model Mrs. Pillars was driving, is ineligible for compensation. The automaker justifies that position by saying the company recalled the cars immediately after discovering the defect and, further, that GM made no efforts to hide the defect. Frankly, I believe GM should have either included these cars in the current compensation fund or set up a new one. Since it’s too late for the current fund, the proper and right thing to do is for GM to set up a new fund.

As you may recall, U.S. Senator Richard Blumenthal encouraged GM’s Chief Executive Officer Mary Barra last year to expand the compensation fund to include more cars recalled for a defective ignition switch. During a hearing, Sen. Blumenthal stated:

I believe now more than ever that all of the injuries and deaths caused by defective ignition switches in GM cars should be covered by the compensation fund. All of those other models suffered from an eerily and strikingly similar malfunction that caused death and casualties. There’s no logical or factual reasons that those victims should be excluded.

Jim Cain, speaking for GM, said the compensation fund’s scope is fair because the ignition switches excluded were a different design and discovered under different circumstances. He said the compensation fund gave victims and their families a route to seek compensation not available to them in the courts. Cain added that was because GM has legal immunity from lawsuits related to accidents that occurred before the company emerged from bankruptcy on July 10, 2009. Thus far, a victim of a pre-bankruptcy crash, excluded from the fund, hasn’t been allowed to sue GM. In a recent article, Bloomberg News stated:
For years, Pillars wondered what caused his wife’s Grand Am to veer across a wintry Michigan highway in 2005 and into the path of a Toyota minivan. A photograph taken shortly after the accident shows the key in the off position. It wasn’t considered important at the time, he said. But when GM announced the recall that included the Grand Am last June, it all clicked into place, Pillars said in an interview. He found the photos and other clues in a file cabinet he’d kept of all her records since her March 2012 death. “It eased my mind that it wasn’t her fault,” he said. “She didn’t have a chance in that car.” Pillars submitted a claim to the compensation fund and it was rejected in March. Applications to the fund closed Jan. 31, so no additional cases will be considered. At last count the fund had processed 4,261 claims and bad another 81 remain under review. So far, 3,027 have been found ineligible and another 872 deficient.

Other persons have also found out that GM was excluding a huge number of cars from the fund. One such person, Doris Phillips, found out she was also ineligible for compensation because the car her husband was driving when he crashed wasn’t on the list of those with the defect known only to GM, but the automaker is now attempting to avoid paying claims. This automaker has shown that the safety of its customers has been far down the company’s list of priorities. I hope that GM will do the right thing and set up a compensation fund for the cars that are not covered by the fund being administrated by Ken Feinberg.

Source: Insurance Journal

NHTSA IS INVESTIGATING A SECOND COMPANY FOR AIR BAG INFLATOR MALFUNCTIONS

The National Highway Traffic Safety Administration (NHTSA) is investigating air bag inflators made by ARC Automotive Inc. that went into about 420,000 older Fiat Chrysler Town and Country minivans and another 70,000 Kia Optima midsize sedans. The probe, revealed in documents posted July 14 by NHTSA, comes just weeks after Takata agreed to recall 33.8 million inflators in the U.S. in the largest automotive recall in American history. As has been widely reported, at least eight people have been killed worldwide by flying shrapnel from Takata inflators, and more than 100 injured.

NHTSA received a complaint in December about a 2009 incident in a 2002 Chrysler minivan, but determined it was an isolated case involving an ARC driver’s side inflator. Then in June, Kia told the agency about a lawsuit involving a 2004 Optima in New Mexico with an ARC inflator, so NHTSA decided to open an investigation. Both cases are the only known incidents involving ARC inflators in vehicles made by either automaker.

NHTSA said one person was hurt in each of the incidents and an investigation was opened to determine if there is any connection. NHTSA Administrator Mark Rosekind confirmed this to reporters in Orlando, Fla., on July 14. Rosekind said a probable cause in the Chrysler case was identified, but that investigators don’t know the cause of the Kia rupture. If the investigation determines that the inflators are a hazard, Rosekind said NHTSA will seek a recall.

The investigation by NHTSA also will determine how many of the suspect ARC inflators are on the road. Fiat Chrysler, Kia and ARC, which is based in Knoxville, Tenn., said in statements that they are cooperating in the probe. Fiat Chrysler said it no longer uses the inflators that are being investigated. ARC says it makes inflators that are used by other companies in air bag systems. The inflators use an inert gas to fill the air bag, which is supplemented by an ammonium nitrate propellant.

A preliminary analysis of the Chrysler minivan system showed that the path for the inflator gas to exit the inflator may have been blocked by an unknown object, according to NHTSA. In the Takata cases, ammonium nitrate is the main propellant, and it can become unstable over time when exposed to high humidity and temperatures. The chemical can burn too fast and blow apart a metal inflator canister. Automakers, NHTSA and Takata are trying to find the exact cause.

The Chrysler incident with an ARC inflator happened on Jan. 29, 2009, in Ohio. A man complained to NHTSA that his wife was hurt by shrapnel when the air bag deployed after the van collided with a snowmobile. “Most of the shrapnel went into her chest, with the air bag plate breaking apart, striking her in the chin, breaking her jaw in three places,” wrote the man, who was not identified. He said: “If it hadn’t been for a great ambulance crew, she would have bled to death.”

ARC made inflators for Delphi Corp. air bags that were sold to Kia and used in Optimas, according to NHTSA. ARC also made them for Key Safety Systems air bags sold to Chrysler and used in minivans. Delphi said it will respond to NHTSA inquiries, and that it used some ARC inflators before selling its air bag business in 2010. Key said it would support the investigation. About three-quarters of Takata air bags that have ruptured in testing came from Florida, according to sources. The inflators have ruptured on about 300 of the 30,000 Takata air bags tested in the investigation, according to NHTSA.

Administrator Rosekind urged people in Florida with recalled vehicles to get them fixed as soon as possible. High heat and humidity, especially along the Gulf Coast, is said to be a factor in causing Takata air bags to malfunction in cars from 11 different auto companies. One of the eight people killed by the air bags and 34 of the 105 people hurt were in Florida, according to Sen. Bill Nelson, D-Florida. “Supplies are on the shelves in this area of Florida because of the risk,” Rosekind said. But he added that if a dealer doesn’t have parts, people should demand a loaner car.

Source: Atlanta Journal Constitution

FIAT CHRYSLER RECALLS SUVs OVER SUSPENSION CONCERNS

Fiat Chrysler Automobiles US LLC (FCA) has recalled 7,690 new Jeep Grand Cherokee and Dodge Durango SUVs—with only a few being on the road in the U.S.—that may have a defect in their suspension that could affect
braking. The company said in a press release that only around 65 of the 2015 model year SUVs being recalled made it into the hands of drivers and that most of the rest are still at or on their way to dealers’ lots. According to the automaker, it issued the recall after its supplier notified it of improperly heat-treated components in the vehicles’ suspension that could break and affect stability and braking power. Fiat Chrysler says it hasn’t received any word of accidents or injuries related to the problem.

Fiat Chrysler said that the recalled vehicles were all assembled between June 12 and June 20. Because of timely notification by the supplier, the automaker says that only around 13 percent of the total number of SUVs being recalled are believed to contain the defect. The company said that buyers of the 65 affected vehicles who have already driven off the lot should park them. Fiat Chrysler will call them to arrange an inspection and transport the vehicles that are found to have the questionable parts back to the dealership to have the components replaced.

It was stated that 5,608 of the affected Durangos and Cherokees are probably in the U.S., 235 are in Canada and 65 in ar Mexico. Around 1,829 of the affected vehicles were going to be exported, but they have not been shipped. The recall came just before the company testified at a public hearing before the National Highway Traffic Safety Administration about its implementation of 22 recalls between 2013 and 2014 involving more than 11 million vehicles.

KIA ACCUSED OF SELLING CARS WITH SHATTER-PRONE SUNROOFS

A class action lawsuit has been filed against Kia Motors America Inc. alleging that the automaker knowingly marketed cars with shatter-prone sunroofs then refused to pay to fix them. It’s claimed that Kia knew about the problem for years. The proposed nationwide class of consumers was filed in a California federal court. Plaintiffs in the suit allege that Kia joined a prevailing automotive trend of the past decade by replacing the standard metallic roofs in many of its consumer cars with “panoramic” sunroofs that, while “aesthetically pleasing,” are prone to shattering "suddenly and without warning.” The complaint said:

Replacing metal roofs with large plates of glass requires precision in the strengthening, attachment, and stabilization of the glass. Several manufacturers have failed to meet these demands, with three issuing safety recalls because their panoramic sunroofs spontaneously shatter ... Several Kia models have the same problem.

Specifically, it’s alleged in the complaint that the 2011-2015 Kia Sorento, Optima and Sportage, as well as the 2014-2015 Soul and Cadenza, feature the faulty and potentially hazardous sunroofs. The sunroofs used in these Kia models are composed of tempered glass with a ceramic print area, which, the complaint alleges, impairs the glass’s strength. Because of the company’s desire to prevent the sunroofs from rattling free of their chassis, Kia attaches the sunroofs to their cars with such firmness as to prime them for shattering when subjected to the typical pressures and vibrations of a moving vehicle. The complaint alleges that both Kia and NHTSA have been aware of this issue for years. Kia initiated an internal investigation of the problem as early as 2012, which was then followed by an NHTSA Office of Defects Investigation inquiry into the same issue.

Kia declined to recall its vehicles with suspect sunroofs. However, Audi AG, Hyundai Motor America and Volkswagen AG each issued recall notices for similar products. Lead Plaintiff Noemi Caudillo and her husband purchased a 2014 Kia Cadenza in April 2015. The couple drove the vehicle for about two months before its sunroof imploded while Caudillo was driving it along a Texas highway. When the vehicle was taken to a Kia dealer for repairs, Caudillo was informed that the damages must have resulted from the impact of a foreign object and not from any defect inherent to the car.

Plaintiffs in the suit, which demands relief for both national and Texas classes of consumers, allege that Kia has engaged in fraudulent business practices, unjust enrichment and negligence, and violated the California Consumer Legal Remedies Act and the Texas Deceptive Trade Practices-Consumer Protection Act. It will be interesting to see how this case develops. We will continue to monitor it.

Source: Law360.com

NHTSA INVESTIGATES BRAKE DEFECT IN 250,000 FORD PICKUPS

The National Highway Traffic Safety Administration (NHTSA) has started an investigation into potential brake failures in Ford Motor Co. pickup trucks. It’s estimated that more than 250,000 vehicles could be affected by the alleged defect. The Office of Defects Investigation (ODI) opened its investigation after identifying 52 complaints alleging that failures in the electric vacuum assist pump caused a loss of brake power assist in 2011-2012 Ford F-150 trucks equipped with 3.5-liter engines. The agency said:

Two reports alleged crashes due to increased brake pedal effort required to stop or slow the vehicle. The complaints show an apparent increasing trend, with approximately 60 percent of complaints received within the past nine months.

According to the ODI, a preliminary evaluation was opened “to assess the cause, scope and frequency of the alleged defect.” Based on early reports, it would appear that a significant safety defect may well be involved.

Source: Law360.com

THE CASE AGAINST FORD INVOLVING POWER STEERING DEFECT WILL GO FORWARD

U.S. District Judge Lucy Koh, in a ruling last month, preserved most of a proposed class action against Ford Motor Co. over an alleged power steering defect. The automaker had attempted to have the suit dismissed a second time after the Plaintiffs amended their complaint. Even though Judge Koh granted Ford’s motion to dismiss one of the four claims of the named California Plaintiffs, as well as the proposed class bid for injunctive relief, she didn’t accept Ford’s contention that the Plaintiffs did not sufficiently plead their claims that the automaker fraudulently concealed the defect.

The Plaintiffs are seeking damages on behalf of a proposed nationwide class of consumers who had leased or purchased 2010-14 Ford Fusion and 2012-14 Ford Focus vehicles. The Plaintiffs claimed Ford advertised the cars’ electric power-assisted steering system as enhancing vehicle safety, knowing full well that the system actually contains a multitude of safety defects. Because of rulings by Judge Koh, the case now includes only a California class and alleged fraudulent concealment of the defect along with violations California’s Unfair Competition Law (UCL) and Consumer Legal Remedies Act (CLRA). The case no longer includes false advertising or warranty claims.

Because the consumers did not begin to experience the alleged problems with their steering systems until 2013 and 2014, Judge Koh ruled that the statute of limitations has not run out. In addition, Judge Koh held that the Plaintiffs plausibly alleged that Ford knew about the defect before the first of the Plaintiffs bought their cars in 2010 based on internal memos, consumer complaints and technical service bulletins. Ford claimed that the alleged power steering failure at low speeds was not an unreasonable safety risk, but Judge Koh said the issue is a factual one that should go before a jury.

Source: Law360.com

NHTSA FINES TWO HEAVY-DUTY VEHICLE MANUFACTURERS $9 MILLION

The National Highway Traffic Safety Administration (NHTSA) has fined automakers Forest River Inc. and Spartan Motors Inc. at least $9 million for failing to disclose critical information regarding known safety defects, a violation of the agency’s Safety Act. According to NHTSA, investigations of the
companies last year revealed that both had failed on multiple occasions to issue timely recalls, submit early warning data or disclose to the agency when they had released technical service bulletins to their customers.

Forest River, a Berkshire Hathaway-owned company, will pay a $5 million cash penalty up front and Spartan will pay a $1 million penalty and $3 million worth of safety improvement costs. Both companies are also required to comply with third-party audits. Further violations by Forest River could cost the company $50 million and Spartan $5 million. U.S. Transportation Secretary Anthony Foxx said in a statement:

Safety is a critical shared responsibility, and when manufacturers fail to meet their responsibility, the department will enforce the law. Today's action sends a message to these manufacturers and to others that withholding critical safety information is not an option.

In September 2014, NHTSA opened an investigation into Forest River, an Indiana-based recreational vehicle maker, asking it to submit customer notification documents related to any known safety defects. In February and March, the company notified NHTSA of both a faulty wiring and exhaust vent defect in two sets of camper trailers that it had reported to customers the previous year, but failed to report to the agency.

A similar investigation into Spartan, a Michigan-based maker of specialty heavy-duty vehicle chassis and emergency-response vehicles, revealed that the company had failed to notify NHTSA of 244 service bulletins over a 10-year period starting in April 2003. The agency determined that three of those safety bulletins, which occurred between 2012 and 2013 and were disclosed to customers, should have been submitted to the agency as safety defects and were not.

I wrote on this matter primarily to remind our readers that under the National Traffic and Motor Vehicle Safety Act of 1966 and the NHTSA's defect reporting regulations, all manufacturers of vehicles and equipment are required to submit a copy of each service bulletin no later than five working days after the end of month it was issued.

Source: Law360.com

WHEN WILL WE SEE SELF-DRIVING CARS?

Automakers and technology companies are aggressively developing self-driving vehicles and there has been a lot of attention given to this development. Automakers such as Mercedes and Toyota have vehicles with systems that allow cars to maintain their lanes, park themselves, and apply brakes when necessary. Automakers generally plan to add automatic functions until cars are capable of driving themselves, and apply brakes when necessary.

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Source: Law360.com

IV. A REPORT ON THE GULF COAST DISASTER

A FIVE-YEAR PATH TO JUSTICE WINDS UP WITH A SETTLEMENT

I wrote on the global settlements with BP, with an emphasis on Alabama, in the first section of this issue. I will expand on the overall settlement here. BP Exploration & Production Inc.’s $18.7 billion global settlement last month came after a hotly contested five-year court battle over the deadly 2010 Deepwater Horizon explosion. More was said about the record-breaking settlement in the Capitol Comments Section of this issue. This settlement resolves claims by the federal government and five Gulf states—Alabama, Florida, Louisiana, Mississippi and Texas—as well as those by more than 400 local government entities. A timeline of activity in the case that ended in the largest environmental settlement in U.S. history is set out below for your edification.

- April 20, 2010: The Deepwater Horizon oil rig explodes, killing 11 workers and causing millions of barrels of oil to spew into the Gulf of Mexico, marking the worst offshore oil spill in U.S. history.
- Dec. 15, 2010: The U.S. Department of Justice sues energy companies associated with the rig, including BP Exploration, Anadarko, and Transocean Deepwater Inc., which owned the rig. The suit, filed in Louisiana federal court, accused the companies of causing the spill and sought damages and fines under the Oil Pollution Act (OPA) of 1990, Clean Water Act (CWA) and the Outer Continental Shelf Lands Act.
- Feb. 21, 2012: U.S. District Judge Carl Barbier finds that as co-owners of the Macondo well, BP PLC and Anadarko were liable for Clean Water Act violations arising from the spill. He finds they would be liable for as much as $1,100 in fines per barrel. His ruling paved the way for a three-phase civil trial over the spill.
- Nov. 15, 2012: BP agreed to pay a record $4.5 billion in federal penalties over the spill and BP plead guilty to 11 felony counts linked to seaman manslaughter charges and copped to lying to Congress, resolving all criminal and securities claims brought by the U.S. government over the disaster. In April that year, it had agreed to pay $1 billion toward environmental restoration after the oil spill.
- Feb. 25, 2013: The first phase of the civil trial over liability began, with lawyers for the Justice Department, state governments, private Plaintiffs and drilling contractors arguing that BP bears most of the blame for the accident.
- April 17, 2013: The first phase of the BP trial ended after Judge Barbier heard testimony from 60 witnesses—including 39 live witnesses and 23 video witnesses—and reviewed more than 1,000 exhibits.
- Sept. 30, 2013: The second phase of the BP trial began. The goal in that phase was to determine how much oil spilled and how quickly. BP argued that it did its best. But other parties in the suit, including Transocean and Halliburton, argued BP refused to spend any time or money preparing to stop an underwater blowout at its source despite decades of warnings.
• Oct. 9, 2013: The second phase of the trial ended with the U.S. government highlighting its reliance on BP’s own information and recommendations to support its estimate that 4.2 million barrels of oil were released into the Gulf of Mexico.

• June 5, 2014: The Fifth Circuit upheld Judge Barbier’s ruling that BP and Anadarko can be held liable for Clean Water Act violations over the disaster. The Macondo well’s cement failed, compromising the confinement of oil such that the oil entered navigable waters of the U.S. The companies didn’t dispute their ownership of the well.

• Sept. 4, 2014: Judge Barbier issued his ruling on the first phase of the trial, finding that BP acted with gross negligence and willful misconduct. His ruling placed 67% of the fault onto BP, 30 percent on Transocean and 3 percent on Halliburton, the cement contractor for the Macondo well that blew out beneath the rig.

• Nov. 5, 2014: The Fifth Circuit panel refused to reconsider its June decision upholding Judge Barbier’s ruling that BP and Anadarko can be held liable for Clean Water Act violations from the spill. The appeals court said it hadn’t made any legal or factual errors, and affirms the lower court’s finding that the Macondo well, which they co-owned, was the source of the spilled oil.

• Jan. 9, 2015: The Fifth Circuit in a 7-6 split decision found that BP had released 3.19 million barrels of oil into the Gulf of Mexico during the Deepwater Horizon disaster, rejecting the government’s calculation that 4.19 million barrels had spilled. This limited BP’s potential CWA fines to $13.7 billion from a potential $18 billion.

• March 13, 2015: The government indicated it would appeal the ruling capping the potential CWA fines to $13.7 billion. BP and the U.S. Department of Justice had presented competing scientific experts supporting their respective positions during trial proceedings. Judge Barbier, however, found neither party to be fully persuasive and settled on a figure in between the estimates.

• March 27, 2015: The federal government urged Judge Barbier to impose penalties against BP and Anadarko at the higher end of the maximum limit for both of them. BP sought a reduced penalty and Anadarko of the maximum limit for both of them. BP against BP and Anadarko at the higher end urged Judge Barbier to impose penalties for Clean Water Act violations from the spill. The Horizon disaster, rejecting the government’s calculations that 4.19 million barrels of oil were spilled in the Deepwater disaster. BP sought to push the blame onto rig contractors.

• June 12, 2015: BP requested the U.S. Supreme Court to hear its appeal, arguing the Supreme Court’s review is necessary because more than 90 percent of U.S. offshore drilling takes place in the Fifth Circuit’s jurisdiction, so its decision will effectively apply to the entire industry without the high court’s intervention.

• June 29, 2015: The U.S. Supreme Court denied BP’s petition for certification.

• July 1, 2015: The record global settlement is made public.

Even though you took five years, the road from massive oil spill in the gulf to settlement was relatively short. Because it dealt with a complex set of issues and a well-financed wrongdoer, it is important to note that this massive settlement came about in record time. Nobody anticipated that the litigation would be over in most part by mid-year of 2015, only 5 years post-spill. But it happened! Source: Law360.com

BP MUST PAY MUNICIPAL SETTLEMENTS FROM 2010 OIL SPILL WITHIN 30 DAYS

As we reported, BP set aside $1 billion of the $18.7 billion settlement for local governments impacted by the spill. Municipalities that still had not settled claims against BP for damages caused by the spill had until July 15 to accept or reject BP’s settlement offers. Most all of the 500 municipalities in the Gulf coastal states that were seeking damages from BP accepted the offer. However, a large number of municipalities in Alabama have accepted the settlement offers from BP as part of the larger settlement package. Our firm represented a number of cities, towns and other governmental entities in Alabama and Florida in the litigation. We were able to settle economic loss claims for our clients.

Judge Barbier has required BP by court order to pay the settlement amounts within 30 days.

• April 9, 2015: BP filed a petition for writ of certiorari to the U.S. Supreme Court, arguing that it is being unfairly held liable for CWA violations over the disaster, and asked the high court to reconsider the Fifth Circuit’s rulings. BP argued the Fifth Circuit panel found it liable by invoking “four different, shifting interpretations” of the CWA’s phrase “from which oil or a hazardous substance is discharged.”

V. DRUG MANUFACTURERS FRAUD LITIGATION

FEDERAL JUDGE DISMISSES LUPIN’S SUIT IN FAVOR OF ALASKA’S PAY FOR DELAY INVESTIGATION

The State of Alaska has won an important victory relating to the investigation of the drug maker Lupin by the state’s Attorney General. A Motion to Dismiss filed by the Attorney General’s office was granted by U.S. District Judge Richard D. Bennett. The ruling defeats Lupin’s challenge in federal court to the State’s investigation into what is known as “Pay for Delay” conduct. In February of this year, Attorney General Craig Richards, on behalf of the State of Alaska, issued Civil Investigative Demands (CIDs) to investigate potential violations of Alaska’s Antitrust, Unfair Trade Practices, and Consumer Protection laws.

Alaska hired our firm, along with the Miner, Barnhill & Galland firm and The Fosler Law Group, a local Alaska firm, to assist with its investigation into whether certain pharmaceutical manufacturers violated Alaska State law by entering into what are known as

BP received a reduced penalty and Anadarko of the maximum limit for both of them.
Judge Bennett agreed, stating in his ruling: “the state proceeding represents an important part of federalism and comity for which federal courts have held that due deference to the principles of federal law must be paid.” He continued: “The state court has jurisdiction over the case under the precedent set by a 1971 U.S. Supreme Court ruling in Younger v. Harris.”

Alaska argued that, “Since the seminal case of Younger v. Harris … the Supreme Court has held that due deference to the principles of federalism and comity require federal courts to abstain from exercising jurisdiction over the case under the precedent set by a 1971 U.S. Supreme Court ruling in Younger v. Harris.”

In the past several years politics in Alabama have centered on a number of different issues. One involves the special session of the legislature, which has pitted Gov. Robert Bentley against both houses of the Alabama Legislature. The President Pro Tem of the Senate, the Speaker of the House and several others in leadership positions have been at odds with Gov. Bentley. But interestingly, it now appears that Sen. Marsh and Speaker Hubbard also are in conflict with each other, taking different paths for the session. Their conflict appears to be on competing versions of gambling legislation.

Another ongoing issue involves the battle over the Confederate battle flag. The flag was removed from the state capital grounds by Governor Bentley. While that has stirred up some controversy, I believe it was the right thing to do. The flag has become a symbol of aggression and it serves no useful purpose today. It’s a part of history and its display is appropriate in museum settings.

A third situation involves the BP settlement money with a number of players and a number of different issues being involved. While we have been involved in the state’s case from the beginning, I really don’t have any specific recommendations on how the money should be spent. It’s my opinion that Gov. Bentley should have the final word on that part of the statement, but with input from the legislature.

The temperatures in Montgomery have been close to 100 degrees lately and it will seem even hotter around the State House when the legislature comes back to work on Aug. 3. Hopefully, the special session will be both productive and successful. Maybe by the time this issue is mailed, a miracle will have happened and the legislators will have done their job.

The Presidential Election Really Heats Up And Very Early

Donald Trump entered the race for the Republican nominee for president last month and “The Donald” has already stolen the show. He continues to do well in all of the recent polls, either leading or being second in all that I have seen, and his rise has been impressive. It’s been rather interesting—and even amusing—to see how the other Republican candidates are reacting to his entry into the race. For example, Jeb Bush has seemed to be in a state of mild shock. Maybe some of his recent statements can be attributed to his real fear of “The Donald” as a candidate. The debates will be most interesting and may be much better than the reality shows that seem to attract television viewers these days.

Regardless of how one feels about “The Donald,” he will be a force in the Republican primary. No longer can he be considered a fringe or mere novelty candidate. I suspect the other candidates dread having to appear in a debate with “The Donald.” The Tea Party folks appear to be very glad to see that this candidate came along and is doing so well, but there are also lots of unhappy campers in the top ranks of the National Republican Party. The scary thing, however, is that this man could become a legitimate candidate with a chance to win.
VII. LEGISLATIVE HAPPENINGS

THE SPECIAL SESSION GETS OFF TO A RATHER STRANGE START

The leaders in the Alabama Legislature appeared to draw a line in the sand when they abruptly recessed the special session called by Governor Robert Bentley on the very first day of the session. Their recess will be in effect until Aug. 5, when both Houses will return to work. Gov. Bentley has a package of bills that in my opinion the legislators should consider and pass. When they return, there will be eight legislative days within nine calendar days left in the session to get the job done. In the event a budget is not passed that includes substantial additional revenues, the people of Alabama will suffer greatly.

It’s high time for the legislators to put politics aside, get down to work and then solve the state’s fiscal problems on a permanent basis. By the way, that’s what they were elected to do and it’s also what folks back home expect. My brother, Billy, who serves in the State Senate, told me recently that he was “elected to do the right thing, not to play political games, and that’s what I plan to do.” I elected to do the right thing, not to play the State Senate, told me recently that he was home expect. My brother, Billy, who serves in

VIII. COURT WATCH

10th CIRCUIT REAFFIRMS CLASS WIN IN $1 BILLION PLUTONIUM DISPUTE

The Tenth Circuit Court of Appeals will not rehear a dispute over plutonium contamination emanating from a Colorado nuclear plant once owned by Dow Chemical Co. This potentially keeps intact a nearly $1 billion jury verdict against Dow and the plant’s successor, Rockwell International Corp. The decision in June by a three-judge panel of the court to deny Dow’s and Rockwell’s appeal of a state law verdict stands for the time being after notification on July 27 that the full appellate court will not reconsider the original ruling. The case now goes back to the district court and that court will decide how much of the $926 million judgment a class of property owners near the plant will get to keep.

Source: Law360.com

IX. THE CORPORATE WORLD

CITIBANK TO PAY $700 MILLION FOR DECEPTIVE CREDIT CARD MARKETING

Citibank and its subsidiaries have been ordered to pay $700 million in consumer relief for illegal practices related to credit card add-on products and services. According to a consent order issued by the Consumer Financial Protection Bureau (CFPB), about 7 million consumer accounts were affected between 2005 and 2012 by Citibank's deceptive marketing of five debt protection products and additional add-ons that offered credit monitoring. The illegal practices included:

- Marketing that misrepresented or failed to inform consumers about the cost of the products. Although Citibank told its marketers to offer “free” 30-day trials, the bank still charged customers for coverage during that period.
- False claims of the fraud-alert services would notify customers of fraudulent purchases. Instead, the monitoring only provided alerts to changes in customer credit files maintained by major credit-reporting firms.
- Using leading or vague questions to sign customers up for credit card add-ons without specific authorization.
- Enrolling customers in the programs and charging them for the services even though the customers were ineligible for coverage.

I believe that most folks were totally unaware of how bad the conduct of some in Corporate America has been. CFPB Director Richard Cordray had this to say:

"We continue to uncover illegal credit card add-on practices that are costing unknowing consumers millions of dollars. In our four years (of existence), this is the tenth action we’ve taken against companies in this space for deceiving consumers."

Citibank said it cooperated with investigations by the CFPB and the U.S. Office of the Comptroller of the Currency and started to take corrective actions to reimburse customers in 2013. Affected customers will automatically receive a statement credit or check, and those no longer with Citi who are eligible will be mailed a check.

The $700 million in consumer relief paid by Citibank includes about $479 million for an estimated 4.8 million consumer accounts harmed by the deceptive marketing or retention practices. The bank will also pay about $196 million to the estimated 2.2 million consumer accounts that failed to receive promised credit-monitoring services. Additionally, Citibank will pay $70 million in cumulative penalties to the CFPB and the Office of Comptroller of the Currency and agree to be barred from marketing add-on products to customers until the bank submits a compliance plan to the consumer agency.

A Citibank subsidiary known as Department Stores National Bank will have to provide approximately $23.8 million in relief to nearly 1.8 million consumer accounts for charging expedited payment fees. Citibank said it was fully reserved for costs associated with the payments and had previously disclosed the investigations to investors.

Source: USA Today

BIG PHARMA AND MEDICAL DEVICE MANUFACTURERS PAY BILLIONS TO DOCTORS TO PRESCRIBE THEIR DRUGS

Government data released on June 30, covering a 17-month period between August 2013 to December 2014, revealed drug companies and medical device manufacturers paid out approximately $5.5 billion to physicians and medical training programs for promotional talks, research and consulting. A total of 1,617 companies reported 15.7 million payments valued at $9.9 billion. Nearly all of those payments—14.9 million—were classified as “general payments,” covering promotional speaking, consulting, meals, travel and royalties. They totaled $3.5 billion over the 17-month period.

The information is public as a result of a provision of the Affordable Care Act (ACA) known as the Sunshine Law that requires the health care industry to release details of its payment to doctors and teaching hospitals. The transparency process is called Open Payments. Companies must also provide information on the value of non-monetary “perks,” such as gourmet meals, trips and other “entertainment.”

An informational website operated by the Centers for Medicare & Medicaid Services at CMS.gov provides a searchable database for this type of information. Open Payments does not include money spent on drug samples left at doctors’ offices. Interestingly, the tally also doesn’t include the bulk of the money companies spend on independently administered continuing medical education, which they support with unrestricted grants. The government has tightened the rules for reporting such continuing education in the future.

ProPublica, an independent, non-profit newsroom that produces investigative journalism in the public interest, also created an online search tool it calls “Dollars for Docs,” that allows users to search for general payments in a certain reporting period. The search excludes research and ownership interests. Users can search by a doctor’s name and/or state, and by company to see how payments break down by drug, device or doctor.

Source: ProPublica
The drug and device companies insist the payments are about funding and encouraging research and education. I concede that some of them undoubtedly are. Physicians regularly consult with drug makers and medical device manufacturers on how these products are working for patients. Health care professionals are also involved in clinical trials, and should be compensated for their time and expertise.

But the drug and medical device industry’s practice of paying “kickbacks” to physicians has become endemic in recent years. For example, in 2007, three major manufacturers of metal-on-metal hip replacements were targeted in a Department of Justice investigation sparked by reports that the prosthetic devices were defective and subject to premature failure—and that the manufacturers were aware of these defects. In the wake of this investigation, the U.S. Department of Health and Human Services reported that these companies had paid out $800 million over a four year period to “physician consultants” who promoted the devices as safe and effective.

Of course, a payment from a health care products maker to a physician in of itself—standing alone—is not necessarily a bribe or a kickback. Many of these payments may indeed be for legitimate services. However, independent analysts point out that such payments from industry are very likely to influence a physician’s choice of drugs and devices, and opinions on those products. If the drug manufacturers cross the line—and doctors are in fact compromised—that’s a horse of a different color. That is why transparency is so very important. Now, thanks to the Sunshine Provision of the ACA we can at least see who is paying how much to whom and get some idea of why these payments are being made.

Sources: www.ringoffireradio.com, ProPublica, NPR

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**TEXAS BARGE SPILL OIL POLLUTION ACT CASE TO PROCEED TO TRIAL**

While BP and Anadarko were questioning certain components of the Oil Pollution Act (OPA), on another front, two other corporations were challenging another key term of the statute in Texas courts. The dispute is based on the cleanup of oil spilled from a barge into the waters near Orange, Texas. The spill occurred when the barge was grounded on wetlands after a hurricane struck in September 2008. Brothers Enterprises, Inc. purchased the barge in April 2008 and later sold it to Tom’s Welding, Inc. in a removal agreement. Despite the U.S. Coast Guard’s instructions to delay salvaging until a plan was approved, Tom’s Welding allegedly went ahead and ended up spilling some oil. The company then sold the barge to Leesboro Corp. before a larger spill occurred, giving rise to the lawsuit.

Tom’s Welding argued it was not a “responsible party” under OPA and, as a result, was not liable for cleanup costs because Leesboro was the owner of the barge at the time of the larger spill. Tom’s Welding also contended the barge did not represent a “substantial threat of a discharge” despite being stranded in tidal wetland on top of gas pipelines and still containing oil.

U.S. District Judge Marcia A. Crone disagreed, stating that Tom’s Welding’s interpretation was too narrow after taking OPA’s plain language and legislative history into account. Judge Crone also held that questions remained as to whether the barge constituted a “substantial threat of discharge” when it was grounded on top of the oil pipeline, clearing the way for the case to proceed to trial. The case will now proceed.

Source: Law360.com

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**SOUTH CAROLINA SUPREME COURT REDUCES RISPERDAL FINE AGAINST J&J UNIT**

The South Carolina Supreme Court has further reduced the judgment against Ortho-McNeil-Janssen Pharmaceuticals Inc., a Johnson & Johnson subsidiary, in the state’s suit over deceptive marketing of the antipsychotic Risperdal. An additional $12 million was taken away in the ruling. The court said its February ruling halving the original $327 million in penalties was still $12 million too high. The court filed a substituted opinion in response to a petition for rehearing. The main purpose of the ruling was to correct a calculation error in its earlier order that put Janssen on the hook for $136 million in civil penalties. The judgment should have been $124.3 million, the court said. The court also added that its ruling is supported by federal law.

In its 2007 suit, South Carolina accused Janssen of engaging in unfair and deceptive acts by hiding the risks of Risperdal on labels attached to sample packs sent to doctors, and sending “dear doctor” letters that touted Risperdal as safer than other competing brands of antipsychotic medications. The state had argued that Janssen sent the letter to protect Risperdal’s sales.

In June 2011, a South Carolina state court judge ruled that Janssen should pay $327 million in civil penalties for 553,055 separate violations of the South Carolina Unfair Trade Practices Act (SCUTPA). In February, the state high court cut the penalty to $136 million, limiting claims to three years from a January 2007 tolling agreement between the subsidiary and the state.

States including Louisiana and West Virginia sued over the drug after the U.S. Food and Drug Administration (FDA) ordered the company in 2003 to revise prescribing information for Risperdal to include a warning for an increased risk of diabetes among users. In a footnote in its substituted opinion, the South Carolina high court acknowledged that other state actions were settled for much less—including a settlement with Arkansas for $775 million and a settlement with 36 states and Washington, D.C., averaging $4.89 million per state.

However, the South Carolina Supreme Court was not inclined to discount the judgment further. “We decline to rely on average settlements as dispositive, especially when we are constrained by an abuse of discretion standard of review,” the justices said. The court adjusted the penalties by around $12 million because it previously had the wrong number of drug samples sent to physicians from February 2004 until the complaint was filed in April of 2007. The initial decision had based the $100 per box penalty on 45,654 sample boxes. The new opinion says that Janssen handed out only 228,447.

The court also augmented its February ruling to counter Janssen’s argument that the jury had been improperly instructed on what constitutes “unfair,” saying that the SCUTPA was intended to be guided by federal unfair trade policies and that the language used to instruct the jury was in line with Federal Trade Commission policy statements on what constitutes unfairness and deception. The court said other issues that Janssen had raised in its rehearing petition were “not preserved for appellate review.”

Source: Law360.com

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**TYCO TO PAY $126 MILLION IN SHAREHOLDER SUIT OVER COM-NET BUY**

A Pennsylvania judge has awarded nearly $126 million to Com-Net Critical Communications Inc. in a shareholder action against Tyco Electronics Corp. over its purchase of the wireless communications company. Judge Alan Hertzberg issued the verdict on July 13. Tyco is required under the order to turn over $80 million it has been withholding from Com-Net Critical shareholders and pay $45.75 million in interest. The withholding was part of the stock purchase agreement for Com-Net Critical, which was signed in March of 2001. A provision of the contract said that if a then-ongoing communications project in Florida was not completed on time and within the specified budget, Tyco would be entitled to keep some or all of that portion of the payment.

In the findings accompanying the verdict, Judge Hertzberg found that Tyco was responsible for slowing down the project and that Com-Net Critical should not be held liable. The judge stated in his findings:

While Florida actually provided the ‘written acknowledgment’ on September 16, 2010, defendants’ breach of the provision of the stock purchase agreement that required diligent, timely and efficient completion of the Florida communications system, using all commercially reasonable efforts, delayed its completion, and therefore receipt of the written acknowledgment from Florida.

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**Sources:**
- www.ringoffireradio.com
- ProPublica
- NPR
The Florida project originally included 134 radio frequency towers and 22 microwave towers. Judge Hertzberg said that alterations made to the project plans, which included additional towers, were not agreed to by Com-Net Critical and should not be counted toward the overall cost. He found that Tyco’s calculations showing the project came in over budget improperly counted these additions and also included other mistakes. Judge Hertzberg stated further in his findings:

**While more than $124 million was spent to complete the Florida communications system, under the definition in the stock purchase agreement of ‘costs incurred,’ the amount of the overspend did not exceed $124 million.**

Judge Hertzberg said the withheld payment started accruing interest on Jan. 1, 2006. The case is in the Court of Common Pleas of the State of Pennsylvania, County of Allegheny.

Source: Law360.com

### DATA BREACHES AFFECT MIDSIZE BUSINESSES

According to a recently completed survey, most midsize business leaders consider a data breach to be among their top risks and a majority view IT security as being “very important” when selecting a supplier. The Hartford did a survey of midsize business owners and C-level executives. It’s concluded that there is good reason to be concerned: 45 percent of those surveyed had experienced a data breach in the prior three years, and 13 percent have had a supplier’s data breach impact their business information. The survey found most midsize business leaders (82 percent) consider a data breach at least a minor risk to their business. Nearly one-third (32 percent) view it as a major risk. Joe Coray, vice president of The Hartford’s Technology & Life Science Practice, stated:

“All types of businesses have networks and networks can be vulnerable to a breach. As we have seen in recent years, a breach involving a supplier or vendor can impact a business as much as a breach of its own IT systems. Whether businesses are hosting their data internally or entrusting it to external business partners, it is important that they validate how their information is being secured.

Recognizing the data risks involving suppliers, more than half of the midsize business leaders (53 percent) surveyed consider IT security and data protection practices very important when selecting a supplier. By comparison, 36 percent consider a supplier’s contingency planning and 28 percent view a supplier’s location relative to their business as very important. Coray stated:

*Given what is at stake in terms of a company’s operations and reputation, evaluating a prospective supplier or vendor’s IT security and data protection protocols against current best practices should be a critical part of a company’s due diligence process.*

Coray discusses data breaches and other technology risks for midsize businesses at www.thehartford.com/midsizemonitor. This is a major area of concern and one that must be addressed by both government and businesses.

Source: Claims Journal

### BIOGEN ACCUSED OF PAYING KICKBACKS TO PRESCRIBERS

Four whistleblower lawsuits accusing Biogen Inc. of violating the False Claims Act by paying millions of dollars in kickbacks to doctors as incentives and rewards for prescribing the company’s multiple sclerosis drugs to Medicare patients have been unsealed.

One of the lawsuits was brought by a former sales representative and marketing staffer, who was employed at the company from 2004 to 2012. The former sales representative alleges Biogen preserved market share for multiple sclerosis drug Avonex and expanded market share for multiple sclerosis drug Tysabri by identifying top prescribers and paying them through sham consulting and speaking schemes to write prescriptions. The sales representative’s lawsuit alleges that Biogen shelled out kickbacks worth $18 million in 2009 and 2010 to 1,500 health care providers who accounted for 60 percent of all multiple sclerosis drug prescriptions despite representing only a small minority of all U.S. providers who treat multiple sclerosis.

The second lawsuit was brought by two of the company’s product managers and one medical director. These individuals allege that Biogen engaged in illegal pre-approval marketing activities such as disguising kickbacks by staging excessive board meetings that doctors were paid to attend. The lawsuit alleges these payments were intended to encourage use of multiple sclerosis drug Tecfidera, which obtained U.S. Food and Drug Administration (FDA) approval in 2013. The third lawsuit alleged Biogen provided influential prescribers with improper kickbacks in the form of exorbitant speaker fees, advisory board fees and study site fees. The fourth lawsuit was brought by a former Biogen business manager who had been tasked with expanding sales of Avonex and Tysabri. The business manager accused Biogen of strategically seeking out and paying kickbacks to the highest-prescribing multiple sclerosis specialists in the country to induce providers to use its multiple sclerosis products.

The Anti-Kickback Statute prohibits offering, paying, soliciting or receiving remuneration to induce referrals of items or services covered by federally funded programs. The purpose of the statute is to ensure that a doctor’s medical judgment is not compromised by improper financial incentives and is instead based on the best interests of the

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**JereBeasleyReport.com**
patient. When health care companies pursue profits by paying kickbacks to doctors, they undermine a patient’s ability to trust that medical decisions are being made for scientific reasons, not financial ones.

Source: Law 360

A LOOK AT THE ORIGINAL SOURCE DOCTRINE

The Original Source Doctrine is an exception to the False Claims Act (FCA), which, as we have said previously, is a whistleblower statute dating back to the Civil War. The FCA allows whistleblowers to file lawsuits temporarily under seal to inform the Department of Justice about fraud occurring against the federal government. The Original Source Doctrine in this litigation has varied in its interpretations from court-to-court, but typically it requires the whistleblower to:

1. “have direct and independent knowledge” of the fraud and
2. voluntarily inform the government of the fraud.

Another exception to the FCA is the Public Disclosure bar, which typically prohibits a whistleblower from filing a FCA suit based on information publicly available, such as from a public news report. These exceptions are potentially deadly to a would-be whistleblower’s case and that’s why whistleblowers should consult a lawyer with FCA experience.

The U.S. District Court for the Central District of California ruled recently that a whistleblower attempting to claim part of a $322 million FCA settlement with Scan Health Plan (Scan) had failed to demonstrate that he was the original source of information. See United States of America v. Scan Health Plan, CV 09-5013-JFW (JEMX) (C.D. Cal. June 1, 2015). The whistleblower, James Swoben, quit Scan and informed a state senator about overpayments made by California’s Medicaid program for patients’ long-term care. The state senator referred the whistleblower’s information to the State Controller’s Office, which opened an investigation. The Controller’s Office drafted the State Controller’s report. The Court ruled that Swoben was not the “original source” of the information and therefore he could not recover.

Cases such as the one mentioned above demonstrate the many hurdles whistleblowers face. Often they are not only in a battle against the company defrauding the government but sometimes are placed in a position of opposition against the government itself when they are trying to obtain the reward they are rightfully entitled to. This is why it is important that if you are considering blowing the whistle on corporate fraud, you should contact a competent FCA whistleblower lawyer like those at Beasley Allen.

If you have a potential whistleblower case and want to discuss it with our firm, contact Andrew Brassher at Andrew.Brassher@beasleyallen.com, Archie Grubb at Archie.Grubb@beasleyallen.com, Larry Golston at Larry.Golston@beasleyallen.com, or Lance Gould at Lance.Gould@beasleyallen.com, or at 1-800-898-2034 or 334-269-2343. Each of these lawyers handle whistleblower lawsuits and would be glad to talk with anybody who needs information or wants to discuss a potential claim.

Source: JDSUPRA Business Advisor

FEDERAL JUDGE TAKES THE DEPARTMENT OF JUSTICE TO TASK FOR MINIMIZING A WHISTLEBLOWER’S CONTRIBUTIONS IN A CASE

A federal judge in Philadelphia has taken the Department of Justice to task for minimizing a whistleblower’s contribution in a False Claims Act case. That case resulted in a $192 million settlement with Endo Pharmaceuticals. It actually ended over a decade’s worth of fraud that ripped off Medicare and Medicaid. Based on the court’s findings and comments,had Ms. Ryan not done her duty as a whistleblower, I am fairly certain that Endo’s wrongful conduct would most likely never have been discovered.

Endo Pharmaceuticals sold more than $750 million worth of Lidoderm in 2010 and, according to Endo Pharmaceutical’s own employees, more than 90 percent of these sales were off-label. Based on the court’s findings and comments, had Ms. Ryan not done her duty as a whistleblower, I am fairly certain that Endo’s wrongful conduct would most likely never have been discovered.

Source: Corporate Crime Reporter

The Court denied a partial summary judgment motion for the whistleblower and found that the State Controller’s 2010 report and Swoben’s 2009 complaint alleged the same scheme. The whistleblower’s claim that his complaint contained additional fraud allegations did not overcome the Court’s conclusion that the complaint was duplicative of the State Controller’s report. The Court ruled that Swoben was not the “original source” of the information and therefore he could not recover.

The Court reads the statute to hold that the only measuring stick is the contribution of the relator. If Congress had intended limitations, like in the case of large awards, it would have explicitly included them within the statutory framework of the FCA. Congress’ silence on this issue compels rejection of the Government’s argument that a relator should get a smaller percentage in large case. Second, the Government has failed to include any legal precedent affirming this argument, and thorough research by this Court has failed to unearth any such support.

James Hoyer Law Firm Managing Partner Chris Casper made this astute observation:

Judge Kelly’s decision is not only a testament to Peggy’s commitment in this decade long case, but also reaffirms the value of all whistleblowers and the False Claims Act as the government’s most powerful tool in fighting fraud.

Judge Kelly called Ms. Ryan’s efforts “nothing short of extraordinary” in explaining his decision to give her close to the maximum award of 25 percent for a False Claims Act relator. He wrote that “Without the assistance of Ryan, the probability of the Government recovering any funds for the FCA violations would have been slim at best.”

Every time I start to believe that members of Congress actually understand the basic principle that safety on our highways is a good thing, something happens in Washington...
ton to bring me back down to earth. In fairness, I have to believe that most of the members of the House and Senate really do understand how important safety is. So why don’t their actions reflect that understanding? A prime example, causing me to wonder what is really going on, involves a recent bill introduced last month by Senator John Thune, Chairman of the Commerce, Science and Transportation Committee.

The Thune bill will decrease needed protection relating to defective rental cars. It would allow rental companies to rent cars that have unresolved defects so long as the rental company tells the consumer about the defects in writing. While the requirement of written notice may lead some to believe that this is a step forward in consumer safety, consumer protection organizations believe it’s really a step backward.

Rosemary Shahan, president of Consumers for Auto Reliability and Safety, stated, “This is going backward… this would be worse than existing practices for 95 percent of the industry.” Plain old common sense tells me that a rental company should not be allowed to rent a car when it knows that the car is under recall.

Many rental companies have existing policies that prohibit the renting of cars that are under recall. This new legislation could prompt rental companies to drop these policies or, at the least, reduce incentive to adopt such policies. Consumer groups have been working to get legislation passed that would prohibit the leasing of vehicles that are subject to a safety recall until the issue is fixed. The Raechel and Jacqueline Houck Safe Rental Car Act of 2013 sought to prohibit rental companies from selling or renting vehicles within 24 to 48 hours of receiving a recall notice. However, this bill never became law. If you wonder why, check out the lobbying efforts by the industry.

The proposed legislation was named in honor of Raechel and Jacqueline Houck, two sisters from Santa Cruz, Calif., ages 24 and 20, who were killed while driving a recalled Chrysler PT Cruiser they had rented from Enterprise in 2004. About a month before the deadly crash, Enterprise received a recall notice that the PT Cruiser had a defective power steering hose that was prone to catching fire and that it would be repaired by Chrysler free of charge. Despite the warning, Enterprise failed to get the vehicle repaired and rented it out to three other customers before renting it to the Houck sisters. The defect caused the car to catch fire and crash head-on into a tractor-trailer, killing both sisters. That was a tragedy that never should have happened.

Cally Houck, the mother of Raechel and Jacqueline, has joined with consumer groups in support of legislation designed to close a loophole in safety standards. The proposed legislation would require rental car companies to ground recalled vehicles as soon as they receive a safety recall notice. It would also prohibit them from being rented or sold until they are fixed. Auto dealers are already subject to these requirements and the bill would simply extend the same requirements to rental car companies. In speaking in support of the bill named for her daughters, Cally Houck said:

If this bill had been in effect when my daughters rented that recalled car, they would still be alive today. No other parents should have to suffer such a horrific loss because a rental car company hasn’t bothered to get an unsafe recalled car repaired.

Plain old common sense, which is sometimes missing—and basic safety principles—should tell members of Congress that a car under recall for safety issues should not be rented to a person who is looking to rent a car. Not only does renting a vehicle under recall put the person renting at risk, a hazard is also created on the highways for others. Why is that so hard for our elected members of Congress to understand?

Sources: Bloomberg and Consumers for auto reliability and safety

XII. AN UPDATE ON THE FIRM’S PERSONAL INJURY AND PRODUCT LIABILITY SECTION

There continues to be a great deal of activity in our firm’s Personal Injury / Products Liability Section. The General Motors and Takata litigation has kept a number of lawyers in the Section very busy. I will give an update on some of the current projects lawyers in the Section are working on.

Product Liability—We continue to focus on accident cases involving automobiles, heavy equipment and consumer products. Some of these auto cases involve single-vehicle crashes, while others involve multiple-vehicle accidents. Our lawyers will be glad to review any case involving catastrophic injury or death. Contact 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 quickly send accident investigators to the scene of a truck accident to begin working to limit their liability in these situations. Our lawyers, staff and in-house accident investigators immediately begin the important task of documenting and preserving the evidence. We would like to review any case involving catastrophic injury or death. Contact Julie Beasley, Chris Glover or Mike Crow at 800-898-2034 or by email at Julie.Beasley@beasleyallen.com, Chris.Glover@beasleyallen.com, or Mike.Crow@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, it has 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 – Many times product claims arise from facts giving rise to workers compensation claims. After we investigate the circumstances that caused the injuries, many times we discover a defective machine may be the cause of the injuries. Contact Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

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

I will write in more detail in this issue on several other topics, including specific cases and other matters of interest, under the
Product Liability Section below. Currently, we have 15 lawyers and 11 Legal Assistants working in this Section. In addition, we have seven highly trained investigators, all employed by the firm, and that has provided to be a definite benefit for us and our clients.

XIII. PRODUCT LIABILITY UPDATE

AN UPDATE ON THE BAD BOY BUGGY LITIGATION

Lawyers in our firm continue to handle cases involving injuries from the off-road vehicle known as the Bad Boy Buggy. The Buggy was initially designed by a gentleman who owned an auto salvage yard in Natchez, Miss. The concept was good and there definitely was a market for electric off-road vehicles. The vehicles are quiet, which makes them attractive to hunters. But unfortunately, the design of the buggy was poor. The company was sold a couple of times and now is owned by Textron, Inc. and the Buggies are manufactured in Augusta, Ga.

These vehicles are currently marketed for hunting and utility work yet they are unstable on uneven terrain. The static stability factor of the Bad Boy vehicles is very low caused by a narrow track width and a high center of gravity. The vehicles are very heavy primarily because of the weight of the numerous batteries located internally. When the Bad Boy vehicle turns over it has the potential to cause significant injury.

As of today, the Bad Boy Buggies are still not equipped with doors or adequate measures to prevent “leg-out injuries.” Yamaha performed a recall on all of its Rhino vehicles in 2007 because it was seeing numerous leg-out injuries when the vehicles tipped over. The primary problem is that in a side-by-side vehicle, the driver or passenger will reflexively put their foot out as the vehicle tips. The vehicle, the driver or passenger will reflexively put their foot out as the vehicle tips. Hopefully, Textron, Inc. and its subsidiary Textron Specialty Vehicles, Inc. will recognize the design flaw and start equipping their vehicles with doors and other proper safety devices to reduce the danger. In the meanwhile, some very bad and defective vehicles are in use and are an extreme hazard for folks who use them.

If you have any questions about a specific Bad Boy accident or need information on the ongoing litigation, contact Greg Allen, our firm’s Senior Product Liability lawyer, at 800-898-2034 or by email at Greg.Allen@beasleyallen.com. Greg has successfully handled a number of cases involving the Bad Boy Buggy and currently has several in court.

9TH CIRCUIT UPHOLDS $2.7 MILLION SANCTIONS AGAINST GOODYEAR AND ITS LAWYERS

Lawyers in our firm have represented numerous individuals in several cases who either lost loved ones or were themselves severely injured when the RV they were traveling in became impossible to control due to a Goodyear G159 tire failure and/or tread separation. After long tough battles, our firm was able to discover Goodyear’s actual knowledge and why the G159 is not safe for RVs. Most critical, we were able to discover how Goodyear’s own testing demonstrated that the tire was not safe before it even sold a single G159 tire to RV manufacturers and owners, knowing the RVs would be used to transport families on vacations over our country’s highways. We found out what Goodyear knew and used that information in our cases.

Recently the 9th Circuit Court of Appeals upheld an Arizona Federal Court’s opinion that sanctioned Goodyear and some its lawyers $2.7 million dollars for committing fraud and deliberately withholding critical testing that had been requested repeatedly in a G159 case in Arizona. In its decision, the Court of Appeals highlighted the District Courts language:

Liturigation is not a game. It is the time-honored method of seeking the truth, finding the truth, and doing justice. When a corporation and its counsel refuse to produce directly relevant information an opposing party is entitled to receive, they have abandoned this basic principle in favor of their own interests. The little voice in every attorney’s conscience that murmur turn over all material information was ignored.

In confirming the sanctions the Appeals Court found the undisclosed test crucial to the Plaintiffs. Hopefully, Goodyear will learn from the 9th Circuit’s Order. In addition, Goodyear needs to do the right thing and finally recall and replace every G159 tire that remains on RVs today. These tires, which were never safe for RVs, are now more than 10 years old and even more dangerous due to age. Because RVs are used very little each year, hundreds of these tires are still on vehicles today. The next tragedy could happen tomorrow. So the ball is clearly in Goodyear’s court and the company should take action immediately.

If you need more information on this subject, contact Rick Morrison, a lawyer in our firm who handles tire litigation. He can be reached at 800-898-2034 or by email at Rick.Morrison@beasleyallen.com.

JURY RETURNS $59 MILLION VERDICT AGAINST SUNBEAM SPACE HEATER IN FIRE DEATH

A California federal jury has awarded $59.3 million to the family of a woman who died in a fire caused by a space heater manufactured by Sunbeam Products Inc. The company was found by the jury to be negligent in designing the product and in failing to adequately warn consumers. The jury determined that Sunbeam was aware of the fire risks posed by its defective product when it was manufactured. They also found Kenneth Shinedling and his three daughters to be entitled to compensation for the death of Amy Celeste Shinedling, their wife and mother. While Kenneth Shinedling was found to be 20 percent responsible for the January 2011 blaze, the jury said Sunbeam was mostly to blame. The jury concluded that the company’s Holmes brand heater presented a substantial danger that ordinary consumers wouldn’t recognize. The jury found that a “reasonable manufacturer” would have provided greater notice to customers who bought the space heater.

The family received $13.6 million in wrongful death damages and the remainder of the award was for the emotional distress they have experienced. One daughter—4 years old at the time of her mother’s death—was awarded another $13.4 million for her past and future suffering. It was acknowledged by the Plaintiffs that the heater did come with a warning stating that combustible materials like furniture, papers and curtains should be kept at least three feet away from the front of the product. The company’s design failed to account for the fact that flammable objects can inadvertently be kicked or knocked within three feet of the heater.

The lawsuit was filed in December 2011, and was removed to federal court the following March of 2012. San Bernadino County and Phelan Pinon Hills Community Services District were originally included as Defendants. The family said the municipal Defendants were responsible for a malfunctioning fire hydrant that failed to provide water when the fire broke out, but later agreed to dismiss those claims after the county and district asserted their immunity.

Sunbeam claimed that the Plaintiffs relied on “rank speculation” to support their manufacturing defect claim and that the family couldn’t show causation for their negligence.
claim. U.S. District Judge Cormac J. Carney agreed that two reports over a 10-year span involving similar heaters melting and burning were too speculative and dismissed the claim for a manufacturing defect. But the judge said a jury could find for the Plaintiffs on the negligence claim due to Sunbeam’s representation that the heater would turn off automatically if it got too hot. The jury found for the Plaintiffs on two counts of strict liability and two counts of negligence.

Source: Law360.com

**Wrongful Death Lawsuits Filed Against Continental Involving Tire Defect**

Two separate lawsuits have been filed against Continental Tire The Americas LLC, the North American unit of German automobile parts maker Continental AG, involving defective tires. The product liability and negligence lawsuits were filed in a South Carolina federal court and involve allegations that a defective tire tread caused a crash in 2012 that killed a driver and severely injured her passenger. The complaints filed on behalf of the driver, Sharondha T. Turnipsedge, and her minor son who was a passenger (known in the documents only as JFW-T) allege the two South Carolina residents were both critically injured when the tread of the left rear tire manufactured by Continental in 2004 separated, causing the 1998 Ford Explorer to roll several times. Ms. Turnipsedge eventually died from her injuries.

In addition to permanent injuries the child suffered from the accident, another element of danger is due to the fact that he had to witness the death of his mother. Other than some minor wear and tear, both the vehicle and tire were in about the same condition as when purchased, according to the complaint. The Plaintiffs claim Continental was negligent in both the design of its tire and warning of potential dangers that come with age and wear. Additionally, the suits claim Continental breached its warranty that the tire was in safe working condition and is strictly liable for placing a defective tire into the market.

The tire in involved in the litigation is a General Ameri GS60, P225/75R15, with a DOT Number A3HH SUU 4404, and was manufactured the 44th week of 2004 at the General Tire & Rubber Company in Mt. Vernon, Ill. According to the National Highway Traffic Safety Administration (NHTSA) website, there have been no reported defects associated with the tire. The two Plaintiffs are also suing Cossi Holdings LLC, TBC Corp. and SpecDece Worldwide Corp., all of which owned and operated the SpecDece Oil Change and Auto Service in Rock Hill, S.C.

According to the complaint, the Rock Hill auto inspector was negligent and reckless for failing to properly inspect the tires for age defects while providing standard maintenance on the SUV prior to the July 2012 crash. In early July, Continental recalled a batch of 3,800 passenger vehicle tires after a driver reported an incident in which the tire’s tread became separated from the rubber. According to the company, that faulty tire—a different make and model than the one in question in the complaint—was manufactured during the second week of February and traced back to Continental’s plant in Fort Mills, S.C. No injuries resulted from that reported incident.

Source: Law360.com

**The Hazards Created By Ethanol Fireplaces**

A recent jury verdict in Minnesota once again brings to light the dangers associated with ethanol fireplaces and similar devices. In McElrath v. Gilt Groupe, Inc., EcoSmart, Inc., and Blue Ocean Manufacturing Group, LLC, a federal court jury in Minnesota heard evidence involving defects associated with a tabletop fireplace. In that case, Carla and Paul McElrath suffered serious burns while trying to add ethanol to a 12-ounce container used with a tabletop fireplace.

The involved product, an Eco-Flame Granite Table Top Fireplace, was purchased new by the couple. It was manufactured by Blue Ocean Manufacturing Group, LLC. The fuel was manufactured and packaged by EcoSmart, Inc. and the product was sold and marketed by an online retailer, Gilt Groupe, Inc. Both Gilt Groupe and EcoSmart settled with the Plaintiffs before trial. The verdict was against Blue Ocean, which was not represented at trial.

Ms. McElraths had attempted to add fuel to the small, glass-covered fireplace while a flame was unknowingly still lit. Because of the nature of the product, it is difficult to determine whether the flame has completely burned out. The product is designed in such a manner that fuel must be added from the top. As fuel was being added, in this case a flashback occurred, which resulted in serious burns.

Ethanol fireplaces were developed from concepts similar to the old kerosene lanterns. The products began to grow in popularity about 10 years ago. The products come in various shapes and sizes, from the tabletop models to models that are stationary or hang on walls. They are also available for indoor and outdoor use.

The fireplaces are touted as being more environmentally friendly than traditional fireplaces or other fuel-burning devices. The fuel is made from natural ingredients, such as corn, potatoes, milk and rice. The manufacturers of these products contend that the amount of carbon dioxide that is emitted after using the fireplaces for three hours is roughly equivalent to what would be created by two burning candles. They are also touted as being odorless.

However, there are other firepots and tabletop fireplaces that are not ethanol/fuel based. Other products use fuels that are alcohol-based or other “gel fuels.” Many of these products have been associated with serious injuries. Government-initiated investigations have greatly curtailed the use of these products. For example, in 2012, the Consumer Product Safety Commission (CPSC) directed that all pourable gel fuels be recalled, after as many as 86 people were injured from using these products. In 2013, the CPSC also issued a recall on Brinkmann Outdoor Tabletop Propane Heaters, which created risks of carbon monoxide poisoning. Between 2005 and 2013, there were more than 10 recalls of similar products.

Another lawsuit has also recently been filed on behalf of a couple in New Jersey. In that case, the product concerned was a citronella oil-filled patio table lamp. The Plaintiff, Mari Linn Lancovara, reported that she blew out the lamp on her patio and as she turned the lamp exploded, causing serious burns. This oil lamp was sold by Big Lots and was manufactured in India. The Consumer Product Safety Commission ordered Big Lots to stop selling the product because of the numerous reports of burns associated with it.

As these cases demonstrated, these fuel-burning products, including the ethanol-fuel products, can be hazardous. One company, Nu-Flame (bluworld HOElements) instituted a recall in 2012 on certain of its Vivido wall mounted Bio-Fireplaces. The recall necessitated the addition of vent holes, which had to be done by an approved repair person. Its product includes a warning that cautions the user against refilling the burner or the cup while the flame is still on or the cup is warm.

The take-home message is that all of these products must be purchased and used with extreme care. We anticipate more issues with these types of products in the future because of the nature of the products and the risks of burns or fires. If you need more information on this subject, contact Ben Locklar, a lawyer in our firm’s Personal Injury/Products Liability Section, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com.


**Stevens Johnson Syndrome Award Could Be $130 Million With Interest**

We have written on several occasions in previous issues about Stevens Johnson Syndrome (SJS). A recent case puts in perspective how serious SJS is and how bad the effects are. Samantha Reckis was 7 years old when she took Children’s Motrin. She was hurled onto an unrelenting path of pain and suffering that has left her legally blind and unable to have children of her own. That was in 2003. She is now 19 and continues to face a lifetime of hardship following a horrific bout with the darker side of Stevens Johnson Syndrome, toxic epidermal necrolysis (TEN).

In April the highest court in Massachusetts ruled that a $50 million judgment for pain and suffering awarded to Ms. Reckis will stand fol-
Energy Inc. (UGE) and a subsidiary of engineers wind turbine manufacturer Urban Green covered by UGE's warranty. Blitterswyk also "total surprise" and that the company had interviewed that Law360 that the suit was a
have failed to fulfill their duties owed to latest failure of the wind energy system, and warranty. "Both Landmark and UGE have which manufactured the turbines, for alleged
energy system has been turned off. The town is seeking unspecified damages of at least $1 million from both Landmark, which installed the turbines, and UGE, which manufactured the turbines, for alleged negligence, breach of contract and breach of warranty. "Both Landmark and UGE have failed to accept any responsibility for this latest failure of the wind energy system, and have failed to fulfill their duties owed to Addison," the town said in the suit.
UGE CEO Nick Blitterswyk claimed in an interview that Law360 that the suit was a “total surprise” and that the company had been in discussions with Addison and offered to fix the defective blade at no cost. He said this offer of support typically wouldn’t be covered by UGE's warranty. Blitterswyk also said the company was told by local police the turbine blade was damaged by a projectile and that although the blade was damaged through no fault of UGE, the company offered to make the necessary repairs. Blitterswyk said further:
We haven’t felt like we had a willing party on the other end of the line to discuss it with. We offered to repair any damage done, and we’ve been rebuffed.

John Sloan, one of the lawyers with the Sloan Matney firm representing Addison, said the town tried for a year to resolve the issue before filing suit. He says no offers came to him prior to his filing suit. Also in dispute is the cause of the turbine blade's malfunction. Addison's lawyers dispute the claim that the blade was damaged by some kind of projectile. It’s alleged in the suit that an investigation by Landmark and UGE was "inconclusive, but indicated that the blade flew off during a period of high winds." But a UGE spokeswoman pointed out Addison's mayor wrote in an April 2014 blog post “the blades appear to have been damaged from an unidentified foreign object.” Blitterswyk claims he wants to schedule a conference call between the three parties to try to work out the dispute.

Addison is represented by John Sloan and Douglas Lukasik of Sloan Matney LLP, a firm located in Dallas, Texas. The case is in the District Court of Dallas County, Texas. It will be most interesting to see what develops in this most interesting lawsuit.

Source: Law360.com

XIV. MASS TORTS UPDATE

Lawyers in our firm's Mass Torts Section have been working on a number of significant projects. I will give a brief summary on several of them. Andy Birchfield heads up this Section for the firm, and he says his Section has been extremely busy. However, Andy says lawyers in the Section are ready to take on any new projects that come their way. We currently have 31 lawyers and 19 legal assistants working in the Mass Torts 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, who presided over suits against Merck & Co. over its medication Vioxx. The Vioxx litigation resulted in a $4.85 billion settlement in 2007. Contact David Byrne or Melissa Prickett at 800-898-2034 or by email at 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 up of 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. Contact Ted Meadows or Melissa Prickett at 800-898-2034 or by email at, 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. According to the FDA, reported complications from using the mesh include the mesh becoming exposed or protruding out of the vaginal tissue, pain, infection, organ perforation and urinary problems. Contact Chad Cook, Leigh O’Dell or Melissa Prickett at 800-898-2034 or by email at Chad.Cook@beasleyallen.com, Leigh.Odell@beasleyallen.com, or Melissa.Prickett@beasleyallen.com.

Liptor - 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 Liptor 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. Contact Frank Woodson or Melissa Prickett at 800-898-2034 or by email at Frank.Woodson@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 84 percent greater risk of developing melanoma compared to men who had never taken the drug. Men who had never taken Viagra were at about double the risk of developing melanoma compared to men who had never taken the drug.

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 embedding in the uterus, among others. Contact Roger Smith or Melissa Prickett at 800-898-2034 or by email at Roger.Smith@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Byetta, Januvia, Janumet and Victoza 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. Contact David Dearing or Melissa Prickett at 800-898-2034 or by email at 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 remove 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 at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

You will note that Melissa Prickett, a lawyer in the Section, is listed as a lawyer on all of these projects. That is to give persons seeking assistance a definite contact person in the Section for each project if the lawyer named for a specific project is unavailable. Melissa will put folks in touch with the appropriate lawyer for that project. As a matter of interest, I don’t see any slow down in the Mass Torts Section any time soon. That’s especially true on projects including the drug manufacturing industry. I will mention a few of the specific items listed above in more detail below.

**Update on Risperdal Litigation**

Lawyers in the Mass Torts Section at Beasley Allen continue to pursue Risperdal claims on behalf of individuals who have been injured as a result of taking Risperdal, the brand name drug manufactured by Janssen Pharmaceuticals, Inc., a division of Johnson & Johnson. The drug went on the market in 1993 after receiving approval from the U.S. Food and Drug Administration (FDA) for the treatment of schizophrenia. In 2003, the drug was approved for short term treatment of acute manic/mixed episodes associated with Bipolar I Disorder in adults. Until 2006, the drug was not approved for any indication to treat minors.
In 1997, the FDA denied a request by Janssen for a pediatric indication for the drug. Despite this denial, Janssen marketed the drug for the treatment of depression, anxiety, Attention Deficit Disorder (ADD), Attention Deficit and Hyperactivity Disorder (ADHD), conduct disorder, sleep disorders, anger management and mood enhancement/stabilization.

In 2006, Janssen obtained approval to market the drug for autistic irritability for children and adolescents between the ages of 5 to 16 years old. In 2007, Janssen obtained approval to market the drug for treatment of schizophrenia in adolescents between the ages of 13 to 17 years old and short-term treatment of manic or mixed episodes of Bipolar I Disorder in children and adolescents between the ages of 10 to 17 years old. Use of Risperdal can cause gynecomastia (enlarged breasts in males), galactorrhea (milky nipple discharge), weight gain, hyperglycemia, diabetes and inhibited reproductive function.

In January 2015 the trial judge in Philadelphia ruled that the statute of limitations under Pennsylvania law began to run as of June 30, 2009, for individuals that used Risperdal before October 2006. A statute of limitations is a period of time that is allowed by law for an injured party to pursue claims. Each state has its own statute of limitations for product liability actions and the time period for pursuing claims varies from state to state. The statute of limitations can also vary from state to state on what triggers the statute to begin running and whether the statute of limitations is tolled based on discovery of the injury and/or cause of injury.

The Philadelphia trial judge has indicated that he may enter a case management order that applies the January 2015 ruling to all Risperdal cases pending in Philadelphia. This ruling will be appealed. In the event the January 2015 ruling is upheld, it could have a significant impact on Risperdal cases filed in Philadelphia. The January 2015 ruling may not bar claims for injuries that arose after June 30, 2009, provided the lawsuit was filed within two years of the discovery of the injury.

If you need more information on the Risperdal litigation, contact James Lampkin, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at James.Lampkin@beasleyallen.com.

**AN UPDATE ON THE DRUG INVOKANA**

Johnson & Johnson’s Invokana, approved by the U.S. Food and Drug Administration (FDA) in March 2015, is prescribed to people with Type 2 diabetes. When Invokana was approved, it was the first drug in a new class known as sodium-glucose cotransporter-2 (SGLT2) inhibitors. These drugs help prevent high blood sugar levels by causing the kidneys to remove excess blood sugar through urine. The FDA stated in May 2015 in a drug safety announcement that it was investigating reports that these drugs may cause a serious condition known as diabetic ketoacidosis. According to the FDA, there were 457 serious adverse events reported between March 2013 and 2014. At least 20 cases of ketoacidosis linked to the SGLT2 inhibitor class of drugs were reported in the span of 15 months and all required emergency room visits or hospitalization.

Diabetic ketoacidosis, normally associated with Type 1 diabetes, is a serious but treatable condition that occurs when acidic waste products known as ketones build up in the blood and become so high that (when the body starts to break down fat cells for fuel because it cannot use glucose in the bloodstream because there is too little insulin. When fat cells break down, ketones are released. If untreated, the ketones may trigger toxic acid levels and can lead to diabetic comas or death. If you need more information on this matter, contact Melissa Prickett at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com.

**ENDO’S AMS UNIT SETTLES MORE THAN 100 VAGINAL MESH SUITS**

Endo International PLC unit American Medical Systems Inc. has settled more than 100 injury suits that were part of consolidated multidistrict litigation (MDL) over health complications allegedly caused by an assortment of vaginal mesh devices, including its Apogee and Perigee products. The MDL is consolidated in a West Virginia federal court. The device maker indicated that it has settled more than 100 suits in which Plaintiffs claimed to have suffered injuries after being implanted with its devices. The suits targeted devices including the Apogee and Perigee systems as well as the MiniArc Sling and the IntePro Y Sling, among other products.

In May, U.S. District Judge Joseph R. Goodwin, who is overseeing the litigation, said that he’d been informed by counsel for AMS that approximately 108 Plaintiffs had reached a settlement with Endo and that the parties had until April 2016 to submit an agreed order of dismissal with prejudice; otherwise, the cases will be dismissed without prejudice. In April, Endo told the judge that it had "compromised and settled all claims" with about 360 cases.

In April last year, Endo said that it had agreed to pay $830 million to settle a number of suits over the alleged mesh injuries. Its agreement was with several Plaintiffs’ firms—including Motley Rice LLC, Blasingame Burch Garrard & Ashley PC, Levin Simes LLP and Clark Love & Hutson GP—and sought to resolve some 20,000 claims in the ongoing litigation. Plaintiffs in the suits have claimed that the vaginal mesh devices at issue are defective and have caused chronic pain, incontinence and other injuries. In April 2014, the U.S. Food and Drug Administration (FDA) issued two proposed orders that would reclassify surgical mesh for transvaginal repair of pelvic organ prolapse as a high-risk device and require manufacturers to apply for premarket approval with the agency.

Source: Law360.com

**XV. AN UPDATE ON ACTIVITY IN OUR FIRM’S CONSUMER FRAUD AND COMMERCIAL LITIGATION SECTION**

I will mention some of the ongoing projects in our firm’s Consumer Fraud and Commercial Litigation Section. Lawyers in the Section are winding down the AWP litigation that has involved several states. That litigation has been a most successful endeavor, benefiting the citizens of the eight states our firm represented. Dee Miles heads up this Section for the firm. The following are some of the other ongoing projects in the section.

**State and Municipalities Litigation**

Our firm has represented numerous states throughout the country. These cases have been handled through the attorneys general and have involved various civil actions. Many times, individuals are barred from bringing a consumer fraud type claim but the state government is not. We recently concluded litigation in six of eight states for a recovery of more than $1 billion, with still two states remaining. For more information, contact Dee Miles, Roman Shaul or Alison Hawthorne at 800-898-2034 or by email at Dee.Miles@beasleyallen.com, Roman.Shaul@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

**False Claims Act / Whistleblower**

We are handling and investigating whistleblower claims of government fraud ranging from Medicare/Medicaid to military contracts, and any other type of fraud involving a government contract. Under the False Claims Act (FCA) the whistleblower is entitled to a percentage of the recovery. Studies show that as much as 10 percent of Medicare/Medicaid charges are fraudulent. Common schemes involve double-billing for the same service, inaccurately coding services, and billing for services not performed. Additionally, the Commission on Wartime Contracting has warned that the lack of oversight of government contractors has led to massive fraud and waste. Contact Lance Gould,
there are 11 lawyers and three Legal Assistants working with Dee in the Section. The types of cases handled by the lawyers are constantly changing, which is quite a challenge, and requires them to be able to take on new projects. Thus far, they have handled things extremely well.

Class Action Litigation - Lawyers in the Section are handling a number of class action cases. Many of their cases are of the MDL variety. Contact Dee Miles, Archie Grubb or Andrew Brashier at 800-898-2034 or by email at Dee.Miles@beasleyallen.com, Archie.Grubb@beasleyallen.com or Andrew.Brashier@beasleyallen.com.

Antitrust - Our firm is handling claims related to the violation of federal and state antitrust laws. Lawyers in this section are currently involved in claims alleging a wide array of anticompetitive conduct, including illegal tying, exclusive dealing, monopolization, and price fixing. Contact Archie Grubb, Roman Shaul or Alison Hawthorne at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com, Roman.Shaul@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

Health Care Fraud - Our lawyers are looking into cases fraud within the health care industry. These may include cases dealing with pricing, off-label prescriptions, or other health care abuse. Contact Roman Shaul, Clay Barnett or Rebecca Gilliland at 800-898-2034 or by email at Roman.Shaul@beasleyallen.com, Clay.Barnett@beasleyallen.com, or Rebecca.Gilliland@beasleyallen.com.

Fair Labor Standards Act (FLSA) - Lawyers in the Section are working on several cases involving Fair Labor Standards Act 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. Contact Lance Gould or Larry Golston at 800-898-2034 or by email at Lance.Gould@beasleyallen.com or Larry.Golston@beasleyallen.com.

Dec Miles heads up this Section. Currently there are 11 lawyers and three Legal Assistants working with Dee in the Section. The types of cases handled by the lawyers are constantly changing, which is quite a challenge, and requires them to be able to take on new projects. Thus far, they have handled things extremely well.

XVI. AN UPDATE ON SECURITIES LITIGATION

Short-Selling Stock Scheme Before The U.S. SUPREME COURT

Naked short selling is an illegal practice of trading stocks before you actually take possession of the stock or before determining if they even exist. Ordinarily, stock traders must borrow a stock, or determine that it can be borrowed, before they sell it short. This practice wreaks havoc on market prices because it artificially adds units to supply/demand issues and can obscure the true price of a security. The U.S. Supreme Court recently agreed to hear the case of Merrill Lynch Pierce Fenner & Smith Inc. v. Manning, concerning this illegal practice. However, this case is likely to have far-reaching implications beyond just the practice of short-selling. At issue is whether some state laws can be used to deter illegal stock trading or whether the only remedy is under federal law. As readers of this newsletter will recognize, this issue is commonly referred to as “federal preemption.” Unfortunately, when Courts start expanding federal preemption rights, consumers usually lose out.

The Plaintiffs in this case filed suit in May 2012, accusing Merrill Lynch, UBS Securities LLC and other firms of illegally shorting a company’s stock by entering sell orders for shares they did not own or did not reasonably believe they could borrow, and then profiting amid the collapse in that company’s share price. While short selling is regulated under the federal law, the Plaintiffs filed suit in the New Jersey Superior Court by alleging violations of the state’s Racketeer Influenced and Corrupt Organizations (RICO) Act and its Uniform Securities Law. The case was removed to federal district court, where it remained until the Third Circuit issued its ruling in November. The appellate court said it does not, unless there is another, independent basis for federal jurisdiction.

On the other hand, the appellate claim that the Fifth and Ninth circuits have held the section confers jurisdiction only on federal courts over all actions that seek to establish liability based on the violations of the Exchange Act. The Supreme Court has the opportunity to clear things up on the issue.

The appellants petitioned the U.S. Supreme Court in March, calling their case the “ideal vehicle” for resolving the circuit split. They further warned that if the Third Circuit’s ruling is left standing, it would seriously disrupt the objective of having a uniform national regulatory system over the securities sector and would effectively empower 51 different state court systems to enforce and interpret the Exchange Act.

It will be interesting to see if the justices will move toward more federal preemption of state securities claims. While there has been lots of speculation over what the high court may do, nobody really knows. The court may not be concerned about state courts deciding matters of securities law. In any event, however, the court will likely clear up the split in the circuits.

Source: Law360.com

JPMorgan Will Pay $388 Million To End MBS Class Action

JPMorgan Chase & Co. has agreed to pay $388 million to end an investor class action in New York federal court. The financial giant was accused of misrepresenting underwriting standards for $10 billion worth of mortgage-backed securities. JPMorgan entered into a settlement with the Laborers Pension Trust Fund for Northern California and the Construction Laborers Pension Trust for Southern California, which are representing a class of investors in nine public offerings issued before the financial meltdown. The settlement must be approved by the court. The settlement amount is said to represent, on a percentage basis, the largest recovery ever achieved in a mortgage-backed securities (MBS) purchaser class action. It’s more than two-and-a-half times greater than the average percentage recovery in previous MBS class settlements, according to reports.

The proposed settlement comes after the court partially granted the investors’ bid for class certification in September, finding they had met predominance requirements for liability, but not for damages. There were more
than 80 million pages of documents turned over in discovery and 42 depositions taken.

The case, filed in 2009, alleged that New York-based JPMorgan made false representations about the quality of mortgages underlying a series of securities it issued in 2007 in public offerings. The lead Plaintiffs claimed that rather than being filled with “quality mortgages,” the securities were stuffed with “subprime home loans” that imploded when the housing bubble burst, beginning in 2007.

The Plaintiffs claimed that underwriting standards in the offering documents were abandoned, that appraisers falsified appraisal values, failed to follow industry standards, and that loan-to-value ratios set out in the offering documents were false. The case had survived a motion to dismiss in March 2011. However, U.S. District Judge John G. Koeltl ruled that the lead Plaintiffs could only bring claims related to tranches of the securities they actually held. He dismissed claims for holders of the other 10 securities offerings.

U.S. District Judge Paul Oetken, who is now presiding over the case, allowed the lead Plaintiffs to pursue claims for investors in the other 10 offerings in April 2013. Discovery revealed that only a handful of investors were involved in two of the trusts, which had separate lawsuits pending, narrowing the suit to nine offerings. In partially certifying the class in September, Judge Oetken found that the Plaintiffs’ expert had not created a systemically applicable model for calculating damages and noted that the market for the certificates was “not particularly” liquid. The lead Plaintiffs and JPMorgan entered mediation in June, which led to an agreement in principle to settle the action.

Source: Law360.com

**MF Global Executives Agree To $65 Million Settlement Of Investors’ Claims**

Former MF Global executives, including former New Jersey Gov. Jon Corzine, will pay $64.5 million to settle claims that they cheated investors by touting the brokerage’s financial health before its fall 2011 collapse, during which $1.6 billion worth of customer financial health before its fall 2011 collapse, cheated investors by touting the brokerage’s $64.5 million to settle claims that they

The settlement, which requires approval from a judge, will be paid by way of insurance and not directly by the Defendants. MF Global’s directors and officers insurance was being rapidly depleted by costs of defending and resolving numerous related litigations. The personal assets of the individual Defendants were insufficient to cover any expected judgment. This is the third blockbuster settlement reached with parties closely involved with MF Global’s affairs.

In December, seven investment banks that underwrote MF Global stock and debt offerings reached a $74 million settlement over claims they misled investors about the firm’s financial health by offering documents that allegedly concealed the dire liquidity pressures that ultimately felled the derivatives and commodities brokerage. The settlement covers Citigroup Global Markets Inc., Deutsche Bank Securities Inc., Goldman Sachs & Co., JPMorgan Securities LLC, Merrill Lynch Pierce Fenner & Smith Inc. and RBS Securities Inc., all of which underwrote a June 2010 secondary stock offering. In April, auditor PricewaterhouseCoopers LLP agreed to pay $65 million to settle with MF Global customers who accused PwC of negligently failing to identify the bankrupt brokerage’s alleged scheme to deceive investors about its financial stability.

The New York federal judge overseeing the 12 consolidated class actions put the Virginia Retirement System and Her Majesty the Queen in Right of Alberta—the largest victims—in the leadership role in January 2012, noting that they suffered a loss of nearly $19 million in MF Global securities transactions, more than any of the other Plaintiffs vying for the role.

The first of the class actions was filed in November 2011, when MF Global shareholder Joseph DeAngelis sued the bankrupt brokerage’s executives, saying they deceived investors about the company’s financial stability. It’s alleged that after its debt was downgraded, the company had issued a false statement claiming Corzine had bolstered MF Global’s risk-management practices since becoming CEO in March 2010.

Separately, in the CFTC’s suit against Corzine, the former governor recently said he is seeking evidence to support the CFTC’s contention that there were “at least 100” improper transfers of segregated customer cash during the October 2011 downfall of MF Global, which implicated after revelations the firm had amassed a $6.3 billion bet on troubled European debt. Amid this collapse, the firm also dipped into accounts holding segregated customer accounts, causing about $1.6 billion in customer cash to disappear, according to the firm’s bankruptcy trustee.

Source: Law360.com

**Chancery Judge Rejects Settlement Over $1.5 Billion Aeroflex Cobham Deal**

A Delaware Chancery judge has rejected a proposed settlement in the lawsuit challenging the $1.5 billion acquisition of private equity-controlled Aeroflex Holding Corp. by British defense manufacturer Cobham PLC. The judge ruled that the deal brought no value to the putative class and “undercuts the litigation process.” During a hearing in Wilmington, Vice Chancellor J. Travis Laster said that the settlement consideration—additional disclosures, a 40 percent reduction in the $52 million break-even fee and one day taken away from a four-day matching period—didn’t actually address what, at the time, appeared to be stopping an undisclosed third party from making a topping offer.

Vice Chancellor Laster likened the settlement to a car being brought to a mechanic for a faulty transmission, but getting an oil change instead. He also said the global release of the Defendants from practically any claims over the deal set in in into the agreement was much too broad. The vice chancellor said from the bench: “This is not a settlement I can approve in its current form. The class gets nothing, zip, zero.”

The vice chancellor said that one of the issues in the case was that an undisclosed potential topping bidder appeared to be disqualified from making an offer because the company wouldn’t waive a non-disclosure agreement, but said the settlement agreement fails to even address that issue.

The vice chancellor did say that the lawsuit, when it was filed a year ago, seemed like might include some plausible claims, but Plaintiffs apparently found no conflicts regarding the sale process when they got to discovery and perhaps should have backed off then. The vice chancellor said the parties had several options, which included revising the settlement to only release the Delaware fiduciary duty claims asserted in the First State lawsuit or the Defendants filing a motion to dismiss and the case proceeding from there.

The case arose from a deal Aeroflex and Cobham announced in May that the British aerospace and defense manufacturer agreed to pay $10.50 per share to purchase the microelectronic equipment maker through a special purpose subsidiary called Army Acquisition Corp. The companies said the transaction was valued at $940 million for Aeroflex’s common stock, as of March 31, plus $540 million for the target’s net debt. The $10.50 per-share price represented a premium of roughly 26 percent of Aeroflex’s closing the day before the deal announcement, and the company’s private equity controlling shareholders had pledged to vote in favor of the transaction.

Source: BeasleyAllen.com
will be interesting to see where this case winds up. Based on the statements from the bench, this one may be a real uphill battle.

Source: Law360.com

OILFIELD SERVICES COMPANY TO PAY $120 MILLION TO SETTLE INVESTOR FRAUD LAWSUIT

Weatherford International Ltd., an oilfield services company, will pay $120 million to settle a securities class action alleging it misled investors about its financial condition leading up to a 2012 disclosure that it had overstated earnings and done the arithmetic wrong on its taxes. The proposed settlement was revealed last month. In June, the company agreed in principle to settle claims brought by lead Plaintiffs Anchorage Police & Fire Retirement System and Sacramento City Employees’ Retirement System. But the details of the arrangement weren’t disclosed at that time. The settlement, if approved, would end a three-year battle over whether the company deceived investors into thinking business was booming before revealing its earnings and tax problems.

The Plaintiffs’ suit, first filed in March 2012 and amended that September, alleged Weatherford misled investors about its financial condition and filed false financial statements between March 2011 and July 2012 that resulted in the oilfield services and products company overstating its earnings by $500 million from 2007-2010. The company also continued to fraudulently underestimate its tax expenses in three subsequent restatements, according to the Plaintiffs, citing a February 2012 whistleblower report on alleged improper practices in Weatherford’s tax department.

Weatherford engaged Latham & Watkins LLP and Ernst & Young LLP to conduct an investigation following the whistleblower allegations, which ultimately found no intentional wrongdoing. But Latham had actually found evidence of fraud, which it then told Ernst about, despite the companies making public announcements to the contrary, the Plaintiffs alleged.

In a related case, the company and several executives agreed to pay $52.5 million to settle claims brought by Plaintiffs including American Federation of Musicians and Employers’ Pension Fund and Georgia Firefighters’ Pension Fund in 2014.

Source: Law360.com

NEW CHANGES IN THE OVERTIME LAW COULD MEAN MORE MONEY OR LESS MONEY FOR WORKERS

President Barack Obama recently proposed giving millions of Americans a raise. This has obviously caused a lot of controversy and mixed emotions as to whether he can actually accomplish such a thing. Specifically, the President has proposed raising the salary amount a worker has to make before a company can deny their employee’s overtime pay. Currently, if a company pays their employee $23,660 dollars or more a year they can deny that worker overtime pay under certain conditions. The new law would raise the minimum threshold to $50,440. This means that anyone who makes less than this amount, annually, would be eligible for overtime pay for all hours worked in excess of 40 each week, regardless of job title or job duties. The White House has suggested that this proposal will result in an increase in “bring home pay” for approximately 5 million Americans. There is no question that this proposal will result in many Americans making more money. However, depending on how some corporations react to this change in the law, it may not benefit as many people as the administration hopes. If an employee’s pay falls below the $50,440 minimum threshold four changes could occur:

The employee will start getting overtime:
Right now, workers who make a little more than $23,660 and are given some managerial duties are considered “exempt” from overtime pay. Under the new rules, such low-paid managers would be reclassified as “non-exempt,” so when they work more than 40 hours they would be compensated at time and a half.

The employee may get a small raise:
If you earn just under the new threshold, an employer may decide to just raise your base pay by a few thousand dollars to avoid having to pay you overtime. This is not all bad, since the employee would still make more money.

The company may decide to let you go home early with your current pay:
If you regularly work long hours but don’t get paid overtime because you’re exempt, you might be able to start heading home earlier. Your boss might just prefer to send you home after an eight-hour day, rather than pay you extra. This has the potential for an added benefit in that your employer may hire an additional person to perform the extra work that you were doing. This allows the company to continue paying straight time without having to pay overtime to the new employee.

You could see no change in hours or pay:
Even if you become eligible for overtime, you may still end up working long hours but not get paid a dime more, because your employer could lower your base pay to offset any overtime you’d be owed.

Consider this scenario. An assistant manager makes $40,000 a year or $770 a week and usually puts in about 50 hours a week. If she becomes eligible for overtime pay under the new rules, her employer may decide to reset her hourly rate so that her pay still won’t top $40,000, even with her 10 extra hours of work every week. The “cost-neutral” rate would come to $560 a week, or $14 an hour.

Add to that $210 for 10 hours of overtime at $21 an hour and the employee’s paycheck for a 50-hour workweek is still $770. But there’s a big downside here. If she puts in fewer than 50 hours, she would essentially see a pay cut. That’s because, unlike an exempt employee, she will only be paid for the hours she works. That may seem like unfair treatment of an employee and is wrong, but it is not illegal. The federal government can’t tell employers how much they should pay their employees so long as they’re paying at least minimum wage under federal and state laws.

Source: CNN Money

CVS PHARMACISTS REACH $2.3 MILLION SETTLEMENT IN OVERTIME SUIT

A putative class of pharmacists has asked a California federal judge to give preliminary approval to a $2.3 million settlement with CVS Pharmacy Inc. The class also asked for provisional class certification for the group of employees who claim they were unlawfully required to work more than six consecutive days. Named Plaintiff Rimanpreet Uppal contends that CVS violated the Fair Labor Standards Act (FLSA) by requiring pharmacists to work more than six consecutive days without paid overtime and that the judge should certify the putative class he represents. Pharmacists involved in the suit will recover about 82 percent of the owed overtime and interest, according to the settlement. Uppal filed suit in March 2014 in the Alameda County court on behalf of former and current CVS pharmacists. The company removed the case to federal court after two months. The complaint alleged that CVS failed to pay overtime premiums, provide accurate itemized wage statements, pay all wages due to employees upon resignation or termination, engaged in unfair business practices and unlawfully withheld wages.

The proposed settlement is part of a larger $12.8 million deal between the company and employees to settle several suits over the
seven-day work week in five regions served by CVS. Putative class members would see about $326 for each week that violated federal law, according to the settlement. The pharmacists requested about $783,000 to cover attorneys’ fees and no more than $30,000 for litigation expenses, according to the settlement. Uppal would receive a $10,000 service award as the named Plaintiff. Pursuant to the settlement, class members would have 30 days to either opt out or object to the proposed settlement and 60 days to submit a claim.

Source: Law360.com

XIX. PREMISES LIABILITY UPDATE

Another Deck Collapse—This One in North Carolina—With Multiple Injuries

A deck collapse on July 4 at a rental house in North Carolina caused a number of persons to be injured. The collapse is believed to have been caused by nails, deteriorated by years of exposure to the sand, salt and moisture from the ocean, that gave way. Twenty-four people were injured as they posed for a picture on the deck at the beachfront home located in Emerald Isle. It appears that the deck was most likely up to code when the house was built in 1986. The nearly 30-year-old nails fell apart and the deck collapsed on July 4. According to reports, the pilings of the deck remained in place, and two-thirds of the structure did not fall.

The persons were injured when they fell about 10 feet to the ground. The ages of those injured ranged from 5 to 94. At press time, two were still in critical condition. The family staying at the rental home was from northern Virginia. The injuries ranged from minor cuts and abrasions to more severe injuries that appeared to include broken bones. The house, which was being rented by Bluewater Real Estate, is a six-bedroom, five-bath oceanfront home with an elevator. It is currently up for sale for nearly $1.15 million. The deck area, estimated to be about 12 feet by 12 feet, gave way from about 10 to 12 feet above the ground. The one-story house was on pilings.

Neither North Carolina law nor Emerald Isle's building code require inspections after a structure is completed unless complaints are made or problems are noted. We know from our experience with these type cases that regular inspections by the owner or company managing the property are essential to ensuring that decks are capable of supporting reasonable and anticipated loads. Because deck failures can lead to serious injuries and even death, rental property owners and managers with elevated decks have a responsibility to conduct inspections on a regular basis and to follow up on the findings and recommendations coming from the inspections.

Furthermore, inspections by structural engineers are strongly recommended. Issues that lead to a deck collapse may escape the untrained eye, but structural engineers know exactly where to look and what conditions indicate an imminent collapse. Nobody should be doing inspections who hasn’t been adequately trained. The agreements between the owner and property manager, along with the property manager’s policies and procedures, commonly detail which entity is responsible for inspections and the frequency of those inspections.

National building codes and the International Property Maintenance Code specifically require regular inspections of elevated decks to identify and rectify issues before a collapse occurs. Regular inspections and proper maintenance of elevated decks should prevent most deck collapses. Until owners and property managers take their responsibilities more seriously, we will continue to see unnecessary and catastrophic events like this one in North Carolina.

Source: Insurance Journal

$40 Million Jury Verdict in Wrongful Death Suit Over TGI Friday Killing

A jury in Southern California has awarded $40 million to the parents of Orlando Jordan, who was stabbed to death in a TGI Friday's restaurant. The jurors found that the restaurant's operator was 55 percent responsible for the January 2009 death at a TGI Friday's in Riverside, Calif. Jordan, 33, was dating the mother of Michael Castillo, who was said to have disapproved. Jordan was stabbed during an argument with Castillo, who had entered the restaurant with a friend. Castillo and Louis Martinez pleaded guilty to assault with a deadly weapon. Castillo was sentenced to three years in state prison, and Martinez was sentenced to four years.

Castillo was 20 at the time of the killing, making him under the legal drinking age. Jordan's parents, Ray and Carmen Jordan, contend that employees of the restaurant deliberately failed to check Castillo's identification before serving him and continued to serve him alcohol despite his intoxication. It was said that Castillo ordered the equivalent of 12 alcohol servings in 30 minutes. A pattern of assaults at the restaurant and a lack of security cameras were said to have been factors in the jury's findings. The jury agreed that employees served alcohol to Castillo even though he was obviously drunk. They found New Jersey-based Briad Restaurant Group to be 55 percent responsible for Jordan's death. The two attackers were found to be 45 percent responsible.

Source: Claims Journal

XX. TRANSPORTATION

Amtrak Won't Contest Liability In Derailment Cases

Amtrak has announced that it will not contest liability in claims stemming from May’s deadly train derailment in Philadelphia. It filed responses to complaints in lawsuits filed by two passengers injured in the accident. The filings represent the first time that Amtrak has conceded to legal liability for Train 188’s derailment, which killed eight passengers and injured more than 200 others.

"Amtrak … admits that Train 188 was traveling in excess of the allowable speed at the time the train derailed, and states that it will not contest liability for compensatory damages proximately caused by the derailment," the company said in response. The suits were filed by a group of four passengers and their families.

Train 188 was en route from Washington D.C. to New York City when it derailed shortly after making a scheduled stop at Philadelphia’s 30th Street Station on the night of May 12. The National Transportation Safety Board (NTSB) has said that the train was traveling at more than 100 mph when it entered a curve in an area of track known as Frankford Junction. The posted speed limit on that section of the track is 50 mph. Amtrak CEO Joe Boardman issued a statement after the crash, saying that the company took “full responsibility” for the accident. It now appears that liability won’t be an issue in any litigation arising out of the incident. More than 20 cases filed by Train 188 passengers are currently pending in state and federal courts.

It appears there will be a multidistrict litigation (MDL) created in Philadelphia to handle the derailment cases. Given Amtrak’s willingness to support the creation of a new MDL, the Plaintiffs asked the U.S. Panel on Multidistrict Litigation to grant expedited hearing of the consolidated MDL motion. However, the panel declined to depart from its “long-standing practice” and denied the motion. The panel is expected to consider the motion at an upcoming hearing in New York at the beginning of October. Hopefully, the MDL will be created and put in a fast track.

Source: Law360.com

Jury Awards $24 Million to Widower of Woman Killed in Florida Hotel Cabana

A South Florida jury awarded $24 million to a man whose wife was killed when a drunken driver slammed into a cabana at a Fort Lauderdale hotel. The incident occurred when a car crossed a sidewalk, jumped a curb and crashed into the poolside cabana at the River-
UBER SETTLES DEATH CASE INVOLVING 6-YEAR-OLD GIRL

Uber Technologies Inc. has reached a settlement in a suit in California state court brought by the family of a 6-year-old girl who was killed by a car the family said was driven by a driver of the smartphone-based ride-hailing service. Six-year-old Sofia Liu was killed and her mother and 5-year-old brother were injured when a driver, who was logged in on Uber’s system, hit them as they were crossing a San Francisco street in a crosswalk. Sofia’s family blamed the fatal collision, which happened on New Year’s Eve in 2013, on Uber’s system of requiring drivers to use the mobile app while driving.

The victim’s family, in a filing with the court, said the parties had tentatively reached a resolution of the wrongful death case. They sought to file the settlement under seal to protect the privacy of Sofia’s brother. It was stated:

This information, if made public, makes him susceptible, along with his family, to identity theft and to individuals taking advantage of the minor when he ... comes into settlement funds. Failure to seal the records creates a real risk that the plaintiffs’ financial privacy interests and future well-being are jeopardized.

It was alleged in the suit that when an Uber user places a request for a driver in the area, the driver must respond quickly or risk losing the business and the pay that comes with it. This need for a quick response leads to distracted drivers, according to the complaint. Uber said after the collision that the driver wasn’t working for Uber at the time of the wreck and that his account had been deactivated.

The suit filed by the family sought damages for wrongful death, negligence in a motor vehicle, negligent infliction of emotional distress, negligence, negligence per se, strict products liability, negligent hiring and retention and supervision, loss of consortium and wrongful death survival action.

Uber announced in March 2014, after the accident, that it was expanding its insurance coverage for drivers. California Gov. Jerry Brown, in September, signed an amendment to state law boosting the insurance requirements for Uber and other transportation network companies. The new law requires drivers of the services to maintain primary liability insurance coverage of at least $50,000 per person and $100,000 per occurrence of death and personal injury during the time they are working via the companies’ apps. While it’s good that the state will require liability insurance, the amounts are grossly inadequate.

In January, California Insurance Commissioner Dave Jones approved a personal auto insurance policy offered by Metromile Inc. for UberX drivers in an effort to close the insurance gap during the premortem period from when drivers have logged on to the application until they have a passenger match.

STUDY FINDS THAT CELL PHONE NOTIFICATIONS CAUSE MORE DISTRACTIONS

A new study by Florida State University (FSU) has found that driver distraction could happen even when the driver isn’t using his cell phone. It found just receiving a notification on a cell phone can cause enough of a distraction to impair a person’s ability to focus on a given task. In fact, the distraction caused by a simple notification — an incoming phone call or text by a trendy ringtone, an alarm bell or a quiet vibration—is comparable to the effects seen when users actively use their cell phones to make calls or send text messages, the researchers found. “The level of how much it affected the task at hand was really shocking,” according to Courtney Yehnert, an FSU research coordinator. She worked on the study as an undergraduate student before graduating in 2014.

The study, “The Attentional Cost of Receiving a Cell Notification,” was published in the Journal of Experimental Psychology: Human Perception and Performance. Psychology doctoral student Cary Stothart is the lead author of the study, and his co-authors are former FSU postdoctoral researcher Ainsley Mitchum and Yehnert. This is the first study to examine the effect of cell phone notifications on performance. The researchers wrote in the paper:

Although these notifications are generally short in duration, they can prompt task-irrelevant thoughts, or mind-wandering, which has been shown to damage task performance. Cellular phone notifications alone significantly disrupt performance on an attention-demanding task, even when participants do not directly interact with a mobile device during the task.

It’s well documented that using a mobile phone while performing another task is associated with poorer performance. That’s because people have limited capacity for attention that must be split between tasks, the researchers explained. The Florida State study underscores that simply being aware of a missed call or text can have the same effect. The researchers’ findings are significant because many public information campaigns intended to deter problematic cell phone use—while driving, for example—often emphasize waiting to respond to messages and calls.

However, even waiting may take a toll on attention, according to the researchers. Simply remembering to perform some action in the future is sufficient to disrupt performance on an unrelated concurrent task. To conduct the study, the researchers compared the performance of participants on an attention-demanding computer task, which was divided into two parts. In the first part, participants were asked simply to complete the task. During the second part, although they were not aware of it, participants were randomly assigned to one of three groups: call, text or no notification. Automated calls and texts were then sent to the personal phones of participants in the first two groups without their knowledge that the notifications were coming from the researchers.

Overall, the researchers found that participants who received notifications made more mistakes on the computer task than those who didn’t. In fact, the increase in the probability of making a mistake was more than three times greater for those who received notifications. Those who received phone call notifications fared worse on the task than those who received a text alert. The researchers then compared their results to the findings of other studies that explored the impact that actually using a cell phone had on attention performance. They found their results were similar, suggesting that receiving a notification but not responding is as distracting as actually answering the phone or replying to a text.

Although the FSU study did not involve driving, the results are certainly relevant to the problem of distracted driving, according to the researchers. Stothart had this to say on that connection:

Even a slight distraction can have severe, potentially life-threatening effects if that distraction occurs at the wrong time. When driving, it’s impossible to know when ‘the wrong time’ will occur. Our results suggest that it is safest for people to mute or turn off their phones and put them out of sight while driving.

The researchers plan to follow this study with another that examines cell phone notification distraction while participants are given a driving test on a simulator. That should prove to be helpful in this area of concern.

Source: Florida State University
**XXI. ENVIRONMENTAL CONCERNS**

**Haze Of Uncertainty Surrounds EPA Vapor Intrusion Rules**

Thirteen years after releasing an initial draft and two years after issuing a draft for public comment, the U.S. Environmental Protection Agency (EPA) on June 11 released its final vapor intrusion guidance document—“Office of Solid Waste and Emergency Response Technical Guide for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Sources to Indoor Air (“VI Technical Guide”).” The EPA also released its “Technical Guide for Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites” on the same day. I recommend that anyone persons with an interest in environmental issues obtain a copy of both reports.

Source: Law360.com

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**XXII. UPDATE ON NURSING HOME LITIGATION**

**JURY AWARDS $18 MILLION IN WRONGFUL-DEATH CASE AGAINST KENTUCKY NURSING HOME**

The family of Eliza Jennings, 94, has been awarded $18 million in a wrongful death suit against a Berea, Ky., nursing home. Eliza Jennings died in 2009. As part of the overall award, the jury awarded $9.5 million out of a maximum of $10 million for punitive damages because of the care Jennings failed to receive at The Terrace Nursing & Rehabilitation Center. Ms. Jennings developed several deep bedsores, including sores down to the bone, and infections including E. coli. One deepbone bed sore was the size of a softball and left her tailbone and nerve endings exposed.

Evidence was presented at trial that The Terrace had a policy of leaving residents in wet diapers for extended periods of time to save money. The woman had also lost use of her arms and legs because they had become ‘frozen’ from the lack of range of motion exercises, he said. The Terrace is a part of PDM Corporation, which owns 12 nursing homes across Kentucky. Corey Fannin, a lawyer with Wilkes & McHugh, a law firm with headquarters in Tampa, Fla., represented the family. They did a good job in this case.

Source: personalinjury.com

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**XXIII. AN UPDATE ON CLASS ACTION LITIGATION**

**Significant Class Action Lawsuit Filed In A Connecticut Federal Court By Our Firm**

Lawyers from Beasley, Allen, Crow, Methvin, Portis, & Miles have filed a class action lawsuit on behalf of owners or lessees of vehicles equipped with an aerial device or aerial work platform manufactured by Terex Corporation. The complaint, filed on behalf of Plaintiff Ace Tree Surgery, Inc., alleges the aerial platform—often mounted onto vehicles such as a commercial truck chassis and sometimes referred to as a “cherry picker” or “bucket truck”—is defectively designed.

A particular brand and model line of Terex Hi-Ranger XT Series does not meet the standard for aerial devices, which could result in catastrophic failure resulting in serious injury or death to users and bystanders resulting from falls and impact with equipment. Terex was aware its product did not meet the required safety minimums but falsely claimed the product met all standards and sold the product as such. The Plaintiff and class members have suffered economic losses as a result. Dee Miles, who heads the firm’s Consumer Fraud and Commercial Litigation Section, said there is no excuse for compromising safety. He says this class action seeks to ensure that those using these bucket trucks are using a safe product.

The American National Standards Institute (ANSI) dictates that vehicle-mounted elevating and rotating work platforms meet a structural design requirement that design stress is not more than 50 percent of the minimum yield strength of the steel, or a “two to one” / “2:1” safety factor. The minimum yield strength is the amount of force that must be applied to permanently deform the steel. If the platform does not meet this requirement, the steel may deform and fail, leading to worker and equipment falls with catastrophic results.

The Plaintiff, individually and on behalf of other members of the Class, seeks economic damages for replacement of the Hi-Ranger XT, damage to vehicles on which the Hi-Ranger XT is mounted, and injunctive relief. The complaint was filed in the U.S. District Court for the District of Connecticut. Counsel for the Proposed Class are Dee Miles, Archie Grubb and Andrew Brashier from our firm; Kathleen L. Nasiri with the Koskoff, Koskoff & Beider firm, in Bridgeport, Conn.; and Adam J. Levitt and Edmund S. Aronowitz of Grant & Eisenhofer, a firm in Chicago, Ill.

**CLASS-ACTION LAWSUIT FILED ON BEHALF OF FEDERAL WORKERS HARMED BY HACKERS**

The largest federal employees union has filed a class action lawsuit against the Office of Personnel Management (OPM) following the massive data breach that may have exposed personal information on as many as 18 million current and former government workers. The American Federation of Government Employees (AFGE) filed the lawsuit in U.S. District Court. OPM Director Katherine Archuleta, OPM Chief Information Officer Donna Seymour, and background check contractor KeyPoint Management Systems are named as Defendants. The lawsuit claims the breach caused financial and emotional harm to government workers. AFGE officials had this to say in a written statement:

AFGE will not sit idly by while OPM fails to comply with the most basic requests for information or provide an adequate response. Even after this historic security breach, OPM has continued to use poor data security practices and inferior private-sector strategies to solve its security woes. Since 2007, officials at OPM have been alerted to their lackluster data security policies and protocols and failed to take appropri-
ate steps to safeguard the information. Although they were forewarned about the potential catastrophe that government employees faced, OPM’s data security got worse rather than better.

OPM announced earlier this month that information on as many as 4 million former and current government employees could have been compromised in the cyber breach that’s been traced to Chinese hackers. Reports later surfaced that because information used during background checks has also been compromised, as many as 18 million people may be affected by the hack. AFGE’s lawsuit asks the District Court of the District of Columbia to consider a motion to certify all 4.2 million—and possibly more—affected employees and retirees treated as a class.

The suit seeks damages including claims for out-of-pocket expenses related to replacing credit cards, closing bank accounts and additional credit monitoring other than what has been provided. If the court certifies the class action, employees would automatically be added and not have to sign up to join.

Source: AL.com

XXIV. THE CONSUMER CORNER

PUBLIC CITIZEN ASKS FDA TO WITHDRAW APPROVAL OF SEPRAFIL SURGICAL GEL

Public Citizen has requested the U.S. Food and Drug Administration (FDA) remove the medical device Seprafilm from the market because it has not been shown to be safe and effective, and has been associated with patient death and severe injury. A petition was filed last month by Public Citizen. Seprafilm—approved by the FDA in August 1996—is a thin sheet of gel-like material that surgeons use during abdominal and pelvic surgery to prevent internal organs from forming fibrous bands of tissues that can block the intestine and cause other complications following surgery.

Public Citizen says the clinical studies the FDA relied on when approving Seprafilm were plagued with problems. A study researcher at one hospital did not follow the study protocol or report all adverse event data and filed incomplete and inaccurate paperwork. There were also high numbers of serious adverse events in patients receiving Seprafilm. At the time of approval, the FDA ordered the product’s manufacturer, Genzyme, to conduct a post-approval safety study to address the agency’s concerns with the initial trials.

However, this postmarket study, when finally completed, used highly questionable forms of analysis and failed to establish that Seprafilm offers any important clinical benefits for patients. More troublingly, evidence from this study, along with reports filed with the FDA over the years, shows that Seprafilm may interfere with wound healing and cause severe reactions—including death—in some patients. Dr. Michael Carome, director of Public Citizen’s Health Research Group, stated:

Seprafilm never should have been approved. There is no evidence that this device achieves any important clinical benefit for patients—but ample evidence showing serious adverse health consequences. The FDA needs to immediately withdraw the approval of Seprafilm and initiate a mandatory recall of the device.

Through records in the FDA’s Manufacturer and User Facility Device Experience database, Public Citizen found 21 reports of death in patients in whom Seprafilm was placed during surgery. It is likely that many other deaths have gone unreported. In addition to the death reports, Public Citizen identified a total of 524 reports of adverse events linked to Seprafilm. Public Citizen spoke with Laura Schmitz, whose mother Jayne Heisner, died from complications related to Seprafilm. Ms. Schmitz had this to say:

My mother died after experiencing what her operating physician described as an intense, inflammatory reaction where Seprafilm had been placed during surgery. She didn’t ask that Seprafilm be placed in her, nor did our family. During routine surgery for a benign ovarian tumor, it was discovered that she had adhesions [fibrous bands of tissues]. At that time Seprafilm was placed in her abdominal cavity to prevent further adhesions. Within a short time she had a severe reaction to Seprafilm. Four weeks later, her system totally failed and, ultimately, we made the painful decision to remove her from life support. Now my family and I are left to share her story in hopes that the FDA or even Genzyme will see the catastrophic outcomes that this device can cause and immediately remove it from the market. Our hope is that no one will ever again have to experience what our family and other victims of Seprafilm and their families have experienced.

In addition, in 2013, Genzyme settled two lawsuits with the U.S. Department of Justice related to allegations that company representatives had instructed doctors to dissolve pieces of Seprafilm in a “slurry” for injection into patients’ abdomens during surgery. This use has not been approved by the FDA and raises a number of safety concerns. Hopefully, Public Citizen will be successful in this matter of concern.

Source: Public Citizen

JURY AWARDS $10 MILLION TO FAMILY OF TEEN WHO DIED AT CALIFORNIA FACILITY

The family of a teenage boy who died at a care facility has been awarded more than $10 million in damages by a jury in a case involving the boy’s death. The victim, 15-year-old Kevin Barr, died at a Lonika’s Home Inc., care facility in 2012 after staff failed to give him his anti-seizure medication and then delayed calling 911 when they found him unresponsive. The jury awarded $4.5 million in punitive damages to Kevin’s family in the second phase of the trial. Earlier in the family was awarded $5.7 million for compensatory damages. The punitive award brings the total verdict amount to $10.2 million. The jury found that Lonika’s Homes was negligent in employing a caregiver with no CPR or emergency response training.

Source: Insurance Journal

FTC ANNOUNCES $54 MILLION IN PAYDAY LOAN SETTLEMENTS

The operators of a payday lending scheme that allegedly bilked millions of dollars from consumers nationwide have agreed to more than $54 million in settlements with the Federal Trade Commission (FTC). The settlements, announced on July 7, arise from allegations that the FTC that Timothy Coppinger, Frampton Rowland III and their companies targeted online payday loan applicants—consumers seeking short-term loans to tide them over until they received their next paycheck. Approximately 400,000 consumers were affected by the scheme, and the settlement funds will be used to reimburse them for losses, according to the FTC.

Using information gathered from data brokers and lead generators, the companies allegedly deposited funds in the applicants’ bank accounts without obtaining permission. The companies subsequently withdrew money to pay recurring ‘finance’ charges without using any of the funds to pay the total allegedly owed, the FTC alleged. The companies also allegedly misrepresented the loans’ costs, finance charges, annual percentage rates payment schedule and other data. Consumers who closed their bank accounts in a bid to halt the unauthorized debts subsequently discovered that the companies had sold the purported loans to debt-collection companies that harassed them for payment, the FTC alleged. A federal court in Missouri halted the operation and froze the Defendants’ assets pending resolution of the FTC allegations.

The Coppinger and Frampton limited liability companies involved in the lawsuit include: CWB Services; Orion Services; Sandpoint Capital; Bassetterre Capital; Namakan Capital; Anasazi Services; Anasazi Group; Vandelier Group; St. Armands Group; Longboat Group and Oread Group. The settlements, which require federal court approval, erase any con-
sumer debt purportedly owed to the Defendants and bar them from reporting the debts to credit-reporting agencies.

The agreements, according to the FTC, also ban the Defendants “from any aspect of the consumer lending business, including collecting payments, communicating about loans and selling debt.” If approved by the court, the FTC said the settlements will impose a more than $32.1 million consumer redress judgement on the Coppinger companies agreed and a similar judgement of nearly $219 million on the Frampion companies. The judgements against Coppinger and Frampion will be suspended upon their surrender of certain assets, according to the FTC.

Source: USA Today

TIME WARNER CABLE TO PAY $229,500 TO WOMAN HARASSED WITH ERRANT ROBOCALLS

Time Warner Cable has been found liable of violating the Telephone Consumer Protection Act (TCPA) and ordered to pay $229,500 to a woman it harried with robocalls. The company placed 153 automated calls in less than a year to a cell phone owned by Araceli King, continuing even after she informed them they were reaching the wrong person and even after she filed a lawsuit to stop the calls. U.S. District Judge Alvin Hellerstein awarded triple damages in the case amounting to $1,500 per call, after determining the company was willfully violating the TCPA.

The cable company began calling Ms. King’s cell phone and leaving automated messages for Luiz Perez as part of a system intended to contact customers who are late paying their bills. Time Warner claimed it had not violated the TCPA because Perez had consented to being called by the company. However, Ms. King said she spoke to a Time Warner representative and had record of a seven-minute conversation in which she explained the phone number they were calling no longer reached Perez, but instead went to her cell phone. The calls continued, and Ms. King filed a lawsuit to try to force the company to rectify the situation.

In his decision, Judge Hellerstein noted that 74 phone calls were made even after Ms. King filed her lawsuit, and said these were “particularly egregious violations of the TCPA.” He said this action illustrated Time Warner did not take the lawsuit seriously. He said that a “responsible business” would have tried hard to find Perez or, at the very least, updated the information in its interactive voice response system to stop the calls from going to Ms. King.

Source: MSN

CPSC APPEARS TO BE DEVELOPING A LITIGATION STRATEGY

The U.S. Consumer Product Safety Commission (CPSC), from all accounts, is finally escalating its enforcement efforts. Recently, the U.S. Department of Justice, on behalf of the CPSC, filed suit against Spectrum Brands Inc. in a Wisconsin federal court. This was the CPSC’s second enforcement lawsuit filed in 2015, a year in which records for CPSC penalties will likely be set. The complaint alleges that Spectrum not only failed to comply with CPSC reporting requirements, but that it also allowed hundreds of defective coffeemakers to be sold after a 2012 recall of the products. The CPSC seeks both civil penalties and injunctive relief. Hopefully, this CPSC-backed lawsuit will be a warning to similarly situated companies and will prompt them to report products containing potential hazards.

The Consumer Product Safety Act (CPSA) requires that manufacturers, distributors and retailers "shall immediately inform" the CPSC of any potential substantial product safety hazards or unreasonable risks of serious injury associated with their products. According to the CPSC, "immediately" means "within 24 hours." 16 C.F.R. Section 1115.14(c).

This latest lawsuit continues the trend of increased CPSC enforcement. In the past few years, the enforcement trend has been evident in increasing penalties against manufacturers over allegations of unsafe products and associated reporting violations. CPSC Chairman Elliot Kaye has repeatedly stated that the commission will seek higher penalties. Early this year, he announced his plans to authorize the CPSC to issue fines up to the $15 million cap. Further, in an official statement announcing a recent multimillion dollar fine, Chairman Kaye warned:

While this well-deserved civil penalty is not even close to the level Congress authorized and expected when enacting the Consumer Product Safety Improvement Act, I have put violators on notice that we will seek much higher penalties, as appropriate.

The CPSC appears to be serious about backing up Chairman Kaye’s statements. In 2014, the CPSC imposed a record $12.2 million in fines for failure to report product safety hazards or for selling recalled products. That was more than double the $6 million in total penalties assessed in 2013, which was up from $4.3 million in 2012. The total could potentially double again this year; 2015 is not even half over and the CPSC has already fined companies more than $11 million.

The enforcement mandate does not appear targeted at a specific industry or a particular point in the distribution chain. The penalties assessed in the past few years have ranged from retailers to manufacturers, and from home appliances to home furnishings to children’s products. The common theme is reporting violations—including significant delays in reporting multiple events or failure to immediately report a death or serious injury.

Where companies won’t agree to fines, it appears the CPSC is no longer reluctant about filing lawsuits when necessary. Historically, CPSC-backed lawsuits were rare. Before this year, the CPSC had only filed three lawsuits and one administrative complaint, all seeking mandatory recall remedies under Section 15 of the CPSA.

Source: Law360.com

NEW CAR SEAT IS DESIGNED TO SAVE CHILDREN FROM DYING IN HOT CARS

As we have previously reported, one child dies every nine days from being left in a hot car. I hear folks say quite often, how could a child be left in a car? Unfortunately, as we know all too well, it does happen. Now a car seat that could prevent children from being accidentally left in cars is being made available. The car seat, the Evenflo Embrace DLX Infant Car Seat with SensorSafe technology, will be sold at Wal-Mart and online at Evenflo.com.

The seat has a sensor that sounds an alarm once the car ignition is turned off, to remind parents there is a baby still in the seat. The alarm is activated through a “smart” chest clip and a wireless receiver. It also alerts the driver if the chest clip is unbuckled during transit. The wireless receiver plugs into the data port that mechanics use to check a car’s system, and links via Wi-Fi to the sensor inside the chest clip. The sensor is enabled when the car starts moving. Once the car stops and is turned off, a set of tones will sound.

According to Evenflo, the SensorSafe system will work even when multiple SensorSafe-equipped car seats are in one car, thanks to each chest clip having a unique ID. The SensorSafe seats can also be used in multiple cars. The car seat fits babies from 4-35 pounds and up to 30” in height. The seat is currently available at Walmart.com and will soon be available in Wal-Mart stores and on Evenflo.com. It retails for $149.88. Hopefully, these seats will work and, if so, lives will be saved.

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 July. 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.
HONDA ADDS 4.5 MILLION VEHICLES TO GLOBAL TAKATA AIR BAG RECALL

The recall of Honda vehicles outside the U.S. included 1.6 million vehicles of various models manufactured from 2007 to 2011 in Japan, according to the Japanese Ministry of Land, Infrastructure, Transport and Tourism. The 1,625,144 Japan-made vehicles have driver’s side air bags in need of replacement. Honda also recalled 5,335 vehicles manufactured in Thailand. The global recall does not include Honda vehicles in the U.S. In June, the automaker added 1 million more Civics and Accords to its stateside recall, which now affects around 2.3 million vehicles. Honda’s global recall expansion comes two weeks after Toyota Motor Corp. and Nissan Motor Co. Ltd. announced they were expanding their recalls to 3 million more vehicles made with Takata air bag inflators worldwide.

Toyota expanded a recall previously limited to North America to include the rest of the world, replacing the potentially defective passenger-side air bag inflators made by Takata in another 23 models, or 2.86 million vehicles, in China, Japan and Europe. Nissan recalled another 198,131 vehicles globally after its May 20 recall of cars equipped with the inflator in North America. Both automakers said that they will replace the impacted vehicles’ air bag inflators. The total number of automobiles wrapped up in the recall—launched after it was discovered that the Takata-made air bag inflators pose a risk of rupturing and sending shrapnel flying at the vehicles’ occupants—was estimated at 34 million at the end of May, which makes it the largest recall of its kind, and that number continues to creep upward.

TOYOTA RECALLS 625,000 PRIUS HYBRIDS OVER SOFTWARE PROBLEMS

Toyota Motor Corp. has recalled approximately 625,000 Prius hybrids worldwide because a glitch in the software can cause the hybrid system to shut down while being driven. The recall affects about 340,000 cars in Japan, 160,000 in Europe and 120,000 in North America. Toyota says there haven’t been any reported crashes or injuries. Similar software problems have plagued the Prius before, prompting the company to recall approximately 1.9 million Prius vehicles worldwide in order to correct the glitch.

The current software settings for the motor and generator control engine control unit, or ECU, and hybrid control ECU can result in higher thermal stress in certain transistors, the company said in a statement, which can cause warning lights to illuminate and send the car into a failsafe mode. “In rare circumstances, the hybrid system might shut down while the vehicle is being driven, resulting in the loss of power and the vehicle coming to a stop,” the company said.

About 109,000 model year 2012 to 2014 Prius V hybrids are affected by the recall in the United States, Toyota dealers will update the software for both the motor and generator ECU and hybrid control ECU to fix the glitch. The automaker issued a similar recall in February 2014 for about 1.9 million Prius vehicles manufactured between 2009 and 2014. They also had a glitch in the hybrid control system that could cause the vehicles to shut down while being driven, which the company said it planned to fix with a software update. This recall comes just days after the National Highway Transportation Safety Administration (NHTSA) announced it had started looking into a driver’s claim of sudden unintended acceleration at low speeds in Toyota vehicles, which could affect more than 42,000 2009 Lexus ES 350 vehicles if a genuine defect is found.

The agency decided in May, however, that the company doesn’t have to recall up to 1.7 million Corollas over similar acceleration complaints. Toyota has already issued millions of recalls over the acceleration defect, and won approval in July 2013 for a $1.1 billion settlement it reached with approximately 23 million customers.

GM RECALLS 200,000 HUMMERS AFTER THREE PEOPLE BURNED

General Motors Co. has recalled nearly 200,000 Hummers after three people reported being burned in fires caused by an overheated part in the vehicles’ heating and air conditioning motor. The automaker said it is recalling 196,579 of its 2006 through 2010 Hummer H3s and 2009 and 2010 Hummer H3Ts because the module that controls their heating and air conditioning motor’s speed can overheat, melting nearby plastic and causing a fire.

There have been 42 vehicles fires and three people burned. Of the total number of Hummers being recalled, 164,993 are in the U.S., and the remainder are in Mexico and Canada, GM said. Dealers will replace the affected portion of the connector and harness, the automaker reported. GM phased out its Hummer brand in 2010, after a $150 million deal to sell the brand to Chinese company Sichuan Tengzhong Heavy Industrial Machinery Co. Ltd. fell through.

In one complaint filed with the National Highway Transportation Safety Adminis-
General Motors (GM) has recalled nearly 780,000 midsize SUVs worldwide because of a problem with the vehicles’ power liftgates, which can suddenly fall and strike people. The recall covers 2007-2010 Saturn Outlook, 2007-2012 GMC Acadia, 2009-2012 Chevrolet Traverse and 2008-2012 Buick Enclave models that are equipped with the power liftgate option. Approximately 690,000 of the affected vehicles are in the U.S., the automaker said in a statement. The power liftgate, which is the upward-swinging rear door, has gas struts that hold it up when opened, but the struts can prematurely wear out and cause the open liftgate to unexpectedly fall, according to the statement. “GM is aware of 56 reported injuries but no crashes or fatalities related to this condition,” the statement said.

The SUVs are equipped with a system that is supposed to return the liftgate to the closed position in a slow and controlled manner, according to the statement. The affected vehicles, however, have a problem in their prop rod recovery system software, causing it to potentially be unable to detect or stop a liftgate from falling too quickly after the liftgate is open if the gas struts have worn out, the statement said. “If this condition occurs, it may introduce the opportunity for injury due to contact of the liftgate door with a person’s head/body,” GM said in a June 25 letter to dealers.

The National Highway Transportation Safety Administration (NHTSA) acknowledged the recall in a letter, saying it had first been notified of the issue on June 24. In a safety recall report submitted to the agency, GM said it first investigated an incident of power liftgate failure in September 2010 after a report from a company vehicle driver. With low rates of incidents in the field, the automaker closed the investigation that month but continued to monitor field reports. The automaker’s emerging issues group in November investigated two so-called Speak Up For Safety cases involving power liftgates, and GM opened a formal investigation on March 17, the report said. The company reviewed field data relating to the condition, instigated a read-across of vehicles with the power liftgate systems and conducted tests between April and June, and decided to conduct a safety recall on June 17, according to the report.

Under the recall, dealers will reflash the power liftgate actuator motor with a new software calibration, and GM will reimburse drivers for repairs. The calibration is designed to mitigate the liftgate’s behavior when gas struts are weakened, the report said.

Ford Motor Co. has recalled nearly half a million cars and sport utility vehicles with an electronic glitch that could cause the engine to continue running even after the ignition has been switched off, creating a possibility for the vehicles to be rolled away or stolen. The 2015 Ford Focus is among the models recalled for a rollaway or theft hazard.

This recall encompasses 435,000 of Ford’s model year 2015 Focus, C-MAX and Escape vehicles, and its implementation will allow the automaker to remain compliant with National Highway Transportation Safety Administration (NHTSA) regulations regarding theft and rollaway protection. In a statement, Ford said it is not aware of any accidents or injuries associated with the defect and added that the recall is a compliance issue with Federal Motor Vehicle Safety Standard 114, which specifies performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles. There is an issue with the body control module—the cars’ electronic control unit—in the recalled vehicles, which can cause the engine to continue to run after turning the ignition key to the off position and removing the key or after pressing the engine stop button, Ford said.

The recall includes 432,096 vehicles in North America, including 374,781 in the U.S., 52,180 in Canada and 5,135 in Mexico. Ford reported that its dealers will update the body control module software at no cost to customers. Thursday’s announcement comes about a week after the NHTSA launched an investigation into potential brake failures in more than 250,000 Ford pickup trucks. The Office of Defects Investigation opened its investigation on June 22 after identifying 32 complaints alleging that failures in the electric vacuum assist pump caused a loss of brake power assist in 2011-2012 Ford F-150 trucks equipped with 3.5-liter gasoline turbocharged direct-injection V6 engines. Two reports alleged crashes due to increased brake pedal effort required to stop or slow the vehicle, and the complaints it has received show an apparent increasing trend, with approximately 60 percent of complaints received within the past nine months, the agency said.

Jaguar Land Rover NA LLC has recalled approximately 65,000 Range Rover sport utility vehicles after discovering a keyless entry software glitch causes some of the vehicles’ doors to fly open unexpectedly. The recall includes certain 2013-2016 Range Rover and 2014-2016 Range Rover Sport vehicles made with keyless lock software that the carmaker reported can cause the doors to unlatch unexpectedly, which could distract drivers and cause a crash or, if the car’s occupants aren’t wearing seat belts, allow them to fall out.

Jaguar Land Rover said it is not aware of any injuries or crashes caused by the defect and reported that its dealers will update the keyless entry software at no cost to owners of the affected cars. The immediate recall includes 65,352 vehicles sold in the U.S., but is a global issue. The software to be replaced was made by German car parts giant Brose Group’s Brose SchießSysteme GmbH & Co., according to Jaguar Land Rover. The automaker began looking into the problem last October after getting customer complaints.

According to one driver who filed a complaint with the National Highway Traffic Safety Administration (NHTSA) last November, the door of his or her Range Rover flew open while the car was in motion. “I was traveling at approximately 60 miles per hour on a highway and all of a sudden the driver’s side door opens,” the safety complaint said. “My left elbow was resting on the door with just the weight of my elbow and all of a sudden I feel my elbow drop down and a gust of wind. The door opened maybe an inch before closing back up again.”

Other Jaguar Recalls

Jaguar Land Rover said it is recalling 492 2012-2013 Land Rover LR4 models because of an ineffective primer that can cause the vehicles’ panoramic roofs to open unexpectedly.
takata air bags

covers could become dislodged. The
after an investigation revealed the engine
FC recalls 350,000 crossovers to

FERRARI RECALLS 2,000 CARS OVER

FERRARI RECALLS 2,000 CARS OVER TAKATA AIR BAGS

Ferrari North America Inc. has recalled more than 2,600 of its luxury cars, including 841 in the U.S., because the Takata Corp. air bags they contain were incorrectly assembled and could cause neck injuries, according to a report by NHTSA. The safety recall report stated that the problem is a combination of the air bags being deployed in a "rotated orientation," as well as a lack of glue to keep them in place. The affected vehicles include various 458 models, as well as the F12 Berlinetta, California T, FF and LaFerrari, the last of which retails for about $1.4 million. "Ferrari SpA has been informed by the Takata Corp. of a production nonconformance issue with the driver-side air bags it received preassembled from said supplier and installed in several cars built in 2015," the company said in a statement.

A spokeswoman for Ferrari said that the issue is unrelated to the defect affecting Takata air bags in vehicles made by American Honda Motor Co., Nissan Motor Co., Ford Motor Co. and others, which can cause the air bags to expel potentially deadly pieces of shrapnel. Takata informed Ferrari about a potential problem with its air bags in June after one test revealed elevated "energy absorption" values used to quantify the risk of a neck injury, according to NHTSA.

Additional testing showed that both the insufficient gluing and the rotation error—caused by the cushion being improperly inserted into a folding machine—had to be present for the air bags to be dangerous, the recall report said. The recall was scheduled to begin July 30.

FCA RECALLS 350,000 CROSSOVERS TO SECURE ENGINE COVERS

FCA US LLC has recalled nearly 350,000 crossover utility vehicles worldwide after an investigation revealed the engine covers could become dislodged. The engine covers in 2011 to 2015 Dodge Journey and Fiat Freemont vehicles with 2.4-liter, four-cylinder engines could become dislodged in certain conditions and cause a fire risk if they come in contact with exhaust components. "Indicators of a loose engine cover may include noise from the vehicle's engine compartment, a burning odor and/or a warning light in the instrument cluster," the automaker said. "Customers who experience these events are advised to contact their dealers." The company said the condition was discovered after three incidents in Chile, which all occurred after the vehicles had been "extensively driven on unpaved or uneven surfaces."

An FCA representative said that the company knew of only one minor injury in Mexico related to the engine covers.

More than 144,000 vehicles are being recalled in the U.S., 43,000 in Canada, 46,000 in Mexico and 115,000 in other countries, the automaker said, while an estimated 10 percent of the total recalled vehicles are still in dealer hands. Six-cylinder engines are not affected by the recall. FCA said it will install upgraded engine-cover retainers free of charge.

E-Z-GO RECALLS GAS-POWERED GOLF, SHUTTLE AND UTILITY VEHICLES DUE TO FIRE HAZARD

About 8,200 Golf cars, shuttles and off-road utility vehicles have been recalled by E-Z-GO, a division of Textron Inc. and Textron Specialized Vehicles Inc., of Augusta, Ga. The gas tank can leak, posing a fire hazard. This recall involves E-Z-GO gas-powered TXT Fleet golf cars, E-Z-GO Freedom TXT, TXT2+2 and Valor golf cars, E-Z-GO Express, E-Z-GO Terrain and the Cushman Shuttle vehicles with bench seats for the driver and passengers. The E-Z-GO Terrain and the Cushman Shuttle have a cargo bed on the back. The recalled vehicles have date codes ranging from G2015 through L0515. E-Z-GO or Cushman and the model name are printed on the side and front panels of the vehicles. Date codes are printed on a plate or label inside the cab below the driver's seat. The first letter of the date code identifies the month of production in sequence, with G corresponding to January and L to May. There is no letter I. The first two numbers in the date code identify the two-digit day of production and the final two numbers identify the two-digit year of production.

The vehicles were sold at E-Z-GO and Cushman dealers nationwide from January 2015 through May 2015 for between $5,300 and $12,100. Consumers should immediately stop using the recalled vehicles and contact E-Z-GO or an authorized dealer for a free repair. E-Z-GO and E-Z-GO dealers are contacting known owners. Contact E-Z-GO toll-free at 844-725-7212 between 8 a.m. and 5 p.m. ET Monday through Friday, or online at www.ezgo.com or www.cushman.com and click on Recall Information at the bottom of the page for more information.

HUSQVARNA RECALLS LAWN AND GARDEN TILLERS DUE TO RISK OF BODILY INJURY

About 24,000 lawn and garden tillers have been recalled by Husqvarna Consumer Outdoor Products N.A. Inc., of Charlotte, N.C. The tiller's transmission shift rod and clip can come into contact with the control cable during shifting and cause the tiller to unintentionally move forward or backward, posing a risk of bodily injury and/or laceration. This recall involves Ariens®, Husqvarna®, Jonsered® and Poulan Pro® brand rear-tine tillers used for plowing, cultivation and riding gardens and lawns. The tillers have an engine to power the wheels and the rear tines, an operator handle with forward and reverse transmission and tilling widths ranging from 17 to 19 inches. The brand name is printed on the side of the tiller. They were sold in red, orange and yellow/black colors. No incidents or injuries have been reported.

The tillers were sold at hardware stores, home centers and independent outdoor power equipment dealers from October 2014 through May 2015 for between $600 and $850. Consumers should immediately stop using the recalled tiller and return it to the nearest Husqvarna dealer for a free repair. Contact Husqvarna toll free at 877-257-0921 from 8 a.m. to 6 p.m. ET Monday through Friday, email recalls@husqvarna.com or online at www.husqvarna.com and click on “Latest Press” for more information.

BRIGGS & STRATTON RECALLS SIMPLICITY RIDING MOWERS AND GARDEN TRACTORS

About 2,800 Briggs & Stratton riding mowers have been recalled. The chute deflector on the riding mowers and garden tractors can fail to prevent projectiles from being expelled. This poses a risk of injury to consumers from projectiles. This recall involves orange Simplicity brand zero turn riding mowers, mower deck attachments and garden tractors. Mower deck sizes range from 44 to 54 inches. The Simplicity logo is on the side of the mower or garden tractor. The model and serial numbers are located on the frame near the front tires or on the frame rail below the seat. Mowers with a black dot on the label containing the product's model and serial number are not included in this recall.
The mowers were sold at Briggs & Stratton dealers nationwide from August 2014 through May 2015 for between $3,600 and $16,000. Manufacturer: Briggs & Stratton Corp., of Wauwatosa, Wis. Manufactured in United States. Consumers should immediately stop using the recalled products and contact a Briggs & Stratton dealer to schedule a free repair. Contact Briggs & Stratton at 800-227-3798 between 8 a.m. and 5 p.m. CT Monday through Friday, or visit the company’s website at www.briggsandstratton.com and click on “Recalls and Notifications” for more information. Dealers can be found using the dealer locator at www.simplicitymfg.com.

**Polaris Recalls Youth RZR Recreational Off-Highway Vehicles**

About 4,300 Polaris Youth RZR recreational off-highway vehicles have been recalled by Polaris Industries Inc., of Medina, Minn. The vehicle’s fuel pump can leak, posing a fire hazard. This recall involves Model Year 2015 Polaris Youth RZR® 170 EFI recreational off-highway vehicles with model number R15YAV17AA/AF and VINs between RF3YAV170FT00076 and RF3YAV17XFT005141. To see the complete list, visit the company’s website. The VIN is on the left-hand front frame tube. They were sold in both blue and red. The blue models have a “170 EFI” decal on the right and left side of the hood and an “RZR” decal on the right and left front fenders. The red models have a “170 EFI” decal on the right and left front fenders and a “RZR” decal on the right and left rear fenders.

The recreational vehicles were sold at Polaris dealers nationwide from October 2014 through June 2015 for about $4,600. Consumers should immediately stop using the recalled Polaris RZR vehicles and contact their local Polaris dealer to schedule a free repair. Polaris is contacting its customers directly and sending a recall letter to each registered owner of an affected product. Contact Polaris toll-free at 888-704-5290, from 8 a.m. to 5 p.m. CT Monday through Friday, or visit the company’s website at www.briggsandstratton.com and click on “Recalls and Notifications” for more information.

**Öhlins Front Forks for Motorcross Bikes Recalled by Öhlins USA**

About 50 Öhlins RXF 48 front forks for motocross bikes have been recalled by the Importer/Distributor Öhlins USA Inc., of Hendersonville, N.C. The front fork can break or detach, posing a crash hazard. This recall involves Öhlins RXF 48 mm front bike forks for motocross bikes. The fork legs are yellow with a large white “Ö” and a small “TTX” on the front. The fork legs measure about 37 inches long. The following product and batch numbers are included in this recall and stamped on the silver-colored front fork bottom piece.

**Product Number Batch Number**

- FGK7 1586 309632
- FGK7 1596 309628
- FGK7 1596 138461

The bikes were sold at off-road bike stores nationwide from November 2014 through May 2015 for about $3,500. Consumers should stop using motorcross bikes with these front forks immediately and contact Öhlins for free replacement and installation of a new cartridge kit in the fork. Contact Öhlins USA at 800-336-9029 from 9 a.m. to 5 p.m. ET Monday through Friday or online at www.ohlinsusa.com and click on Important Safety Recall for more information. Photos available at http://www.cpsc.gov/en/recalls/recall-alerts/2015/ohlins-front-forks-for-motorcross-bikes-recalled-by-ohlins-usa/

**Continental Recalls 3,800 Tires Due to Defective Treads**

The North American unit of German tire maker Continental AG has recalled a batch of 3,800 passenger vehicle tires after a driver reported an incident involving the ContiProContact P205/65 R15 95T XL model tire—which can fit cars, minivans and SUVs—resulted from an improper mix of rubber components during production that didn’t allow the tread to bond properly to the rest of the tire. The faulty tire was traced back to a batch produced at Continental’s plant in Fort Mills, S.C., during the second week of February. There have been no reported injuries or accidents, according to the company. Continental said it was difficult to tell how many of the tires had actually made it onto customer vehicles, but it was likely that some would be stopped at the nationwide dealers and warehouses they had been sent to.

The affected tires may exhibit localized tread wear, excessive vibration, noise or bulging in the tread area, a condition that may lead to partial or full tread separation and possible loss of control, according to Continental’s website. The tires can be identified by the Department of Transportation code VY UR 471B 0615 on the outer rim and will be replaced free of charge, the company said. Even though there was just one incident involving a small batch, the company decided on a recall voluntarily to be safe and proactively sent out a news release even though it’s not required by the National Highway Traffic Safety Administration (NHTSA) this early in the recall stage.

Continental recalled roughly 8,000 motorcycle tires in September and 6,000 Mercedes-Benz tires in June 2014, according to the NHTSA website. In March 2011, after a number of complaints, Continental voluntarily recalled nearly 400,000 tires produced at its plant in Mexico between 2007 and 2008 and used on Ford F-250 and F-350 trucks because of problems with improper inflation in hot weather. The Hanover, Germany-based company produces a variety of auto parts including brakes, airbags and engine components, and has two tire manufacturing plants located in the United States that each produce about 800,000 tires per year.

**Harley-Davidson Issues Recall For Saddlebags**

The Harley-Davidson Motor Company has issued a recall stating that the saddlebag mounting receptacle, p/n 10900009 on some model year 2014 and 2015 Touring family vehicles may not adequately secure the saddlebag to the motorcycle during use. If this condition remains undetected, the saddlebag may become separated from the motorcycle while it is in motion, possibly creating a hazard for other motorists. Owners of the affected motorcycles will be asked to arrange service with an authorized Harley-Davidson dealer, who will confirm that the motorcycle is covered by this recall. If covered, the dealer will install the updated receptacle from the recall kit provided. This service will be provided at no charge to the customer. Motorcycles should be taken to dealers to have the appropriate service performed as soon as possible. Some product campaigns may have expired and you may have to pay for the service. See your local Harley-Davidson dealer for further details.

**Hearth & Home Technologies Recalls Gas Fireplaces**

About 2,500 Heat-N-Glo® and Heatilator® Corner Unit Series indoor gas fireplaces have been recalled by Hearth & Home Technologies of Lakeville, Minn. The back of the fireplace can bow out, posing a fire hazard. This recall involves Heat-N-Glo® and Heatilator® Corner Unit Series indoor gas fireplaces. The fireplaces are LP or NG-fueled corner units with tempered glass fronts. The following model numbers are printed on the unit rating plate, located near the controls used to
operate the units, and in the instruction manual. LCOR-36TRB-1PI; RCOR-36TRB-1PI; GDC41456L; and GDC41456L. There have been two reported incidents involving charring and minor property damage. No injuries have been reported.

The fireplaces were sold at fireplace stores from March 2008 through November 2014 for $1,200 to $8,000. Consumers should immediately stop using the gas fireplaces and contact the fireplace store where the unit was purchased to arrange for a free inspection and installation of a correction kit. The company's dealers are contacting known purchasers. Contact Hearth & Home Technologies at 800-883-6690 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.hearthnhome.com and click on Notices for more information. Photos available at http://www.cpsc.gov/en/Recalls/2015/Hearth-and-Home-Technologies-Recalls-GasFireplaces/.

HEARTH & HOME TECHNOLOGIES RECALLS PELLET STOVES AND INSERTS

About 2,000 Quadra-Fire Mt. Vernon E2 Pellet Stoves and inserts have been recalled by Hearth & Home Technologies of Lakeville, Minn. Fuel can back up, creating unstable combustion and a pressure build up inside the firebox and glass can break, posing a laceration hazard. This recall involves Quadra-Fire® Mt. Vernon E2 pellet stoves and inserts. The cast iron pellet stove is about 32 inches high, 28 inches wide, 29 inches deep and has a matte black, sienna bronze, porcelain mahogany or porcelain black finish. The inserts are about 34 inches wide in front by 24 inches high by 15 inches deep. The viewing area is 21 inches by 14 inches and has a matte black, sienna bronze or porcelain mahogany finish. The following recalled model numbers are printed on the unit rating plate, which is located near the controls and in the instruction manual.

Stoves

MTV-E2-PBK
MTV-E2-CSB
MTV-E2-MBK
MTV-E2-PDB
MTV-E2-PFT
MTV-E2-PMH

Inserts

MTV1-E2-CSB
MTV1-E2-MBK
MTV1-E2-PMH

The company has received eight reports of glass breaking, but no injuries have been reported. The stoves were sold at store stores from February 2012 through June 2015 for $1,200 to $8,000. Consumers should stop using the unit, turn the small blue dial on the stove, or insert the -4 position and follow the daily maintenance requirements in the owner's manual. They should contact the retailer where the unit was purchased to arrange for free installation of an enhanced control board. Contact Hearth & Home Technologies at 800-883-6690 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.hearthnhome.com and click on “Notices” for more information. Photos available at http://www.cpsc.gov/en/Recalls/2015/Hearth-and-Home-Technologies-Recalls-GasFireplaces/.

IKEA RECALLS 27 MILLION CHESTS AND DRESSERS AFTER TWO DEATHS

Ikea has recalled about 27 million chests and dressers because they can tip over and crush children if they aren’t anchored to the wall. Two children died after Ikea’s Malm chests fell on them in 2014. Ikea says it knows of reports of three additional deaths since 1989 from tip-overs involving other models of Ikea chests and dressers. While Ikea’s new repair program is considered a recall, consumers aren’t supposed to return the furniture. Instead, they should order or pick up a new free wall anchoring kit for the affected chests and dressers. Consumers should move unanchored chests and dressers into storage or other areas where they cannot be accessed by children until the chests and dressers are properly anchored.

Furniture and TV tip-overs have been a top concern at CPSC for several years. A child dies every two weeks and one is injured every 24 minutes in the U.S. from furniture or TVs tipping over, according to CPSC data. CPSC Chairman Elliot Kaye has called on the entire industry to make more stable furniture—and for Ikea to lead the way considering their “big market share.”

Ikea is known for its low-priced, low-frills furniture. In Sweden, where it is based, interestingly, the company meets Europe’s more stringent voluntary safety standard, which states furniture units need to be anchored to walls. CPSC did work with the U.S. standard-setting body in 2014 to update the furniture stability standard, but Kaye says it’s still “much fuzzier” than Europe’s.

In February 2014, a 2-year-old boy from West Chester, Pa., died after a Malm six-drawer chest tipped over and fatally pinned him against his bed. A nearly 2-year-old child from Snohomish, Wash., died in June of last year after he became trapped beneath a three-drawer Malm chest that tipped. Neither chest was secured to the wall. Ikea and CPSC also have 14 reports of tip-over incidents involving Malm chests that led to four injuries. Since 1989, Ikea is aware of three other reports of deaths from tip-overs involving other Ikea chests and dressers.

About 7 million Malm chests and 20 million other Ikea chests and dressers are part of this nationwide repair program. The Malm chests that are part of the repair program were sold starting in 2002. The price of the chests ranges from about $80 to $200. To receive a free wall-anchoring kit, consumers can visit an Ikea store, register at www.IKEA-USA.com/saferhomestogether, or call toll-free at 888-966-4532. Ikea’s Lobell said the retailer “is committed to helping raise the awareness of this serious home safety issue and to continue to provide consumers with the tools and knowledge they need to prevent these accidents.”

GREENWORKS BLOWER/VACS RECALLED BY SUNRISE GLOBAL MARKETING DUE TO FIRE AND BURN HAZARDS

Sunrise Global Marketing LLC, of Mooresville, N.C., owns the GreenWorks brand and has recalled about 14,000 GreenWorks 12-amp electric blower/vacs. The blower/vacs have a green motor housing and a black blower tube and restrictor nozzle. They measure 12 inches high and 34 inches long. Recalled blower/vacs have model number 24022 with a serial number between GWS0350001 through GWS2280500 or model number 24072 with a serial number between GWR1310001 through GWS2281100. The model number, serial number, “greenworks” and “ELECTRIC BLOWER/MULCHER WITH BAG” are printed on the side of the motor housing. Model 24022 has a two-speed switch. Model 24072 has a variable speed switch. Sunrise Global Marketing has received three reports of the blower/vacs catching fire. No injuries have been reported.

They were sold at Menards, Magic Mart and Mowtown stores nationwide and online at Amazon.com, atgstores.com, blishmize.com, build.com, chip.com, cpo-outlets.com, globalindustrial.com, Greenworktools.com, hayneedle.com, homedepot.com, johnelandis.com, Kmart.com, Lowes.com, magicmartstores.com, maxtools.com, Menards.com, mowtownusa.com, overstock.com, powerequipmentdirect.com, reishardware.com, samsclub.com, scotsco.com, Sears.com, seventhavenue.com, smithsc.com, Target.com, thehardwarecity.com, unbeatabledeal.com, Walmart.com, wayfair.com and 123greetings.com from February 2012 through June 2015 for between $30 and $70. Consumers should immediately stop using the recalled blower/vacs and contact Sunrise Global Marketing for a full refund. Contact GreenWorks toll free at 888-909-6757 from 9 a.m. to 8 p.m. ET Monday through Friday and from 9 a.m. to 5 p.m. ET Saturday and Sunday; or online at www.greenworktools.com and click on Important Safety Notice for more information.
**TECHNOSPORT RECALLS OMERSUB SCUBA MASK DUE TO INJURY HAZARD**

About 2,600 Omersub Zero Cube scuba diving mask have been recalled by Technosport Inc., of Virginia Beach, Va. Non-conforming glass was used for the lens, which can shatter during normal use, posing an injury hazard. The diving mask is designed to cover the eyes and nose. The mask and strap are made with soft black rubber, with hard rubber around the two glass lenses. “O.M.E.R.®” appears on the forehead area of the mask in raised letters. The UPS Code 801 773 612 2298 and Omersub MFG Part #603NCF appear on the original packaging. Twelve incidents have been reported to the company in which the lens has shattered. No injuries have been reported.

The masks were sold at Technosport Inc. and local diving equipment retailers, and online at amazon.com and www.omersub.com from April 2012 through June 2015 for about $80. Consumers should immediately stop using the mask and contact Technosport for a replacement mask. Contact Technosport at 800-853-1911 from 10 a.m. to 6 p.m. ET Monday through Friday, by email at info@technosportinc.com or online at www.omersub.com and click on “click here for Technosport Recalls” at the bottom of the homepage for more information.

**COST PLUS WORLD MARKET RECALLS RONAN BISTRO CHAIRS**

About 9,200 Ronan Bistro Chairs have been recalled by Cost Plus Management Services Inc., of Oakland, Calif. This recall involves metal Ronan Bistro chairs intended for outdoor use. The chairs measure 35 inches tall, have a slatted seat, a two horizontal slat back and were sold in antique white, lagoon blue and Poinciana (red). SKU number 502281, 502282 or 502283 is printed on the UPC sticker attached to the sales tag at the time of purchase. The company has received three reports of bent or fractured or torn rear chair legs. No injuries have been reported.

The chairs were sold exclusively at Cost Plus World Market and World Market stores nationwide and online at www.worldmarket.com from February 2015 through May 2015 for about $60. Consumers should immediately stop using the Ronan Bistro chairs and return them to any Cost Plus World Market or World Market store for a full refund. Contact Cost Plus World Market toll-free at 877-907-5362 from 7 a.m. to midnight ET daily or online at www.worldmarket.com and click on “Product Recalls” for more information.

**TEAVANA RECALLS GLASS PITCHERS**

Teavana of Seattle, Wash., has recalled about 56,800 Tristan glass pitchers in the U.S. and Canada. The pitchers can break or leak, posing laceration and/or burn hazards to consumers if filled with hot tea. The company has received 50 reports of the glass pitchers breaking or leaking, including three reports of lacerations and two minor burns. This recall involves 64-oz. Tristan glass pitchers for hot or cold tea with a glass handle, stainless steel infuser and a lid and base that are made of flexible black silicone. The pitchers measure about 12 inches tall and 4 inches in diameter. The Teavana logo is printed on the bottom. Style #30593000064 and SKU #11034874 are printed on the pitchers’ box.

The pitchers, manufactured in China, were sold exclusively at Teavana stores nationwide and online at www.teavana.com from May 2012, through June 2015, for about $50. Consumers should immediately stop using the recalled glass pitchers and return them to a Teavana store location (except for two stores: Columbia Mall, Columbia, Md., and Dallas-Fort Worth Airport, Texas) or contact Teavana for a free replacement 66-oz. infusion tea pitcher plus a $25 Teavana gift card or for a Teavana gift card for the purchase price plus tax. Consumers may contact Teavana toll free at 888-665-0463 from 8 a.m. to 5 p.m. (ET) Monday through Friday.

**EPOCA INTERNATIONAL RECALLS GLASS WHISTLING KETTLE**

Epoca International, Inc. of Boca Raton, Fla., has recalled about 115,000 Glass Whistling Kettles. The bottom portion of glass vessel can break when heated and the contents can spill, posing laceration and burn hazards. The Primula® Borosilicate-two-quad clear glass round kettle has no markings or etchings on the glass. Model PTGK-4420 has a green plastic handle with a green silicone insert in the handle and a green whistling-stopper lid. Model PTKB-4420 has a black plastic handle with a black silicone insert in the handle and a black whistling-stopper lid. Both models have a ½” metal band around the glass kettle’s neck. “Not for dishwasher” is printed in raised letters underneath the lid. The company received nine reports of incidents, including three injuries and one report of property damage valued at $200.

The kettles were sold at retail stores including, Kitchen Collection, Meijer, Peyton Phoenix, Ross Stores, Target and online at amazon.com, primulaproducts.com and target.com from January 2012 through May 2015 for about $15. Consumers should stop using the product immediately. Customers should either return the product to the retailer or contact Epoca International for instructions on how to return the product for a full refund. Contact Epoca International at 800-241-7940 anytime or online at www.epoca.com and click on ‘recalls’ in the upper right-hand corner of the homepage for more information. Photos available at http://www.cpsc.gov/en/Recalls/2015/Epoca-International-Recalls-Glass-Whistling-Kettle.

**JAKE’S FIREWORKS RECALLS YoYo SPARKLERS**

Jake’s Fireworks Inc., of Pittsburgh, Kan., has recalled about 651,500 of their sparklers. The sparklers burn faster and with a larger flame than normal and can burn down the stick towards users’ hands, posing a burn hazard. This recall involves Yo Yo Sparklers. The sparklers are 13 1/2 inches long, metallic gray in color on a wire stick. They were sold in multicolored packages containing four individual sparklers. The front of the packages had a logo with the U.S. flag and the words World Class Fireworks at the top, the words YOYO Sparklers and two pictures of sparklers burning at the bottom. Jake’s has received 12 reports of incidents of the sparklers burning rapidly down the stick towards users’ hands resulting in second degree and third degree burns to consumers hands.

The fireworks were sold at small fireworks stands and pop-up stores nationwide from April 2015 to July 2015 for about $3 per package. Consumers should immediately stop using the recalled sparklers, take them away from young children and contact Jake’s Fireworks to receive a full refund. Contact Jake’s Fireworks at 800-676-1277 from 8:30 a.m. to 5:30 p.m. CT Monday through Friday, at email info@jakesfireworks.com or online at www.jakesfireworks.com and select the Blog on the menu at the top of the page, then click on YoYo Sparkler Alert Recall for more information. Photos available at http://www.cpsc.gov/en/Recalls/2015/Jakes-Fireworks-Recalls-YoYo-Sparklers.

**STELLA & CHEWY’S RECALLS PRODUCTS DUE TO POSSIBLE HEALTH RISK**

Stella & Chewy’s has recalled some of its products due to concerns of a possible presence of Listeria monocytogenes. The recall was prompted by a positive test confirming Listeria monocytogenes in Chewy’s Chicken Freeze-Dried Dinner Patties for Dogs, 15 ounce, lot #111-15, during routine surveillance testing by the Maryland Department of Agriculture. There have been no reported pet or human illnesses associated with this

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 ripping. Listeria is an organism that can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems. Although healthy individuals may suffer only short-term symptoms such as high fever, severe headache, stiffness, nausea, abdominal pain and diarrhea, listeria infection can cause miscarriages and stillbirths among pregnant women. As a precautionary measure, Stella & Chewy’s is voluntarily recalling all products nationwide from Lot # 111-15. Retailers and consumers can find the full product recall list at http://www.stellaandchewys.com/stella-chewys-recall-notice/. Consumers should look at the lot numbers and UPC codes printed on the bag to determine if it’s subject to the recall. People who have purchased these products are instructed to dispose of the food or return it to the place of purchase for a full refund.

During July there were a very large number of recalls. 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 or our blog, www.RightingInjustice.com. 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**

**SEAT CHECK SATURDAY COMING UP IN SEPTEMBER**

Beasley Allen will once again host a free child safety seat check for parents and child caregivers in Montgomery on Saturday, Sept. 19, giving them an opportunity to ensure their child safety seats are properly installed in their vehicles. The event, Seat Check Saturday, is part of National Child Passenger Safety Week, an annual event presented by the National Highway Traffic Safety Administration. Seat Check Saturday will once again be held at The Shoppes at EastChase.

Every year, thousands of children are tragically injured or killed in automobile crashes. For children ages 3-6, and 8-14, it is the leading cause of death. It is impossible to overstate the toll this takes on families. All 50 states and the District of Columbia and our territories have laws requiring the use of safety seats, booster seats and seat belts for children traveling in motor vehicles. But these restraints cannot work if they are not installed properly. Sadly, three out of every four child restraints are not properly used.

Details including time and location for the sixth annual Seat Check Saturday check point will be announced this month. Safe Kids USA will provide certified technicians to install, inspect and instruct caregivers. For information about a seat check event or training near you visit safekids.org. If you need more information on this event, contact Helen Taylor, Public Relations Coordinator for the firm, at 800-998-2034 or by email at Helen.Taylor@beasleyallen.com.

**XXVII. SPECIAL RECOGNITIONS**

**DANIELLE MASON NAMED 2015 ALABAMA BLACK ACHIEVERS ATTORNEY OF THE YEAR**

Beasley Allen principal Danielle Mason was recently honored as the 2015 Alabama Black Achievers Award Attorney of the Year during the awards gala hosted by the Oliver Robison Foundation in Birmingham, Ala. This was quite an honor for Danielle. The Oliver Robison Foundation, founded in 2005, is dedicated to recognizing African-Americans throughout Alabama who generously give their time, talent and resources to make a positive impact on their respective communities. The categories of men and women honored at the 2015 Alabama Black Achievers Awards Gala included physicians, entrepreneurs, corporate executives, lawyers, non-profit executives, Civil Rights Legends and Lifetime Achievers.

"After seven years of practice, it is beyond amazing to have been recognized by my peers for the work I have accomplished," Danielle said. "While it was a struggle personally to reach this level, it is comforting to know that the hard work and diligence I put forth to achieve my dream continues to pay off. I do not do this work to be recognized."

Born and raised in Montgomery, Ala., Danielle attended Jefferson Davis High School and graduated from Auburn Montgomery with a Bachelor’s degree in Economics in 1999, followed by a Master of Business Administration. Seat Check Saturday will once again be held at The Shoppes at EastChase.

"Being a lawyer had always been my dream, but due to family demands, I did not think I would be able to balance the rigorous study that law school required with running a family and work," Danielle said. "After speaking with some of my relatives who are also lawyers, I built up the confidence to finally give it a shot and was very thankful that Jones School of Law offered the opportunity to both attend school and work. As I sat in my first law class, I instantly knew that I had found the profession for me."

Two years after earning her J.D. in 2007, Danielle joined Beasley Allen’s Mass Torts Section, where she handles claims related to dangerous drugs and medical devices. Her hard work and dedication has helped secure many large verdicts for her clients, including a $72.6 million verdict on behalf of three Plaintiffs in Philadelphia who took HRT drugs and later developed breast cancer.

"As I look around the firms in this state, there are very few who have committed to valuing and nurturing diversity as Beasley Allen has," Danielle said. "Having made Principal at the firm this year put me in a very small percentage of African-American women lawyers who have reached this level of professional status; however, I hope that in some way I am showing that we as a class have the skills and ability to not only enter this profession, but to also become shining stars within it. I am forever grateful to Jere Beasley and this firm for allowing me to shine, and for creating an environment in which I can continue to learn and grow."

**BRYAN STEVENSON DISCUSSES THE NATIONAL FAILURE TO ADDRESS HISTORY OF RACIAL INJUSTICE**

Bryan Stevenson has dedicated his legal career to the pursuit of justice for all people, but in particular the legal needs of the poor, and those who suffer injustice due to racial bias. He is the founder and executive director of the Equal Justice Initiative (EJI), a private, non-profit law organization based in Montgomery, Ala. EJI is an advocacy group that focuses on social justice and human rights in the context of criminal justice reform in the United States. Bryan also is a member of the New York University School of Law faculty as a Professor of Clinical Law.

Recently, Bryan addressed issues of racial injustice in the wake of the mass shooting in Charleston, S.C., on June 15, which left nine people dead. As has been widely reported, the shooter, a young white man, targeted African Americans worshiping at historic Emanuel African Methodist Episcopal Church. The incident was clearly a racially motivated hate crime.

In an interview with The Marshall Project, Bryan said the shooting cannot be understood outside of the context of America’s history of violence and terror directed at black people. He says the killings are a confirmation of his fears about where the nation stands as a result of a longtime failure to honestly deal with our history of racial injustice.

Even before the Charleston shootings, appearing on The Daily Show in October 2014, Bryan talked with host Jon Stewart about what he calls a ‘disconnect’ in the justice system for blacks, based on the history of slavery. Bryan had this to say:
There is this narrative out there corrupted by the politics of fear and anger. … We have never, ever committed ourselves to a process of truth and reconciliation of our history. We didn’t talk about the consequences of a myth that created slavery, and, because of that, slavery didn’t end, it evolved. And we didn’t think about what it meant to terrorize people between the end of Reconstruction and World War II, and then we bad Jim Crow and segregation, and we dominated and humiliated people for decades, without appreciating the harm done by that. And now we’re in an era where our failure to talk honestly about race, and the legacy of racial inequality continues to haunt us. There are these presumptions of dangerousness and guilt that are assigned to people of color.

Bryan says the tragedy in Charleston puts these points into stark relief. It is this “narrative of racial difference” created during the 20th century that he says continues to lead to people of color being “wrongly accused, convicted and condemned.”

Bryan has been representing capital defendants and death row prisoners in the Deep South since 1985, when he was a staff attorney with the Southern Center for Human Rights in Atlanta, Ga. He founded the Equal Justice Initiative in 1989. Bryan joined the clinical faculty at New York University School of Law in 1998. In 2014 he published “Just Mercy,” which explores the struggle against injustice. The book explores the story of Walter McMillan, who was convicted of murdering a white woman and placed on death row despite eyewitnesses that provided him with an alibi, and numerous other instances of prosecutorial misconduct. The book became a New York Times bestseller.

Bryan was awarded the MacArthur Fellowship Award Prize in 1995. He is a 1989 recipient of the Reebok Human Rights Award, the 1991 ACLU national Medal of Liberty, and was selected the Public Interest Lawyer of the Year by the National Association of Public Interest Lawyers in 1996. In 2000, Bryan received the Olaf Palme Prize in Stockholm, Sweden, for international human rights and in 2004 he received the Award for Courageous Advocacy from the American College of Trial Lawyers and the Lawyer for the People Award from the National Lawyers Guild. In 2006, NYU presented Bryan with its Distinguished Teaching Award.

Bryan is a 1985 graduate of Harvard University with both a Masters in Public Policy from the Kennedy School of Government and a J.D. from the School of Law. He has honorary degrees from several universities, including Yale University, the University of Pennsylvania, and Georgetown University School of Law. This man could have gone to work with any law firm in the country, and without a doubt, he still can. Instead, Bryan chose a different path and has accomplished a tremendous amount of good for folks who badly needed a champion for their causes. Bryan Stevenson has been, and continues to be, a real American hero.

For more information about the Equal Justice Initiative, or how you can support its work, visit them online at www.eji.org.


**XXVIII. FAVORITE BIBLE VERSES**

Andy Birchfield, who heads up our firm’s Mass Torts Section, supplied a timely verse this month. Andy says God speaks a gentle reminder to him through this passage. God whispers for Andy to keep his eyes on Jesus at all times. Andy has been extremely busy in his work and is in a most stressful field of law. Andy says through all the demands that seem to press in on him, he is reminded to view all things through the lens of the cross.

Therefore, since we have so great a cloud of witnesses surrounding us, let us also lay aside every encumbrance and the sin which so easily entangles us, and let us run with endurance the race set that is set before us, fixing our eyes on Jesus, the author and perfecter of faith, who for the joy set before Him, endured the cross, despising the shame, and has sat down at the right hand of the throne of God. Hebrews 12:1-2

Rhon Jones, who heads up our firm’s Toxic Torts Section, sent in the following verse. As you know from past issues, Rhon has been our lead lawyer in the BP litigation.

My brothers, if anyone among you wanders from the truth and someone brings him back, let him know that whoever brings back a sinner from his wandering will save his soul from death and will cover a multitude of sins. James 5:19-20

Lisa Courson, a lawyer in our firms’ Mass Torts Section, furnished two verses for this issue. She describes Job 26:7 as breathtaking. Lisa says it should remind us of the awesome power of God.

He stretcheth out the north over the empty place, and bangeth the earth upon nothing. Job 26:7

Lisa says when she and her brother used to fight as children, her mother would tell them, “when you hurt each other, you hurt me, and when you hurt each other you also hurt yourselves.” Lisa says that we must all remember that we are all God’s children, and that He loves each of us, and when we hurt our brothers, we hurt ourselves, and we also hurt our Father in Heaven. Lisa did add that the fights were not serious ones and were infrequent.

What then? shall we sin, because we are not under the law, but under grace? God forbid. Romans 6:15

And this commandment have we from him, That he who loveth God love his brother also. 1 John 4:21 KJV

Bob Mount, who has been a long time friend of mine, sent in the following verse for this issue.

And God gave Solomon wisdom and exceedingly great understanding, and largeness of heart like the sand on the seashore. Thus Solomon’s wisdom excelled the wisdom of all the men of the East and all the wisdom of Egypt. For he was wiser than all men—than Ethan the Ezrabiite, and Heman, Chalcol, and Darda, the sons of Mahol; and his fame was in all the surrounding nations. He spoke three thousand proverbs, and his songs were one thousand and five. Also he spoke of trees, from the cedar tree of Lebanon even to the hyssop that springs out of the wall; he spoke also of animals, of birds, of creeping things, and of fish. And men of all nations, from all the kings of the earth who had heard of his wisdom, came to hear the wisdom of Solomon. 1 Kings 4:29-34

Helenor T. Bell, the Project Manager for Economic Development for the Town of Hayneville, also sent us two verses this month. Ms. Bell says the first scripture lets her know that as long as she stays on the plan that God has for her she knows that she is safe and able to stand in faith and expect God’s best for her life.

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

Ms. Bell adds that with the scripture set out below she knows that when her situations are given to God, He is then in control. She adds that by the power of the Holy Spirit, she can be strong and confident as she makes her journey through this life.

Commit to the LORD whatever you do, and he will establish your plans. Proverbs 16:3 NIV

Bridgette Singleton, an intake specialist with our firm, sent in the following verses. She says Psalms 121:1 was a favorite scripture of her mother, who died just a little more than a year ago. Bridgette says this verse reminds her so much of her mother and the faith she
had in God. It is now one of Bridgette’s favorites.

I will lift up mine eyes unto the hills, from whence cometh my help. 
Psalms 121:1

Bridgette says Isaiah 25:2 is also one of her favorite scriptures because the Lord has been so good to her. She says God has brought her through so many things and that she can’t thank Him or praise Him enough for that.

O Lord, thou art my God; I will exalt thee, I will praise thy name; for thou hast done wonderful things; thy counsels of old are faithfulness and truth. 
Isaiah 25:1

Helen Johnson, another good friend, furnished two verses for this issue. She found the message in Hebrews 13:2 to be both interesting and timely.

Do not neglect to show hospitality to strangers, for by this some have entertained angels without knowing it. 
Hebrews 13:2

And ye shall seek me, and find me, when ye shall search for me with all your heart. Jeremiah 29:13

XXIX. OUR MONTHLY REMINDERS

If my people, who are called by my name, will humble themselves and pray and seek my face and turn from their wicked ways, then will I hear from heaven and will forgive their sin and will heal their land. 
2Chron7:14

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 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

XXX. PARTING WORDS

Lots of folks are concerned about the future of our country and for good reason. We seem to be on a collision course for disaster unless we wake up. During the month of July, Sara and I, along with other members of our Sunday School class, have been in the Old Testament and specifically studying Micah and Isaiah, two of the prophets. Lots of folks dodge the Old Testament and don’t see its application to modern day issues. In my opinion, that is a big mistake. We can learn a great deal about what it takes to cause a powerful nation to go from strong to weak if we will study history and incorporate that study with the Old Testament.

The United States of America could well be in for a severe decline in power and influence if we don’t wake up. We can avoid a wakeup call if we learn from the lessons taught in their day by these two prophets who were God’s messengers to the people in Israel and Judah, and who spoke out boldly in their day. Isaiah warned that unless God intervened, Israel was headed toward disaster. He let the people know that neither political alliances, material wealth nor religious pretense could ever be an answer to their nation’s problems. But nobody was listening.

Micah also spoke to the people of Israel and warned them that the widening gap between the rich and the poor would eventually be the nation’s downfall. He also told them that the poor were being deprived of any hope for justice in the courts of that day. He called that a sinful reality. Micah let the people and the rulers know that true faith requires justice, faithfulness and walking with God. All of this was lacking and it was a recipe for disaster. So what happened? Israel was taken over by a foreign country and Jerusalem fell. The people suffered greatly, but they couldn’t say they weren’t warned.

Does any of this apply to the Untied States in the year 2015? Are we being warned? I believe we are and I fear that many of us aren’t listening. Many of the problems that were present in ancient Israel and Judah should sound most familiar to us today. My prayer today is for our nation. We must learn from history and correct our ways!

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.
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Jere Locke Beasley, founding shareholder of the law firm Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., is one of the most successful litigators of all time, with the best track record of verdicts of any lawyer in America. Beasley’s law firm, established in 1979 with the mission of “helping those who need it most,” now employs 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.