I. **CAPITOL OBSERVATIONS**

**Beasley Allen To Open Atlanta Office**

Since 1979, our law firm has had one location. Although we work with lawyers from all over the country, and in courtrooms throughout the U.S., our offices have always been in Alabama's Capital City. For the first time, Beasley Allen will now open an office in Atlanta. We are excited about expanding our reach to handle more cases in the state of Georgia and especially in Atlanta. This office is scheduled to open no later than January of next year.

We are highly pleased to be joining forces with an outstanding Atlanta lawyer Lance Cooper. Lance, who handles product liability cases, will become a Principal in our firm. He will also maintain his own practice. Our regular readers will remember that Lance uncovered the General Motors' ignition switch scandal through his outstanding work in the Melton case. That case started the massive recall of GM vehicles, which has saved countless lives. It also was responsible for the creation of an MDL and the settlement of hundreds of cases. Lance is a former president of the Georgia Trial Lawyers and is very well respected in the Atlanta area, Georgia, and throughout the nation.

Chris Glover will be moving to Atlanta to run our new office. Chris, an experienced trial lawyer, handles products and trucking litigation primarily. He recently wrote a book on trucking acceleration, *An Introduction to Truck Accident Claims: A Guide to Getting Started*, which is available free to lawyers. Chris had this to say about the new venture:

*Image could be more excited about the opportunity to move to Georgia and open our firm's office in that state. I became a lawyer to help those injured or killed by the wrongdoing of others. The nature of the cases we handle is that our clients are experiencing the most tragic circumstance they will likely face in their life. It is a unique opportunity and very humbling to know that people trust you at their time of greatest need. I think having an office in Atlanta will allow our firm the opportunity to help more and more people. I also really enjoy spending time with other lawyers. I've had a wonderful time making new friends in Georgia and hope to have an opportunity to team up with many of them on their clients' cases. Our firm has always been known for hard work and integrity. Those are qualities modeled to us by our firm's founder, Jere Beasley, and qualities that will follow us to our new Atlanta office.*

LaBarron Boone and Gibson Vance, two of our most experienced lawyers, will also be heavily involved in the Atlanta office. LaBarron and Gibson are members of Beasley Allen's Executive Board. They have already been in contact with a number of lawyers in Atlanta to let them know of our plans.

The Atlanta office will be handling mostly products liability cases and truck accident cases, which include auto crash-worthiness, single vehicle accidents, defective consumer products, defective tires, heavy truck rollovers (normally where a truck driver is injured), cab guard cases (where loads shift in vehicles and injure the driver), on-the-job products liability cases, and defective airbag cases. We will also be handling cases in our normal practice areas, which you can find at www.BeasleyAllen.com

We are really looking forward to this new venture and to working with other lawyers in Georgia, and especially those in the Atlanta area. If you need more information on our new office, contact Chris Glover, Gibson Vance or LaBarron Boone at 800-898-2034 or by email at Chris.Glover@beasleyallen.com, Gibson.Vance@beasleyallen.com or LaBarron.Boone@beasleyallen.com.

II. **THE ANNUAL BEASLEY ALLEN LEGAL CONFERENCE**

**The 10th Annual Beasley Allen Legal Conference**

The 10th annual Beasley Allen Legal Conference & Expo is set for Nov. 17 and 18 in Montgomery, Ala. More than 2,000 lawyers are expected to attend the two-day event. This will be the largest gathering of its kind in the state, and one of the largest legal conferences in the nation.

We have a variety of speakers, including lawyers from Beasley Allen as well as special guest speakers who are political and community leaders. Alabama lawyers will learn about emerging areas of litigation, and how to examine potential claims and evaluate their potential.

Lawyers who attend the conference can earn a full 12 hours of Continuing Legal Education (CLE) credits, certified by the Alabama State Bar. The event also provides a legal services expo where conference attendees can visit.

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with a limited number of the nation’s top legal service providers. This is a great place to learn about the leading products and services that will help enhance and support your litigation efforts.

Another valuable benefit of attending the conference is the chance to network with other attorneys from all over the state. If you are a new lawyer or if you have an established practice, are part of a large firm or operate a single-lawyer practice, you will learn a lot from talking to your colleagues. This is the time to build relationships that will help you grow your practice.

The best part is that all of this is completely free and open to all Alabama lawyers in private practice. The event includes breakfast, lunch and a dinner reception on Thursday, and a special prayer breakfast on Friday morning that always features an inspirational speaker. We appreciate our sponsors, who help make this conference possible. This year’s platinum sponsors are Jackson Thornton Valuation and Litigation Consulting Group, Freedom Reporting, Inc., and Virage Capital.

If you are on our email list, you should already have received some information about the conference. We ask our Alabama lawyer readers to visit our conference registration website at expo.beasleyallen.com to reserve your spot. We look forward to another outstanding conference. If you need more information, contact Helen Taylor at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com.

III.
MORE
AUTOMOBILE
NEWS OF NOTE

TWO MORE DEATHS LINKED TO TAKATA AIRBAGS

Two more deaths have been linked to defective Takata Airbags—one death was in the U.S. and the other death occurred in Malaysia. Honda Motor Co. has confirmed the 11th U.S. fatality linked to a ruptured Takata airbag inflator. The victim, a 50-year-old woman, died from injuries sustained in a Sept. 30 crash in Riverside County, Calif., which caused the driver-side Takata airbag inflator in her 2001 Honda Civic to rupture, according to the National Highway Traffic Safety Administration (NHTSA) and Honda.

The victim’s vehicle was among the roughly 313,000 model year 2001-2003 Honda and Acura vehicles that NHTSA warned owners in June to stop driving because of a “grave danger” posed by that generation of Takata airbags. That population of vehicles contained Takata inflators that were never replaced under previous recalls and contained a manufacturing defect that elevates the chance that the inflator could rupture in a crash to as much as 50 percent, according to NHTSA.

According to Honda, the 2001 Civic’s inflator was first recalled in 2008 but never repaired despite more than 20 notices mailed to the registered owners of the vehicle. Nearly 70 million Takata inflators in U.S. vehicles either have been or will be recalled through 2019 under a massive recall plan being coordinated by NHTSA. According to the agency, some 11.4 million Takata recalled inflators had been replaced as of Oct. 7, representing about 36 percent of total number of airbags under recall to-date.

The deadly defect has been linked to at least 100 injuries in the U.S. alone and has put Takata under severe financial duress. Takata’s inflator customers have to fled to rival suppliers and its stock price has tanked in the last two years, prompting the supplier to scramble for a buyer. The 11th U.S. death adds to the mounting human costs of what has become the largest and most complex safety recall in U.S. history.

But the U.S. is not alone in the deaths and injuries caused by the defective airbags. At least five more fatalities have been reported globally, according to Reuters. In Malaysia, Honda confirmed that a driver-side airbag inflator ruptured during a fatal crash—the fourth death this year in the Southeast Asian country linked to airbags from supplier Takata Corp.

Takata’s defective airbag inflators have been linked to at least 14 deaths globally so far and more than 100 injuries, and sparked the largest-ever auto recall. About 100 million Takata air bag inflators have been declared defective worldwide.

Lawyers in our firm are handling a number of claims involving the recalled Takata airbags that caused shrapnel-related injuries. As we have previously reported, components of the airbags break off and can cause blunt force trauma or lacerations of occupants. If you have any questions, or you have a case involving these claims, you can contact Chris Glover, a lawyer in our firm’s Personal Injury/Products Liability Section at 800-898-2034 or by email at Chris.Glover@beasleyallen.com. There is a great deal of additional information relating to this subject, but due to space limitations we couldn’t include all of it in this issue. Chris will be glad to talk with you on all that we have learned.

Sources: Automotive News; Law360.com

NHTSA PROBES NISSANS WITH INADVERTENT AIR BAG DEPLOYMENT

The National Highway Traffic Safety Administration (NHTSA) has opened an investigation into Versa vehicles manufactured by Nissan North America Inc. with side air bags that may deploy inadvertently when the vehicle’s door is shut. The probe was initiated by the agency’s Office of Defects Investigation (ODI). The probe covers an estimated 155,000 model year 2012 Nissan Versas.

At press time, there had been three complaints to NHTSA relating to the possible defect. ODI said:

The complaints indicate the driver or passenger curtain and seat mounted air bags deployed when the front door on the affected side was shut, possibly in an aggressive manner.

NHTSA received the three complaints within a four-month span in 2015. The first complaint came to the agency on July 6, two days after the alleged incident, which took place in Lansing, Ill. The second came on July 27, reporting an incident from October 2012. The third reported incident took place in Athens, Ga., on Sept. 22 and was reported to NHTSA less than two weeks later.

Source: Law360.com

NISSAN SETTLES DEFECTIVE TRANSMISSIONS LITIGATION

Nissan has settled a class action lawsuit involving defective transmissions that caused vibrations in certain Pathfinder and Infiniti QX60 vehicles. The cases were filed by car owners. One of the owners, Kenai Batista, has asked U.S. District Judge Robert N. Scola Jr. to grant preliminary approval of the settlement. Nissan North
America Inc. has agreed to give all owners and lessees of nearly 200,000 Nissan Pathfinders and Infiniti JX35s/QX60s vehicles (from model years 2013 and 2014) a free, two-year 24,000-mile extended warranty for their transmissions. The owners will also be informed on how to update their vehicles’ software to include detection of the transmission vibration problem, which is referred to as “judder.”

Owners who have had two or more repairs done to their transmissions may be eligible for discounts on future purchases of a Nissan or Infiniti vehicle. Mr. Batista says this settlement will have the “practical benefit of allowing all class vehicles to be permanently repaired for the judder condition, free of charge.”

Source: Law360.com

NHTSA IS INVESTIGATING FORD F-150 PICKUPS OVER BRAKE FAILURES

The National Highway Traffic Safety Administration (NHTSA) has launched an investigation that covers an estimated 282,000 Ford F-150 pickup trucks after receiving more than two dozen consumer complaints about brake failures. This came just a few months after Ford Motor Co. recalled older models of the popular vehicle for similar issues. The recent investigation stems from 25 complaints that model year 2015 to 2016 F-150s equipped with 3.5L engines can suffer from sudden brake failure. It follows a May recall that addressed front brake loss in model year 2013 to 2014 trucks.

The issues reported, according to NHTSA, seem to differ between the 2015 and 2016 pickup trucks. The 10 complaints about the 2015 F-150s centered on the brake pedal going to the floor with a sudden and total loss of brake effectiveness, brake warning light illumination and low or empty brake fluid level. NHTSA said that those problems are consistent with the May recall of nearly 271,000 trucks based on master cylinders that leak brake fluid into the brake booster, increasing the risk of a crash.

The 15 complaints about the 2016 pickup trucks allege an abrupt and complete loss of brakes without the brake warning lamp coming on and low or empty brake fluid level, but some consumers claim that repair facilities pinpointed master cylinder failure as the problem. NHTSA says no injuries have been reported thus far.

Source: Law360.com

NHTSA Is Investigating 2010 Ford Fusion Power Steering Failures

The National Highway Traffic Safety Administration (NHTSA) has opened another investigation involving a Ford recall. Problems with 2010 Ford Fusion power steering systems have caused NHTSA to open the investigation. Ford Fusion owners filed nearly 550 complaints. Owners of 2010 Fusions allege they suddenly lose power steering while driving, causing problems with controlling the cars, especially at slow speeds or on curves.

Some owners report the “power steering assist fault” warning lights activate at the same time power steering is lost, but the lights don’t illuminate until the power steering fails. This leaves drivers unaware of what is about to happen until it’s too late, something NHTSA says has caused 12 crashes and four injuries. Complaints also suggest the loss of power steering can happen at any speed and the failures can come and go as they will.

Ford has previously experienced trouble with the loss of power steering in Fusions. The automaker had recalled 423,000 vehicles earlier, including the 2011-2012 Ford Fusion. That recall came about as a result of a 2014 investigation of power steering problems. The automaker blamed the power steering loss on an electrical connection in the steering gear, but for some reason the 2010 Ford Fusion wasn’t included in the recall.

Ford dealers were told to approach the recall repairs based on what diagnostic trouble codes appeared. In certain situations dealers updated the software for the power steering control modules. In other cases dealers replaced the steering gears. NHTSA says it opened the investigation because power steering complaints were increasing from Ford Fusion owners. Based on the results, safety regulators may upgrade the investigation, recall the cars or determine no safety defect exists. You can go to CarComplaints.com for updates on this investigation.

Source: CarComplaints.com

Ford Edge “Door Ajar” Lights Investigated By NHTSA

Ford Edge “door ajar” light problems are also under investigation by the National Highway Traffic Safety Administration (NHTSA) after safety regulators received 1,560 complaints about 2011-2013 Ford Edge door ajar lights that stay on and are very expensive to repair. Ford Edge owners say the door ajar lights located on the instrument clusters stay on all the time even when all doors are closed and fully latched, leaving owners questioning if the doors are really closed.

Owners also complain about other problems associated with the door ajar lights staying on, such as drained batteries from both the door ajar lights and the dome lights staying on. Some consumers report the doors won’t lock with the door ajar lights constantly illuminated and other owners say the doors open while driving. NHTSA says it doesn’t know of any related crashes, but one person reported they suffered injuries due to the problem.

In addition to the safety hazards caused by the lights, owners say they have been forced to pay hundreds of dollars to fix problems those owners believe should be fixed under a Ford recall. However, one Edge owner said she was told by Ford the vehicles hadn’t been recalled because there had not been enough complaints. Then the owner of a 2011 Ford Edge said they thought it was a simple door sensor problem that would be covered under an extended warranty, but Ford said the problem was caused by the door latch, something not covered under the warranty. An owner of a 2013 Edge said it cost more than $400 to fix the problem.

Ford Motor Co. Faces Nine Classes In Touchscreen Defect Litigation

Ford Motor Co. is also having to face claims by nine classes that it sold vehicles with faulty touchscreen systems that failed often, leaving drivers without safety functions such as rearview cameras and functioning navigation systems. U.S. District Judge Edward M. Chen certified nine different classes of Ford owners. These are divided by state: California, Colorado, Massachusetts, New Jersey, North Carolina, Ohio, Texas, Virginia and Washington. Each of the classes has its own set of claims related to breach of warranty, unfair
trade practices, fraudulent concealment and other allegations.

Judge Chen refused to certify classes in Arizona, Iowa and New York, finding that state laws and policies didn’t warrant hearing those claims as a group. The judge said that New York law does not permit a presumption that people in the class relied on misrepresentations from Ford when making their purchase decisions. Judge Chen wrote:

Determining reliance would entail a high individualized inquiry. Certification would thus be inappropriate even if the court presumed classwide exposure.

The Ford owners allege in a series of suits filed in 2013, and eventually grouped together, that the MyFord Touch infotainment touchscreen systems often crash or freeze while the vehicle is in motion. The systems, introduced by Ford in 2010, promised consumers the ability to operate audio controls, use a navigation system, make phone calls, manage climate systems and play music from their smartphones. However, the systems have run into a litany of problems. In 2012, the company reported some 400 problems for every 1,000 vehicles, which was an improvement from earlier numbers. It appears the systems add about $1,000 to the cost of a Ford vehicle.

Source: Law360.com

California Judge Approves $15 Billion VW Diesel Settlement

A California federal judge has given final approval to the $15 billion settlement in the Volkswagen Diesel litigation. $10 Billion is attributable to owners of Volkswagen diesel vehicles in the multidistrict litigation (MDL). This settlement involves the company’s emissions cheating scandal. U.S. District Court Judge Charles Breyer said the settlement was reasonable and the result of the “tireless efforts” of the parties and unusual expediency by the government agencies. The settlement, preliminarily approved in July, sets aside $10 billion for the 475,000 drivers who will receive compensation of up to $10,000 per vehicle and can individually decide whether to sell their cars back to VW or have the company fix their emissions output. The settlement also includes an agreement with the Environmental Protection Agency (EPA) to invest $4.7 billion in environmental remediation and zero-emission technology development.

Also before the judge were consent decrees from the U.S. Department of Justice (DOJ), representing the EPA’s $4.6 billion settlement and a partial consent decree ordering VW to pay $86 million to the California Attorney General’s Office. The settlement before the judge had the support of the Department of Justice and the Federal Trade Commission (FTC).

Plaintiffs’ Steering Committee Chair Elizabeth Cabraser of Lieff Cabraser Heimann & Bernstein LLP said the settlement “isn’t the most perfect thing,” but adding that it was the result of compromises between the class and VW, and could realistically function. The parties “set the land-speed record” for turning around the largest automotive settlement in U.S. history in about a year. Speedy approval of the settlement was vital to reducing further harm to the environment and to the value of the customer’s cars. Elizabeth said many of the objections the court heard at the hearing—about the mileage estimates, about extra compensation for additional options purchased with cars and about the formula for eligible sellers—were considered during negotiations, but that the interests of streamlining the process won out. She pointed out that consumers had options. They could choose to either sell their cars back to VW or get an emissions fix on their vehicles, and they could decide what to do with the additional cash payment of $5,100 to approximately $10,000 per vehicle, which was meant to cover costs like taxes and individual attorneys’ fees.

Now that this this portion of the settlement for the VW 2.0 Liter diesel engines has been approved, there remains the case against VW for the VW 3.0 Liter engines and the alleged supplier of the cheat device, Bosch. The PSC will continue discovery on these claims until such time as there can be a settlement or trial. We will continue to report the progress of the entire VW litigation.

The Plaintiffs’ Steering Committee is chaired by Elizabeth J. Cabraser of Lieff Cabraser Heimann & Bernstein LLP. Dee Miles from our firm is on the Plaintiffs’ Steering Committee and he believes this is a very good settlement. The multidistrict litigation is In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation, case number 3:15-md-02672, in the U.S. District Court for the Northern District of California.

Volkswagen Dealers Agree To $1.2 Billion Settlement In Diesel Emissions Case

Volkswagen AG will also pay up to $1.2 billion to resolve claims brought by more than 650 franchise dealerships claiming the automaker’s diesel emissions scandal hurt the value of their businesses. U.S. District Judge Charles R. Breyer has given preliminary approval to the settlement. The dealers said the terms were fair and reasonable and were reached after extensive negotiations between the parties.

Under terms of the settlement, Volkswagen will pay up to $1.21 billion to 652 U.S. dealerships that were Volkswagen-branded franchise dealers as of Sept. 18, 2015. The average payout will be $1.85 million. The settlement also provides additional benefits to dealers, including buybacks of affected vehicles that can’t be put into emissions compliance, under the same terms afforded to car owners as part of VW’s tentative $14.7 billion consumer settlement. That settlement, preliminarily approved in July, includes $2.7 billion for environmental remediation and $2 billion to build zero-emission vehicle infrastructure. The motion filed by the dealers states:

This recovery to the franchise dealer class is outstanding, particularly given the immediate need for cooperation among Volkswagen and its franchise dealers to effectuate the terms of the $10 billion-plus consumer class action settlement that is presently pending approval before this court. Without any obvious deficiencies, the settlement agreement readily meets the standards for preliminary approval.

In addition, lawyers for the dealers said there will be no claims process, as dealerships that do not opt out of the settlement will automatically receive a cash payment based on a formula of 71 times the monthly support payment VW made to dealers in November 2015.

As part of the settlement, VW has agreed to pay attorneys’ fees and expenses separately from the $1.2 billion settlement amount. The dealers are represented by the entire Plaintiff’s
The shareholders claimed they suffered damages in September 2015 when Volkswagen finally admitted it had been cheating emissions standards by installing the software in at least 11 million cars. The automaker ultimately agreed to pay $14.7 billion to consumers and the U.S. federal government.

Source: Law360.com

VOLKSWAGEN FACES $9.1 BILLION IN INVESTOR CLAIMS IN GERMAN COURT

A German court announced recently that Volkswagen AG now faces about 1,400 investor lawsuits worth about 8.2 billion ($9.1 billion) alleging that the automaker defrauded investors by concealing its involvement in a scheme to cheat emissions standards in diesel vehicles. The regional court in Braunschweig—near Volkswagen’s headquarters in Wolfsburg—said that 750 investor suits were filed one year and one day after the U.S. Environmental Protection Agency (EPA) first accused the German automotive giant of selling diesel cars equipped with software designed to evade nitrogen oxide emissions standards.

The Braunschweig court in August announced that it had referred shareholder suits totaling about 4 billion to a German court of appeals for the purposes of selecting a bellwether case. Germany lacks a class action mechanism, but under the country’s Capital Markets Model Case Act, trial courts facing a number of investor suits that pose identical questions of law or fact can issue an order of reference to a court of appeals, which will then select a model case to try first.

The court of appeals said in August it expects to select a model case by the end of this year. Once a model case is selected, the other cases will be suspended, and a decision in the bellwether will be binding on the remaining cases. The German investors contend that Volkswagen had a duty to disclose the emissions manipulation and the risk an eventual regulatory action would pose to shareholders. The investors argue the decision to install the so-called defeat devices was made as early as 2005 and that even if the company wasn’t aware of the software, it would have been put on notice when both suppliers and technicians raised the issue in 2007 and 2011.

The investors said the company also knew as early as 2008 that the EPA would impose hefty fines on automakers that breach emissions regulations. It’s the investors’ position that Volkswagen should have been obligated to disclose the manipulation after the EPA began investigating in 2014.

Source: Law360.com

JPML SENDS JEEP GEARSHIFT DEFECT SUITS TO MICHIGAN JUDGE

The U.S. Judicial Panel on Multidistrict Litigation (JPML) has consolidated several lawsuits in the Eastern District of Michigan over allegations that Fiat Chrysler Automobiles (FCA) manufactured certain vehicles with defective electronic gearboxes. The panel consolidated the six cases, three of which originated from the Eastern District of Michigan, saying that FCA US LLC and its gearshift supplier ZF Friedrichshafen AG are headquartered there, and that relevant documents and witnesses will be more readily available.

The decision came despite attempts by several other class Plaintiffs who sought to move the case either to Colorado or Massachusetts federal court. However, the panel chose Michigan, saying:

The Eastern District of Michigan has the support of the defendant and the majority of the responding plaintiffs. [U.S. District] Judge David M. Lawson, to whom we assign this litigation, is an experienced jurist, and we are confident he will steer this litigation on a prudent course.

The JPML’s decision comes several months after drivers of certain FCA vehicles—including Dodge Chargers, Chrysler 300s and Jeep Grand Cherokees—sued the automaker in class actions nationwide over allegedly faulty electronic gear shift systems that could cause the vehicles to roll and cause accidents, even if the vehicle was supposedly placed in park.

According to the lawsuits, NHTSA has received several complaints about the gearshifts, which were manufactured by ZF. It was alleged that electronic signals were used to relay gear shift requests to the transmission instead of traditional mechanical linkages.

The suits arose from a NHTSA investigation into the vehicles, starting in August 2015 with an evaluation of more than 400,000 Jeep Grand Cherokee SUVs. The agency widened the probe in February to include Dodge Chargers and Chrysler 300s, expanding the number of possibly affected vehicles to more than 850,000. It’s alleged that FCA started to phase out the shifters within months after hearing of the complaints, but no recall was issued until April 2016.

Source: Law360.com

ARC SAID TO BE DRAGGING ITS CORPORATE FEET

It appears ARC Automotive Inc. is failing to cooperate with the National Highway Traffic Safety Administration (NHTSA) in the agency’s investigation of the potentially defective and dangerous air bag inflators manufactured by the company. NHTSA called ARC’s actions “insufficient and disappointing.” In an Oct. 4 letter to ARC, NHTSA said the company missed a number of deadlines to submit information requested by the agency, despite numerous deadline extensions and promises that the responses would be delivered on time.

NHTSA also noted that ARC failed to report a number of incidents relating to the company’s air bag inflators and said ARC contested its obligation to report this information. NHTSA said any future failures to cooperate with the investigation could result in serious consequences, including civil penalties of $21,000 per violation per day, up to a maximum of $105 million. The agency said:

Should ARC fail to appropriately work with the agency and other relevant entities in the underlying investigation, in addition to civil penalties, NHTSA will pursue all available enforcement options, including but not limited to the immediate notice of administrative depositions and scheduling of a public hearing to obtain the requisite information to pursue our investigation.

NHTSA’s letter is the latest development in its investigation against ARC. The probe was launched in July 2015 after the agency received two reports of injuries caused by ruptured air bag inflators. The investigation covered 420,000 2002 Chrysler Town and Country minivans manufactured by
General Motors Co. and 70,000 2004 Optima sedans made by Kia Motors Corp. The agency upgraded the investigation in August of this year after the death of a driver in Canada the month prior because of an air bag rupture.

With the renewed investigation, NHTSA issued a standing general order to ARC requiring, among other things, a report by the company to the agency within five days of being notified of an inflator rupture. The investigation expanded to 8 million vehicles made by Chrysler, GM, Kia and Hyundai. In its Oct. 4 letter, NHTSA also said ARC missed an Aug. 9 information request deadline and proposed a response date of Sept. 8 instead, indicating it would allow the company sufficient time to provide answers to the agency.

ARC continues to request revised submission schedules, citing various reasons for its delays including “IT issues.” The company has continually missed the submission deadline and eventually pushed its deadline back as far as Sept. 26. NHTSA said in its letter that ARC had an obligation to submit information, even if it was only partially complete, and even if the company had been granted an extension. The agency reminded ARC of its obligations under the general order, including its incident reporting requirements, saying all future information requests must be submitted by 4:30 p.m. on deadline day.

Source: Law360.com

**Goodyear Is Left To Fight $2.7 Million Discovery Sanction Alone**

It appears that Goodyear Tire & Rubber Co. will be left alone in its fight to avoid a $2.7 million discovery sanction. A former Goodyear coordinating counsel and a lawyer with the Fennemore Craig firm, who were hit with a $2.7 million discovery sanction have settled with the family injured in a motor home crash. The discovery issue is on appeal to set to be reviewed by the U.S. Supreme Court. Goodyear will now have to make its case in the U.S. Supreme Court alone.

The settlements came just weeks after Goodyear and the lawyers secured certiorari of a massive discovery fraud order against the company, a local Goodyear lawyer at Fennemore Craig, and Musnuff—a one-time former national litigation coordinator. The three Defendants had challenged a split Ninth Circuit decision in favor of members of the Haeger family, who were seriously injured when a tire on their motor home blew, resulting in a lawsuit in 2005 against Goodyear.

In 2010, just before trial, the Haegers and Goodyear settled the underlying case. More than a year later, the family saw an article about testing that Goodyear had done on its tires that wasn’t produced under a discovery request for all testing related to the tire model. The family then filed a motion for sanctions. The district court judge subsequently found that Goodyear and its lawyers “engaged in repeated and deliberate attempts” to frustrate the case by keeping the testing information out of court. The judge ordered the Defendants to pay all the Haegers’ legal fees and costs incurred after Goodyear served responses to an initial discovery request, totaling $2.7 million. A Ninth Circuit panel last year agree with the trial court’s finding of bad faith and affirmed the court’s authority to impose the sanction.

In its May petition to the Supreme Court, Goodyear argued that its due process rights were violated when it was hit with what it called a criminal sanction long after the case concluded, and one untethered from the underlying conduct. The U.S. Supreme Court limited review to an alleged circuit split on the requirement for a direct connection between a litigant’s conduct and a compensatory sanction. The settlements of the discovery dispute include an agreement that the settling Defendants withdraw their U.S. Supreme Court petitions. Goodyear had 30 days to appeal the settlements and the tire manufacture has stated its intention to continue its battle in the U.S. Supreme Court.

Source: Law360.com

**IV. WHISTLEBLOWER LITIGATION**

**Nursing Home Chain Pays Record $145 Million In FCA Settlement**

Nursing home giant Life Care Centers of America will pay $145 million to settle False Claims Act (FCA) litigation that alleged it billed Medicare for excess treatment. This is a record FCA settlement for the nursing industry. The deal ends two whistleblower cases as well as an unjust enrichment suit brought by the Department of Justice (DOJ) against Forrest L. Preston, owner of Tennessee-based Life Care, which has more than 200 locations. Whistleblowers Tammie Taylor and Glenda Martin, former employees of Life Care, will share a $29 million cut of the payout.

This settlement is the largest in the Justice Department’s history involving a skilled nursing chain. Its size was said to be based on Life Care’s ability to pay. The government, which joined the FCA cases in 2012, alleged excessive treatment of seniors in order to maximize Medicare reimbursement.

Life Care’s litigation has involved some of the hottest FCA issues, including the use of statistical sampling to prove liability. In 2014, a Tennessee federal judge issued a significant ruling allowing statistical sampling in Life Care’s case. Sampling dramatically streamlines FCA cases by making claim-by-claim review unnecessary. The suits against Life Care have also raised questions about the ability of the government to second-guess the treatment decisions of medical professionals.

That’s been a recent area of focus in several FCA cases targeting nursing homes and hospices. Life Care was accused of “jacking up treatment” from 2006 to 2013 in order to qualify for the “Ultra High” reimbursement level that Medicare pays for the neediest patients. That level is reserved for patients who need at least 720 minutes of skilled therapy in two medical disciplines every week. The DOJ, in a statement announcing the settlement, said:

> Life Care “instituted corporate-wide policies and practices designed to place as many beneficiaries in the Ultra High reimbursement level, irrespective of the clinical needs of the patients.”

The company sometimes maintained treatment “even after the treating therapists felt that therapy should be discontinued,” according to the DOJ. This sort of conduct can’t be justified.


Source: Law360.com
HOSPITAL CHAIN AGREES TO PAY $513 MILLION TO SETTLE ANTI-KICKBACK STATUTE CLAIMS

Tenet Healthcare Corporation and two of its subsidiaries have agreed to pay $513 million to settle claims regarding False Claims Act (FCA) and Anti-Kickback Statute (AKS) violations. The alleged anti-kickback violations occurred when pre-natal care clinics referred pregnant women to Tenet’s hospitals. The pre-natal clinics were informing soon-to-be mothers that the childbirth would have to take place in a Tenet hospital if the mother wanted Medicaid to cover the cost accompanying childbirth.

The AKS prohibits paying kickbacks to induce referrals for services that are paid by Federal health care programs. In Lance Gould’s book, Whistleblowers: A Brief History and A Guide to Getting Started, Lance explains:

The AKS arose out of Congressional concern that payoffs to those who can influence health care decisions corrupt professional health care decision-making. These actions could result in Federal funds being diverted to pay for goods and services that are medically unnecessary, of poor quality, or even harmful to a vulnerable patient population.

These referrals to Tenet Hospitals were harmful to a vulnerable patient population, expectant mothers. When the expectant mothers were informed that they had to deliver in a Tenet hospital, the women no longer believed they had to deliver in a Tenet hospital if the mother wanted Medicaid to cover the cost of childbirth. The AKS prohibits paying kickbacks to induce referrals for services that are paid by Federal health care programs. In Lance Gould’s book, Whistleblowers: A Brief History and A Guide to Getting Started, Lance explains:

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INVESTOR SUES TENET OVER KICKBACK SCHEME

A punitive class action lawsuit has been filed against Tenet Healthcare Corp. by a shareholder who claims the hospital system violated the Exchange Act with misleading statements in the run-up to the $513 million settlement mentioned above.

Shareholder Nicholas Pennington says in the suit that Tenet violated the Exchange Act by making misleading statements in its SEC filings and that its failure to disclose the details of the scam misled investors who bought its stock, which later dropped after the revelations of the investigation and the settlement agreement. The complaint alleges:

Had plaintiff and the other members of the class been aware that the market price of Tenet securities had been artificially and falsely inflated by the company’s and the individual defendants’ misleading statements and by the material adverse information which the company’s and the individual defendants did not disclose, they would not have purchased Tenet securities at the artificially inflated prices that they did, or at all.

The case also names CEO Trevor Fetter, former Chief Financial Officer Ralph D. Williams—a Georgia resident—under the qui tam provisions of the FCA and the Georgia False Claims Act. Mr. Williams served as Chief Financial Officer for one of the hospitals involved. As we have written on numerous occasions, these qui tam provisions permit ordinary citizens to become whistleblowers and file suit on behalf of the government. The provisions also provide incentives for ordinary residents to step up and become whistleblowers. Some of these incentives include protection against retaliation and a percentage of what the government recovers. Mr. Williams will receive $84.43 million for his part in the case.


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WHISTLEBLOWER SETTLES LAWSUIT AGAINST GATEWAY FOR $6.27 MILLION

A $6.272 million settlement has been reached in a whistleblower lawsuit filed against Gateway, Inc. and its subsidiary Cowabunga Enterprises, Inc. The settle-
ment resolves claims that Gateway and Cowabunga violated the Illinois False Claims Act (FCA) by their knowing failure to collect and remit Illinois use tax on Internet sales to Illinois customers. Gateway and Cowabunga were selling untaxed merchandise through the Internet to Illinois customers despite the presence of agents or representatives in Illinois operating on the companies’ behalf.

Gateway had filed an interlocutory appeal after the trial court denied its motion to dismiss. The appellate court ruled that the False Claims Act “seeks to penalize actions that deprive the government of funds rightfully owed to it regardless of the nature of the underlying transaction giving rise to the claim.” The appellate court concluded that “use tax claims relating to Internet and/or catalog sales may be brought under the [False Claims] Act.”

Gateway was dismissed as a Defendant in 2013, but the action proceeded against Cowabunga. In October 2016, the Attorney General and the Relator entered into a settlement agreement with Gateway and Cowabunga. The Defendants agreed to pay $6.272 million for their failure to collect and remit $2.56 million in taxes during the period Oct. 1, 1999, through June 30, 2003.

Illinois has a false claims act with qui tam provisions permitting private individuals to sue state sales tax evaders on behalf of the government. Only a few states have that provision. Actions for unpaid taxes pursuant to the False Claims Act give the State a means to recover substantial amounts of lost revenue, including treble damages and penalties.

In this case, under the settlement agreement the whistleblower, Stephen B. Diamond, P.C., received $940,000 (15 percent) as the Relator’s share of the proceeds. In addition to the $6.27 million in taxes and damages, Defendants paid $365,000 for the Relator’s attorneys’ fees, expenses and costs. It should be noted that Mr. Diamond, a lawyer, was actually the whistleblower. The litigation was in the courts for 13 years.

Source: PRnewswire.com

NATION’S LARGEST NURSING HOME PHARMACY HAS AGREED TO SETTLE FCA CLAIM FOR $28 MILLION

The Department of Justice (DOJ) announced last month that Omnicare Inc., the nation’s largest nursing home pharmacy, has agreed to pay more than $28 million to resolve kickback allegations. The complaint alleged that Omnicare solicited and received kickbacks from Abbott in exchange for recommending that physicians prescribe an anti-epileptic drug, manufactured by Abbott, to nursing home residents. It appears that Omnicare signed agreements giving it larger rebates from Abbott based on how much Depakote it prescribed to patients. This conduct violated the False Claims Act (FCA) and the Anti-Kickback Statute (AKS).

The AKS prohibits paying kickbacks to induce referrals for services that are paid by Federal health care programs. In Lance Gould’s book, Whistleblowers: A Brief History & A Guide to Getting Started, he explains:

“The AKS arose out of Congressional concern that payoffs to those who can influence health care decisions corrupt professional health care decision-making. These actions could result in Federal funds being diverted to pay for goods and services that are medically unnecessary, of poor quality, or even harmful to a vulnerable patient population.”

The agreement made between Abbott and Omnicare put an already vulnerable population at an even greater risk. Concerning this case, Principal Deputy Assistant Attorney General Benjamin C. Mizer stated, “Every day, elderly nursing home residents suffering from dementia rely on the independent judgement of our nation’s healthcare professionals for their personal care and their medical treatment. Kickbacks to entities making drug recommendations compromise their independence and undermine their role in protecting nursing home residents from the use of unnecessary drugs.”

One way Omnicare was disguising its kickbacks was through its “Re*View” program. The complaint alleged that Re*View was a program designed to solicit kickbacks from pharmaceutical manufacturers in exchange for Omnicare’s use of the manufacturer’s drugs on nursing home patients. In internal documents, Omnicare referred to Re*View as its “one extra script per patient” program. As a result of these kickbacks, the government intervened in the FCA suit, and Omnicare agreed to settle by paying $20.3 million to the United States and $7.8 million to the states participating in the lawsuit.

The lawsuits were filed under the qui tam provision of the FCA, which provides an avenue for ordinary citizens to blow the whistle on fraud and file suit on behalf of the United States. The qui tam provision includes incentives for individuals to step forward and blow the whistle. These whistleblowers, also known as relators, are entitled to protection against retaliation and 15 to 30 percent of the monies recovered by the government. The two whistleblowers in this particular case will split $3 million for their assistance in the case.

Are you aware of fraud being committed against the federal government, or a state government? If so, the FCA can protect and reward you for doing the right thing by reporting the fraud. If you have any questions about whether you qualify as a whistleblower, contact Andrew Brashier, a lawyer on the Whistleblower litigation team at Beasley Allen, for a free and confidential evaluation of your claim at Andrew.Brashier@beasleyallen.com. You can also contact Beasley Allen for a free copy of Lance Gould’s book, Whistleblowers: A Brief History & A Guide to Getting Started.

Source: Law360.com, U.S. Department of Justice

STATE PROGRAMS REWARD WHISTLEBLowers FOR IDENTIFYING SECURITIES VIOLATIONS

Many states have enacted their own versions of the False Claims Act (FCA) to enlist whistleblower assistance in preventing fraud on state government. But surprisingly, most states do not have similar statutes mirroring the federal whistleblower protection of the Dodd-Frank Act. In fact, Utah and Indiana are the only states that currently have a whistleblower program aimed at identifying securities law violations.

Many whistleblowers have helped federal securities regulators identify and prosecute wrongdoers at the federal level. Therefore, it is no surprise that states are beginning to enact similar programs. In Utah, people providing information leading to the collection of at least $50,000 from a violator can receive up to 30 percent of those proceeds as a reward. Indiana
allows state officials to award up to 10 percent of monetary sanctions received in an enforcement action to a person who provided original and significant information that led to the case.

The main benefit of these programs is that they encourage people to identify wrongdoing in real time, not after a fraud has occurred and restitution is unlikely. When people make complaints well after the crime has been committed, it is much more difficult to freeze assets and get the victims' money back. Whistleblower programs help get people in the door sooner because the anonymity provided to whistleblowers allows people to come forward without fear of reprisals from powerful financial institutions.

In August of this year, for example, an informant was awarded $95,000 (10 percent of the $950,000 settlement) for helping Indiana securities regulators bring an enforcement action against JP Morgan Chase for failing to disclose certain conflicts of interest to clients about the way the bank invested their money and steering clients to in-house funds that carried higher costs or generated greater fees for the bank. Utah's program has similarly resulted in 15 successful prosecutions, the first of which occurred in 2014 when an investment advisor tipped off state officials to approximately $150,000 in questionable transactions he had seen when analyzing an elderly client's holdings. Utah followed up by bringing a securities fraud case and recovering the money; the whistleblower was awarded $20,000.

Both of these programs took effect within the last five years (Utah in 2011, Indiana in 2012). Therefore, this may be something we will see other states replicating in the future. In fact, the topic of possibly expanding state whistleblower programs came up at a recent meeting of the North American Securities Administrators Association, the state securities regulators group. These programs are viewed as a tool that both state and federal securities regulators could use to improve enforcement and deter financial fraud, because they allow states to leverage their limited resources to crack down on fraud they otherwise would not have been able to see. Overall, these are good programs to help state governments put an end to securities fraud, and to protect and reward those who are willing to speak out against such fraud.

Not only do lawyers who are on Beasley Allen’s whistleblower litigation team file cases on behalf of whistleblowers under federal and state False Claims Act, but they are now filing complaints alleging securities fraud violations. Any of the lawyers on the team would be happy to work with individuals in pursuit of any whistleblower claims they might have. We are also working with other lawyers on whistleblower claims.

\[\text{Source: The New York Times}\]

**FCA Suit Concerning Fabricated Grades Revived**

A False Claims Act (FCA) suit has been revived for the second time in the Eighth Circuit Court of Appeals. The original complaint alleges that Heritage College, a for-profit health care training college, falsified their student records in order to receive federal money. The three-judge panel ruled the falsifications were material to the payment of financial aid by the government under the recent Supreme Court ruling in the Escobar case.

In *Universal Health Care Services v. U.S. ex rel. Escobar*, the Supreme Court found that false statements concerning records must be material to the payment of federal funds in order to establish FCA liability. This materiality is determined by the objective “reasonable person” standard. The question becomes whether or not a reasonable person would likely find the statement or records important in making a payment decision, or whether or not the defendant knew or should have known the statement or record would be important.

About 97 percent of Heritage College students receive federal aid, which accounts for about $32.8 million in disbursements. In order to receive this financial aid, the college was required to sign a program participation agreement with the Department of Education (DOE). The agreement required Heritage to maintain procedures and records ensuring “proper and efficient” administration of the federal funds.

The original complaint alleged that Heritage altered grade and attendance records of students to ensure the college remained eligible for federal funding, thereby fraudulently inducing the DOE to provide financial aid.

Heritage claims, and the district court agreed, that any false statements concerning the records are immaterial to the financial aid. However, following Escobar, the Eighth Circuit found that Heritage was aware of the importance of the records and that a reasonable jury could find that Heritage was required to maintain accurate student records in order to receive the financial aid. The panel further found that any false statements concerning the student records should be considered material to the government’s payment decision.

The whistleblowers (relators) in this case are former Heritage employees. The former employees filed their suit under the qui tam provision of the FCA, which allows individuals to file suit on behalf of the United States. The case will now proceed.


**You Can Be A Whistleblower**

Any person who is aware of fraud being committed against the federal government, or by a state government that has a Whistleblower Act, should become a whistleblower. On the federal level, the FCA will protect and reward individuals for doing the right thing and reporting the fraud. I believe the states have similar protections for retaliation. If you have any questions about whether you qualify as a whistleblower, feel free to contact a lawyer on the whistleblower litigation team at Beasley Allen for a free and confidential evaluation of your claim. You may also contact our firm for a free copy of Lance's book, *LITIGATION: True Stories of Defeating Injustice & Protecting the Vulnerable*, which I referred to above. If you would like to contact Lance, call him at 800-898-2054. You can also contact him by email at Lance.Gould@beasleyallen.com. Lance will be glad to help you.

V. AN UPDATE ON BAD BOY BUGGY LITIGATION

**The 2013 Bad Boy Buggy Recall Is Extremely Dangerous**

Our law firm settled a Bad Boy Buggy case recently involving the injury to then 12-year-old Grace Shivers. Grace, a beautiful and thoughtful young lady, and her parents live in Orange Beach,
2012 Bad Boy Buggy XTO

Greg Allen reached another settlement recently of a case involving another tragic Bad Boy Buggy incident. We have been warning about the dangers of these vehicles for a very long time. While Textron, the manufacturer, has made improvements in the design of these machines over the years, there still are serious safety problems. Sadly, we expect to see additional cases involving Bad Boy buggies in the future. I will tell more about this tragic case.

Adam and Debra Pike, who are from Macon, Ga., lost their son, Cody, when a Bad Boy vehicle turned over. Cody’s head was trapped between the roof structure and the ground. The 2012 Bad Boy XTO did not have seatbelts or any type of occupant retention device, including doors or netting, which allowed Cody to be ejected as the cart turned over.

Cody’s best friend was driving the Bad Boy when they turned a corner into some honeysuckles. There was a small hidden pile of dirt under the honeysuckles, which caused the vehicle to tip over. The cart was essentially stopped at the time that it turned over. According to our reconstruction expert, the cart was traveling slower than 5 miles an hour when the left wheel hit the bump hidden by the brush.

Greg, our leading product liability lawyer, did a tremendous job for his clients in the case. He discovered that there were videos made advertising the XTO. In pre-trial discovery, Greg issued an out-of-state subpoena for the advertising videotapes that were made of the vehicle. Greg, assisted by Carol Thompson, our most experienced legal assistant, obtained the outtakes for the commercials and discovered that in one of the commercials, an XTO nearly tipped during the filming. The passenger on that vehicle was ejected onto the ground. Through additional Discovery, Greg was able to determine that the ejected passenger was an executive assistant at Textron. The case settled before Greg had the opportunity to take the deposition of this Textron employee.

Cody Pike was a remarkable young man. He was very interested in military aircraft. Cody’s father works on the air force base in Warner Robins, Ga. Whenever the family would go on vacation, Cody would find the nearest war memorial or museum and the family would have to stop and look. He was also very interested in farming. Cody was an avid seatbelt wearer. His family will miss him dearly. It’s a tragic shame this young man’s life was cut short. He was only 14 years old when he lost his life and it was his first and last experience with a Bad Boy Buggy.

Cody and his friend were not doing anything that would be considered dangerous. The buggy was being operated as intended. They had no way of knowing that this buggy was so poorly designed. Cody’s parents were not present and knew nothing about the Bad Boy before this tragic day. The Bad Boy Buggy was owned by the friend’s uncle. The XTO is an extremely heavy vehicle, weighing more than 1,700 pounds. That’s because of the numerous batteries the vehicle uses as a source of power. The XTO is a derivative from the Bad Boy Classic, which we have written about before.

Greg was able to discover that Textron was cutting an advertisement for a new and improved XTO the very same month the vehicle involved in this incident was manufactured. The voice over for the ad for the new vehicle states:

And the new XTO’s Occupant Protection System provides a robust tubular steel frame, 3-point seatbelts, side safety nets and head rests to keep you safe when the going gets rough.

Unfortunately, the design of the buggy that killed Cody had none of these safety features. That is totally inexcusable. Textron claimed that the vehicle met SAE-J-2258, which is a stability standard; but Greg tested the 2012 XTO and it failed. This vehicle is unstable and there were no restraints or other safety features provided that would prevent the tip over from causing this tragic incident.

Our firm, led by Greg Allen, was associated in this case with Jarome Gautreaux and Rick Sizemore of Gautreaux & Sizemore, a law firm located at 778 Mulberry Street, Macon, Ga., 31201. These men are excellent lawyers and we were honored to be associated with them in this case.

As I mentioned above, if you want more information on the Bad Boy Buggy litigation, contact Greg at 800-898-2034 or by email at Greg.Allen@beasleyallen.com.
VI. PRODUCT LIABILITY UPDATE

DANGER LURKS IN OLD GUARDRAIL SYSTEMS

Guardrails are a critical element of safety on our highways. When selected, installed, and maintained correctly, a guardrail system can be the difference between life and death for motorists. They are designed to keep vehicles from leaving the road and plunging into dangerous areas, or to safely re-direct cars from a hazard.

While the intentions of safety are well noted, guardrails can be very dangerous depending on their design and the quality of their installation. Properly designed guardrails should keep a vehicle from plunging into a hazardous location, and if a guardrail end is hit directly, the end should fold backward and away from the car. In this way, the car should slow down, and any material from the guardrail should push away from the car during impact. It is therefore critical that the guardrail anchors be installed properly, and that they be spaced at precise distances to keep the end from becoming too stiff. If a guardrail is too stiff, it will not flare backwards, but will instead spear the car with devastating consequences.

In addition, many guardrails are outdated and have older breakaway cable terminal end pieces with blunt ends, or BCTs. These BCTs have been cited as too stiff to handle an approaching impact, and as a result, there have been numerous instances of BCTs completely spearing automobiles, oftentimes with devastating consequences. Since the 1990s, the Federal Highway Administration has taken the position that approach end BCTs are unacceptable for low or high speed roads due to a penetration hazard, yet these guardrails still exist on many of our roads. Our firm is currently handling a case where an approaching car struck a BCT head on, and the BCT penetrated the car's firewall and speared through and out the back of the vehicle. In the process, the guardrail ripped the driver's leg off. In other cases, BCTs have killed drivers.

Guardrails are supposed to save lives—not take them—and that must be a primary design objective. Safety personnel performing maintenance on our roads and bridges should be especially careful when maintaining or installing guardrails. If you have any questions about these cases, contact Chris Glover or Parker Miller, lawyers in our firm's Personal Injury and Products Liability Section, by email at Chris.Glover@beasleyallen.com and Parker.Miller@beasleyallen.com, or by phone at 800.898.2054.

SAMSUNG ABANDONS GALAXY NOTE 7 SMARTPHONES AFTER FIRES PERSIST

Samsung permanently killed production of its flagship smartphone, the Galaxy Note 7, on Oct. 6 amid reports that the devices continued to burst into flames even after a global recall and release of replacement models fitted with different batteries.

Problems with the Note 7 began emerging just days after the Korean electronics corporation released it on Aug. 19. The highly anticipated smartphone had been on the market just two weeks when Samsung recalled all 2.5 million of the devices for safety purposes following a series of fires causing personal injury and property damage.

Under pressure to diagnose the problem, Samsung engineers attributed the defect to batteries it received from one of its two suppliers. The company produced more Note 7 devices using batteries from another supplier and sent them out into the world, but that solution failed.

The first clue that the phones were still defective came when a passenger's replacement Note 7 burst into flames aboard a Southwest Airlines jet that was preparing for takeoff at Louisville Regional Airport. Additional reports of replacements blowing up trickled in, forcing Samsung back to the drawing board. The phones have now been banned on aircraft.

But after several days of unsuccessfully trying to reproduce and solve the problem, Samsung laid the Note 7—the phone that was supposed to rival the iPhone—to rest. The Note 7 had a very short life.

The recall, extra production, and lost revenues directly related to the Galaxy Note 7 disaster cost Samsung as much as $5 billion, but that figure is small compared to the $18-billion loss in the company's valuation following its announcement to quit the Note 7 completely.

Sources: Law360 and Righting Injustice

FORD TVCT ELECTRONIC THROTTLE BODY FAILURE

Ford throttle body problems have resulted in Ford owners filing a class-action lawsuit alleging the Delphi Gen 6 electronic throttle bodies cause the vehicles to stall under throttle and reduce down power to idle, despite the driver's pedal commands. Plaintiffs Janis Benkle and John Kovak say the affected Ford and Lincoln vehicles are equipped with 3.7-liter Ti-VCT engines with Delphi Gen 6 electronic throttle bodies that experience electrical problems with the powertrain control modules. The following vehicles contain the defect.

- 2011-2015 Ford F-150
- 2011-2015 Ford Edge
- 2011-2015 Ford Mustang
- 2011-2015 Lincoln MKX

In February 2013, the National Highway Traffic Safety Administration (NHTSA) opened an investigation into alleged throttle body problems that caused Ford and Mercury vehicles to enter “limp-home” mode. For those who don’t already know—“limp-home” mode is manufacturer speak for idle speed.

Based on the results of the investigation, Ford found nearly 60,000 warranty claims related to throttle body problems and determined there was an electrical connectivity problem in the electronic throttle body. Ford didn’t recall the vehicles, but a “customer satisfaction program” was started that extended warranty coverage for the throttle body.

Ford owners have complained about sudden “limp-home” trigger events, even at speeds of 70 mph. Other owners warn that the defect presents itself under heavy throttle, such as when the driver attempts to accelerate onto a highway. The results can be catastrophic. The following is a recap of the two owner complaints presented to the NHTSA website:

The contact owns a 2015 Ford F-150. The contact stated that while driving at 70 mph, the vehicle abruptly decelerated. The wrench and limp mode warning lights illuminated while the failure occurred. The contact was able to coast on to the road shoulder and restarted the engine however; the vehicle did not regain acceleration. The vehicle was towed to the dealer whom per-
formed a diagnostic that located a failure code at the throttle body.—NHTSA complaint submitted by a 2015 Ford F-150 owner in Mandeville, Louisiana.

While driving my 2011 V6 Mustang the car will completely lose power. This has happened on the highway and on side streets. There is no warning. The wrench light comes on and the car is forced to idle. This can be very dangerous for people accelerating to merge and very dangerous on the highway to stop in the middle of the road or have to limp to the shoulder through traffic at idle. I have already paid $300 for a full throttle body service and the same thing is still happening.—NHTSA complaint submitted by 2011 Ford Mustang owner in Tomball, Texas.

According to the Plaintiffs, Ford concealed knowledge of the alleged defect and has done nothing to correct the throttle body problems. Plaintiffs Benkle and Kovak say Ford should recall, repair or replace the vehicles and extend the warranties.

The Ford throttle body lawsuit was filed in the U.S. District Court for the Central District of California—Janis Benkle, et al. v. Ford Motor Company. Persons from other states can join the California suit regardless of where they live. Our firm has several clients who will join this litigation. If you need more information, contact Clay Barnett or Andrew Brashier, lawyers in our firm, at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com or Andrew.Brashier@beasleyallen.com.

VII. MASS TORTS UPDATE

AN UPDATE ON THE THIRD TALCUM POWDER / OVARIAN CANCER TRIAL

Beasley Allen lawyers Ted Meadows, David Dearing, Danielle Mason and Ryan Kral on Sept. 26 began trying the third talcum powder lawsuit in St. Louis, Mo. The Plaintiff, Deborah Giannecchini, sued Johnson & Johnson, alleging that Johnson & Johnson failed to warn that using its Baby Powder for feminine hygiene could cause ovarian cancer. Earlier this year, separate St. Louis juries awarded verdicts to two other clients of $72 million and $55 million, respectively. Jurors found in each case that talc exposure caused ovarian cancer and that Johnson & Johnson had failed to warn of the risk. We expect Ms. Giannecchini’s case to be over by the time this issue is received.

Currently there are more than 800 similar cases filed in the City of St. Louis Circuit Court. Our firm is working on the Giannecchini case with the law firms of Allen Smith; Onder, Shelton, O’Leary, and Peterson; LLC; and Porter Malouf. Ted Meadows and Allen Smith are co-lead counsel in this litigation.

An estimated 25,000 women are diagnosed each year with ovarian cancer, and more than 15,000 die as a result. The disease strikes about one in 70 women, though studies show that women who use talc-containing products on their genitals as a daily hygiene habit have a 30 to 60 percent increased risk of developing ovarian cancer. In the last 34 years (since the time of the first epidemiological study in 1982), approximately 127,500 women have died as a result of ovarian cancer that could be attributed to talcum powder use on the genitals. It has been projected that an estimated 1,500 women will die within the next year as a result of talc use.

Lawyers in our firm’s Mass Torts Section are heavily involved in litigating cases on behalf of women who were diagnosed with ovarian cancer following the genital use of talcum powder. If you have any questions regarding these cases, or about the talc litigation generally, contact Ted Meadows, the lead talc lawyer in our Mass Torts Section, at Ted.Meadows@beasleyallen.com or 800-898-2034.

JOHNSONS & JOHNSON BABY POWDER CANCER MDL CENTRALIZED IN NEW JERSEY COURT

The Judicial Panel on Multidistrict Litigation (JPML) has centralized nine lawsuits alleging Johnson & Johnson’s talcum powder products, including Johnson’s Baby Powder, cause ovarian and uterine cancer in New Jersey federal court. Johnson & Johnson is headquartered in New Jersey. U.S. District Judge Freda L. Wolfson was selected by the panel. The case is In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation, MDL No. 2758, before the Judicial Panel on Multidistrict Litigation.

JUDGE UPHOLDS VERDICT IN JOHNSON & JOHNSON TVM CASE

Our readers may remember that earlier this year a jury returned another verdict against Johnson & Johnson subsidiary Mentor Worldwide LLC in a Georgia federal court. That Case involved a pelvic mesh implant called an ObTape sling. Plaintiff Tessa Taylor was implanted with the ObTape, a type of “bladder sling,” to treat her incontinence in 2004. For the next seven years, she experienced bladder pain, back pain and bladder discomfort, and had trouble urinating. In 2011, after many attempts at diagnosis and treatment, her doctor recommended they remove the ObTape and replace it with another type of bladder sling.

A Georgia federal judge recently upheld that jury’s verdict, which found that the medical device was defectively designed and that Mentor failed to warn about the possibility of injury. The jury initially awarded $4 million in punitive damages, but Florida law required that award to be reduced to $2 million. The jury’s $400,000 compensatory award was upheld, bringing Ms. Taylor’s total award to $2.4 million.

Judge Land praised the jury, who saw and heard the evidence over the course of nine days, and, after deliberation, “render[ed] a verdict that speaks the truth—the truth of that case as they saw and heard it based on their collective wisdom and guided by the law as instructed by the judge.” However, Judge Land had strong words for Mentor. He wrote:

After the jury is dismissed thinking that justice has been done, losing lawyers—well trained in dissecting every comma and spinning every word—mine the written transcript to weave a different story, one that suits their purposes but is often very different than what was actually experienced by that fact-finding jury.

The right to a civil jury trial is guaranteed in the Seventh Amendment. The importance of the jury’s role cannot be understated. Judge Land was absolutely correct that second-guessing the jury’s
findings can lead to a world of “mischief.”

AN UPDATE ON THE LIPITOR LITIGATION

For more than three years, Frank Woodson and Matt Munson, lawyers in our firm’s Mass Torts Section, have been handling the firm’s litigation involving Pfizer’s Lipitor. Plaintiffs alleged the immensely popular statin drug was causing otherwise healthy women to develop Type 2 diabetes in as little as six weeks after starting a prescription.

Earlier this summer, the federal judge overseeing the Lipitor multidistrict litigation (MDL) excluded all of the Plaintiffs’ experts in the nationwide litigation. The Plaintiffs’ Steering Committee intends to appeal this decision. The same judge is now considering entering summary judgment in favor of Pfizer and against approximately 2,500 Plaintiffs whose cases are in the MDL. Counsel for the Plaintiffs have opposed Pfizer’s single omnibus motion on the basis that an MDL judge lacks the authority to grant such a motion without considering the laws and burden of proof for each Plaintiff’s home state, something this judge has not done.

It is most unfortunate that the Lipitor litigation is now at a standstill, but the case will be appealed. It’s quite ironic that Japan’s pharmaceutical regulatory agency required Pfizer to warn doctors and patients about this serious disease being associated with ingestion of Lipitor in 2003. Pfizer has never warned women in this country of this potential effect of taking Lipitor.

TAXOTERE LAWSUITS CENTRALIZED IN LOUISIANA FEDERAL COURT

On Oct. 4, the U.S. Judicial Panel on Multidistrict Litigation (JPML) ordered that all federally filed Taxotere lawsuits involving allegations of permanent hair loss be consolidated for the purposes of coordinated pretrial proceedings. The JPML’s Order transferred 33 Taxotere lawsuits, which were filed in 16 federal jurisdictions, to the U.S. District Court for the Eastern District of Louisiana. Judge Kurt D. Engelhardt will preside over the newly formed MDL No. 2740.

Taxotere (docetaxel) is a chemotherapy drug approved to treat breast cancer, non-small cell lung cancer, advanced stomach cancer, head and neck cancer and metastatic prostate cancer. The drug, a member of a family of drugs called taxanes, is administered intravenously. It is used in an effort to prevent cancer cells from growing and dividing.

When Sanofi-Aventis started manufacturing Taxotere, it marketed and promoted the drug as more potent and effective than Taxol, a competitive chemotherapy agent distributed and produced by Bristol-Myers Squibb. Sanofi-Aventis intentionally developed Taxotere to be twice as strong as Taxol in an effort to claim a large market share in the highly profitable chemotherapy market segment. However, Taxotere has been found to be significantly more dangerous and linked to a higher number of side effects as compared to Taxol. Additionally, Taxol can be used at lower doses than Taxotere with similar effects.

In 2007, Sanofi-Aventis issued a press release touting the efficacy of Taxotere based on a clinical study, GEICAM 9805. However, Sanofi-Aventis failed to inform the U.S. Food and Drug Administration (FDA), health care providers, and the public that in the GEICAM 9805 study permanent hair loss persisted into the follow-up period (10 years and five months was the median follow-up) and was observed to be ongoing in 9.2 percent of the patients taking Taxotere.

Hair loss, a very common side effect of fighting cancer during chemotherapy, is expected. However, patients undergoing chemotherapy with Taxotere were not warned they could potentially experience permanent hair loss. As you can imagine, permanent hair loss is an extremely debilitating condition, especially for women. The permanent loss of hair is more than cosmetic. For cancer survivors it is a constant reminder of their struggle and a completely unnecessary result of chemotherapy treatment.

Lawyers at Beasley Allen are currently investigating potential cases involving individuals who have suffered permanent hair loss following chemotherapy with Taxotere. For more information on this subject, contact Beau Darley or Melissa Prickett, lawyers in our firm’s Mass Torts Section, at 800-898-2034 or by email at Beau.Darley@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Sources: United States Judicial Panel on Multidistrict Litigation, October 4, 2016 Transfer Order; www.drugsafetynews.com; and PR News Wire

STIMUCATH PERIPHERAL NERVE BLOCK CATHETERS

Continuous peripheral nerve block is becoming an increasingly popular method to relieve pain at the site of surgery. The Arrow StimuCath is one catheter device in a line of products designed to use electrical stimulation for aid in localizing nerves and optimizing placement of nerve catheters to reduce pain scores and opioid consumption.

Perineural catheters are often placed on an ambulatory basis and removed by the patient within days of the surgery. This is especially problematic when complications arise and there are issues of proximity to the provider. Prior to surgery, a catheter is placed under the skin in the area containing the nerves that provide feeling to the area where the surgery will be performed.

The catheter is connected to a pump, and a local anesthetic is transfused through the catheter continuously at a pre-determined rate for around 12-18 hours. After an additional 12 hours when the effect of the local anesthetic has worn off and sensation has returned, the catheter may be removed. The FDA has cleared all Arrow Epidural Catheters for use up to 72 hours.

It is during the catheter removal that potentially serious complications arise, and the majority of these complications involve the Arrow StimuCath catheter. Catheters can be difficult to remove due to a condition called nerve entrapment, which involves knot formation of the nerves at the needle tip. This has been associated with the kinking of the metallic, coiled tip into a hooked shape, and it has been postulated that the coils of the curved tip may entrap nerve tissue between them.

The majority of cases in which catheter tip entrapment was involved occurred in the area of the brachial plexus. It is speculated that the complex branching structure of the nerves in that area may increase the risk of the complication. The bare metal surface of the StimuCath catheter has also been implicated in forming adhesions to surrounding tissue, requiring more force to remove it. When exces-
sive force is applied during catheter removal, there is additional concern for neurological damage during separation from the tissue, catheter deformation and component separation. Attempts to remove entrapped or adherent catheters carry a significant risk of nerve injury. Reports include a patient who suffered permanent injury to the C5 and C6 nerve roots, a case where superior neurological trunk function was lost, and patients who suffer transient pain, persistent paresthesia, and other neurological symptoms. Complications associated with perineural catheters include infection, leaking, migration, kinking, shearing and knotting, and surgical extraction is often required in those cases. The increasing use of postoperative nerve catheters will likely lead to a rise in the presentation of these types of problems.

The first model of StimuCath was approved via 510(k) in 2002. Arrow International was acquired by Teleflex Incorporated in 2007. Arrow StimuCath Continuous Nerve Block Kits were recalled in 2011 and 2014 due to possible compromise in sterility, and Arrow Continuous Nerve Block Needles were recalled in 2005 due to possible over crimping of the needle during manufacturing. If you have any questions, contact Leigh O’Dell, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com.

JOHNSON & JOHNSON WARNS OF CYBER-SECURITY FLAW IN ITS INSULIN PUMPS

Johnson & Johnson recently warned that its popular Animas One-Touch Ping Insulin Pump is vulnerable to cyberattacks by hackers. Insulin pumps are primarily used in Type-1 diabetic patients, less frequently in Type-2 patients, and work by delivering a continuous low dose, of insulin 24 hours a day, plus bolus doses as needed, to regulate blood sugar levels. Although they acknowledge the risk exists, Johnson & Johnson says the probability of a person’s pump being hacked is low since the devices operate on radiofrequency and do not connect to the internet.

Even so, it is a scary proposition for patients and parents of patients that someone could potentially manipulate the settings so that the pump would deliver too much or too little insulin. In either case, the results could be deadly and Johnson & Johnson must take steps now to fix the security flaw.

If you have any questions, contact Matt Munson, a lawyer in our Mass Torts Section, at Matt.Munson@beasleyallen.com or 800-898-2034.

10 BABY DEATHS POSSIBLY TIED TO TEETHING PRODUCTS

The U.S. Food and Drug Administration (FDA) warned last month of reports of 10 deaths associated with homeopathic teething products for babies. However, the exact relationship of these products to those infant deaths has yet to be determined. The FDA said that it had begun investigating the teething gels and tablets—which are labeled to prevent teething pain—in September, after receiving a report that a child had a seizure after being administered a homeopathic teething product. On further examination, the FDA said, there were more than 400 reports of adverse events in the past six years—including death, seizure and fevers—related to homeopathic teething products.

The FDA first warned parents to stop using the tablets and gels on Sept. 30 and urged them to seek immediate medical care if their child has seizures, trouble breathing or muscle weakness after using the products. The agency stated on Oct. 10:

At this time, the FDA is still conducting our investigation, and we have not yet completed the analyses of products to determine if there is an association between the adverse events and the homeopathic teething products.

Also on the same day, homeopathic remedy maker Hyland’s Inc. said in a notice on its website that it was voluntarily stopping distribution of the company’s teething products in the U.S. in light of the FDA’s warning. CVS Health Corp. also voluntarily pulled all homeopathic teething products from its shelves after the September warning, the FDA said.

The regulator said that its preliminary review shows that these adverse events are similar to those seen in 2010, when the agency warned of belladonna toxicity associated with Hyland’s teething tablets. The FDA also emphasized that while adverse event reports give some information about a product and serious injuries or deaths related to its use, the reports also often indicate situations needing more analysis and do not constitute conclusive evidence of a problem with the product. The FDA said:

Sometimes after further analysis, the adverse events may inform agency decisions to take regulatory action. Other times, further analysis shows that the adverse events were not attributable to a problem with the product but to other factors, such as a patient’s underlying health conditions.

In its September warning, the FDA had said that homeopathic teething tablets and gels have not been evaluated or approved by the agency for safety or efficacy. The agency also said that it was unaware of any proven health benefit of the products. Dr. Janet Woodcock, director of the FDA’s Center for Drug Evaluation and Research, said in a statement:

Teething can be managed without prescription or over-the-counter remedies. We recommend parents and caregivers not give homeopathic teething tablets and gels to children and seek advice from their health care professional for safe alternatives.

Lawyers in our Mass Torts Section will continue to monitor developments in this matter. For more information on this subject, contact Melissa Prickett at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com or 800-898-2034.

Source: Law360.com

MYLAN REACHES $465 MILLION SETTLEMENT OVER EPIPEN REBATES

Mylan Inc. has reached a $465 million settlement with the U.S. Department of Justice (DOJ) to resolve an investigation into its controversial classification of allergy treatment EpiPen as a generic drug for purposes of Medicaid rebates. The nearly half-billion-dollar settlement will resolve “all potential rebate liability claims by federal and state governments as to whether the product should have been classified as an innovator drug” subject to larger rebates.

Mylan added that EpiPen has been classified as a generic since before it acquired the product in 2007, a designation that the company said was made.

JereBeasleyReport.com
in accordance with “longstanding written guidance from the federal government.” The company said it will enter a so-called corporate integrity agreement as part of the settlement, which still needs to be finalized. Sen. Richard Blumenthal, D-Conn., a leading critic of Mylan, has derided the settlement as “a shadow of what it should be.” He said in a statement:

The deal short-circuits investigation and fact-finding necessary to determine the scope of illegality, culpability of individuals and proof of criminal wrongdoing. This settlement is blatantly inadequate, not only in dollar amount, but also Mylan’s avoiding admission of moral and legal responsibility.

Lawmakers have been directing heavy scrutiny at EpiPen’s generic classification for rebate purposes, questioning whether it could constitute fraud under the False Claims Act. The scrutiny began after earlier criticisms of fivefold increases in EpiPen’s price in recent years. The Centers for Medicare & Medicaid Services (CMS) has confirmed that Mylan has been paying 13 percent rebates to the government for EpiPen by classifying it as a generic drug, despite the agency arguing that it should be classifying EpiPen as a branded drug with at least a 23.1 percent rebate. Mylan has claimed it falls under an exemption that allows it to pay the 13.1 percent rebate, since the medication inside EpiPen is off-patent but the device itself is patent-protected. CMS, however, has disputed that assertion.

Source: Law360.com

**AN UPDATE ON THE XARELTO LITIGATION**

To date, more than 9,000 lawsuits have been filed across the country against the makers and distributors of Xarelto. Currently, more than 7,000 cases are pending in New Orleans, Louisiana in the multi-district litigation (MDL) overseen by U.S. District Court Judge Eldon Fallon. There are approximately 1,000 state court cases pending in Pennsylvania, 1,000 cases in Delaware, and additional cases in California state courts.

Xarelto is a blood thinner manufactured by German drug maker Bayer AG and distributed in the U.S. by Janssen Pharmaceuticals, a subsidiary of Johnson & Johnson. Xarelto entered the U.S. market in July 2011, and is currently approved for six indications, including reducing the risk of stroke in patients with non-valvular atrial fibrillation; treating deep vein thrombosis and pulmonary embolism, and reducing the recurrence of these conditions; and preventing blood clots in patients following knee or hip replacement surgery.

Xarelto carries a significant risk of severe, uncontrolled internal bleeding, with bleeding most often occurring in the gastrointestinal tract or brain. Patients who experience internal bleeding caused by Xarelto are often subjected to hospitalization, blood transfusions, surgeries, strokes, debilitating sickness and disabilities, and/or death.

According to the Institute of Safe Medication Practices, data from the U.S. Food and Drug Administration shows that Xarelto accounted for the largest number of reported cases of domestic, serious injury among regularly monitored drugs in 2015. In 2015, there was a total of 10,674 reports involving patients on Xarelto, including 1,121 patient deaths and 4,508 injuries requiring hospitalization. The most frequent reports involved bleeding on the brain and in the intestines.

Lawyers at Beasley Allen represent hundreds of clients who were injured by Xarelto, and the firm continues to investigate new Xarelto claims. Additionally, Beasley Allen lawyers have been entrusted with key roles in the national Xarelto litigation. Andy Birchfield, the Section Head for our firm’s Mass Torts Section, is on the Plaintiff Steering Committee (PSC) for the MDL and is serving as the Co-Lead Plaintiffs’ Counsel. Beasley Allen lawyers Gibson Vance (Co-Chair of the State/Federal Coordination Committee) and David Byrne (Co-Chair of the Sales & Marketing Discovery Subcommittee) are also serving in key PSC committee roles.

U.S. District Judge Eldon Fallon has selected four “bellwether” cases to be tried next year in Louisiana, Mississippi, and Texas. The first trial involves Louisiana man Joseph J. Boudreaux, Jr. who suffered severe gastrointestinal bleeding after using Xarelto less than a month. The trial for Mr. Boudreaux’s case will begin on March 13, 2017 in New Orleans. The second trial, scheduled to start in New Orleans on April 24, 2017, involves Louisiana man Joseph Orr, who sued the manufacturers/distributors of Xarelto after his wife died from a brain hemorrhage after taking Xarelto for about a month.

The two Louisiana trials will be followed by a trial in Natchez, Mississippi, beginning on May 30, 2017. The Mississippi trial involves one of Beasley Allen’s clients, Mississippi woman Dora Mingo, who suffered gastrointestinal bleeding after using Xarelto to treat a blood clot in her leg. Ms. Mingo’s gastrointestinal bleed required her to spend several days in the ICU, undergo several blood transfusions, and undergo a life-saving surgical procedure. The fourth Xarelto “bellwether” trial will involve Texas man William Henry, who died due to gastrointestinal bleeding while taking Xarelto. The fourth trial will take place in the Northern District of Texas, but the date has not been determined.

Judge Fallon will oversee all four “bellwether” trials, and Beasley Allen lawyers will be heavily involved in each of those trials. Our lawyers continue to investigate new Xarelto claims and are filing cases on behalf of individuals injured by Xarelto. If you need more information about the Xarelto litigation, contact David Byrne, one of the lawyers in our firm’s Mass Torts Section, at 800-898-2034 or by email at David.Byrne@beasleyallen.com.

Sources: Louisiana Record and The Institute for Safe Medication Practices—Quarter Watch

**VIII. BUSINESS LITIGATION**

**JTEKT CORP. REACHES $62.5 MILLION SETTLEMENT IN AUTO PARTS ANTITRUST MDL**

JTEKT Corp. and its U.S. subsidiaries will pay $62.5 million to settle car buyers’ claims of auto parts price-fixing brought in multidistrict litigation (MDL) in Michigan’s Eastern District. The settlement, which has yet to be approved by the court, will resolve claims that the Japanese company and other auto parts makers conspired to restrict competition for automotive bearings and electric powered steering assemblies in the U.S. It should be noted that class action lawsuits filed by other Plaintiffs against JTEKT are still pending.

The court had previously granted preliminary approval for a $34.5 million

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IX. AN UPDATE ON SECURITIES LITIGATION

BP SAYS INVESTORS MUST FOLLOW OPT-OUT RULES

BP PLC told a Texas federal court last month that investors in securities lawsuits arising from the deadly 2010 Deepwater Horizon drilling platform explosion should not get a special allowance to skip proper procedures for opting out of the oil giant’s $175 million class settlement. The settlement by BP resolves a certified class action alleging the company misrepresented the seriousness of the explosion and its aftermath, in which 11 workers were killed and an estimated 4.9 million barrels of crude oil were spilled into the Gulf of Mexico.

About 135 institutional investors said in September that they wanted to opt out of the deal, as they have brought separate, individual cases arising out of the Deepwater Horizon disaster. But BP responded by saying that just because the investors filed separate actions does not mean they can automatically opt out. BP further said:

The submission of the individual action plaintiffs confirms that they, at bottom, seek special treatment not afforded to any other member of the ... settlement class in this action, or to class members typically in securities class action settlements. The individual action plaintiffs concede that they are able to opt out of the settlement if they wish not to be bound by it, and that they intend to do so.

A number of securities suits had been filed against BP after the rig explosion, which resulted in three months of unchecked oil flow. A class of purchasers of American depositary shares who bought the securities after the explosion alleged they were misled about the incident’s impact. That class was certified in 2014, after many of the suits were consolidated in multidistrict litigation (MDL). The class covers anyone who purchased depositary shares between April 20, 2010, when the explosion occurred, and May 28, 2010, when it became apparent that the oil flow from the broken wellhead was much higher than BP initially disclosed. The Plaintiffs who want to opt out said their claims are broader than what was covered in the settlement and also relate, for example, to BP’s alleged withholding of information about the safety of Deepwater Horizon ahead of the incident.

BP says that any class member who wants to opt out has to provide certain information, such as identifying any American depositary share transactions during the class period. However, the 135 Plaintiffs have said it would be onerous for them to provide this data. BP said that their statement that they may be unable to identify all their class period American depositary share transactions should not allow them special treatment. BP wrote in its response:

The parties to the settlement also are entitled to know the number of shares that have opted out because that fact is relevant to their supplemental agreement, which affords BP the right to terminate the settlement in certain circumstances. A group of plaintiffs who previously opted out of the class action asked the court to let them withdraw their opt-out request and to allow them back into the class. A group of investment funds and individuals who bought BP American depositary shares after April 26, 2010, bad said their claims were broader than what was alleged in the class action, so they filed individual suits to recover losses unlikely to have been recouped in the class action. Those investors opted out of the class action to protect their rights to continue with their individual actions, but because the settlement has not been preliminarily approved and other class members can now opt out, the class members would not be prejudiced if the opted-out investors are allowed back into the class.

Our firm hasn’t been involved in this litigation. We felt our resources were needed in the other claims against BP and we elected not to be involved in the securities’ litigation.

Source: Law360.com
Allstate Insurance Co. has filed a product liability suit against Electrolux Home Products Inc. in an Illinois federal court seeking to recover $3.6 million in damages. The insurer said it paid policyholder claims in connection with fire-causing dryers that Electrolux knew were defective. This is the latest in more than a half-dozen such suits.

Allstate said it paid 46 policyholders more than $3.6 million for damages related to fires caused by gas or electric clothes dryers manufactured and sold by Electrolux.

The insurer also demands that Electrolux cover its costs and pay punitive damages for the fires in part because the fires were foreseeable. Allstate says Electrolux had started testing a new dryer system with a part made from a combustible material in the mid-1990s, and the test results showed that dryer lint could get into the back, ignite and cause the combustible material to burn. But the insurer says Electrolux sold the dryers anyway, leading to fires in the homes of the Allstate customers. It’s alleged by Allstate:

- Electrolux designed, tested, inspected, manufactured, sold and/or distributed into the stream of commerce the subject dryers, including their component parts, in a dangerous defective condition, which catastrophically failed due to a defect.

Allstate has filed more than six similar product liability suits against Electrolux in various federal districts asserting essentially the same claims but for different damages amounts. The machines at issue in the instant suit are so-called ball-hitch dryers that include a dryer drum that rotates around a fixed rear access, with an empty space just behind the drum called a heater pan, according to the suit. The following are allegations by Allstate:

- There’s also a blower motor encased in a housing and a trap duct on the front of the dryer cabinet with a mesh lint trap to pick up loose clothing lint while the dryer turns. The blower housing and trap duct used to be made of steel, but in 1995 and 1996, Electrolux redesigned those parts to be made with combustible plastics. During the redesign process, Electrolux ran tests on its new plastic parts, and a ball-bitch dryer had a fire ignited in its internal cabinet that spread to the combustible plastic trap duct.

During another test in 1998, Electrolux found that a fire could spread to the blower housing and trap duct, both of which were made with combustible materials. Once ignited, the plastics in the blower housing and trap duct could melt and spread outside the dryer cabinet. Before it even started making the dryers with plastic parts, Electrolux had received consumer complaints and warranty claims for fires with the ball-bitch models, and in 2005, the Japanese government forced a recall. But the company didn’t recall the dryers in the U.S., and it didn’t warn customers of the fire hazard.

Allstate’s suit includes claims for strict liability and negligence. It’s most interesting that this insurance company doesn’t mind using the court system when it is the victim. The case is Allstate Insurance Co. et al. v. Electrolux Home Products Inc. in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

Children’s Hospital Los Angeles To Pay $27 Million in Settlement

Children’s Hospital Los Angeles has agreed to pay $27 million to resolve class actions brought on behalf of thousands of workers claiming they were shorted on wages and denied breaks. A Los Angeles Superior Court Judge gave final approval to the settlement agreement that was reached in mediation after the lead case was litigated for more than three years. The $27-million wage-and-hour class action settlement covers more than 9,500 current and former hourly, nonexempt employees who worked for Children’s Hospital between April 2004 and May 2016.

The lawsuits alleged, among other things, the employees were shorted on overtime, not provided meal and rest breaks and not paid promptly at the time of discharge or termination. It’s estimated that the average payments the employees will receive range from $9,076.43 for employees who worked more than 40 hours in a week allegedly without receiving proper overtime, to $2,955 for employees who worked 12-hour shifts and claimed that they were paid a lower standard wage or a straight-time wage for hours worked. Children’s Hospital Los Angeles will also pay its share of employer taxes on the wage portion of the settlement, which is estimated to add another $550,000 to the payout.

Source: Law360.com

$13 Million Settlement Involving Workers’ Bag Check Claims Is Approved

A California judge has granted preliminary approval to CVS Caremark Corp.’s $12.75 million settlement of claims it shorted roughly 78,000 workers on pay for time they spent in security checks. Los Angeles Superior Court Judge Richard E. Rico issued a written tentative ruling before the start of a hearing, indicating he was planning to approve the settlement proposed by named Plaintiffs Kimberly Murphy, Elizabeth Ortiz and Gail Miller.

Ms. Murphy filed the proposed class action in July 2011, alleging that for years CVS had required her to submit to security inspections and label her personal property while off the clock. It was alleged that since 2007, CVS has had a policy of not compensating hourly employees in California for time spent waiting for and undergoing security inspections after clocking out but before they leave the store.

Ms. Murphy filed her motion for preliminary settlement approval in early September. She also asked Judge Rico for permission to amend her complaint to fold in Ortiz and Miller as additional Plaintiffs. Ortiz and Miller had filed a separate suit against CVS alleging wage violations relating to bag checks, including a claim under California’s Private Attorney General Act, which provides employees with the opportunity to bring claims on behalf of all
agreed employees to enforce the state's labor laws. That suit, pending in California federal court, will be dismissed once the settlement in the instant action is approved. The potential class members covered by the settlement will receive $100 to $200 on average under the settlement.

The case is Kimberly Murphy v. Caremark CVS Corp. et al. in the Superior Court of the State of California, County of Los Angeles.

Source: Law360.com

XII. PREMISES LIABILITY UPDATE

$13.6 MILLION VERDICT IN LOUISIANA PLANT EXPLOSION

A Louisiana jury has returned a $13.6 million award against Williams Cos. Inc. in a lawsuit brought by four contractors who were injured in the deadly June 2013 explosion at a petrochemical production plant owned by the midstream giant. At the conclusion of the trial, the jury determined that Williams’ negligence led to the explosion at its ethylene production plant in Geismar, La., that killed two people and injured more than 100. The jurors assigned 95 percent of the fault to Williams, 3 percent to Williams Olefins LLC, the listed owner of the plant, and 2 percent to officials at the plant. The jury awarded Plaintiffs Shawn Thomas $9.4 million in damages, Christopher Devall $3.6 million, Eduardo Elizondo $360,000 and Michael Dantone $205,000.

The jury found that Williams Olefins LLC was merely a shell company and that the parent company had full control over the plant. The jury found that the four contractors were actually employees of Williams Cos., and held Williams fully accountable for the explosion. Williams said in a statement that it will appeal the verdict.

Williams is facing several additional suits arising from the explosion at the Geismar plant. The company said the explosion was caused by the ignition of a vapor cloud from an equipment rupture. This case was the first of the suits to go to trial. This makes the jury’s verdict most significant. There are trials set for November, January 2017 and April 2017.

In December 2013, the Occupational Safety and Health Administration (OSHA) charged Williams Olefins with six process safety management violations and fined the company $99,000.

The case is Paul Thompson et al. v. Williams Cos. Inc. et al. in the Eighteenth Judicial District Court of Iberville Parish, La.

Source: Law360.com

APPELATE COURT UPHOLDS THE $30 MILLION VERDICT IN PIPELINE BLAST SUIT

The Oklahoma Supreme Court has upheld the $30 million verdict against two Enterprise Products Partners LP units arising from the 2010 Texas pipeline explosion that led to the demise of a power line company whose worker was killed and that ruined the company’s potential sale. Enterprise had urged the high court to overturn the 2013 jury verdict that the company’s negligence—the failure to mark an active gas pipeline—led to the explosion that killed C&H Power Line Construction Co. employee James Neece and caused the $33 million sale of C&H to fall through. The sale took place later, but at a much lesser price. Enterprise argued, among other things, that Neece’s death should not have impacted C&H’s value.

However, the state Supreme Court said in a unanimous opinion that C&H was not bringing a wrongful death claim and that the damages the company sought were based on how much a buyer would pay immediately before and after the pipeline accident. The opinion stated:

Loss of a key, highly skilled employee, whether through death or disability, affects the value, but the damage is not the same as that for wrongful death. Even if a company cannot recover separate damages for emotional distress, nor for changes in workers’ compensation ratings, the emotional outlook and ratings barriers to acquiring new jobs still have an impact on the value of a company to a prospective buyer, who is entitled to consider these items in making an offer for the purchase of the business.

The testimony of C&H’s expert witness on the value of the company before and after the accident reasonably supported the jury’s verdict, according to the high court. The opinion stated:

The verdict was within the range of his evaluation of the value of the company immediately before the accident, and within the amount paid for the company when it was subsequently sold.

The appeals court also blasted Enterprise’s argument that the lower court wrongly excluded evidence that C&H was mismanaged and that its funds were used on “frivolous items” such as gambling and boats. The justices agreed with C&H that such evidence is irrelevant as to the company’s financial condition. The opinion stated:

The only purpose we can see is to prejudice the jury by placing the owner in a bad light. The owner took certain amounts out of the company, whether he took them for frivolous spending or to give it all to charity does not change the amount taken out, nor the impact it has on the company.

Neece had been drilling a hole for a power line tower in June 2010 when he struck an unmarked gas pipeline. The resulting rupture and explosion killed Neece and severely burned another C&H employee. Before drilling, C&H called Texas’ excavation notification system to have companies within its work area mark their pipelines. While other pipeline companies marked their pipelines, Enterprise failed to do so. C&H claimed that at the time of the blast, the company had a letter-of-intent offering to buy C&H for $35 million up front, plus a $10 million earn-out provision.

A state court jury in May 2013 awarded C&H $26 million in actual damages and $1 million in punitive damages. The addition of prejudgment interest brought the amount up to $30 million. The case is C&H Power Line Construction Co. v. Enterprise Products Operating LLC et al. in the Supreme Court of the State of Oklahoma.

Source: Law360.com
STATE OF WASHINGTON AND TIMBER CO. REACH $60 MILLION SETTLEMENT IN OSO LANDSLIDE SUIT

The state of Washington and Grandy Lake Forest Associates, a timber company, have agreed to settle a lawsuit brought by victims and family members of those who died in the 2014 Oso landslide for a total of $60 million. The state of Washington will pay $50 million and the timber company will pay $10 million in the settlement.

The Plaintiffs in the case made wrongful death and personal injury claims. A landslide near Oso killed 43 people in March 2014. It was alleged that alterations, including adding debris and soil, were made to a hillside that was known to be extremely dangerous due to past landslides. The Plaintiffs' lawyers had this to say about the settlement:

*These settlements are one step forward in obtaining accountability for the acts that resulted in plaintiffs' losses. Plaintiffs will also continue to pursue steps to change the way government, landowners and timber companies address these types of landslides in the hope of avoiding similar tragedies in the future.*

The state of Washington also said in the settlement agreement it would pay about $394,000 in attorney's fees for work done to resolve an issue of evidence being deleted by the state's expert witnesses. King County Superior Court Judge Roger Rogoff had said that he would sanction the state over allegations that the state knew its experts were deleting emails and that one of the state's lawyers appeared to have encouraged the action. The judge also ordered the state to pay about $789,000 in punitive damages over the email deletions.

The Plaintiffs had alleged that the group of scientists the state had as their expert witnesses changed their findings of how dangerous the hillside was to help the state's case, and tried to hide the trail by deleting emails.

The case is Ryan M. Pszonka et al. v. Snohomish County et al. in the Superior Court of the State of Washington in and For King County.

Source: Law360.com

$8.5 MILLION VERDICT AGAINST CRANE CO. IN TIP-OVER INJURY LAWSUIT

A Mississippi federal jury returned an $8.5 million verdict against crane manufacturer Manitowoc Cranes LLC last month. The jurors ruled for the wife of a crane operator who was severely injured in a 2014 tip-over accident. The award will be reduced as Manitowoc wasn't found completely at fault. Wanda Williams, whose husband, John, suffered "catastrophic permanent injuries" after being launched from a Manitowoc-model crane cab during a tip-over incident in June 2014, was awarded $8 million in economic and noneconomic damages on her failure to warn claim, and $500,000 on her loss of consortium claim against the crane maker.

The jury concluded that Williams had proven that Manitowoc's model 16000 crane failed to contain adequate warnings or instructions as to the dangers of falling counterweights, which are used to keep the crane stable during operation. The jury found she had also proven her loss of consortium claim.

Williams was operating a Manitowoc-model “crawler” crane at VT Halter Marine’s Pascagoula, Miss., shipyard on June 25, 2014, when his crane began to tip forward, causing roughly 18,000 pounds of unsecured counterweights to shift forward as well, striking the back of his crane cab and ejecting him out the front. The crane began to tip forward slowly, giving Williams a short window to have jumped to safety. However, he remained in the cab and tried to stabilize it, not realizing that the counterweights behind the crane cab had the potential to come loose. As a result of being ejected, Williams suffered permanent brain damage and blindness.

However, the jury found Manitowoc to be only 40 percent at fault for the tip-over incident. John Williams was found to have been 10 percent at fault. VT Halter Marine Inc., the shipyard he was operating the crane for at the time was found to be 50 percent at fault. The shipyard was not a party to the instant suit. VT Halter was immune from being sued because it was John Williams’ employer. Under Mississippi law, the jury is allowed to allocate fault, even to nonparties, and they did so in this case.

Source: Law360.com

XIII. WORKPLACE HAZARDS

TALC IS AN OFTEN OVERLOOKED WORKPLACE HAZARD THAT CAUSES SEVERE LUNG DISEASE

We have written on numerous occasions about the association between talc and ovarian cancer. This month another problem relating to talc use will be discussed. As we have stated, talc is a naturally occurring mineral consisting of magnesium, silicon, and oxygen that is widely used in the manufacturing processes of a vast number of industries. Talc is found in two forms—one containing asbestos fibers and the other without asbestos. Both the U.S. Food and Drug Administration (FDA) and the American Cancer Society acknowledge health and safety concerns relating to exposure to both forms of talc, especially in the occupational setting. A recent medical study presented at the European Respiratory Society’s International Congress highlighted talcosis as one of the most serious health hazards associated with occupational exposure to talc.

Talcosis is a specific type of the interstitial lung disease known as pneumoconiosis. It is caused by repeated inhalation of talc dust. The disease is characterized by chronic and often progressive hardening or scarring (fibrosis) of the lungs and can manifest itself as a restrictive lung disease (preventing the lungs from fully expanding and filling with air when breathing in), obstructive lung disease (making it hard to exhale all the air in the lungs), or a combination of both.

Early warning signs of talcosis include shortness of breath, especially during increased activity or physical exertion, and chronic cough. As the disease progresses, the tissue surrounding the lung’s air sacs and air passages become increasingly more thick and stiff, thereby making breathing more and more difficult, which can seriously impair a worker’s ability to continue working and their quality of life. With continued exposure to talc dust, talcosis can develop into a number of serious life-threatening conditions, including progressive respiratory failure or heart failure.

Industries that use talc in their manufacturing process include: ceramic, paper, leather, plastics, rubber, paint,
in the U.S. Court of
Circuit Court of Appeals. The compa
settlement ends an appeal
injured in a vehicle crash caused by an
previously approved the jury award.
The jury reduced the award from $8
premiered that any legal responsibilities of the driver.

The parties' review of Ms. Bullock's medical records revealed that Medicare had made only one relevant payment to that point, and the parties agreed to a process for remitting that payment. After extended discussion and obtaining outside opinions from Medicare experts, however, the parties disagree about their legal responsibilities concerning any future payment of Medicare benefits.

The case, filed by Cheryl Bullock and her husband, Kevin, in February 2013 arises from her 2011 accident that caused numerous injuries to her, including fractured neck vertebrae and a head injury for which she will require a lifetime of care. The Volkswagen Passat rocketed out of control while Ms. Bullock traveled down a Georgia highway with her 5-year-old daughter. A leaky seal allowed oil to seep into the vehicle's turbocharger, which Honeywell manufactured. The jury ruled for the Bullocks in September 2015, holding VW and Honeywell liable for a combined $4.8 million. The original award found VW liable for $7 million in damages and Honeywell responsible for $1 million, but the award was reduced because they were found to be less than 100 percent liable for the accident. The Eleventh Circuit referred the parties to mediation, which took place in May, and the Defendants agreed to dismiss their appeals after Honeywell and VW paid the Bullocks a confidential amount. The court was asked for a limited remand back to Judge Lake to clear up a Medicare repayments conflict. Honeywell and VW are concerned that they or their insurers may be required to submit Ms. Bullock's future Medicare payments under the Medicare Secondary Payer Act if the settlement does not require her to set aside part of the funds to satisfy future Medicare payments.

All parties agree that the issue requires a ruling based on facts not already presented in the case. We believe that it is important for Judge Land to rule on this dispute. Our understanding—from reading both state and federal case law and memoranda from the center that oversees Medicare and Medicaid—is that a Medicare set aside is not required in a personal injury accident where worker's compensation is not involved.

The Bullocks are represented by Mike Andrews, Kendall Dunson and Greg Allen from our firm. The case is Cheryl Bullock, et al v. Volkswagen Group of America, et al. in the U.S. Court of Appeal for the Eleventh Circuit.

Source: Law360.com

**Lawsuit Against Driver In Fatal Wendy's Crash Settled For $1.2 Million**

A lawsuit filed against the 79-year-old driver involved in a fatal crash at a Wendy's restaurant last year in New Jersey has been settled for $1.2 million. In February of 2015, Elizabeth M. Garcia, then 78, drove her BMW through a window at the restaurant and struck 89-year-old John Ruiu, who died from his injuries two and a half weeks later.

Jody M. Ruiu-Geisert, the daughter and estate executor of John Ruiu, filed a wrongful death lawsuit against Ms. Garcia in Monmouth County Superior Court. The suit claimed that John Ruiu “suffered physical and emotional injuries, considerable pain, anguish and suffering and permanent injuries, which ultimately caused his death.” The lawsuit also alleges that Mr. Ruiu’s family was forced to “expend monies for (his) treatment and care” and suffered “other monetary and economic losses.”

The suit also named Garcia’s husband, Guillermo J. Garcia, as a co-Defendant in the case. It was alleged in the lawsuit that he “negligently, carelessly and/or recklessly entrust(ing) his/their motor vehicle” to Elizabeth Garcia.

Elizabeth Garcia did not face criminal charges following the crash and was only cited for careless driving, which she was found guilty of last September. She received the highest penalty for that violation—a $200 fine. Surveillance video of the crash, shown at Ms. Garcia’s trial on the careless driving charge, showed her SUV pass through a

**TRANSPORTATION**

**Volkswagen And Honeywell Settle Driver Acceleration Suit**

Volkswagen and Honeywell International Inc. have now settled with our clients Kevin and Cheryl Bullock. We wrote about the trial of their case in a previous issue. Mrs. Bullock was injured in a vehicle crash caused by an unintended acceleration in a VW vehicle. The settlement ends an appeal by the Defendants to the Eleventh Circuit Court of Appeals. The companies had filed an appeal of the $5 million jury award in favor of the driver.

U.S. District Judge Clay D. Land had previously approved the jury award. The jury reduced the award from $8 million to $5 million after finding Honeywell and Volkswagen jointly liable for only 60 percent of the damages stemming from the crash. The companies had asked the appeals court for a limited remand of the case, saying the sides dispute whether a portion of the settlement amount should be set aside to reimburse Medicare for payments relating to Ms. Bullock's future treatment after discovering she enrolled in the program. The motion said:

Despite government acknowledgement and warnings of talc’s danger in the workplace, scientific studies conducted by leading pulmonologists have found an insufficient awareness and a general lack of proactive safety measures being taken in most industries that use talc in their manufacturing process. These studies found the occupational talc exposure situation to be urgent and prevailed on industry leaders to take immediate action to become better informed of the dangers caused by prolonged talc exposure and to immediately institute adequate safety measures to protect their workers.

Lawyers in our firm are investigating cases where a person was exposed to talc or other harmful agents or chemicals in the workplace and, as a result, developed a serious lung injury or disease, including talcosis. If you have any questions about talcosis or any other occupational lung disease, contact Chris Boutwell or Ryan Kral, lawyers in our Toxic Torts Section, at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com or at Ryan.Kral@beasleyallen.com.

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Source: Law360.com

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line of people waiting at the Wendy’s counter. It also showed that after the car crashed, Ms. Garcia put it in reverse and backed up less than a foot.

Source: The Jersey Journal

AN UPDATE ON THE HORRIBLE NEW JERSEY COMMUTER TRAIN CRASH

A New Jersey commuter train carrying 250 passengers crashed in the Hoboken Terminal on Sept. 29 at about 8:45 in the morning. The train, which was operating at around 21 miles per hour, crashed into and then over the bumping post at the end of Terminal Track 5 Platform. The crash caused one fatality and more than 100 injuries after the roof of the train and a portion of the terminal roof collapsed.

The National Transportation Safety Board (NTSB) is investigating the crash, and has released some preliminary data from the train’s event recorder, which showed that the train was operating at roughly 8 mph while in the yard outside of the terminal. Some 38 seconds before the crash, for reasons unknown, the throttle increased from the idle position to the “number 4” position, causing the train’s speed to nearly triple before slamming into the end of the terminal platform. The speed limit for trains inside the terminal is 10 mph. The train’s engineer, who had been working for the New Jersey Transit Authority for 29 years, said that he couldn’t remember the moments before the crash, and believed that he was operating the train at 10 mph coming into the terminal. It had been estimated that the investigation could take more than a year to complete.

Forward-facing video recorders installed on the train captured the collision. The videos show that the train’s horn sounded one blast, roughly a minute prior to the crash, and the train’s bell began sounding immediately after the crash, continuing to sound until the video terminated. The video shows the front of the train colliding with the bumper post, and then continuing over the bumper post and onto the main platform floor.

The Hoboken Terminal serves about 60,000 passengers daily, and will remain closed until engineers can assess whether the significant damage has affected the structural integrity of the building. Experts have said that this crash, coupled with two more crashes in the Northeast, could lead to calls for more aggressive action from regulators and tougher rules on equipment upgrades and staffing. Federal officials are pushing for “positive train control,” which is technology that can automatically stop or slow down a train. This technology is available and should be in use by the industry.

The last time the New Jersey Transit system was involved in a fatal accident was 1996. If you need more information on this subject, contact Warner Hornsby, a lawyer in our firm’s Personal Injury and Products Liability Section, at 800-898-2034 or by email at Warner.Hornsby@beasleyallen.com

CHAMELEON CARRIERS ARE DANGEROUS

I will start by saying that “chameleon carriers” are very dangerous. After reading this statement one might ask the obvious question, “what is a chameleon carrier?” For the uniformed (and that’s most of our readers I suspect), a chameleon carrier is one that attempts to avoid consequences of safety violations by closing down and then reopening, or “re-incarnating” as a legally separate entity. These carriers can be dangerous. By definition, they have a history of unsafe practices and they prefer to compound the problem by using legal judo to hide rather than simply fix the way they do business. While a majority of freight companies go to great lengths to comply with government regulations and adhere to public safety laws, a small number of carriers simply close up shop and reopen with a new name to avoid government penalties and fines.

The U.S. Government Accounting Office (GAO) estimates that chameleon carriers are involved in up to 18 percent of severe crashes, nearly three times the rate of new applicants who prefer to compound the problem by using legal judo to hide rather than simply fix the way they do business. While a majority of freight companies go to great lengths to comply with government regulations and adhere to public safety laws, a small number of carriers simply close up shop and reopen with a new name to avoid government penalties and fines.

The Federal Motor Carrier Safety Administration (FMCSA) is vetting carriers to find businesses evading regulated safety standards. Thanks to two rules, the agency has both a clear legal definition of chameleon carriers and the authority to identify them, consolidate their safety history and shut them down.

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In 2011, a bus tour crash in Virginia killed four people and led to the shutdown of Sky Express by the FMSCA. The company reopened in a matter of days under the name 108 Tours and 108 Bus. Although FMSCA officials were quick to close the new operation, authorities and law makers are concerned that far too many chameleon carriers fall through the cracks.

After the 2011 Virginia incident, Senator Charles Schumer of New York announced an initiative to close the loopholes that facilitate the opening of chameleon carriers. In March of 2016, the Government Accountability Office released a report saying while the FMCSA had improved the vetting process, it could do more to strengthen the system by revising the methodology to factor in the lack of sufficient information from carrier inspections and to look beyond the reported violations of safety related regulation, which the GAO feels are reported too infrequently to accurately predict which carrier presents a crash risk. While the system is not perfect, it is a step in the right direction for insuring the safety of the public.

If you need more information on this subject, contact Mike Crow, a lawyer in our Personal Injury and Product Liability Section, at 800-898-2034 or by email at Mike.Crow@beasleyallen.com.

CALIFORNIA TOUR BUS CRASH THAT KILLED 13 IS BEING INVESTIGATED

Investigators in southern California are still trying to determine why a tour bus crashed into the back of a tractor-trailer truck on an interstate highway, killing 13, including the bus driver. The crash also injured 31, including the driver of the truck. This is among the deadliest bus crashes in California in recent years. The pre-dawn crash took place about 100 miles east of Los Angeles. The bus was going significantly faster than the truck at the time of the crash.

National Transportation Safety Board (NTSB) investigators have examined the crash scene. The bus plowed 15 feet into the back of the truck in a “substantial impact.” At press time it was unclear why the bus was traveling at a much faster speed than the truck. It was also unclear whether drugs or alcohol were involved, or whether driver fatigue was a factor.

The tour bus, which was carrying 44 passengers, belongs to USA Holiday, a Los Angeles-based tour company, and the driver was identified as one of its owners. The tour bus had...
started in Los Angeles, traveled to Red Earth Casino in Thermal, and was making its return trip to Los Angeles on the Sunday morning. USA Holiday regularly carries passengers from the Los Angeles area to Southern California casinos. According to its Facebook page, USA Holiday has recently made trips to Tortoise Rock Casino, Red Earth Casino and Las Vegas. There are several reports of previous litigation involving the company.

According to records from the Federal Motor Carrier Safety Administration, USA Holiday owns one bus and has one driver licensed to transport passengers. In 2013, the bus logged 68,780 miles.

Source: USA Today

XV. HEALTHCARE ISSUES

BTG ANNOUNCES $36 MILLION SETTLEMENT OF DOJ MARKETING PROBE

Biocompatibles Inc., a subsidiary of BTG PLC, has agreed to pay $36 million in a settlement arising from the U.S. Department of Justice (DOJ) investigation into the marketing of LC Bead, which is used to treat tumors and other abnormalities. The settlement resolves all allegations relating to an investigation the company, a United Kingdom health care company, revealed in July 2014 over the marketing of the interventional pulmonology company PneumRX Inc. in an effort to expand its own pulmonology business with the target company’s lung treatment devices. In December 2014, BTG said it would pay up to $475 million for the California-based company.

Source: Law360.com

XVI. UPDATE ON BP SETTLEMENT

LAST SEAFOOD PAYMENTS IN BP SETTLEMENTS ARE SCHEDULED TO BE COMPLETED

I am supplying an update on the status of commercial fishing claims in the BP litigation. Claimants have begun to receive Residual Distribution Determination Notices offering payment from the $520 million remaining in the Seafood Compensation Program (SCP) Fund.

The SCP fund, unlike other portions of the Deepwater Horizon Economic & Property Damages Settlement, is capped at $2.3 billion and has been distributed to claimants in three separate rounds. The first distribution paid approximately $1.2 billion to nearly 14,000 claimants and concluded in 2014 for a majority of these claimants. The second phase distributed $521 million between December 2014 and April 2016. The SCP will effectively close once payments are made in this final round during the next couple of months. It will be the third category, after real property sales and Vessels of Opportunity claims, to be fully completed, allowing the Settlement Program to turn its attention to other claims.

Fishermen all along the Gulf coast submitted 24,956 claims since the BP Settlement Program became operational in June 2012. This represents 6.5 percent of the total number of claims filed, which have paid $8.64 billion to date. Louisiana fishermen received 56 percent of the payments, compared to 19 percent for Florida, 11 percent for Texas, 7 percent for Mississippi and 6 percent for Alabama.

We are highly pleased to see these seafood claims finally coming to a close. The Gulf of Mexico’s pristine and bountiful fishing waters endured 87 days of oil gushing from the Macondo well, which made landfall all the way to Panama City, Fla. The use of dispersants such as Corexit also had a severe ecological impact, the extent of which may still not be known for years to come. Although these fishermen can never fully recover from their losses, payment of these claims is certainly a step in the right direction. If you need additional information, contact Ryan Kral, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at Ryan.Kral@beasleyallen.com.

Source: nola.com

SIGNIFICANT PROGRESS IS BEING MADE ON OTHER BP CLAIMS

With the processing of SCP claims finished, the Settlement Program has now shifted its attention to other claims. More than 386,000 claims were filed since claims were first being accepted in June 2012. The sheer volume of claims, combined with an appeal from BP resulting in an 11-month suspension of processing Business Economic Loss claims, caused processing to extend beyond the two years Claims Administrator Patrick Juneau initially expected to settle all claims. The new goal is to complete the claims review process within one year.
Nonetheless, the Settlement Program has made significant progress in implementing the largest private settlement claims process overseen by a United States Federal Court. Statistics released by the claims administrator’s office illustrate the progress made and work that remains:

- Business Economic Loss (BEL) claims are 70 percent complete, with 94,301 of the 134,527 claims resolved. This is the largest category of claims filed in both number and payments made, representing $6.2 billion in offers issued in Eligibility Notices.

- Two subsets of the BEL category are Start-Up BEL claims and Failed BEL claims. Start-Up BEL claims are also 70 percent complete and have been awarded $164.8 million. Failed BEL claims are 77 percent complete but have only received $9 million.

- Individual Economic Loss (i.e. lost wage claims) are 87 percent complete, with 52,983 of the 60,805 claims resolved and $90.1 million paid.

- Wetlands Real Property claims have received $204.5 million for 72 percent of the 28,195 claims filed.

- Subsistence claims are 67 percent complete and have received $298.3 million. These claims were filed by individuals who could not consume the seafood or game they typically harvested after the oil spill due to health and safety concerns.

- The following categories are virtually complete:
  - Vessel Physical Damage claims are 99% complete with a handful remaining on appeal. More than $12 million was awarded to the 1,564 claims filed.
  - Individual Periodic Vendor or Festival Vendors are also 99% complete with 5 claims still under review. More than $77,700 was paid for 389 claims.
  - Coastal Real Property is 99.9% complete with 32 pending review. The 42,223 claims in this category represent more than $164 million awarded.

BP estimates the total value of the private economic settlement to reach $12.9 billion. With this final estimate in place, BP tallied its total cost for the oil spill to be $61.6 billion. Hopefully a price tag this large will deter any corporate giant from cutting corners to earn a quick buck at the expense of worker and public safety.

If you need additional information, contact Ryan Kral, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at Ryan.Kral@beasley-allen.com.

Sources: nola.com and www.deepwaterhorizoneconomicsettlement.com

**MEDICAL CLAIMS UPDATE**

The processing of medical claims in the BP settlement has also picked up considerably since the Medical Claims Facility began accepting claims on Feb. 12, 2014. Claims Administrator Matthew Garreston received 37,281 claims before the filing deadline of Feb. 12, 2015. As of September, $40.2 million was allotted for compensation to 12,881 claimants:

- Almost $15 million has been awarded to A1 claimants who could not document their claims with medical records.
- Nearly $11.4 million has been awarded to A2 claimants who did substantiate their claims with medical records showing they suffered from an enumerated specified physical condition.
- More than $12.4 million has been allocated to A3 cleanup workers who were documented in BP’s own medical database as suffering from certain medical conditions.
- $710,000 has been awarded to A4 cleanup workers who suffered from heat-related illnesses such as heat stroke while working in the cleanup operations.
- $765,350 has been reserved for B1 claimants who suffer from an ongoing, chronic specified physical condition. Due to their value, these claims are the most scrutinized in the entire process.

In addition to upfront compensation for specified physical conditions that have manifested between April 20, 2010, and April 16, 2012, the Medical Benefits Settlement Agreement provides for class members to participate in the Periodic Medical Consultation Program. This includes a comprehensive medical evaluation for class members every three years over the course of 21 years. Its purpose is to screen class members for any medical issues that may manifest in the future. To date, the Claims Administrator approved 3,418 claims for participation and scheduled 216 physicians visits.

The Medical Benefits Settlement also allows for class members to sue BP for a medical condition that manifests after the settlement was reached on April 16, 2012. Thus far, 399 claimants have exercised this Back-End Litigation Option and filed their Intent to Sue BP with the court and proceed in traditional litigation. If you need additional information, contact Ryan Kral, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at Ryan.Kral@beasley-allen.com.

Source: www.deepwaterhorizonmedicalsettlement.com

**XVII. ENVIRONMENTAL CONCERNS**

**Monsanto Roundup Cancer Lawsuits Consolidated in California**

Thirty-seven lawsuits filed nationwide alleging that Monsanto’s Roundup causes the cancer non-Hodgkin’s Lymphoma (NHL) have been consolidated in the Northern District of California for coordinated discovery and pretrial proceedings. On Oct. 3, 2016, the U.S. Judicial Panel on Multidistrict Litigation (JPML) determined that court warranted centralization because two of the earliest and most advanced cases were filed there in April. U.S. District Judge Vince Chhabria will oversee the litigation and will preside over his first multidistrict litigation (MDL).

Lawsuits filed by the Plaintiffs’ allege that Roundup’s herbicide glyphosate can cause NHL and that Monsanto failed to warn consumers and regulators about the alleged risks. Several of the cases have already survived motions to dismiss that rejected Monsanto’s argument that Plaintiffs’ claims were preempted by the Federal Insecticide, Fungicide, and Rodenticide Act. These cases were filed shortly after the World Health Organization’s International Agency for Research on Cancer declared glyphosate a probable human carcinogen in March 2015.
Many Plaintiffs were in favor of the MDL’s formation, but Monsanto was not. In its oral arguments to the JPML, Monsanto claimed that the lawsuits were based on questions of fact that were too individualized for consolidation. Such facts included determining the nature of each user’s exposure, the type of formulation used, and the specific type of NHL contracted. The Panel disagreed, concluding that all the actions contain one overarching query—whether glyphosate causes NHL in persons exposed to it while using Roundup.

We expect the number of these lawsuits to increase as more people become aware of the risks posed by Roundup. Lawyers in our firm’s Toxic Torts Section, are currently investigating cases where commercial applicators of Roundup were diagnosed with NHL. These include farmers, gardeners, landscapers, and others regularly and consistently exposed to glyphosate in the course of their occupation. If you have any questions about this litigation, contact Rhon Jones or John Tomlinson, lawyers in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or John.Tomlinson@beasleyallen.com.

Source: Law360.com

GROUNDBREAKING LAWSUIT SEeks TO HOLD EXXON LIABLE FOR FAILING TO PREPARE FOR EFFECTS OF CLIMATE CHANGE

A lawsuit, touted as the first of its kind, has the potential to set precedent for environmental law. The Conservation Law Foundation (CLF) is suing Exxon Mobil Corp., claiming the company is liable for ensuring it is prepared for the consequences of climate change. The lawsuit claims Exxon has been aware of the risks of global warming since the 1970s, and yet has failed to adequately design and locate chemical storage facilities to resist potential consequences.

It is common for individuals, organization and other entities to sue companies for oil leaks, toxic spills and other man-made environmental disasters after they occur. But this, legal experts agree, appears to be the first lawsuit of its kind, seeking to hold a company responsible for adapting to climate change, and preparing for it.

The suit was inspired partly by a 2006 diesel fuel spill at Exxon’s Everett, Mass., facility, which polluted the Mystic River, upstream from Boston Harbor. CLF argues that Exxon is committing “climate deceit” by denying that climate change has the likely potential to result in increases storm surges, flooding and other environmental events—similar to the 2006 event leading to that spill—that could significantly damage fuel and chemical storage facilities.

By failing to insulate its terminal against climate change threats, CLF alleges Exxon Mobil is violating provisions of the Clean Water Act and the Resource Conservation and Recovery Act (RCRA).

For its part, Exxon Mobil representatives dispute that the company has any definitive knowledge about the potential risks of global warming. A company spokesperson says the lawsuit is based on political agenda rather than legal merit. It also says it retrofits its facilities to protect them against harsh storms.

The Everett facility storage containers hold at least 44 toxic chemicals, along with hazardous wastes and other pollutants, some of them carcinogenic. CLF alleges future storms could rupture the tanks and cause widespread environmental damage to the community and the waterways.

The outcome of this litigation could have a profound effect on hundreds of other fuel and chemical storage facilities throughout the nation. Lawyers in our Toxic Torts Section will monitor this litigation and see what develops.

Source: ClimateWire

ILLINOIS JURY AWARDS $7.5 MILLION In FELA CASE

An Illinois jury returned a $7.5 million verdict recently against a railroad company in a benzene exposure case. The Plaintiff worked for two railroad companies over three decades. Part of his job involved loading and unloading creosote-soaked railroad ties, which he alleged often caused him to be covered from head to toe in wet creosote. This was significant because creosote contains benzene, a known carcinogen. The worker was diagnosed with Myelodysplastic Syndrome (MDS), which later progressed into Acute Myeloid Leukemia (AML) in 2008.

The Plaintiff filed his lawsuit in 2010 claiming that he developed the leukemia as a result of his long-term exposure to toxic chemicals, such as benzene, while working for the predecessor railroad company. Evidence produced at trial showed that the predecessor railroad company knew of the dangers of benzene as early as the mid-1980s when the U.S. Environmental Protection Agency (EPA) sent a memo advising that the company needed to comply with certain safety regulations including providing employees with adequate protective equipment such as boots, gloves, respirators and goggles. The Plaintiff argued that the railroad company did not comply with those regulations until the successor railroad company took over.

During the week-long trial, a medical expert testified in the Plaintiff’s favor, advising that even the slight exposure to benzene can cause AML. Moreover, the lawyer for the Plaintiff argued that the Defendant knew about the toxicity of the substances for years and that they knew how to handle those substances, but failed to take appropriate action by providing adequate protective gear. Conversely, medical experts for the Defense testified that doctors do not know the cause of most cases of AML and that the Plaintiff was not exposed to the toxins in sufficient amounts to cause AML.

The jurors awarded the Plaintiff $3 million for past and future medical expenses; $1.5 million for disability experienced, and reasonably certain to be experienced in the future; $1.3 million for loss of normal life experienced, and reasonably certain to be experienced in the future; $1 million for pain and suffering; and $700,000 for lost earnings.

When a railroad company negligently violates any employee safety law or regulation, it becomes liable for paying injury and wrongful death claims brought under the Federal Employers Liability Act (FELA). This is a federal law that was passed by Congress in 1908 to protect railroad workers in the event of work-related injury or illness. This law was born after countless railroad workers suffered serious or fatal injuries during the course of their labor.

As we have discussed in previous issues, it is very important for railroad (and all workers) to know and understand the risks involved to their health and safety in the workplace due to exposure to toxic chemicals such as benzene. It is also important that these workers be provided with the proper legal options to receive fair and just compensation for the negligence of others. If you need additional informa-
tion on this subject contact John Tomlinson, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com.

Sources: Madison-St. Clair Record and the Edwardsville Intelligencer

XVIII. UPDATE ON NURSING HOME LITIGATION

SIGNIFICANT CHANGES IN LONG-TERM CARE STANDARDS

One of the primary agencies that oversees the regulation of long-term care facilities, including nursing homes, is the Center for Medicare & Medicaid Services (CMS). CMS is an agency of the Department of Health and Human Services. CMS has overseen the standards applicable to long-term care facilities since 1989, when the first public standards were published.

Recently, CMS released a “final rule” for long-term care facilities, which significantly amended the existing federal standards and regulations. This “final rule” is 713 pages long, and CMS described it thusly: “The final rule will revise the requirements that Long-Term Care facilities must meet to participate in Medicare and Medicaid programs. These changes are necessary to reflect the substantial advances that have been made over the past several years in the theory of practice of service delivery and safety...”

The new regulations are to be implemented in three phases, beginning November 28, 2016 (Phase I). Phases II and III will be implemented by this date in 2017 and 2018, respectively.

The new regulations update standards of practice that apply to long-term care facilities on a host of issues, such as resident assessments, transfer and discharge rights, care planning for nurses, quality of care, physicians' services, etc. The regulations also address administrative matters that are substantively important to residents of long-term care facilities and their families.

At present, when a person is admitted to a nursing home or other long-term care facility, they are required to sign and execute a variety of documents, such as an Admission Agreement, Assignment of Benefits, Financial Responsibility, and an Arbitration Agreement. Arbitration Agreements have provided a tremendous hurdle for residents and their families to obtain adequate compensation and justice when a loved one is harmed by the medical negligence of a nursing home’s staff.

CMS recognized that arbitration agreements do not promote better medical care and may even create an incentive to provide less care for the elderly and disabled. As a result, CMS provided in its updated regulations:

BINDING ARBITRATION AGREEMENTS: We are requiring that facilities must not enter into an agreement for binding arbitration with a resident or their representative until after a dispute arises between the parties. Thus, we are prohibiting the use of pre-dispute binding arbitration agreements

This is significant for nursing home residents and their families. As of November 28, 2016, long-term care facilities that receive Medicare and Medicaid benefits may no longer enter into binding arbitration agreements with the resident or their representative at the time of admission to the nursing home.

CMS is to be applauded for their bold step in outlawing this unconscionable practice. Hopefully, long-term care facilities will be proactive and withdraw their arbitration agreements and/or stop seeking to impose the agreements on their residents and family members even before the implementation date of Nov. 28, 2016.

If you need more information on this subject, contact Ben Locklar, a lawyer in our firm’s Personal Injury and Product Liability Section, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com. Ben handles nursing home litigation for the firm.

Source: 42 CFR Parts 405, 431, 447, 482, 483, 485, 486, and 489

XIX. AN UPDATE ON CLASS ACTION LITIGATION

HISTORIC $1.6 BILLION HSBC SECURITIES SETTLEMENT GETS FINAL APPROVAL

An Illinois federal judge has approved a record-breaking $1.575 Billion settlement that ends a 14-year lawsuit between HSBC unit Household International Inc. and a class of investors alleging securities fraud. U.S. District Judge Jorge L. Alonso granted final approval to the settlement reached in June. This is the largest securities fraud class settlement in the Seventh Circuit and the seventh largest ever.

The investors claimed back in 2002 that Household International, which HSBC acquired in 2003, and three of Household’s former top executives lied about the company’s lending practices, financial accounting and loan quality.

The fraudulent deception forced Household higher-ups to restate nine years’ worth of earnings to reflect that the company overstated its revenue by $386 million in the course of those years. The shareholders won a jury verdict in 2009, and a judge hit the bank with the judgment in 2013. But the Seventh Circuit last year reversed the partial final judgment and sent the case back for a new trial. The $1.575 billion settlement was announced on the eve of the second trial.

Source: Law360.com

THE $2 BILLION STOCK-DROP SUIT AGAINST FIAT CHRYSLER MOVES ON

Fiat Chrysler Automobiles (FCA) is facing claims from a putative class of investors alleging the automaker concealed an ongoing investigation into its compliance with safety and recall regulations, which caused a nearly $2 billion stock drop. U.S. District Judge Jesse M. Furman dismissed some of the claims.

The proposed class action alleges FCA and a trio of its executives made false and misleading statements about the company’s compliance with regulations, and made false estimates about quarterly provisions for warranty and recall reserves. FCA moved to dismiss the complaint, saying the investors...
didn’t bring enough specificity in their complaint.

Judge Furman kept alive claims based on FCA’s statements about compliance with applicable regulations. But he dismissed the claims that were centered on FCA’s reserve estimates and related statements. Judge Furman, saying the investors didn’t bring forward enough facts, wrote:

*Lacking internal analyses, confidential witnesses or other particularized allegations, plaintiffs fail to adequately allege scienter with respect to defendants’ reserve estimates and related statements.*

The opinion also dismissed Robert Palmer, chief financial officer for FCA, as a Defendant, because the claims against him were only related to reserve estimates and related statements.

The Plaintiffs filed the suit in September 2015. A second amended complaint alleges the automaker effectively defrauded shareholders by telling them in reports and statements that it was in compliance with safety and recall regulations, when FCA was actually being investigated by the National Highway Traffic Safety Administration (NHTSA) for noncompliance. The suit claimed that Defendants CEO Sergio Marchionne, CFO Palmer and former head of American Safety and Regulation Compliance Officer Scott Kunsman made the false and misleading statements, specifically in reports with the U.S. Securities and Exchange Commission (SEC).

The NHTSA investigation ultimately led to a pair of consent orders and $175 million in fines over FCA’s failure to timely notify the NHTSA and vehicle owners about recalls and safety issues. In the days after each of the consent orders was announced, the stock price of Fiat Chrysler fell a combined 9 percent, losing $1.8 billion in market capitalization. The shareholders say that was directly caused by the compliance failures.

Judge Furman said in his opinion that the investors adequately alleged actionable material misrepresentations. That’s because FCA made statements that it was in compliance with relevant global safety laws from November 2014 through June 2015, even though at the time it was allegedly not in compliance with certain laws, Judge Furman wrote. During that time period, FCA said it was “substantially in compliance with the relevant global regulatory requirements affecting [the company’s] facilities and products.” Judge Furman wrote:

*A reasonable investor could, and likely would, read FCA’s statement to mean that the company was substantially in compliance with all applicable regulations, including the [National Traffic and Motor Vehicle Safety Act of 1996] and vehicle safety regulations in the United States.*

But when it came to the allegations of statements relating to FCA’s recall reserves, Judge Furman ruled that the investors failed to bring forward enough facts, and couldn’t show that FCA’s determinations of its funds were false. Judge Furman wrote, citing Fait v. Regions Fin. Corp. from 2011:

*The Second Circuit has held that ‘determining the adequacy of loan loss reserves is not a matter of objective fact’ but a matter of opinion. As a result, such reserve estimates are actionable only if they are ‘both false and not honestly believed when they were made.’*

The case is *Pirnik v. Fiat Chrysler Automobile NV et al.* in the U.S. District Court for the Southern District of New York.

Source: Law360.com

**Lumber Liquidators And Shareholders Seek Approval Of $45 Million Settlement**

The shareholders in a class action suit against Lumber Liquidators Holdings Inc. have asked a Virginia federal court to approve a $45 million settlement of their claims based on the company having misled investors concerning its importation of cheap products that used illegally harvested wood from China. The settlement would consist of $26 million in cash and 1 million shares of stock. The investors claimed the value of their shares dropped sharply when it was discovered the company was selling flooring made of illegally harvested and chemically contaminated wood. The investors told the court that the cash portion of the settlement represents all of the company’s remaining insurance coverage.

Source: Law360.com

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**XX. THE CONSUMER CORNER**

**Best Buy Agrees To Pay $3.8 Million Civil Penalty For Distributing And Selling Recalled Products**

The U.S. Consumer Product Safety Commission (CPSC) announced last month that Best Buy Co., Inc., of Richfield, Minn., has agreed to pay a $3.8 million civil penalty for distributing and selling previously recalled consumer products. Federal law prohibits the sale, offer for sale, or distribution in commerce of a consumer product that is subject to voluntary corrective action, such as a recall, that has been publicly announced and taken in consultation with CPSC. The settlement agreement resolves charges that the company knowingly sold and distributed 16 different recalled products during a five-year period from 2010 through 2015.

CPSC staff charged that Best Buy failed to implement adequate procedures to accurately identify, quarantine, and prevent the sales of the recalled products across all of its supply chains. Staff also charged that Best Buy, in some cases, failed to permanently block product codes due to inaccurate information that signaled that the recalled product was not in inventory. At other times, the blocked codes were reactivated prematurely, and in a few cases, overridden.

Sales of recalled products continued even after Best Buy told CPSC that the company had put measures into place to reduce the risk of sales of recalled products. Between September 2010 and October 2015, Best Buy sold about 600 recalled items, including more than 400 Canon cameras, to consumers. If you need a list of all of the recalled products included in this matter, contact Shanna Malone, Editor of the Jere Beasley Report, at Shanna.Malone@beasleyallen.com.

On July 24, 2014, CPSC and Best Buy jointly re-announced the recalls of 10 products that Best Buy had been selling after the original recalls had been announced. In addition to paying a $3.8 million civil penalty, Best Buy has agreed to maintain a compliance program that is designed to ensure compliance with the Consumer Product Safety Act, including a program for the
appropriate disposal of recalled products. The company has also agreed to maintain a system of internal controls and procedures. The penalty agreement has been accepted provisionally by the Commission in a 4 to 1 vote.

Sources: CPSC.com and PRNewswire.com

Payday Loan Group Hit with Record $1.3 Billion Fine for 700 Percent Lending Rates

A federal judge in Nevada said professional racecar driver Scott Tucker and several of his companies owe $1.27 billion to the Federal Trade Commission (FTC) after systematically deceiving payday lending customers about the cost of their loans. In one example, lending documents indicated that a customer who borrowed $500 would only have a finance charge of $150, for a total payment of $650 — but the actual finance charge was $1,425.

Chief Judge Gloria Navarro of the federal court in Las Vegas, Nev., said in an order that Tucker was "specifically aware" that customers often did not understand the terms of their loans, and was at least "recklessly indifferent" toward how those loans were marketed. Judge Navarro wrote:

It was reported that Scott Tucker did not participate in an isolated, discrete incident of deceptive lending, but instead, he engaged in sustained and continuous conduct that perpetuated the deceptive lending since at least 2008. Judge Navarro also barred Tucker from engaging in consumer lending.

The FTC asked Judge Navarro to direct the turnover of some previously frozen assets to help satisfy the judgment. Tucker, who races in the United States and Europe, faces separate civil and criminal charges in Manhattan, where prosecutors accused him of running a $2 billion payday lending scheme that exploited 4.5 million consumers. A trial in that case is scheduled for April 17 of next year. Tucker pleaded not guilty in February.

Eighteen U.S. states and Washington, D.C. prohibit payday lending, or impose rate caps that effectively outlaw the practice, according to the Consumer Federation of America. In its 2012 civil complaint, the FTC alleged that Tucker’s businesses, such as National Money Service, caused many customers to pay more than triple the amounts they had borrowed. The $1.27 billion judgment also covers AMG Capital Management LLC, Level 5 Motorsports LLC and other Tucker companies. The judgment reflects the $1.32 billion sought by the FTC, less about $52 million collected from or owed by other Defendants. Judge Navarro wrote:

"Where, as here, consumers suffer economic injury resulting from a defendant’s violations of the FTC Act, equity requires monetary relief in the full amount lost by consumers."

As we have written on numerous occasions, the payday lending industry takes unfair advantage of people. This case is typical of how most in the industry operate. The federal government as well as all state governments must do a better job of regulating and controlling the industry.

Consumers Alerted About Exploding Samsung Washers

Samsung Electronics is having its share of problems these days. We are writing in this issue about the problems with its Galaxy Note 7 smartphone. Those problems are far from over. Samsung is working with the U.S. Consumer Product Safety Commission (CPSC) to address another appliance conundrum and that involves top-load washing machines prone to explosion. The electronics giant said it is in "active discussions" with the CPSC to address safety issues relating to certain top-load washing machines manufactured between March 2011 and April 2016. Affected units could vibrate abnormally, causing risk of personal injury or property damage, during the washing of bulky loads like bedding or water-resistant items, the company said in a statement on its website.

Samsung said the issue does not affect its front-load washers. However, it did not specify the serial numbers of the potential affected units. Owners of the top-load machines manufactured between those dates are instructed to use the "delicate" cycle when washing bulky items, as there have been no incidents reported at that setting. The CPSC said on its website that the lower spin speed "lessens the impact injuries or property damage due to the washing machine becoming dislodged." The agency said further:

"CPSC and Samsung are working on a remedy for affected consumers that will help ensure that there are no further incidents. We will provide updated information to the public as soon as possible."

The joint statements came six months after homeowners filed a proposed class action in Indiana federal court against Samsung, accusing the manufacturer of selling them brand-new washing machines that exploded violently in their homes just a few years later, causing significant damage. Indiana resident Suzann Moore bought a Samsung washer in January 2014 from a Sears in Indiana, only to have it explode violently the morning of Dec. 23, 2015, with the sides of the machine shooting outward and damaging the dryer next to it, she said.

Michelle Soto Fielder, a Texas resident, alleged that she bought her Samsung washer in June 2012 and that it, too, exploded in February with "such ferocity that it penetrated the interior walls of her garage," according to the complaint. Ms. Fielder acknowledged that her machine required some previous maintenance.

The statement is the first public acknowledgment by Samsung of reported issues with the top-load washers. It comes just weeks after the company announced it would halt all sales of the Galaxy Note 7 after reports that at least 35 units caught fire due to a lithium-ion battery defect.

Source: Law360.com

St. Jude Heart Devices Recalled

St. Jude Medical Inc. is recalling some of its 400,000 implanted heart devices due to risk of premature battery depletion, a condition linked to two deaths in Europe. The devices are used to shock dangerously racing heartbeats back to their normal rhythm or to treat heart failure. All the devices, called ICDs and CRT-Ds, contain batteries that were manufactured before May 23, 2015, when the company added insulation to reduce the chance of an electrical short circuit. St. Jude’s vice president of quality control, Jeff Fecho, said in an advisory to physicians on Oct. 9: "There have been two deaths that have been associated with the loss of defibrillation therapy as a result of premature battery depletion."

The devices were introduced in 2010 and are meant to last for seven years or longer, until their batteries are depleted, according to the company.

BeasleyAllen.com
They are designed to vibrate at regular intervals once power is diminished, a signal to patients that they should visit their doctors for replacements within 90 days. In addition, a home monitoring unit wirelessly reads the battery level and other information and routinely sends details to doctors.

The company said one of the patients died after his vibration signal indicated low power, but a few days before his planned replacement. Many patients are expected by the company to visit their doctors and some could request early replacements.

St. Jude said 841 devices had been returned to the company for analysis due to premature battery depletion, traced to a build-up of lithium clusters in the batteries. Mark Carlson, medical officer of St. Jude, said in an interview the company’s advisory board of physicians has strongly recommended that most patients not seek prophylactic replacements “because the risk associated with replacing the devices outweighs the low risk of a patient problem occurring.”

The U.S. Food and Drug Administration (FDA) said that patients should seek immediate medical attention as soon as they get a low-battery alert from the monitoring devices. In announcing the recall, the FDA said: “Hospitals should immediately remove any unused devices affected by this recall, and contact the manufacturer to receive corrected devices.”

This recall came as St. Jude is defending itself against unrelated allegations that its heart devices are riddled with defects that make them vulnerable to cyber hacks. Those claims were made by Muddy Waters and research firm MedSec Holdings. St. Jude has denied the allegations and sued both firms. The FDA said last month its investigation into the cyber security vulnerabilities of the devices, including the Merlin@Home monitoring system, is continuing.

Despite the allegations, at this time, the FDA says it strongly recommends that the Merlin@Home device be used to monitor the battery for these affected devices “because the benefits of continued patient monitoring and the life-saving therapy these devices provide greatly outweighs any potential cybersecurity vulnerabilities.”

It appears that relatively few patients will need early replacements and that devices now being sold have improved and reliable batteries. St. Jude advised patients to check its website for details on which devices were affected by the battery issue. (www.sjm.com/battery-advisory).

Source: Reuters

ST. JUDE FORMS MEDICAL DEVICE CYBERSECURITY BOARD

St. Jude Medical revealed on Oct. 17 that it is putting together a cybersecurity advisory board to provide input on how to make its connected medical devices more secure. This came in the wake of reports that have been strongly denied by St. Jude that its cardiac implants have serious security flaws. The new Cybersecurity Medical Advisory Board is intended to assist St. Jude Medical Inc. in its efforts to improve the technology that is used to combat cybersecurity risks in the medical device industry, while ensuring that patients are getting the best care possible, according to the Minnesota-based medical device manufacturer.

St. Jude pointed out that it has long worked with third-party experts, researchers and government agencies to assess potential vulnerabilities, prioritize real-world threats to its technologies, and develop appropriate security safeguards. The formation of the advisory panel—which will allow the device maker to gather direct feedback from leading physicians and other medical experts on the topic of how to best secure medical devices—would only help it further those objectives. Membership for the advisory board is in the process of being finalized. St. Jude says it anticipates that the group will work closely with technology experts within the company as well as external researchers to help the company “maintain and enhance cybersecurity and patient safety.”

Source: Law360.com

U.S. SUPREME COURT TO SETTLE CLAIMS BY 24 STATES OVER UNCASHED MONEY ORDERS

The U.S. Supreme Court has agreed to referee a dispute between Delaware and 23 states over more than $150 million in uncashed money orders. The justices stepped into the dispute involving uncashed money orders from Dallas-based MoneyGram, which has been submitting unclaimed money to Delaware. The other involved states say the MoneyGram checks should be sent back to the state of purchase.

MoneyGram is incorporated in Delaware, as are many other publicly traded companies in the United States. Delaware says state law requires that MoneyGram send unclaimed property to the company’s state of incorporation instead of the state of origin. Abandoned property is a major source of general fund revenue for Delaware. The lawsuit was filed in the Supreme Court, which has the authority to rule on suits between states.

The other states are: Alabama, Arizona, Arkansas, Colorado, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, West Virginia and Wisconsin.

Source: AL.com

FDA TAKING ACTION AGAINST E-CIGARETTE RETAILERS

The U.S. Food and Drug Administration (FDA) recently extended its regulatory authority to cover e-cigarettes in regulations that went into effect in August. The new regulations make it illegal to sell e-cigarette products to anyone younger than 18, either in person or online. Following compliance checks at retail chains, specialty shops, and online retailers, the FDA sent 55 separate warning letters to retailers across the country for selling newly regulated e-cigarette products to minors.

In several instances, the investigators found that minors were still able to buy e-cigarette products in a variety of flavors that were clearly marketed toward underage customers. The FDA gave the retailers 15 days to respond to the warning letters with a plan for taking corrective action to prevent further sales to minors. A list of the offenders that received the warning letter can be found on the FDA’s website.

The new regulations also require manufacturers, importers and retailers of e-cigarettes and similar products to undergo a pre-market analysis and regulatory review by the FDA, including registering manufacturers, and listing all ingredients and potentially harmful substances in these products. Manufacturers will have two to three years to file pre-market analysis and safety data.
on each product, and each product must be found to be in FDA compliance in order to remain on the market. All new e-cigarette and similar products will be subject to FDA review and pre-market approval. While the rule went into effect on Aug. 8, 2016, retailers, manufacturers, importers and distributors will have until May 10, 2018, to come into full compliance with the new advertising health warnings and packaging requirements.

Before these new rules went into effect, e-cigarettes and similar products were not subject to any federal regulation or industry-wide standardization on their manufacture, sale, marketing, or distribution. Some e-cigarettes, for example, have been touted as a safer alternative to traditional tobacco cigarettes, or as an effective way to quit smoking, yet there are no studies proving either of these. Bringing these products under the purview of the FDA will prevent manufacturers from making false health claims, and will give the FDA the power to issue warnings about health risks to consumers.

If you would like more information on this subject, you can contact Will Sutton, a lawyer in our Toxic Torts Section. He can be reached at 800-898-2034 or by email at William.Sutton@beasleyallen.com.

Source: Law360.com

XXI.
RECALLS UPDATE

To qualify “Made in USA” claims for its adhesives as long as the company is forthcoming with its customers about how much of the product contains foreign components or processing. According to the suit, filed in February, Chemence had been labeling its glues—including powerful, fast-acting adhesives known as cyanoacrylates – as being “Proudly Made in the USA” or just “Made in the USA.” However, the FTC says about 55 percent of the chemical components used to make those glues come from abroad. The FTC said:

Therefore, defendant’s claims that its cyanoacrylate glues are made in the US deceive consumers because defendant’s products are actually made in the USA with domestic and imported materials.

It’s alleged in the complaint that by mislabeling its products, Chemence has violated the FTC Act’s prohibitions against false representations and distributing misleading promotional materials for third-party retailers. A subsidiary of U.K.-based Chemence Ltd., the company produces a number of glues intended for various household projects, including Kwik-Fix, Hammer-Tite and Greenhouse, an “eco-friendly” glue made without solvents and sold in recycled packaging, according to its website. The case is Federal Trade Commission v. Chemence Inc. in the U.S. District Court for the Northern District of Ohio.

Source: Law360.com

Toyota Motor Corp. has recalled approximately 340,000 Prius hybrid sedans worldwide over faulty parking brakes that may allow the vehicle to roll away even when the brake is activated, the automaker announced Wednesday. According to Toyota, the recall, which incorporates model year 2016 and 2017 Prius vehicles, stems from parking brake cables that may unexpectedly stop working while the parking brake is activated. The automaker says this may cause Prius vehicles to roll away, if the vehicle’s ignition is turned on and the car is in a gear other than park.

“Toyota dealers will add clips on the top of the brake cable dust boots to prevent the cable from becoming inoperative at no cost to customers,” the automaker said in a statement. Toyota will begin notifying owners of the recall by mail in November.

A Toyota spokesperson says as of Oct. 3 the automaker was not aware of any accidents, injuries or deaths relating to the parking brake issue. The recall covers 212,000 vehicles from Japan and 94,000 vehicles in North America, with 92,000 of those models located in the United States. European Prius models make up 17,000 of the recalled vehicles, with the remaining 16,000 coming from other areas. As of September, Prius vehicles made up nearly 15 percent of all U.S. sales of Toyota models, with more than 105,000 sold.

Source: Law360.com

Glue Maker Will Pay $220,000 To Settle “Made In USA” Claims

Chemence Inc., a maker of strong, fast-acting glue, has agreed to pay $220,000 and discontinue its use of misleading “Made in USA” labels to settle a suit filed by the U.S. Federal Trade Commission (FTC) in a Ohio federal court. Under the terms of the settlement, the FTC will be keeping a more watchful eye on the Georgia-based manufacturer to ensure the company uses its “Made in USA” or “Proudly Made in USA” labels only in cases where the company can meet the relevant standards of the FTC Act. The FTC said:

The settlement prohibits the company from making unqualified ‘Made in USA’ claims for any product unless it can show that the product’s final assembly or processing—and all significant processing—take place in the United States, and that all or virtually all ingredients or compo-
Ford Motor Co. has recalled approximately 1,900 2017 Lincoln Continental vehicles in the U.S. and Canada due to faulty headlamp assemblies with improperly installed headlamp components that fail to meet federal turn signal visibility requirements. Ford said that the 1,876 new Continental vehicles under the recall may contain light-emitting diode, or LED, headlights that are missing necessary lens optics to be in compliance with the Federal Motor Vehicle Safety Standards. Ford manufactured the vehicles under the recall at its Flat Rock, Mich., assembly plant between June 14, 2016, and Sept. 23, 2016. Of the total, 1,826 affected models are currently in the United States, 49 are in Canada and one is in one of the federalized U.S. territories. According to a Ford representative, only about 300 of the affected Lincoln Continental vehicles are in the hands of customers. To fix the issue, Ford will replace headlamp assemblies, if necessary, free of charge to customers.

Ford has also recalled 59 model year 2015 and 2016 Ford Edge vehicles to update their anti-lock braking system, or ABS, software. According to the automaker, the incorrect software could disable the electronic stability control, engine torque control and the traction control, as well as certain warning notification systems, including the electronic parking brake light. Ford said that the incorrect software module could have been inadvertently installed when owners took their vehicles in for service. The automaker is not aware of any incidents or injuries stemming from this issue. To fix the problem, Ford will replace the ABS control module or update the module’s software, at no cost to owners. Ford will notify customers by mail beginning the week of Nov. 7. The automaker also asked owners to contact their local dealership if they experience an issue before they are notified.

**Volkswagen Recalls 281,000 Vehicles Over Fuel Pump Issues**

Volkswagen is recalling approximately 281,500 VW and Audi vehicles in the U.S. in three separate campaigns over fuel pump issues that cause fuel to leak out and possibly start a fire. The largest of Volkswagen AG’s three recalls concerns more than 143,000 model year 2009 to 2012 Audi Q5 and 2007 to 2012 Audi Q7 SUVs with gasoline engines that may develop cracks in the filter housing of the fuel pump, which is part of the fuel cap flange. This could cause the fuel pump to leak and may result in a fire if the leaking fuel is near an ignition source. “Our investigations do not show a distinct cause of the failures,” Volkswagen said in its safety recall report to the NHTSA. “However, we do have indications for an outside contamination by a liquid material corroding the structure of the flange.”

Audi first became aware of the problem in fall 2015 when the NHTSA began to receive an increased number of fuel smell or leaks in Q5 and Q7 vehicles. Additional testing located the scope of the problem. To fix the issue, dealers will clean the fuel pump flange, and a butyl rubber band will be added to it in order to protect the pump. Another recall campaign covers 110,000 2015 and 2016 Volkswagen Golf, SportWagen and GTI models and Audi A3 sedans and A3 cabriolet vehicles of all engine types. According to Volkswagen, the issue stems from a possibly compromised suction pump. Normally, the pump is designed to remove fuel from the engine’s evaporative emissions system, but the fault causes fuel to flow directly into the system instead. In this instance, fuel could accumulate in the system and leak through the charcoal canister filter housing of the fuel pump, which is part of the fuel cap flange. This could cause a fire, the automaker said.

Volvo said the faulty suction pumps were caused by a manufacturing issue, and the automaker will replace them free of charge. The smallest of the recalls deals with more than 28,000 2012 and 2013 model year Audi A6 and A7 sedans with gasoline engines with fuel hoses that may break down over time, causing a fuel leak. Audi said the pumps lost pressure and became porous for unknown reasons. The automaker said it will replace the hose, free of charge to owners. Volkswagen and Audi said vehicle owners affected by the fuel cap flange and suction pump recalls will receive interim notifications in November, and that the parts needed to fix the issues are not yet available. No notification schedule has been set for the hose replacement at this time, according to National Highway Traffic Safety Administration (NHTSA) documents.

**Honda Recalls 350,000 Civics Over Parking Brake Issues**

Honda Motor Co. is recalling more than 350,000 Civic vehicles in the U.S. over software issues that could cause the vehicles’ parking brakes to not engage properly, increasing the risk for rollovers and crashes. The recall covers model year 2016 Civic sedans and coupes with electronic parking brakes that may be affected by the software for the vehicles’ stability assist electronic control unit. The malfunctioning software could potentially cause the parking brake not to engage when it is applied right after the vehicles’ ignition is turned off. If the vehicle is in a gear other than park while the parking brake is deactivated, it is possible for the Civic to roll away and potentially cause a crash, the automaker said. “No crashes or injuries have been reported related to this issue, which was discovered through warranty claims associated with the illumination of the brake warning light,” Honda said.

Honda said if the parking brake malfunction occurs, the vehicle’s brake warning light will flash on its instrument panel to alert the driver. As of Oct. 4, Honda had received more than 300 warranty claims regarding the issue. Honda says that it conducted an investigation into the alleged defect between April and July in conjunction with Continental Automotive Systems Inc., the supplier of the vehicles’ electronic control unit. Initial testing discovered a communication error between the electronic control unit and the electronic parking brake caused by the vehicle’s tire deflation warning system. The warning system was designed to communicate with the ECU immediately after turning off the vehicle’s ignition, which could take up to four seconds to complete, Honda said.

During that time, the parking brake is unable to communicate with the electronic control unit, resulting in the brake’s inoperability until the ignition is turned on again.

To fix the issue, Honda will update the stability assist electronic control unit software at no cost to customers. The automaker will begin to notify Civic owners beginning in early November. This is the third recall for model year 2016 Honda Civics, with the first coming in February, when the automaker sought to replace improperly manufactured piston assemblies in more than 42,000 vehicles equipped
with 2.0 liter engines. The second came in August, with Honda recalling nearly 12,000 2016 Civic coupe models with damaged LED circuit boards in the tail light assemblies that made the lights inoperative, causing the vehicles to fall out of compliance with federal vehicle safety standards.

**HYUNDAI RECalls 84,000 VEHICLES OVER AIR BAG ELECTRICAL ISSUES**

Hyundai is recalling more than 84,000 Genesis vehicles over defective electrical components that could cause the air bag to deploy improperly in the event of a crash. Hyundai Motor Co.'s recall covers 84,500 model year 2010 to 2016 Genesis vehicles, all of which are equipped with an occupation classification system, or OCS, to determine whether there is a person sitting in the front seat and whether the occupant is an adult. Hyundai said the electrical harness connector for the classification system could dislodge, causing only the first step of the two-step air bag to deploy by default in the event of an accident.

If a child restraint system or a small-stature passenger is in the seat when the first step of the air bag deploys, they could suffer serious injury from the force of the air bag. Additionally, it could have an opposite effect for an adult. “The deployment of only the first-stage frontal passenger air bag in a collision which warrants deployment of both first and second stages can, under some circumstances, increase the risk of injury to the front-seat passenger occupant,” Hyundai said. The automaker said the electrical harness dislodgement occurs when the seat is moved while objects placed on the floor come into contact with the component. A malfunction of the component would cause the air bag warning light to illuminate on the instrument cluster.

To fix the issue, dealers will secure the OCS connector at no cost to Genesis owners. The automaker said the recall is expected to begin on Dec. 2. Hyundai says it is not aware of any related accidents, warranty claims or customer complaints. The automaker learned of the issue while conducting a test on July 8, according to NHTSA documents. An investigation initiated on Aug. 10 revealed that the location of the sensor wiring had been changed at the start of model year 2016 production “to better facilitate the vehicle assembly process.” FCA changed the wiring location back to where it had been in model year 2015, according to the documents. That change was made on Aug. 14. “The remedy for this recall is still under development. The manufacturer has not yet provided a notification schedule. Owners may contact Chrysler customer service,” NHTSA documents said.

**FIAT CHRYSLER RECalls 182,000 JEEPS WITH SENSOR WIRING DEFECT**

Fiat Chrysler is recalling 182,300 Jeep Wranglers manufactured this summer because a crash sensor can malfunction and fail to communicate to the air bags and seat belts that a crash is occurring. The National Highway Traffic Safety Administration (NHTSA) released information saying that FCA US LLC is recalling model year 2016 to 2017 Wranglers made from mid-June to mid-August of this year. The sport utility vehicles' impact sensor wiring is placed in such a way that if a headlight rotates during a crash, it could detach the sensor before the sensor is able to signal that a crash is happening. That in turn could prevent the air bags and seat belt pretensioners from activating, according to a NHTSA safety recall report.

FCA US says it is unaware of any related injuries, accidents, warranty claims or customer complaints. The automaker learned of the issue while conducting a test on July 8, according to NHTSA documents. An investigation initiated on Aug 10 revealed that the location of the sensor wiring had been changed at the start of model year 2016 production “to better facilitate the vehicle assembly process.” FCA changed the wiring location back to where it had been in model year 2015, according to the documents. That change was made on Aug. 14. “The remedy for this recall is still under development. The manufacturer has not yet provided a notification schedule. Owners may contact Chrysler customer service,” NHTSA documents said.

**SUBARU RECalls 593,000 VEHICLES OVER FAULTY WINDSHIELD WIPERS**

Subaru of America Inc. is recalling nearly 593,000 vehicles over faulty windshield wiper motors that could malfunction and, in some cases, start a fire. The recall campaign covers certain model year 2010 to 2014 Outback sport utility vehicles and Legacy sedan models. In its recall report to the National Highway Traffic Safety Administration (NHTSA), Subaru said the issue comes as a result of poor manufacturing of the bottom cover for the wiper motor installed in front windshields, which could cause interference between two motor components.

If there is an obstruction, such as snow or ice, the wiper may be prevented from returning to its normal resting position. The force of the air bag. Additionally, it could have an opposite effect for an adult. “The deployment of only the first-stage frontal passenger air bag in a collision which warrants deployment of both first and second stages can, under some circumstances, increase the risk of injury to the front-seat passenger occupant,” Hyundai said. The automaker said the electrical harness dislodgement occurs when the seat is moved while objects placed on the floor come into contact with the component. A malfunction of the component would cause the air bag warning light to illuminate on the instrument cluster.

The recall is an update to a 2011 windshield wiper motor recall on 2010 to 2011 Legacy and Outback models due to a design issue related to certain components contained within the wiper motor bottom cover. According to Subaru's recall report to NHTSA, Subaru sent a notice to its parent company Fuji Heavy Industries Ltd. in 2013 informing it that a wiper motor had emitted smoke and caught fire in a vehicle whose model was outside the range of previously recalled vehicles. Fuji launched an internal investigation, and on Sept. 16 concluded that the issue stemmed from “inappropriate manufacturing processes,” and was different from the issue found in the 2011 recall. As a result, all repaired vehicles under Subaru’s 2011 recall that are subject to the new campaign must be recalled again.

According to a Subaru spokesperson, there have been no accidents or injuries associated with the recall. This is not Subaru’s first recall of 2016. The automaker recalled approximately 300,000 vehicles in May to replace possibly defective air bags manufactured by Takata. The recall was part of a larger announcement by automakers including FCA US LLC and American Honda Motor Co. recalling approximately 12 million vehicles.

Source: Law360.com
**ADVANCED SPORTS INTERNATIONAL RECALLS**

**Bicycles Due To Fall Hazard**

Advanced Sports International, of Philadelphia, Penn. has recalled about 3,000 Breezer and Fuji bicycles. The top clamp of the seat post can crack, posing a fall hazard to the user. This recall involves Advanced Sports International’s 2017 model year Breezer and Fuji bicycles. The aluminum bicycles come in a variety of colors. The seatposts are silver or black. The model name is printed on the frame of the bicycle.

The bicycles were sold at authorized Breezer and Fuji Bicycle dealers from June 2016 through July 2016 for between $400 and $900. Consumers should immediately stop riding the bicycles and take their bicycle to a local Breezer or Fuji Bicycles Dealer or contact Advanced Sports International for a free replacement top seat clamp. Contact Advanced Sports International toll-free at 888-286-6263 from 9 a.m. to 5 p.m. ET Monday through Friday or online at www.fujibikes.com or www.breezerbikes.com and click on “Recall Notice” at the bottom of the page for more information. Photos available at: https://www.cpsc.gov/Recalls/2016/Advanced-Sports-International-Recalls

**SPECIALIZED RECALLS**

**Road Bicycles Due To Injury Hazard**

About 1,000 road bicycles have been recalled by Specialized Bicycle Components Inc. (Specialized), of Morgan Hill, Calif. The bicycles rear wheel can come out of the dropout causing fractures in the rear triangle; presenting an injury hazard to riders. This recall involves 2016 Specialized S-Works Venge Vias and Venge Pro Vias road bicycles. They were sold in black, white and black and green and blue color combinations. S-works or Specialized decal can be found on the downtube. The firm has received seven reports of fractures in the bicycle’s rear triangle, including one report of a rider suffering a minor injury.

The bicycles were sold at authorized Specialized Retailers from July 2015 through September 2016 for between $6,200 and $12,900. Consumers should immediately stop using the recalled bicycles and contact an Authorized Specialized retailer for free installation of a new rear derailleur hanger and a safety inspection. Contact Specialized at 800-722-4423 from 9 a.m. to 5 p.m. PT Monday through Friday or online at www.specialized.com on Safety Notices for more information. Photos available at: https://www.cpsc.gov/Recalls/2017/Specialized-Recalls-Road-Bicycles

**SMARTPOOL RECALLS POOL ALARMS DUE TO FAILURE TO ALERT CONSUMERS**

About 1,600 PE12 PoolEye pool alarms have been recalled by SmartPool LLC, of Lakewood, N.J. The ON/OFF activation switch on the pool alarm is reversed, which can cause the alarm to fail to alert consumers if a child enters the water. This recall includes the PE12 PoolEye submersible swimming pool alarms for aboveground pools. The submersible gray pool alarm consists of two attached components, a sensor tube with a float switch that is submerged under water and an audible sensor that is fixed to the outside of the pool. The siren has an ON/OFF activation switch. PoolEye is printed on the front of the siren. PE12 is printed on the manual and UPC code 628208165125 is printed on the product’s packaging.

The alarms were sold at Family Leisure, Pool and Spa Depot and other authorized dealers and online at Amazon, Doheny Enterprise, Target, Walmart and other websites from June 2016 through July 2016 for between $70 and $80. The alarms were also provided at no cost as part of a pool package. Consumers should immediately contact SmartPool for a free replacement alarm. Always supervise children in and around water. Contact SmartPool toll-free at 888-560-7665 from 9 a.m. to 5 p.m. ET Monday through Friday, via email at info@smartpool.com, or online at www.smartpool.com and click on PE12 Recall link on the homepage for more information. Photos available at: https://www.cpsc.gov/Recalls/2016/SmartPool-Recalls-Pool-Alarms

**TUSA RECALLS DIVING COMPUTERS DUE TO DROWNING AND INJURY HAZARDS**

Tabata USA Inc. (TUSA), of Long Beach, Calif., has recalled about 175 diving computers. The dive computer can malfunction and display an incorrect reading to the diver, posing a drowning and injury hazard due to decompression sickness. This recall involves TUSA DC Solar Link IQ1204 diving computers. The black or white and blue wrist-watch style diving computers have a digital screen. TUSA is printed on the front of the diving computer. The model number and serial number is printed on the back of the diving computer below “TUSA DC Solar Link.” Recalled diving computers have serial numbers 6TA0001—6TA2864.

**SHERWOOD MARKETING RECALLS 3 SQUARES RICE AND SLOW COOKERS DUE TO FIRE AND ELECTRIC SHOCK HAZARDS**

Sherwood Marketing, owner of the 3 Squares brand, LLC, of San Diego, Calif., has recalled about 175,000 3 Squares rice and slow cookers. The rice/slow cooker’s improperly installed wiring can cause electrical shorting in the unit, posing fire and electric shock hazards. This recall involves 3 Squares-branded Tim3 Machin3 and Mini Tim3 Machin3 rice and slow cookers with fixed power cords. The 20-cup/4-quart or 8-cup/1.7-quart programmable electric cookers are stainless steel with black molded plastic, have a control panel/keypad on the front and measure about 11 inches in diameter and 12 inches tall. The 3Squares logo is printed on the front of the control panel. Model numbers starting with 3RC and ending in 3010S, 3020S, 3434, 5020 and 9010S are included in the recall. The model number is printed on a label on the side of the product. The company has received three incident reports, including a cooker sparking when turned on and a cooker turning itself on. One shock injury was reported.

The cookers were sold at home, hardware, mass merchandisers and department stores nationwide and online at Amazon, Bed Bath & Beyond, Best Buy, Costco, Get3Squares, Home Depot, Kohl’s, Target, Wayfair and other websites from December 2015 through July 2016 for between $30 and $70, depending on the model and capacity. Consumers should immediately stop using the recalled rice/slow cookers and contact 3 Squares to receive a free replacement cooker, including shipping. Contact 3 Squares at 800-390-0249 from 9 a.m. to 5 p.m. PT Monday through Friday or online at www.Get3Squares.com and click on Recall for more information. Photos are available here: https://www.cpsc.gov/Recalls/2017/Sherwood-Marketing-Recalls-3-Squares-Rice-and-Slow-Cooker
The computers were sold at Sporting goods stores nationwide from March 2016 through June 2016 for about $750. Consumers should immediately stop using the recalled diving computers and contact TUSA to receive a free replacement diving computer. Contact TUSA at 800-482-2282 from 8 a.m. to 5 p.m. PT Monday through Friday or online at www.tusa.com/us-en and click on “Recall” for more information. Photos available at: https://www.cpsc.gov/Recalls/2017/TUSA-Recalls-Diving-Computers

INTERLOGIX RECalls to Inspect Personal Panic Devices Due To Failure To Operate In An Emergency

Interlogix, of Lincolnton, N.C. has recalled about 67,000 Interlogix® wireless personal panic devices. The wireless personal panic devices can fail to operate, which could result in the device not communicating with the security system if activated in the event of an emergency. This recall involves Interlogix wireless personal panic devices. The product is a wrist band or necklace panic button, used to activate a security control panel within range in the event of a personal emergency or injury. These devices were sold as an accessory with professionally installed home security systems. They were sold in black and white and include model and UPC numbers: TX-4200-01-1 (white; UPC 7-82136-72342-7) and TX-4200-01-2 (black; UPC 7-82136-72343-4). The model number is printed on the underside of the device. Both the model number and the UPC number are printed on the packaging.

The devices were sold through professional security installers and distributors nationwide from May 2014 through January 2016 for about $35 to $50. Consumers should immediately contact their professional security system installer or monitoring company for a free inspection of their personal panic device and a free replacement device for those that fail inspection. Contact Interlogix at 800-394-4988 Monday through Friday, from 8 a.m. to 8 p.m. PT, email questions@interlogix.com, or online at www.interlogix.com. Photos available at: https://www.cpsc.gov/Recalls/2017/Interlogix-Recalls-to-Inspect-Personal-Panic-Devices

SARGENT ART RECalls CRAFT PAINTs Due to Risk of Exposure to Bacteria

About 2.8 million arts and crafts tempera and finger paints have been recalled by Sargent Art, of Hazleton, Penn. The paint can contain harmful bacteria. Exposure to certain bacteria can have adverse health effects in immunocompromised individuals, posing a risk of serious illness including a bacterial infection. Consumers with healthy immune systems are not generally affected by the bacteria. This recall involves 13 types of Sargent Art tempera and finger paints. All colors and sizes of the following types of Sargent Art paints are included in the recall:

<table>
<thead>
<tr>
<th>Paint Type</th>
<th>Color/Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art-Time Tempera Paint</td>
<td>Fluorescent Tempera Paint</td>
</tr>
<tr>
<td>Art-Time Washable Finger Paint</td>
<td>Liquid Tempera Paint</td>
</tr>
<tr>
<td>Art-Time Washable Fluorescent Finger Paint</td>
<td>Supreme Tempera Paint</td>
</tr>
<tr>
<td>Art-Time Washable Tempera Paint</td>
<td>Value Tempera Paint</td>
</tr>
<tr>
<td>Art-Time Washable Glitter Finger Paint</td>
<td>Washable Finger Paint</td>
</tr>
<tr>
<td>Art-Time Washable Paint</td>
<td>Washable Glitter Paint</td>
</tr>
</tbody>
</table>

The paint was sold at: Hobby Lobby, Walmart and other stores nationwide and online at Amazon.com and ShopSargentArt.com from May 2015 to June 2016 for between $1 and $8. Consumers should immediately stop using the recalled paints and contact Sargent Art for a full refund. Contact Sargent Art at 800-827-8081 from 9 a.m. to 5 p.m. ET and Monday through Friday, or online at www.sargentart.com and click on “Recall” for more information. Photos available at: https://www.cpsc.gov/Recalls/2017/Sargent-Art-Recalls-CraftPaints

HUSQVARNA RECalls LAwn Mowers Due To Laceration Hazard

About 235,000 lawn mowers have been recalled by Husqvarna Consumer Outdoor Products N.A. Inc., of Charlotte, N.C. The operator presence control bar can malfunction and cause the engine and blades to continue to operate when they should shut off, posing a laceration hazard to the operator. This recall involves Husqvarna®, Poulan Pro®, Jonsered®, Craftsman®, Yardworks®, Murray®, and Brute® brand walk-behind gas powered lawn mowers with Briggs & Stratton 7.25 HP engines. They were sold in red, orange, blue and yellow/black colors and have either four similar-sized wheels or two larger rear wheels and two smaller front wheels, a long handle with an operator presence control bar that is pushed down towards the mower handle to start the engine, a mowing deck, and may have come with or without a collecting bag in the rear. The brand names are printed on the mowers, and a Briggs & Stratton logo is printed on the engine shield. The mower model and serial number can be found on the rear of the mowing deck, next to the rear wheel. For Brand, Model Name and Serial Number Range visit: https://www.cpsc.gov/Recalls/2017/Husqvarna-Recalls-Lawn-Mowers

The lawn mowers were sold at Lowe’s, Sears and other hardware stores, home centers and equipment dealers nationwide from November 2015 through August 2016 for between $250 and $450. Consumers should immediately stop using the recalled lawn mowers and contact Husqvarna or go to www.husqvarna.com and click on “Recall” to determine if their unit needs a free repair. Call Husqvarna toll-free at 877-257-6921 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 “Recall” for more information. Photos available here: https://www.cpsc.gov/Recalls/2017/Husqvarna-Recalls-Lawn-Mowers

MAKITA RECalls CIRCULAR SAWs Due To Laceration Hazard

Makita U.S.A. Inc., of La Mirada, Calif., has recalled about 450 circular saws. The lower blade guard can malfunction and expose the blade, posing a laceration hazard and risk of injury to

BeasleyAllen.com
the consumer. This recall involves the Makita 5057KB 7-1/4" circular saw with dust collector. The model number and serial number are located on the black nameplate under the name “Makita.” The saw’s housing is a blue-green color and “Makita” is printed on the dust cover. The serial number ranges included in this recall are: 12638-12737, 12978-13027, 13208-13257, 13322-13351, 13376-134505, 13578-13627, 13568-13707 and 13900-13979.

The saws were sold at Tools Plus and other industrial suppliers nationwide and various websites including www.Amazon.com from March 2016 through September 2016 for about $400. Consumers should immediately stop using the recalled circular saws and contact Makita to schedule a free repair. Contact Makita U.S.A. at 800-462-5482 from 8 a.m. to 7:45 p.m. ET Monday through Friday or online at www.makitatools.com and click on “Important Safety Notice/Recall” at the bottom of the page for more information. Photos available here: https://www.cpsc.gov/Recalls/2017/Makita-Recalls-Circular-Saws

CABELA’S RECALLS FOOD DEHYDRATORS DUE TO FIRE HAZARD

About 3,000 Cabela’s food dehydrators have been recalled by Cabela’s Inc., of Sidney, Neb. Defective wiring can cause a buildup of heat, posing a fire hazard. This recall involves Cabela’s commercial grade 80-liter and 160-liter food dehydrators. The stainless steel dehydrators have model numbers 541549 on the 80 liter, and 541650 on the 160 liters. Model numbers are located on the back panel of the dehydrator. The company has received nine reports of the product malfunctioning due to defective wiring. No injuries have been reported.

The dehydrators were sold at Cabela’s stores nationwide and online at Cabelas.com from August 2016 through September 2016 for about $300 for the 80-liter model and $415 for the 160-liter model. Consumers should immediately stop using the recalled dehydrators and contact Cabela’s to receive a replacement product or a refund. Contact Cabela’s at 800-237-4444 anytime, or online at www.cabelas.com and click on “Consumer Product Safety” for more information. Photos available here: https://www.cpsc.gov/Recalls/2017/Cabelas-Recalls-Food-Dehydrators

OFFICE DEPOT RECALLS WINSLEY CHAIRS DUE TO FALL HAZARD

About 129,000 Winsley Mid-Back Chairs have been recalled by Office Depot, Inc., of Boca Raton, Fla. The chair can tip over when leaning back, posing a fall hazard. This recall involves Winsley Mid-Back Chairs. The adjustable chairs come in black or white and have a silver base with five wheels. The recalled chairs have the Office Depot SKU number 388262 (black) or Nu907932 (white) or the OfficeMax item #25100033 (black) or #25100649 (white) and the US REG. No. CA40105 printed on a label located underneath the seat cushion.

The chairs were sold at Office Depot and OfficeMax stores nationwide and online at officedepot.com from August 2015 through August 2016 for about $150. Consumers should immediately stop using the recalled chair and contact Office Depot to receive a free repair kit. Contact Office Depot at 800 949-9974 from 8 a.m. to 8 p.m. ET Monday through Friday, or visit the firm’s website at www.officedepot.com and click on Recall Notices at the bottom of the page for more information. Photos available at: www.cpsc.gov/Recalls/2017/Office-Depot-Recalls-Winsley-Chairs

TARGET RECALLS HALLOWEEN LED GEL CLINGS DUE TO CHOKING AND BUTTON BATTERY INGESTION HAZARDS

About 127,000 LED gel clings by Target Corp., of Minneapolis, Minn. The gel clings can separate and expose the inner decal and LED/button battery compartment, posing choking and button battery ingestion hazards to children. This recall involves six different Halloween-themed LED gel clings that come with two non-replaceable button cell batteries. The gel clings are for window use only and light up with a blinking light when you push on them. The six different gel cling designs are a green skeleton, pink skeleton, purple spider, black cat, orange pumpkin, and black bat. Model number 234-25-0904 is printed on the gel cling’s packaging. Product, Model Number, Color/Description, & Size available here: www.cpsc.gov/Recalls/2017/Target-Recalls-Halloween-LED-Gel-Clings

Once again there have been a large number of recalls since the last issue. While we weren’t able to include all of them in this issue, we included those of the highest importance and urgency. If you need more information on any of the recalls listed above, visit our firm’s web site at www.BeasleyAllen.com or 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.

XXII.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

CLAIRE BURNS

Prior to becoming a lawyer at Beasley Allen, Claire Burns worked as a law clerk in the Firm’s Consumer Fraud and Commercial Litigation Section for one year. In that role, she assists lawyers with research, and drafted complaints and motions. Claire also helped with client investigations, and performed document review. While serving as a law clerk, Claire was recognized for her performance in the March 2016 edition of The Jere Beasley Report. Prior to serving as a law clerk with the firm, Claire had served as an intern with the Clerk’s Office at the Alabama Supreme Court.
Court and with Justice Greg Shaw’s office. She is now working full time as a lawyer in the Section and is involved in class action and antitrust litigation.

Claire says she became a lawyer because, from a young age, she always felt a strong desire to help those who need it most. As a lawyer with Beasley Allen, Claire says she has the opportunity to accomplish her goal. Claire says analyzing a legal problem from all sides is very exciting, and she enjoys mapping out different legal strategies and working collaboratively with other lawyers in her Section.

Claire graduated summa cum laude from Birmingham-Southern College with B.A. in English Literature. She was a Donald C. Harrison Honors Scholar and a member of BSC’s Leadership Studies program and received several awards and recognitions, including the President’s Leadership Award. During her senior year, she was also inducted into Phi Beta Kappa.

In May 2016, she graduated cum laude with her Juris Doctor from Thomas Goode Jones School of Law. While in law school, Claire was named a Walter J. Knabe Scholar. She also served as a Student Works Editor on the Faulkner Law Review and as a member of Jones’ moot court and trial advocacy competition teams. In 2014, Claire was recognized as the Second Best Oralist at Emory University’s Civil Rights and Liberties Moot Court Competition. That same year, she and her teammates were named National Champions at the Mercer University School of Law Legal Ethics and Professionalism Moot Court Competition. Claire is a member of the Hugh Maddox Inns of Court and the Alabama State Bar.

Claire is originally from Biloxi, Miss. When she began her freshman year at Birmingham-Southern College, her parents moved to Prattville. During her free time, Claire enjoys travelling, writing short stories, and playing flute and piccolo. We are pleased to have Claire join the firm as a lawyer and predict that she will be an outstanding trial lawyer.

**ANGELA BYRUM**

Angela Byrum began with Beasley Allen in December of 2015 as a temporary worker in our Mass Torts Section. Just five months later, she was hired to work full-time as a Staff Assistant. Now she is assigned to work for Frank Woodson and Matt Munson, lawyers in the section, on a number of different litigations, including Granuflo and Lipitor cases.

Angela’s family is quite large. She describes her parents as being “wonderful” individuals. Her parents, David and Mabarine, have been married for 37 years. Angela also has one biological brother, Adam, who has two beautiful girls of his own—Anna Claire (5) and Bailey Alivia (2). Her adopted sister and best friend, Sandra, her husband Juan and their daughter Dahlia Shayanne; and her other adopted sister Brittany are the only family members she has living nearby.

In her free time, Angela enjoys reading a good book, traveling and spending time with her friends and family. She also has a deep appreciation for music. Angela is a hard-working, dedicated employee who enjoys her work. We are fortunate to have her with us.

**ALLISON HUNNICUTT**

Allison Hunnicutt joined Beasley Allen in January 2014. She practices in the firm’s Mass Torts Section, and is currently assigned to the Transvaginal Mesh litigation and the Talcum Powder litigation. She received her law degree in 1989 from The Emory University School of Law. Prior to law school, she attended Converse College, earning a Bachelor of Arts degree in English and Business Administration.

Allison is from Destin, Fla., and has been a trial lawyer for more than 20 years. Her practice areas have included Wrongful Death, Personal Injury, Insurance Bad Faith, Medical Malpractice, Products Liability, Employment Law and Workers Compensation. She was named one of Florida Trend Magazine’s Florida Legal Elite, as well as a Jacksonville “Top Lawyer” by 904 Magazine.

While practicing in Florida, Allison was named a Florida Super Lawyer every year from 2007 to 2013. She is rated AV Preeminent, the highest possible rating in both Legal Ability and Ethical Standards by Martindale-Hubbell. Allison is a member of The Texas Bar Association, The Florida Bar Association, American Inns of Court, and the United States District Court, Middle District of Florida.

Allison says she became interested in being a lawyer when she was 18 years old, and had the privilege of serving on a jury in Okaloosa County, Fla. She says she liked the formality of the courtroom and really enjoyed watching the story unfold, as told by the lawyers who handled the case, as well as the lawyers who provided the defense. She was ultimately selected as the foreperson on the jury. During the course of the trial, she decided that Allison wanted to become a lawyer.

Allison says her favorite part of being a lawyer is helping people solve their problems. Even though the facts of each case are different, and the laws that apply to each case may be different, Allison says there is a “roadmap” for discovery and trial that is followed in every case. She says when the “roadmap” is followed either a bench trial or a jury trial, the truth will be revealed. Allison says that it’s her desire for our clients to prevail, and for justice to be served.

Allison is married to Jeffrey A. Williams of Deatsville, Ala. Jeffrey is a Manufacturers’ Representative and Engineer with Air-Tech of Pensacola. Allison and Jeffrey attend Morningview Baptist Church of Montgomery. She and her husband are members of the Capitol City Corvette Club and enjoy taking road trips all over the Southeast with their car club. Most recently, they visited the National Corvette Museum in Bowling Green, Ky., for their 22nd Anniversary Party in September and ran their Corvette on the new track at the museum. Allison and Jeffrey also enjoy travel and spending time with their nieces and nephews, including their nephew John, who is currently a student at Huntingdon.

Allison is a hard-working lawyer who is dedicated to her work and to her clients. We are fortunate to have her with us.

**LEAH ROBBINS**

Leah Robbins began working at Beasley Allen in September 2013 in our Toxic Torts Section. She is currently the Legal Secretary for Chris Boutilwell, who has devoted his practice to protecting the rights of those injured by exposure to toxic substances wrongfully placed in the environment by corporate giants and other polluters. Leah says she shares Chris’ passion for this type litigation.

Leah has been married to her husband Joey for 10 years. Joey works as a National Accounts Facilitator for Rheem Manufacturing. They have three children—Austin, 16, who plays baseball; Andie, 9, who does gymnastics and cheer; and Nathan, 7, who also plays baseball. Leah says her children and family are her biggest accomplishments in life.
Leah says she enjoys organizing “anything and everything” in her free time. She is also an aspiring “do-it-yourself” specialist who loves to take on craft projects alongside her children. Leah is a hard-working, dedicated employee who says she really enjoys her work. We are fortunate to have her with us.

BRENDA RUSSELL
Brenda Russell, who has been a part of the Beasley Allen team since August 2015, is a Legal Assistant, working with Roman Shaul and Clay Barnett in our Consumer Fraud and Commercial Litigation Section. She assists Roman and Clay in all aspects of their cases, which involve multidistrict litigation (MDLs), class actions, insurance fraud, and complex pharmaceutical cases.

Brenda attended Troy University Montgomery, and has 15 years’ experience in civil litigation. She started her career in the legal field as a receptionist, where she made it a priority to learn everything she could and work her way up through hands-on experience. Before coming to Beasley Allen, Brenda worked for a civil defense firm.

Brenda’s family moved to Montgomery in the 1970s after her father retired from the U.S. Air Force, so she considers this town her home. However, she says her favorite place is the Blue Ridge Mountains of North Carolina. Her father was born and raised in Banner Elk, N.C., on an apple farm, and she and her family often go visit there to get away from the Alabama heat.

Brenda’s pride and joy is her daughter, Sarah, who is 19 and studying to be an Occupational Therapist at UAB. Brenda says as a single parent raising a daughter in today’s world, she feels her daughter is her greatest accomplishment—an amazing Christian young lady. She also counts among her family her Golden Retriever, Sam, and four cats all of whom keep her very busy.

When not spending time with her daughter or other family, Brenda enjoys working on her old house, where there is always a project underway. She has a love for old houses that have lots of character, and enjoys antiquing or “pickin’” and collecting dusty vintage pieces to repurpose or restore to their former glory. Brenda is another hard-working, dedicated employee who also says she enjoys her work. We are fortunate to have her with us.

XXIII.
SPECIAL RECOGNITIONS

SEAT CHECK SATURDAY AIMS TO SAVE LIVES

For the seventh straight year, Beasley Allen hosted a Seat Check Saturday event in conjunction with National Child Passenger Safety Week. The event, held Sept. 24, gives parents and caregivers an opportunity to ensure their child safety seats are properly installed in their vehicles. Seat Check Saturday was held at The Shoppes at EastChase. They have graciously allowed us to set up year after year.

The reason our firm likes to bring in certified technicians and host this event is that 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. We believe these events help save lives.

Safety seats, booster seats and seat belts are required in all 50 states and the District of Columbia and our territories for children traveling in motor vehicles. But these restraints cannot work if they are not installed properly. Sadly, three out of every four child restraint systems are not used properly.

Our hope is that those parents who have taken the time to visit one of these events learned how to properly fit and install their child’s seat so that they are safe. Mike James, Alabama Statewide Child Passenger Safety Coordinator, as well as other certified technicians were on site to instruct parents and caregivers. For information about a seat check event or training near you visit seat-check.org. If you need more information, contact Helen Taylor at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com.

XXIV.
FAVORITE BIBLE VERSES

Courtney Carson, the Associate Executive Director of Magic Moments, sent us two verses for this issue. Courtney says God does not have to come and tell her what she must do for Him. Instead, God brings her into a relationship with Him where she hears His call and understands what He wants her to do. Courtney says she does it out of sheer love to God. She quotes from Oswald Chambers:

When people say they have bad a call to foreign service, or to any particular sphere of work, they mean that their relationship to God has enabled them to realize what they can do for God.

In her role with Magic Moments, Courtney says she is able to serve children and families who are struggling with serious illness. Courtney had this to say about her work:

I felt God calling me to this line of work, and I am grateful for the opportunity to serve Him. When I get caught up in the problems around me or stress of work, I remind myself who I am working for. I am serving the Lord through the work He has blessed me to be a part of.
These are her two verses:

And whatever you do, in word or deed, do everything in the name of the Lord Jesus, giving thanks to God the Father through Him. Whatever you do, work at it with your whole being, for the Lord and not for men, because you know that you will receive an inheritance from the Lord as your reward. It is the Lord Christ you are serving. Colossians 3:17, 23-24

Each of you should use whatever gift you have received to serve others, as faithful stewards of God's grace in its various forms. 1 Peter 4:10

Laurie Forks, who works in our Accounting Department as an Accounting Clerk, furnished two verses for this issue. She says these verses have given her great comfort.

Be still and know that I am God. I will be exalted among the nations. I will be exalted in the earth. Psalm 46:10

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

Anthony Brock, the Principal at Valiant Cross Academy for Boys in Montgomery, furnished a timely verse for this issue. He says Proverbs 3: 5-6 resonated with him throughout his life and has done so even more so in recent years. Anthony says that God is in control and that He is always faithful and that is absolutely the Gospel truth.

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

XXV. CLOSING OBSERVATIONS

GRANT ENFIELD TAKES CHECKERED FLAG IN FIRST NASCAR WIN AT TALLADEGA IN BEASLEY ALLEN CAR

BeasleyAllen.com racecar driver Grant Enfinger claimed his first NASCAR Camping World Truck Series victory Oct 22 at Talladega Superspeedway. The 31-year-old racer led the most laps of the Fred’s 250, many of which required him to use his mirror to dictate his racing lane at more than 190 mph—a dangerous, but overall successful strategy.

As Grant’s first sponsor, Beasley Allen helped him move from late model racing to an ARCA Championship to the NASCAR level. Grant raced at Talladega as part of the GMS Racing team, edging out teammate Spencer Gallagher to take the checkered flag, and giving GMS its first one-two finish at Talladega.

In an interview from Victory Lane after the race, Grant noted that he and his father, along with race enthusiasts Greg Allen and Bobby Mozingo from Beasley Allen, began coming to the track as fans. From there, Grant embarked on racing career spanning two decades to bring him to this win. Allen, our firm’s Lead Products Liability lawyer, had this to say:

We are incredibly proud of Grant and this monumental achievement in his career. I’ve seen Grant pursue his dreams first-hand and I know he has what it takes to race. No one has worked harder to achieve his level of success. He is as talented as they come.

Grant stayed in front of the pack for 120 of the race’s 250 miles. He told Racing Newsletter:

Getting this win means the world to me. I have worked so hard to get to where I am today and I wouldn’t be here without all of my supporters and the guys that have worked countless hours by my side. Thank you to GMS Racing, Plugfones, Champion Power Equipment, Holmes Excavation II and Beasley Allen Law Firm for giving me this opportunity. Roll Tide!

All of us at Beasley Allen are very proud of Grant and all that he has accomplished. He will continue to do well in the line of work that he is not only good at—but work that he truly enjoys every single day—and we wish him the very best.

Sources: Racing Newsletter, Autoweek.com

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 beat their land.

2 Chron 7:14

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

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortune, Which they have prescribed.

To rob the needy of justice, And to take what is right from the poor

Isaiah 10:1-2

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

Martha Washington (1732—1802)

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

Louis Brandeis, 1937

U.S. Supreme Court Justice

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

Vincent Lombardi
PARTING WORDS

Cecil Spear, one of my very best friends, is an engineer who graduated from Auburn University. The native of Lapine, Ala., has worked for Trinity Industries, a huge steel company located in Texas, for a very long time. Cecil and his wife Joyce now live in Auburn and they have a very good life there. Cecil’s current job with Trinity is to take “important” customers and key Trinity management personnel to play golf at Shoal Creek in Birmingham about once a month and he actually gets paid to do it.

In his spare time, Cecil is a commercial artist. He paints primarily landscapes and seascapes and his work is very good. Cecil is a member of an art group in Montgomery and they meet weekly.

However, Cecil has another talent that he uses to his advantage and it too has served him well. Cecil can get into places that no person should be able to enter without an official pass or a legitimate escort. I asked Cecil to give us an example of how he operates. The following is a story of one of Cecil’s most difficult entry—in his words.

I was invited to sit in the Beasley Allen Suite for the SEC Championship Game between Auburn and Missouri a few years back. After walking around most of the morning seeing the sights I became very tired. I went to one of the Stadium Gates and was told the Suite Level did not open until 2 p.m., which meant waiting another two hours. As I was being denied entrance to the Stadium, I noticed a group of people with cameras and other gear entering the Stadium at the lower level. So I “bustled” down the stairs and entered the gate with those people. I guess I looked official, because nobody tried to stop me.

As I started to enter the inner gate, I was stopped and told by an imposing female security Officer that I could not enter. I told the lady that I was an “old, tired man with a ticket to an executive suite owned by Jere Beasley.” After examining my ticket and looking me over, she said: “Honey, follow me.” The nice lady ushered me to an elevator and rode up to the Suite level, took me up to the Beasley Suite, unlocked the door and said: “Make yourself at home young man and enjoy the food.”

The food for the game had been delivered and I suddenly realized how hungry I was—so I helped myself. It was GREAT!! After eating lots, I carefully put everything back in its proper place and hid my dirty plate on top of the refrigerator. (I knew that it would not be found until I was long gone.)

The Beasley family and other guests arrived a little after 2 pm and Jere could not understand how I had gotten in. Auburn won the game and the SEC Championship, and it was a very enjoyable experience.

I was quite proud of being able to get in the suite early; however, the moral of this story is very simple. I was very courteous to the security lady and she in turn helped me. I know that the Golden Rule really works; “when you treat others like you want to be treated, good things happen.” I realized then that I had a special talent, but I didn’t want to take the credit. Jere tells me I rank right up there with Mr. Sonny Orr, but I know better.

I have given Cecil a well-earned title, a “get-in artist,” and it is certainly well deserved. In fact, Cecil may be the greatest “walk-in” artist of all time. While Houdini was the greatest escape artist, Cecil may be the greatest “get-in” artist around today. Cecil can definitely get into places that are impossible for others to access. I have seen him do this sort of thing on numerous occasions. Combined with his “golf” job and his paintings, this talent has been very good for my friend Cecil.

Some of you may be having a hard time relating Cecil’s special talent and his escapades with anything spiritual, but I can assure that there is a definite connection. Cecil is a very nice, courteous and friendly man who follows the Golden Rule in his daily life. Having the Golden Rule as our guide in dealings with others will serve all of us well. It will also benefit the folks we deal with. It’s stated in Matthew 7:12:

So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets. Matthew 7:12

My prayer today is for all persons to follow the Golden Rule in all of their dealings with others. If everybody were to do that universally, we would have few—if any—problems of any kind. I strongly encourage each of our readers to follow the Golden Rule daily in all of our dealings with others.

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