I. **CAPITOL OBSERVATIONS**

**BEASLEY ALLEN’S NEW ATLANTA OFFICE IS OPEN**

Beasley Allen’s new office is now open in Atlanta, Georgia. Since 1979, our law firm has had only 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. We are excited about expanding our reach to handle more cases in the state of Georgia and especially in the Atlanta area.

We are glad to be partnering with noted Atlanta lawyer Lance Cooper. Lance, who handles product liability cases, actually uncovered the General Motors ignition switch scandal through his great work in the Melton case. You will recall, this case started the massive recall of GM vehicles, which has saved countless lives. Lance is a former president of the Georgia Trial Lawyers and is very well respected in Georgia and throughout the nation. He will be a Principal in our firm and will also maintain his own practice.

Beasley Allen lawyers Chris Glover and Navan Ward are in the Atlanta office. Chris is an experienced lawyer, particularly in the area of trucking accidents. He recently wrote a book on the subject, An Introduction to Truck Accident Claims: A Guide to Getting Started, which is available free to lawyers.

Navan is a leader in our Mass Torts Section, and has been instrumental in ongoing litigation related to defective metal-on-metal hip implants, serving on a number of Plaintiff Steering Committees for cases involving a number of medical device manufacturers. Navan also is active in the American Association for Justice (AAJ), where he holds the position of Parliamentarian and is in line to become president in the next few years.

LaBarron Boone and Gibson Vance will also be heavily involved in the Atlanta office. Both LaBarron and Gibson are members of our firm’s Executive Board. While the Atlanta office will be handling primarily products liability cases and big truck accident cases, our lawyers will also look at cases in other areas.

Our new office is located at 4200 Northside Parkway, Building One, Suite 200, Atlanta, GA, 30327. You can reach us by phone at 404-751-1162, by fax at 855-674-1818, or toll free at 800-898-2034 to discuss any cases of interest or to get more information about the firm. You can also reach Chris, Navan, LaBarron or Gibson by email. Their email addresses are: Chris.Glover@beasleyallen.com, Navan.Ward@beasleyallen.com, LaBarron.Boone@beasleyallen.com and Gibson.Vance@beasleyallen.com.

II. **MORE AUTOMOBILE NEWS OF NOTE**

**TAKATA PLEADS GUILTY AND AGREES TO PAY $1 BILLION FOR PROVIDING FALSE TEST DATA ON DEFECTIVE AIRBAGS**

Takata Corp. has pledged guilty to providing false data on its defective airbags to the National Highway Traffic Safety Administration (NHTSA). Takata admitted that its data to NHTSA has been selective, incomplete or inaccurate for at least six years. The settlement includes a $25 million criminal fine, $125 million in victim compensation and $850 million to compensate automakers who have suffered losses from massive recalls. In addition to the settlement, U.S. Attorney Barbara McQuade stated that three former Takata executives had been personally charged with fabricating test data to mask a fatal airbag defect.

The $1 billion settlement comes just a little more than one year after Takata admitted in a separate $70 million settlement with U.S. auto safety regulators that it was aware of a defect in its airbag inflators, but did not issue a timely recall. To help Takata restructure and pay for such massive liabilities, Takata has agreed to have its business independently monitored.

Takata’s defective airbag inflators have injured 184 people and killed 11 people in the U.S. The inflators can
explode with excessive force, launching metal shrapnel at passengers in cars and trucks. Many of those killed were involved in low-speed crashes that they otherwise likely would have survived. A 17-year-old high school senior in Texas was killed last year in such an incident. Nearly 70 million Takata airbag inflators have been recalled – making this the largest recall in U.S. history.

The recall has had little effect on real-world safety. So far, only one third of the defective inflators have been replaced. Although NHTSA promised to accelerate the pace of replacements, Takata has shown no sign of speeding up its production of replacement inflators. Until all inflators are replaced, U.S. consumers will continue to drive vehicles with ticking time bombs ready to explode upon the smallest of incidents.

Products liability lawyers in our firm are handling several cases involving defective Takata airbags. For more information on these claims, contact Cole Portis, who heads up our Personal Injury and Products Liability Section, at Cole.Portis@beasleyallen.com or by phone at 800-898-2034.

EPA SAYS FIAT CHRYSLER USED ILLEGAL ENGINE EMISSION SOFTWARE

The U.S. Environmental Protection Agency (EPA) said Fiat Chrysler installed and failed to disclose engine software that allowed about 100,000 Jeep Cherokee and Dodge Ram trucks to produce excessive emissions of nitrogen oxide. The EPA said Fiat Chrysler Automobiles NV and FCA US LLC failed to disclose engine management software in 2014, 2015 and 2016 Jeep Grand Cherokees and Dodge Ram 1500 trucks with 3.0 liter diesel engines sold in the U.S., and issued a notice of violation to the company.

According to EPA enforcement head Cynthia Giles, the agency is not yet ready to call the software a “defeat device,” which is designed to evade testing. However, the investigation is continuing. The software is designed to allow vehicles to meet pollution standards under testing conditions, but lets the NOx levels increase at high speeds or during extended driving periods. The Fiat Chrysler enforcement action is the latest in a series of investigations into carmakers’ emissions engineering practices, including Volkswagen AG, which has agreed to pay billions of dollars to settle a defeat device scandal. Ms. Giles said:

“This is a clear and serious violation of the Clean Air Act. There is no doubt the devices are contributing to illegal pollution.

California Air Resources Board (CARB) has also issued a notice of violation to FCA US LLC, Fiat Chrysler Automobiles N.V., and Chrysler Group LLC after detecting the “auxiliary emissions control devices” in the Grand Cherokees and Rams. CARB also said the company failed to disclose the devices, which it said can “significantly increase” NOx emissions when activated.

The EPA said that under the Clean Air Act, vehicle manufacturers must demonstrate through a certification process that their products meet applicable federal emission standards to control air pollution. Automakers must disclose and explain any AECs that can alter how a vehicle emits air pollution. The EPA said in a statement:

FCA did not disclose the existence of certain auxiliary emission control devices ... despite being aware that such a disclosure was mandatory. By failing to disclose this software and then selling vehicles that contained it, FCA violated important provisions of the Clean Air Act. It said FCA may be liable for civil penalties and injunctive relief for the violations alleged in the notice of violation.

Source: Law360.com

THE GM VORTEC 5300 OIL CONSUMPTION DEFECT CLASS ACTION LAWSUIT

A class action lawsuit has been filed in a California federal court against General Motors. Installed in almost a dozen GM model vehicles (listed below), the Generation IV 5.3 Liter V8 Vortec 5300 engine rapidly consumes oil at a rate that greatly exceeds industry standards. This excessive oil consumption results in low oil levels and internal engine damage.

The oil consumption defect is caused by low-tension oil control rings that GM installed within its Generation IV 5.3-Liter V8 Vortec 5300 passenger engines. The low-tension oil rings are incompatible with these engines as they allow an excessive amount of engine oil to enter the engine’s combustion chambers – where it is consumed or accumulates – resulting in oil loss.

GM offered the defective 5.3-liter engines in the following vehicles (the “Class Vehicles”):

- 2010-2013 Chevrolet Avalanche
- 2010-2012 Chevrolet Colorado
- 2010-2013 Chevrolet Express 1500
- 2010-2013 Chevrolet Silverado 1500
- 2010-2013 Chevrolet Suburban
- 2010-2013 Chevrolet Tahoe
- 2010-2013 GMC Canyon
- 2010-2013 GMC Savana 1500
- 2010-2013 GMC Sierra 1500
- 2010-2013 GMC Yukon
- 2010-2013 GMC Yukon XL
GM’s “Oil Life Monitoring System,” which is supposed to alert drivers when it is time for an oil change, makes the problem worse because it does not properly monitor the engine oil level. As the oil ring defect rapidly depletes the engine’s oil reserves, the Oil Life Monitoring System dangerously encourages drivers to travel farther than the engine can safely handle due to inadequate oil levels.

Beginning with its 2014 models, GM began installing a materially redesigned Generation V 5.3 Liter V8 Vortec 5300 engine, which was designed to remedy the excessive oil consumption problem. The redesigned engine abandoned the low-tension oil control ring engineering failure and returned to the use of standard tension oil rings. However, despite knowing that vehicles equipped with faulty 5.3-liter engines remained on the road, GM has done nothing to alert owners and lessees that their vehicles may be unreliable and unsafe.

Beasley Allen partnered primarily with the law firm of Grant & Eisenhofer in Chicago to file the complaint in the Northern District of California federal court. The case is Monteville Sloan, Jr., Raul Siqueiros et al, vs General Motors (3:16-cv-07244). Dee Miles, Clay Barnett, Archie Grubb and Andrew Brashier from our firm are handling the case. If you need more information contact Clay Barnett at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com

**Volkswagen To Pay $4.3 Billion And Plead Guilty In DOJ Emissions Suit**

Volkswagen AG is very close to an agreement with the U.S. Department of Justice (DOJ) in which it would plead guilty and pay $4.3 billion in penalties over the emissions cheating scandal. At press time, the German automaker was in advanced discussions with U.S. authorities and has negotiated a draft settlement agreement with the DOJ and U.S. Customs and Border Protection. The settlement includes a guilty plea over certain violations of criminal laws and measures to strengthen the company’s compliance systems. The settlement agreement has been approved by Volkswagen’s management and supervisory boards. The company said in a statement:

*A final conclusion of the settlement agreement is further subject to the execution by the competent U.S. authorities and to the approval of the competent U.S. courts.*

The agreement follows a civil settlement Volkswagen reached in June that’s worth up to $14.7 billion and includes vehicle buybacks and pollution control program funding to settle claims related to its scheme to evade government-mandated emissions testing in some 2.0-liter diesel engine cars. It included payments of $5,100 to $10,000 to most consumers who bought their cars before September 2015 – when the fraud was discovered – in addition to the buybacks. VW also agreed to invest $2 billion in projects that support the increased use of zero-emissions vehicles, as well as $2.7 billion to mitigate the effects of the emissions from cars equipped with defeat devices.

The U.S. Environmental Protection Agency (EPA) and the California Air Resources Board (CARB) exposed Volkswagen’s scheme in September 2015, when they accused the company of deliberately installing defeat devices in the computers of many of its diesel vehicles. Volkswagen has since admitted fault and revealed that the software came preloaded in millions of its diesel vehicles around the world – nearly 600,000 of which were sold in the U.S. – allowing the vehicles to emit more toxins into the air after they leave testing labs and are out on the roads. The government hit VW and its subsidiaries with a Clean Air Act suit over the emissions cheating in January 2015.

The general manager of VW’s environmental and engineering office in Michigan wrote in emails and presentations to VW top management that steep penalties and indictments were possible if regulators found out, but it appears the bosses wanted to keep lying to the government and the public. For example, the manager, Oliver Schmidt, knew the vehicles had software installed that would recognize when the car was being tested and alter emissions output. The road-condition testing showed emissions of nitrogen oxide up to 40 times higher than U.S. standards.

Schmidt was part of a group that briefed higher-ups at Volkswagen about a study that found huge discrepancies in emissions levels when tested on the road as opposed to when simulating road conditions with a dynamometer, as was the practice at the EPA and CARB. Schmidt, who had been promoted and reassigned to Germany, had agreed to come back and brief U.S. and California officials on the discrepancies. Schmidt and other employees knew all about the device, and top officials, after being informed about the so-called defeat device, authorized its continued concealment.

In early January, German lawyers filed a complaint against VW on behalf of a diesel car owner demanding the company buy back the emissions-compromised vehicle for the purchase price in a novel case that could put pressure on the European Union to adopt a class action-type legal structure. The suit argues that VW sold the cars under fraudulent terms, without any type of government approval, and that they must be bought back.

Volkswagen, its former CEO and other individuals must face a lawsuit from investors filed in the wake of the scandal despite their arguments that the case belongs in Germany.
However, a California federal judge ruled against them on that issue.

Source: Law360.com

**VOLKSWAGEN’S $1.6 BILLION DEALERSHIP SETTLEMENT GETS FINAL APPROVAL**

A California federal judge has approved a settlement valued at more than $1.6 billion that resolves lawsuits filed by Volkswagen AG franchise dealerships in the wake of the carmaker’s 2015 diesel emissions scandal. Under the settlement, Volkswagen agreed to pay 652 dealerships $1.208 billion in cash to resolve claims against it, and it agreed to continue providing those dealerships with multiple incentives and support payments that are collectively valued at approximately $442 million. U.S. District Judge Charles R. Breyer approved the settlement, saying it was well supported and exceeds the estimated lost profit calculated by class counsel. Judge Breyer noted that only seven dealerships have opted out of the settlement, and eight have objected to it, mainly due to how the settlement is apportioned. This is a relatively low objection rate for a settlement, according to Judge Breyer.


Source: Law360.com

III. DRUG MANUFACTURERS FRAUD LITIGATION

**COSTCO AGREES TO $11.75 MILLION SETTLEMENT OVER PHARMACY ALLEGATIONS**

Warehouse shopping chain Costco has agreed to pay $11.75 million over charges it improperly filled prescriptions and failed to sufficiently manage how it dispensed controlled substances. The agreement, announced by the Justice Department, comes after federal officials said Costco pharmacies in Washington, California and Michigan filled prescriptions that were incomplete, lacked valid Drug Enforcement Administration (DEA) numbers or were for substances beyond various doctors’ scope of practice. The settlement also resolves allegations Costco failed to keep and maintain accurate records for controlled substances at its pharmacies and dispensing centers. The settlement covers the period of time between Jan. 1, 2012 and Dec. 31, 2015. U.S. Attorney Annette Hayes had this to say when announcing the settlement:

*“A company such as Costco that distributes a significant volume of controlled substances has a responsibility to ensure it complies with regulations that help prevent opioids and other dangerous drugs from being misused or otherwise added to the illegal marketplace. I commend the DEA investigators for uncovering the violations at issue in this case, and working with Costco to ensure that systems are put in place to prevent controlled substances from ending up in the wrong hands.”*

Costco recently installed a new $127 million pharmacy management system and other internal audits to identify possible issues with controlled substance prescriptions. It also agreed to allow the DEA to conduct unannounced and unrestricted inspections of all Costco pharmacies over the next three years. Costco operates 715 stores in the U.S., including three in Alabama.

Source: AL.com
**Drug Wholesalers To Pay $36 Million Over West Virginia Pill Mill Claims**

Two prescription drug wholesalers, AmerisourceBergen Corp. and Cardinal Health Inc., will pay $16 million and $20 million respectively to settle West Virginia’s claims relating to their distribution of controlled substances in the state. These are the latest in a number of settlements arising out of a case brought against more than a dozen companies by the state attorney general’s office, along with the Department of Health and Human Resources and Department of Military Affairs and Public Safety. This settlement brings the total secured by West Virginia to more than $47 million, according to a news release from the Governor’s office.

The Plaintiffs plan to support drug abuse prevention and treatment with their portions of the settlements. The state has one of the highest rates of nonmedical use of prescription painkillers among 19- to 25-year-olds nationwide. Opioids are the leading cause of death in drug overdoses, according to Attorney General Patrick Morrisey’s website. Gov. Earl Ray Tomblin, in a news release, stated:

> We’ve taken steps to combat drug abuse in West Virginia with distributors, prescribers and pharmacists, and the money from this settlement will help us expand those efforts with additional treatment and long-term recovery options.

Other settlements include a $3.5 million agreement with H.D. Smith, which resolved claims that the company failed to detect, report or stop the flow of suspicious drug orders from the state; a $2.5 million pact with Miami-Luken Inc.; and a nearly $1.9 million deal with Anda Inc. West Virginia should be commended for its actions.

Source: Law360.com

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**Drug Wholesaler Agrees To Committing $100 Million Prescription Meds Fraud**

The owner of a Utah-based wholesale distribution company admitted last month to fraudulently distributing to pharmacies more than $100 million worth of prescription drugs that he bought on the black market. Nevada resident Roger Crowell pled guilty before U.S. District Judge Edgardo Ramos in Manhattan to one count of conspiracy to commit health care fraud and agreed to forfeit more than $13 million in proceeds from the scheme.

Manhattan U.S. Attorney Preet Bharara’s office says Crowell, the owner and operator of a licensed wholesale distributor of prescription medications based in St. George, Utah, defrauded private insurers as well as Medicaid and other government programs out of hundreds of millions of dollars by purchasing contraband drugs at deeply discounted prices and reselling them to pharmacies across the country as legitimately sourced medications.

Crowell’s company wasn’t named by Bharara’s office but Utah business records list Crowell as the registered agent for Green Valley Medical Distributors LLC of St. George. U.S. Attorney Bharara said in a statement:

> Randy Crowell perverted for profit a health care system designed to get safe and effective medications to patients who need them. He exposed people with life-threatening illnesses to medicines they had no idea had been diverted from the normal stream of commerce, all the while defrauding health care companies and government benefit programs like Medicaid.

To maximize profits, prosecutors say Crowell and his co-conspirators focused on some of the most expensive medications, including those used to treat HIV. Medicaid patients and other people who received monthly prescriptions for little or no costs, and who were willing to sell their medications rather than take them as prescribed, were targeted as would-be suppliers. Their medications were sold to so-called “collectors” who worked on street corners and in stores and paid as little as $40 to $50 in cash for each bottle, according to Bharara’s office.

The conspirators used hazardous chemicals, such as lighter fluid, to remove drug labels from medication bottles, prosecutors said, a process that risked the chemicals getting into the bottles and rendering the drugs unfit for human consumption. The collectors then sold the secondhand drugs to intermediaries with direct access to legitimate distribution channels, including corrupt wholesale companies like Crowell’s business, which in turn sold them as new drugs to pharmacies.

To maintain a facade of legitimacy, the company lied about the drugs’ origins by creating false documents that purported to show the legitimate movement of the medication, according to Bharara’s office. Prosecutors said Crowell himself took numerous steps to conceal his activities, including using the alias “Roger,” frequently changing the phones he used to communicate with co-conspirators and paying them through sham companies. The government is represented by Assistant U.S. Attorneys Edward B. Diskant and Matthew Podolsky. The case is United States of America v. Randy Crowell in the U.S. District Court for the Southern District of New York.

Source: Law360.com

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**Head Of Meningitis-Linked Pharmacy Called Regulators Inept**

The head of the New England Compounding Center (NECC), a compounding pharmacy whose...
mold-tainted drugs killed dozens of people in 2012, bragged in training videos about state regulators who didn’t have a clue about the company’s business. Exhibits introduced into evidence in the man’s murder trial revealed that Barry Cadden could be seen in the videos, from 2011 and 2012, telling employees that when the Massachusetts Board of Pharmacy came to investigate the New England Compounding Center, they would quickly leave. In fact, Cadden said he actually taught the regulators what a compounding pharmacy is. It appears that the state began to trust Cadden so much that when concerns would come in from other states, Massachusetts would simply ignore them.

Prosecutors say that Cadden’s management of the company led to a reckless lack of internal oversight and an outbreak of meningitis that killed 64 people. Cadden had this to say about the regulation in a video:

_They look around, they have no clue. ‘Oh, Barry, this place looks great. Hey, I gotta go.’ Cup of coffee, out the door._

The NECC was regulated the same way a corner pharmacy was, even though it was doing something vastly different than selling prescriptions to customers who walked in off the street. The meningitis outbreak that began at NECC led to new laws in Massachusetts and elsewhere that tightened restrictions on such outfits.

Compounding pharmacies are supposed to make tailor-made drugs for specific patients, like a drug that lacks an ingredient that someone is allergic to. But under Cadden’s leadership, prosecutors say, he ran the company like a high-volume manufacturer, evading U.S. Food and Drug Administration (FDA) oversight. Cadden gave a chilling view of regulation when he said in a 2012 video:

_They don’t understand us, so how can they come in and inspect me? They don’t even know what they’re looking at._

Jurors also heard from Joseph Connolly, a technician who worked at NECC from 2010 to when it was closed in October 2012. Connolly said that he began to grow concerned about the increased demands on pharmacy technicians who were making the drugs. “Something’s going to happen,” Connolly said he told supervising pharmacist Glenn Chin, who has also been charged with murder. “Something’s going to get missed. We are going to get shut down.” Connolly, on direct examination by assistant U.S. attorney Amanda Strachan, also testified about a co-worker who got a job as a technician at New England Compounding despite having lost his license in 2007. That man was his brother, Scott Connolly.

Hopefully the regulators in Massachusetts learned a valuable lesson in their dealings with the NECC debacle. We will see!

Source: Law360.com

IV.
LEGISLATIVE HAPPENINGS

ALABAMA LEGISLATURE IS COMING TO TOWN

The Alabama Legislature will start the Regular Session on Feb. 7. Hopefully, this session will be a productive one. The problems facing Alabama are huge and it’s time to quite “kicking the can down the road” and face reality. We simply need additional revenues in the general fund. Problems in the Medicaid program and prison reform will take center stage in the Session.

12 ALABAMA LEGISLATIVE DISTRICTS RULED UNCONSTITUTIONAL

A federal court has ruled that 12 of Alabama’s legislative districts were unconstitutional, citing an improper use of race in their composition. The three-judge panel enjoined the use of the districts in future elections, but stopped short of intervening in the
drawing of new districts. The judges wrote in a separate order:

*It is this court’s expectation that the state legislature will adopt a remedy in a timely and effective manner, correcting the constitutional deficiencies in its plans in sufficient time for conducting the 2018 primary and general elections, without the need for court intervention.*

The decision ends a chapter in a nearly five-year battle over the district lines - which has gone to the U.S. Supreme Court - and adds another item to a lengthy punch list awaiting state lawmakers this month.

The 2-1 majority of U.S. Circuit Court Judge Bill Pryor and U.S. District Judge Keith Watkins upheld the constitutionality of 24 districts challenged in a lawsuit brought by the Alabama Legislative Black Caucus and the Alabama Democratic Conference (ADC). U.S. District Judge Myron Thompson, while concurring in that decision, wrote that he would have found 12 other districts unconstitutional and argued the majority did not properly apply earlier instructions from the nation’s high court.

The impact of the decision will certainly go beyond the affected districts. Redrawing the boundaries will mean adjustments to others. The judges ruled nine House and three Senate districts unconstitutional. Democrats represent all 12. Black lawmakers represent all but two of the districts.

The Legislative Black Caucus and the ADC argued that the Republican-controlled Legislature deliberately moved black voters, who tend to vote for Democratic candidates, into districts that prevented them from forming alliances with like-minded white voters, muting their voices in the process.

Legislators used a strict standard that prevented the House and Senate districts from going above or below one percent of their ideal population. Republicans argued that the standard allowed them to maintain minority percentages in those districts, and to address population losses in them.

Source: AL.com

V. THE NATIONAL SCENE

**Alabama Sex Trafficking Survivor Files Suit**

A sex-trafficking survivor, who had been forced into prostitution at a Dothan hotel, has filed a lawsuit in Houston County Circuit Court against several Defendants she claims profited from her abduction. The Defendants include the convicted perpetrator, Santiago Alonso; classified advertising website Backpage.com, and its byzantine ownership group; and Choice Hotels, parent company of the Quality Inn where the victim was held against her will. The Dothan hotel’s franchise owner, Veda, LLC, is also among the Defendants in the complaint.

The Defendants, according to the complaint, “conspired, enabled and/or otherwise worked together in a sex trafficking venture in which [the survivor] was victimized when she was just 17 years old.” The now-20-year-old survivor, identified by the initials, “K.R.,” wants to “shed light on the horrors of sex trafficking in the U.S. and how it is happening in cities all across our nation,” according to her lawyer, Greg Zarzaur of the Birmingham firm Zarzaur, Mujumdar & DeBrosse. Greg stated:

_Vulnerable people are taken advantage of, and entities either knew or should have known. But rather than acting on it, they financially benefited from it. Our civil justice system exists to hold those entities accountable for the wrong done._

In 2014, Alonso was found guilty of first-degree human trafficking and felony distribution of drugs to a minor in a Houston County court. The victim, a runaway from Meridian, Mississippi, was kidnapped in Hattiesburg and taken to Memphis before Dothan, where, it was revealed during the trial, she was forced to take drugs and become a prostitute. The teenager ultimately escaped from the hotel and walked eight miles before finding someone who alerted police. Evidence gathered against Alonso included images on his cellphone of ads placed on Backpage.com to prostitute the victim.

Backpage.com, a leading global digital marketplace for commercial sex, has been sued numerous times for alleged child sex trafficking violations, but the entity long claimed it was only a host of others’ content and was thus immune from liability under the Communications Decency Act (CDA). However, the Supreme Court in Washington state has ruled that a 2012 suit against Backpage.com by three Washington teenaged girls who were allegedly trafficked on the site could proceed, in what turned out to be a preliminary blow against the site.

In early January, the U.S. Senate’s Permanent Committee on Investigations released findings from its nearly two-year investigation into Backpage.com. It found that the site “knows it facilitates prostitution and child sex trafficking” and “knowingly concealed evidence of criminality by systematically editing its ‘adult’ ads...to conceal the true nature of the underlying transaction.”

It also cited James Larkin, Michael Lacey, and Carl Ferrer as “beneficial owners” of Backpage.com, whose U.S. operations had been sold to a Dutch company, Atlantishe Bedrijven, C.V., located in Curacao. Late last year, the three men were charged by the California attorney general’s office attorney with conspiracy to commit pimping and 26 counts of money laun-
dering. Ferrer also is charged with 12 counts of pimping, seven involving children. On Tuesday, Ferrer asked a judge in Sacramento, Calif. to toss the pimping charges.

The three men and the Dutch company are also Defendants in the Alabama survivor's lawsuit. Days after the report was released, Backpage.com removed the adult section from its site in the United States, calling the action a “direct result of unconstitutional government censorship.”

It’s alleged in the suit that Backpage.com generated annual revenue of approximately $150 million, or about $3.1 million per week from sex ads. The survivor is suing Choice Hotels, in part, because of the overall role of the hotel industry in the sex trafficking industry, as well as its actions in other cases of sex trafficking. The complaint says:

The vast majority of sex trafficking occurs in hotels and motels and as a result, hotels and motels should be the first line of defense against illegal prostitution and sex trafficking of children. Instead, hotels and motels account for over ninety percent (90%) of commercial exploitation of children. [Choice Hotels] has known for years that pimps and traffickers use their hotels to carry out their crimes. Despite having knowledge of the extensive prostitution and sex trafficking that occurs at its hotels, Defendant Choice Hotels has repeatedly failed to make reasonable efforts to stop these crimes.

The complaint also cites a tragic incident that occurred eight years ago in which a child was raped and killed at a Comfort Inn, another Choice Hotels brand, in Fayetteville, North Carolina. The complaint says:

The incident caused such outrage that child advocates peti-
tioned defendant Choice Hotels to take steps to prevent sex trafficking in its hotel franchise chains.

The owner of the Dothan Quality Inn is a Defendant, according to the complaint, because it should have acted on “red flags” that should have alerted hotel employees to Alonso's illegal activity. It’s alleged:

The red flags include payment by cash-only, older men or women with a younger woman/child or with a female who appears unrelated, the reservation of two rooms close to each other, a lack of luggage, refusal of cleaning services, regular requests for towels, and numerous men coming and going from the rooms or congregating at the door. A lot of these red flags were open and obvious in the sex trafficking [K.R.] at the Quality Inn in Dothan, Alabama. Any reasonable hotel or operator would have recognized these as signs of sex trafficking.

The public should be outraged over the activities described above. Our elected officials have a responsibility to get involved and help stop this sort of thing. The courts will do their part and cases like this one are a step in the right direction.

Source: The Birmingham News

VI.
THE CORPORATE WORLD

AN UPDATE ON THE FTC SETTLEMENT WITH ENDO IN PAY-FOR-DELAY LITIGATION

As part of a proposed Federal Trade Commission (FTC) settlement announced last month, Endo International has pledged to swear off pay-for-delay agreements. But even as the government moves to wrap up its case against Endo, authorities continue to pursue claims against Watson and Allergan. The lawsuit centers on a pay-for-delay deal on Lidoderm. According to the U.S. Federal Trade Commission, Watson “illegally” delayed a cheaper Lidoderm “when it entered into a pay-for-delay agreement with Endo.” The FTC has refiled charges against Watson and former parent company Allergan.

According to the FTC complaint, Lidoderm was an important product for Endo back in 2011. That year, the company made $825 million in sales off the lidocaine patch, or 30 percent of its annual sales total, meaning generic competition would pose “significant financial risks” to the company. Endo paid Watson at least $250 million to delay that competition, according to the FTC.

Through an “administrative complaint,” authorities are also going after Impax Laboratories, which they say received $112 million back in 2010 to delay a generic competitor to Endo’s Opana ER. Endo’s 10-year Stipulated Order for Permanent Injunction would resolve all claims by the FTC against Endo and its Par subsidiary related to Opana ER and Lidoderm. Endo agreed it would not make any agreements that would prevent the marketing of authorized generics of its products or make any payments to other drugmakers to delay the marketing of any of their generics. The FTC first brought the claims back in March 2016. Then, in October, the original complaint was dismissed after an unforgettable federal court ruling. However, the FTC said it would refile, which led to this most recent settlement agreement.

Source: FiercePharma.com
STRONG GOVERNMENT REGULATION IS NECESSITY

There may be efforts by the Trump Administration to weaken federal regulation of industry. Based on what is good for consumers in the United States that would be a very big mistake. Over the past several years, the federal government has failed to effectively regulate industries like the auto and drug industries. The result has been the Toyota sudden acceleration problems – the GM ignition problems – and now the Takata airbag debacle on the auto side. There have been numerous examples on the drug side.

Many safety experts say that the government has failed to do its regulatory job. Clarence Ditlow, who died in November, served as the director of the Center for Auto Safety, a Washington D.C. based non-governmental organization (NGO), for 40 years. He was a strong advocate for safety. Just prior to his death Dr. Ditlow discovered the Takata problems. He had this to say to Bloomberg:

"My take is that if NHTSA had done the right thing and really probed Takata, they could have caught it a lot soon and we wouldn't have the crisis we have today. Takata made one of the most colossal blunders in the history of the industry.

A major problem is that the car companies are allowed to police themselves and file their own reports about defective parts. Rob Weissmann, the President of Public Citizen, said in a press statement regarding discovery in the Takata case:

"We know that regulation itself is not sufficient, because the regulators are underfunded, often too close to industry, and even in the best case scenario can't be everywhere. The executives responsible for this lethal corporate penny-pinching belong behind bars, both as a matter of justice for the victims and their families, and as a deterrent to executives who show similar disregard for the safety of their customers.

Instead of weakening regulation agencies such as the National Highway Traffic Safety Administration (NHTSA) and the U.S. Food and Drug Administration (FDA), they should be given the tools necessary for them to adequately do their jobs. We know from experience that regulation is quite often very much like the "tail wagging the dog. That must change."

Source: Corpwatch.org

VII. WHISTLEBLOWER LITIGATION

BAXTER TO PAY $18 MILLION OVER IV FLUID-MAKING CONDITIONS

Baxter Healthcare Corp., a producer of intravenous solutions, has agreed to pay $18 million to resolve a False Claims Act (FCA) suit in a North Carolina federal court. The suit involves alleged violations of maintenance regulations for sterile drug products. This settlement will allow Baxter to bypass criminal charges. Baxter, based in Illinois, is accused of adulterating an IV solution production line at its production facility in Marion, North Carolina, between July 2011 and November 2012 by failing to follow current Good Manufacturing Practices under the Food, Drug and Cosmetic Act (FDCA).

Within that timeframe, the health care company manufactured sterile IV solutions in a clean room whose high-efficiency particulate absorption, or HEPA, filters contained signs of mold, according to the criminal information filed by the Department Of Justice (DOJ).

In a deferred prosecution agreement, Baxter admitted to distributing drug products that were adulterated in violation of the FDCA, paying $16 million in penalties and forfeiture and $2.2 million to settle a related FCA civil suit brought in 2013 by a Baxter whistleblower employee. Tests of the filters during unannounced Food and Drug Administration (FDA) inspections at the Marion facility revealed mold species on the filters, but there was no sign the IV solutions were affected, the DOJ said.

The related FCA suit, filed by whistleblower Christopher Wall, contends Baxter violated the FCA by submitting false claims to the Department of Veterans Affairs based upon the failure to follow the current good manufacturing practices. Wall will receive $431,555 of the civil settlement proceeds, according to the DOJ. Baxter’s deferred prosecution agreement on the count of introducing an adulterated drug into interstate commerce is subject to approval by a federal judge.

Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division, in a statement said:

"Following current Good Manufacturing Practices is essential to ensure the safety and efficacy of our drugs. Today’s settlement shows that the government will continue to hold companies accountable for failing to fulfill this critically important responsibility."

The U.S. government is represented in the criminal matter by Kelli Ferry, Allan Gordus and Shannon Pedersen. The U.S. government is represented in the civil matter by Sanjay Bambhani and Jonathan H. Ferry. The cases are United States of America v. Baxter Healthcare Corporation, (case number 1:17-mj-00010) in the U.S. District Court for the Western District of North Carolina; and United States ex rel. Christopher Wall v. Baxter Inter-
and warnings.

was defective in design, manufacture
mined that the cab guard on the truck
resulting in his death. The jury deter-
cab, which crushed in on the driver,
slow motion. The load of logs shifted
he was driving overturned and
crashed. An eye-witness said the roll-
over, which was not a high speed
event, was like it was happening in
slow motion. The load of logs shifted
in the crash and breached the truck's
are advertised as being highly effec-
tive to prevent shifting cargo from
contacting the cab of the trucks. In
this case, the cab guard failed miser-
ably. The case is Jacqueline Wright et
al v Volvo Trucks North America,
Inc., et al, (45-CV-2013-9000091.00) in
the Circuit Court of Lowndes
County, Alabama.

Because of the litigation our firm
has successfully handled, two of the
cab guard manufacturers now say “do
not use cab guards on log trucks.”
Beasley Allen lawyers Jere Beasley,
LaBarron Boone and Ben Baker, along
with Tyrone Means of Means Gillis
Law, represented the family in this
case. Hopefully, Merritt will learn its
lesson and will warn all of the log
truck drivers who are at risk of defec-
tive cab guards on their trucks.

**FATAL ROLLOVER TRIGGERS RECALL OF
TEXTRON’S BAD BOY OFF-ROAD UTILITY VEHICLES**

Lawyers in our firm have handled a
number of cases involving Bad Boy
buggies. As a result of their work,
Textron Specialized Vehicles and the
U.S. Consumer Product Safety Com-
mision (CPSC) announced a recall on
Jan. 11 of about 1,100 Bad Boy off-road
utility vehicles to address serious
injury risks associated with the vehi-
cles’ lack of seat belts. The recall
involves the Bad Boy XTO and Bone
Collector XTO model off-road utility
vehicles, which come equipped with a
bench seat for the driver and front
passenger and a rear-facing bench seat
for two additional passengers.

These vehicles are very dangerous
and have posed a serious threat of
injury and death. The vehicles have a
high center of gravity, making them
prone to roll over. At the same time,
the vehicles lack seat belts and doors,
leaving occupants with no safety
restraints in the event of a rollover.

This combination proved deadly
when 14-year-old Cody Pike died in
Toombs County, Georgia. The Bad Boy
XTO Cody was riding in rolled over in
2014. He was a passenger in the
vehicle when the driver made a left-
hand turn and the vehicle turned over.
Because there were no seat belts or
doors on the buggy, Cody was ejected,
and was crushed when the 1,700-
pound vehicle landed on him. Greg
Allen, our most senior Products Liabil-
ity lawyer, represented the family.
Greg had this to say:

*While I am glad to see that
Textron is recalling these vehi-
cles, I am saddened that it took
the loss of a fine young man to
bring about this change. His
parents, Adam and Debra, were
courageous in standing up for
their son in the pursuit of justice.
Their primary goal in bringing
this case was to prevent another
family from suffering a loss
like theirs.*

In addition to Cody’s tragic death,
our lawyers have handled a number
of other cases involving these vehicles.
The recalled vehicles were sold in
camouflage, black, white, forest
green, flame red, and patriot blue.
The brand and model name are printed on
the side and front panels. The recalled
vehicles have serial numbers ranging
from 8000020 through 8004934.
These numbers are located the steer-
ing wheel column. The recalled utility
vehicles were sold at Bad Boy dealers
nationwide from November 2010
through June 2013 for between

**VIII. PRODUCT LIABILITY UPDATE**

**JURY FINDS FOR FAMILY OF MAN KILLED IN
LOG TRUCK CRASH**

A Lowndes County Circuit Court
jury last month found in favor of the
family of Larry Albritton, who was
killed Oct. 7, 2013, when the log truck
he was driving overturned and
crashed. An eye-witness said the roll-
over, which was not a high speed
event, was like it was happening in
slow motion. The load of logs shifted
in the crash and breached the truck’s
cab, which crushed in on the driver,
resulting in his death. The jury deter-
mined that the cab guard on the truck
was defective in design, manufacture
and warnings.

The jury also found that the manu-
facturer Merritt Equipment Co. acted
with reckless disregard for the safety
of others in the way it designed, manu-
factured and provided warnings
related to its cab guards and that the
cab guard did not protect the driver as
it was supposed to do. Defendants
included Merritt Equipment Co., Pitts
Enterprises and Volvo Trucks North
America. The last two Defendants
settled - Volvo prior to the trial and
Pitts during the trial - and the case
proceeded to verdict against Merritt as
the sole defendant.

Truck drivers face many hazards on
the road every day, from weather to
unexpected traffic and unpredictable
other drivers. One thing they should
be able to count on is that the vehicle
they are driving is designed so that
they have a reasonable expectation of
being safe in the event of a crash. In
this instance, the manufacturer failed
the driver, and it cost him his life. It is
our hope that this verdict will send a
message to Merritt and other compa-
nies that drivers’ safety is more impor-
tant than their profits and bottom line.

Our firm has handled a number of
cab guard cases over the past few
years and all have either resulted in
jury or verdict settlements. Cab guards
are sold to serve as protection against
load-shifting on large trucks that pull
flat beds, trailers and log trailers. They
are advertised as being highly effec-
tive to prevent shifting cargo from
contacting the cab of the trucks. In
this case, the cab guard failed miser-
ably. The case is Jacqueline Wright et
al v Volvo Trucks North America,
Inc., et al, (45-CV-2013-9000091.00) in
the Circuit Court of Lowndes
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Because of the litigation our firm
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tive cab guards on their trucks.

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- [Fatal Rollover Triggers Recall Of Textron’s Bad Boy Off-Road Utility Vehicles](#)
- [Product Liability Update](#)

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*Source: Law360.com*
$13,200 and $14,200. All units were manufactured in the U.S.

Consumers should immediately stop using the recalled vehicles and contact Textron or an authorized dealer for a free installation of seat belts. Textron Specialized Vehicles is contacting all known purchasers directly. Textron may be reached by calling toll-free at 855-738-3711 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.badboyoffroad.com.

This recall was prompted by Greg Allen’s good work in exposing the extreme hazard related to the Bad Boy buggies. If you need more information contact Greg at 800-898-2034 or by email at Greg.Allen@beasleyallen.com.

J&J GETS $1 BILLION DAMAGES CUT IN HALF IN HIP VERDICT

A Texas federal judge has reduced the more than $1 billion in punitive damages a jury awarded to Plaintiffs who claimed Johnson & Johnson and subsidiary DePuy Orthopaedics Inc. rushed a faulty hip implant to market. Each of the six Plaintiffs in the third bellwether trial over DePuy’s Pinnacle Ultamet hip implant received the jury’s awards of between $4 million and $6 million in compensatory damages, plus medical expenses, under judgment entered by U.S. District Judge Ed Kinkeade.

The punitive damages awarded by the jury on Dec. 1 were reduced by close to half. J&J and DePuy are now on the hook for about $54.5 million in combined damages. The jury had awarded $168 million in punitive damages to each of the Plaintiffs.

Judge Kinkeade said under U.S. Supreme Court precedent, the Constitution limits how much a Plaintiff can recover in punitive damages, and be capped the punitive awards at a multiple of about nine times the amount of their individual compensatory damages.

Individual punitive damages figures under the judgment range from about $72.5 million to more than $109 million, totaling about $510 million in punitive damages. Shortly after judgment was entered, the Plaintiffs filed a notice of appeal targeted at the reduced damages awards, saying the district court should have entered judgment for the full amount of punitive damages found by the jury. Mark Lanier of The Lanier Law Firm, one of the lawyers for the Plaintiffs, said:

Judge Kinkeade has always been a conservative law-and-order judge. He reads the Supreme Court as capping punitives at a 9-to-1 multiplier. He followed his conservative read of the law, but we believe J&J should have to pay full punitives. So we appealed.

The verdict was returned in less than a day after a two-month trial. Jurors found J&J and DePuy had negligently designed the hip implant, failed to warn surgeons about dangerous conditions related to the implant, and concealed the implant’s risk. Four of the Plaintiffs’ spouses were also each awarded $1 million for loss of consortium and a total of $1 million in punitive damages. Lawyers for the Defense say they will file their own appeal based on what it contends were numerous errors in pre-trial and trial proceedings.

The Plaintiffs are represented by Mark Lanier of The Lanier Law Firm; Richard Arsenault of Neblett Beard & Arsenault; Jayne Conroy of Simmons Hanly Conroy; and Khaldoun Baghdadi of Walkup Melodia Kelly & Schoenberger, among others. These lawyers have done a tremendous job in this litigation.

Source: Law360.com

FRIENDLY FIRE: U.S. MILITARY’S F-35 FIGHTER CONTINUES ENDANGERING PILOTS

More than two decades ago, the U.S. military recognized the need to update its air fleet. Military leaders, experts and pilots had the notion that the aircraft of the future should complement one another in air combat to continue successfully guarding and defending our nation’s borders and protecting the citizens. The F-35 program is the military’s attempt to achieve this notion. The vision was to develop a program that would effectively link the F-35 aircraft fleets in each of the military’s branches through a virtual network and incorporate capabilities to meet unique needs of the various branches.

The goal becomes even more ambitious when service members are forced to rely on poorly designed and unsafe equipment. As we discussed in a recent issue of this Report, the F-35 Joint Strike Fighter Program is the latest demonstration that striving to meet aircraft capabilities often takes priority over pilot safety.

Despite 20 years of development and the projected $1.5 trillion program price tag, the F-35 has faced a number of challenges, according to Mark Fredenburg. Fredenburg is a mechanical engineer and outlines these problems in a National Review column. He explains that the relentless failure to meet deadlines, incredible budget overages and, more importantly, structural problems continue putting service members at risk.

It was no surprise when the latest structural problems surfaced this January. A 2015 deficiency report by the Pentagon included information dating back to 2014. It noted, “…the extreme movements in the cockpit during launch risked pilot health.” According to the Business Insider, citing Inside Defense, a nose gear issue with the Navy’s F-35C causes excessive shaking during launches from aircraft carriers. As a result, pilots suffer severe pain during and after such a launch.

The excessive shaking also disorients pilots at a moment when they should be focused on critical flight data and completing the necessary

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tasks to successfully launch from a moving platform. In an effort to adapt and overcome – something all service members learn early in their training – some pilots lock down their harnesses. While this helps reduce the shaking, it also intensifies an already dangerous situation because when pilots lock down their harnesses, it makes ejecting during an emergency more difficult.

Engineers claim that a potential structural solution exists and that it would reduce the risk of harm to F-35C pilots. However, it will require revamping the aircraft’s design and likely require modifications to the entire U.S. fleet of air carriers, and officials have not clearly defined when or if this fix will be implemented. If it is applied, it could take years to fully implement. Moreover, it addresses only one of the F-35’s deficiencies placing pilots at risk.

Another troublesome function is vertical liftoff, which came at the behest of the Marine Corps. Design changes required to fulfill this directive significantly increased the aircraft’s weight. Consequently, the Pentagon approved more waivers than normal for a combat aircraft so that engineers could strip the aircraft of safety equipment in order to get it off the ground.

The waivers lowered performance standards and affected the plane’s safety, reliability and durability. Removing the safety features to lighten the F-35’s load contributed to the nose gear problem, and the more obvious problem of scraping the safeguards guards engineers installed to protect pilots from fiery crashes. Now, the F-35 no longer has the fuel tank’s ballistc liner, fusdraulic fuses, flammable coolant shut-off valve nor the dry bay fire extinguisher. According to Fredenburg, “[t]he unprecedented and pervasive presence of flammable hydraulic fluid, flammable coolants, and fuel throughout the plane makes the F-35 a flying tinderbox.”

Several recent mishaps illustrate a legitimate concern. Engine fires in 2014, as described recently in the Report, led to the grounding of the F-35 on two separate occasions. Last September, a pilot was forced to escape an F-35 that caught fire before he was even airborne. DefenseTech reported that the fire started when fuel collected in the tailpipe and ignited. One month later, another F-35 aircraft erupted in flames, forcing its pilot into an emergency landing. DefenseNews reported that an initial investigation revealed the fire started when a bracket and electrical wiring it was securing came loose during the training mission. The loose wiring, which sits next to hydraulic lines and other flammable parts, was free to move and chafe – eventually sparking the fire.

In an interview with Bloomberg Businessweek about deadly aviation mishaps last year, retired Marine pilot James Skelton said, “We’re Marines. We know we put our lives at risk. That’s the job. But you don’t want to do it unnecessarily.”

If you need more information on this subject contact Mike Andrews, a lawyer in our firm’s Personal Injury & Products Liability Section, at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com. Mike handles aviation litigation for the firm.


**Urgent Warning Issued For PA-31T Aircraft Following Two Fatal Air Ambulance Crashes**

In the early morning hours of July 29, 2016, a Piper PA-31T Cheyenne airplane broke apart midair over a mountainside near McKinleyville, California. The medical flight, operated by Cal-Ore Life Flight (a subsidiary of Santa Rosa-based REACH Air Medical Service) was transporting a patient (April Rodriguez) when it claimed her life and the lives of the pilot (Larry Mills), flight nurse (Deborah Kroon) and certified flight paramedic (Michelle Tarwater). It left a quarter-mile debris trail across the mountainside, according to The Press Democrat.

The National Transportation Safety Board (NTSB) began investigating the crash immediately. Federal investigators found evidence of a problem with the airplane’s wiring, which started a fire in the cockpit during the flight and ultimately led to the flight’s demise. The finding prompted the NTSB to urge the Federal Aviation Administration (FAA) to issue an emergency airworthiness directive (AD) prior to the end of the investigation.

The NTSB only recommends issuing an emergency AD before an investigation is final when it finds evidence that “an imminent threat to life and safety exists.” As with other emergency ADs, this one required “mandatory action and a shorter timeline for addressing the issue” than was outlined in the special airworthiness information bulletin (SAIB) the FAA issued just weeks earlier with guidance from the NTSB.

A Jan. 9, 2017, NTSB press release confirmed evidence of thermal damage near the airplane’s main electrical bus circuit breaker panel, which is mounted in the floor of PA-31T airplanes. The enclosed space is in a confined area, so it is difficult to assess adequately through current maintenance procedures requiring only general visual inspection. The area includes hydraulic lines that run below or adjacent to the wiring and panel.

A closer inspection, however, revealed wiring in this area “showed evidence of electrical arcing” and sections of hydraulic lines “were consumed by in-flight fire.” Electrical arcing occurs when an electrical current is released and moves through an opening of a circuit, which suggests chaffing and that could cause a
fire. Federal investigators found similar damage when they used a borescope and camera to inspect six other Piper PA-31T airplanes.

After calling on the FAA to issue an emergency AD, NTSB spokesman Eric Weiss told the Associated Press (AP) that the agency “thinks it’s a dangerous situation having electrical lines next to hydraulic line.”

Piper Aircraft confirmed to the AP that it has been working with both the NTSB and the FAA to address the problems since the SAIB was issued in December including issuing its own “mandatory service bulletin” for operators. The AP reports there are more than 300 31T-series airplanes registered with the FAA.

Four months following the Cal-Ore Life Flight crash, another medial air transport crashed into the parking lot near a gold mine in Elko, Nevada, on Nov. 19, 2016. The crash claimed the lives of all four passengers including three medial crew and a patient. While the airplane was also a PA-31T, the NTSB has not released any details about the cause of the crash. American Medflight operated the airplane. This was at least the third fatal air ambulance crash of 2016 and comes at a time when the FAA is working to improve the safety of air ambulances.

IX. TALC LITIGATION UPDATE

THE FOURTH TALC CASE IS SET FOR TRIAL

In May of 2013, at the age of 52, Nora Daniels received the worst news a woman could be told; “you have ovarian cancer.” In extreme pain, she went to the doctor; after testing, Ms. Daniels was informed of the diagnosis. She had to endure chemotherapy and a hysterectomy. Today, Ms. Daniels is not only concerned about the possible return of the cancer, but has to deal with the daily after-effects of treatment.

If Ms. Daniels had known of the risks of using the Johnson & Johnson Baby Powder and Shower to Shower products, she would have never applied these products to the genital area for more than 35 years. Both Johnson & Johnson and Imerys, their talc supplier, have known of this potential and substantial risk for decades. Internal company documents show the companies were “put on notice” as far back as the 1970s.

Ms. Daniels will be the fourth case to go to trial in St. Louis in front of Judge Rex Burlison. Opening Statements are set to begin on Feb. 6, 2017. This case follows three similar talcum powder cases with verdicts totaling almost $200 million. We commend Ms. Daniels’ courage as she faces these corporate giants in February.

There are more trials set for later this year. Ms. Daniels and the other Plaintiffs are being represented by Beasley Allen lawyers, along with Allen Smith of The Smith Law Firm in Mississippi, and attorneys of the St. Louis firm of Onder, Shelton, O'Leary & Peterson, LLC. Ted Meadows from our firm and Allan Smith will be co-leads in the case. If you have any questions regarding these cases, feel free to contact Ted Meadows at Ted.

Missouri Court Denies J&J Request To Delay Talc-Related Cancer Trials

The Missouri Court of Appeals has denied a request by Johnson & Johnson to delay upcoming trials of ovarian cancer claims brought by individuals and families who allege that use of the company’s talc-based products directly led to cancer. Lawyers for the health care giant had asked the appellate court to deny the jurisdiction of the 22nd Circuit Court in St. Louis to hear the cases since most of the 1,350 Plaintiffs with pending claims are not Missouri residents.

In a one-page order signed Jan. 3, Chief Judge Angela T. Quigless denied the motion without further comment. The next trial brought by more than 60 women and family members against Johnson & Johnson will begin in St. Louis on Feb. 6, followed by five additional trials. Last year, St. Louis juries returned three separate verdicts of $70 million, $72 million and $55 million for cancer victims who sued New Jersey-based J&J.

Numerous scientific studies have shown the link between ovarian cancer and the regular use of talc-containing products manufactured and marketed by J&J, including Johnson's Baby Powder and Shower to Shower. The company has known about the dangers of talcum powder for decades, but has suppressed those studies while refusing to provide warning labels on its talc-containing products.

Any person has the constitutional right to bring a case in any jurisdiction. We have chosen St. Louis to file several talc-related claims because it’s a central location that makes sense for these women, many of whom are very ill and desire to have their claims heard fairly, quickly and efficiently.

In the U.S., ovarian cancer affects about 24,000 women a year and is the
fifth-leading cause of cancer death for women. It is estimated that 14,000 women die from talc-related ovarian cancer each year. One medical expert calculates that the use of talcum powder leads to nearly 10 percent of the new ovarian cancer cases reported annually. The Missouri Supreme Court has subsequently ruled against Johnson & Johnson, upholding the court of appeals ruling.

X.
MASS TORTS UPDATE

J&J SETTLES LATEST RISPERDAL CASE BEFORE TRIAL

Ahead of a trial that was scheduled to get underway last month in Philadelphia, a Johnson & Johnson unit agreed to settle the case. The suit alleged that a New York boy grew female breasts after being treated with the antipsychotic drug Risperdal. The settlement comes as Janssen Pharmaceuticals Inc. was gearing up to face a court of appeals ruling.

Zachary Sabol and his family filed suit against Janssen in the Philadelphia County Court of Common Pleas in April 2013 alleging that he developed a condition known as gynecomastia, or the abnormal growth of female breast tissue, after being treated with Risperdal for nearly a decade. The Sabol case is one of nearly 2,300 cases queued up as part of a mass tort program in Philadelphia to address claims that Janssen’s blockbuster antipsychotic caused hormone spikes in adolescent boys that led to the development of gynecomastia.

Johnson & Johnson still faces thousands of claims by boys who grew female breasts as a result of taking Risperdal. Jason Itkin, a lawyer with Arnold & Itkin, represents Zachary and his family. He says this is a one-off settlement and doesn’t indicate Janssen’s willingness to begin any sort of global approach to ending the litigation.

Plaintiffs in the litigation accuse Janssen of working to obscure the risk of abnormal breast growth in young boys as they tried to win approval of the drug for use in children. The Food & Drug Administration (FDA) ultimately approved the drug in October 2006 to treat symptoms of autism in adolescents. When Zachary began taking the drug, however, it was only approved for use in adults and indicated that gynecomastia was a rare side effect that occurred in fewer than one in 1,000 patients.

Warning labels were subsequently updated to show there was a 2.3 percent rate of gynecomastia in adolescents taking the drug. The settlement comes less than a month after a rare mid-trial dismissal of Risperdal-related claims based on what a judge said was insufficient causation evidence from the Plaintiffs. That was the second victory, coming after a Defense verdict in March 2015, that Janssen has won in Risperdal-related cases in the courtroom. The company also secured a summary judgment ruling dismissing a case in October.

Plaintiffs have received four verdicts in their favor in Risperdal cases in Philadelphia, including a $70 million damage award handed down by a jury in July. Damage awards in three other cases have resulted in $4.75 million in damages for Plaintiffs.


Source: Law360.com

JPML CREATES INVOKANA MDL

The Judicial Panel on Multidistrict Litigation (JPML) has ordered that all federal Invokana lawsuits be consolidated in the United States District Court for the District of New Jersey before Judge Brian Martinotti. The Panel held that “the Invokana/Invokamet actions involve common questions of fact, and that centralization of these cases will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.” The Panel further found that “[t]he actions share factual questions arising from allegations that taking Invokana or Invokamet may result in patients suffering various injuries, including diabetic ketoacidosis and kidney damage. The actions thus implicate numerous common issues concerning the development, manufacture, testing, regulatory history, promotion, and labeling of the drugs.”

Lawyers for numerous Plaintiffs sought centralization in the District of New Jersey because Janssen Pharmaceuticals is headquartered in New Jersey, and numerous cases were already pending in that District. The Panel agreed, finding that many of the relevant documents and witnesses are likely to be found in New Jersey. Other courts that the Panel had considered included the Northern District of Illinois and the Eastern District of Missouri.

The Panel refused to consolidate cases involving similar, but competing SGLT2 inhibitor drugs, including Farxiga and Jardiance. Farxiga is marketed and distributed by AstraZeneca Pharmaceuticals and Bristol Myers Squibb, and Jardiance is marketed and distributed by Boehringer Ingelheim Pharmaceuticals and Eli Lilly. The Panel did not indicate when a multidistrict litigation (MDL) will be created for those drugs, or to what court those litigations would be assigned. The Panel reasoned that the

Lawyers in our Mass Torts Section who are handling the Invokana litigation are pleased that the Panel has chosen to centralize all Invokana and Invokamet lawsuits in the District of New Jersey before Judge Brian Martinotti. While Judge Martinotti is new to the federal bench and does not have MDL experience, he is a seasoned jurist with considerable experience overseeing mass tort pharmaceutical litigation within the New Jersey state court system. If you need more information on the Invokana litigation contact Danielle Mason or Roger Smith, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com or Roger.Smith@beasleyallen.com.

**Pinnacle Litigation Update**

U.S. District Judge Ed Kinkeade reduced the punitive damages awarded late last year in the third bellwether trial involving the Pinnacle metal-on-metal hip replacement. On Dec. 1, 2016, a successful verdict resulted in more than $1 billion in punitive damages for the California Plaintiffs. Judge Kinkeade has since ruled that, even though California law does not limit punitive damages, U.S. Supreme Court precedent will not allow such a punitive damages award. Judge Kinkeade reduced the jury’s punitive damages award by about half, representing approximately nine times of each Plaintiff’s compensatory damages.

You may recall that the court similarly reduced another Plaintiff’s punitive damages against Depuy in March of 2016; however, the reduction for that verdict was due a state cap on punitives. The California Plaintiffs have appealed the recent ruling, arguing that Johnson and Johnson should still be responsible for the full amount that the jury awarded, since California does not have such a cap.

In the meantime, litigation continues against Johnson & Johnson and DePuy. The next bellwether trial will have 10 New York Plaintiffs and will not begin until September of this year. Lawyers in Beasley Allen’s Mass Torts Section currently represent several hundred clients who have suffered the deleterious effects of the DePuy Pinnacle device. If you need more information about this case, or the litigation generally, contact Navan Ward or Liz Eiland, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Navan.Ward@beasleyallen.com or Liz.Eiland@beasleyallen.com.

Source: Law 360

**Zofran Litigation Update**

Discovery is underway in the Zofran multidistrict litigation (MDL). U.S. District Judge Dennis Saylor has ordered discovery in four phases. Phase 1 includes Fact Sheets (Plaintiff and Defense) and related authorizations. Phases 2 and 3 include deposition and document production regarding electronically stored information (ESI), corporate organization, general causation, and federal preemption. Phases 1, 2, and 3 are currently ongoing. Phase 4 includes discovery on other general liability issues, and is expected to begin this month.

So far, GlaxoSmithKline (GSK) has produced its U.S. Food and Drug Administration (FDA) submissions, and the Plaintiffs’ Steering Committee (PSC) has finished reviewing those 600,000 pages. The PSC has also deposed corporate witnesses regarding GSK’s Corporate Organization and ESI. Through those depositions, they were able to identify dozens of present and former GSK employees who were significantly involved with Zofran, and identify the electronic systems that contain important regulatory, science, safety, and marketing information. So far, GSK has committed to producing custodial files of 25 witnesses involved in the science and regulatory submissions for Zofran. In a recent status conference, Judge Saylor expressed his hopes to have general discovery completed in 2017.

GSK has also filed two additional Motions to Dismiss. As you may remember, Judge Saylor denied GSK’s first Motion to Dismiss all of the pending Zofran cases on preemption grounds last year. GSK has now filed a Motion to Dismiss all claims that relate to Fraud or Negligent Misrepresentation, saying that the Master Complaints do not plead the underlying facts supporting those allegations with sufficient particularity. The PSC has responded, and Judge Saylor heard arguments at the January 26 status conference.

GSK has also filed a Motion to Dismiss lawsuits filed by women in Georgia, Indiana, Kentucky, Massachusetts, and Oklahoma who alleged that they used a generic form of Zofran. GSK argues that it cannot be held liable for injuries alleged to be related to a pill that it did not manufacture or market. However, under FDA regulations, generic manufacturers have to match their labeling to the label for brand-name Zofran. So, even though GSK did not manufacture the specific pills, it wrote the language in the label. The PSC responded to this Motion, arguing that the plaintiffs’ negligent misrepresentation claims should not be dismissed, and asking Judge Saylor to certify the question to the high courts of each of these states. The court will hear oral arguments on Feb. 16.

Lawyers in our firm’s Mass Torts Section continue to investigate cases involving children born with a heart defect or cleft palate after in utero exposure to Zofran. If you would like more information about this litigation,
or if you or someone you know has had a family member who suffered from a congenital heart defect or cleft palate as a result of prenatal Zofran exposure, contact Roger Smith or Liz Eiland, lawyers in our firm’s Mass Torts Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

**Court Denies Motion To Strike Science Articles From Expert Report As Parties Near Bellwether Trials**

A select group of the nearly 6,000 cases pending in the Testosterone Replacement Therapy Products Liability Litigation are nearing completion of the discovery process and are preparing for trial. Starting last month and extending into this month, the parties will depose the expert witnesses retained by both the Plaintiffs and Defendants. As part of the expert discovery process, U.S. District Judge Matthew Kennelly, the Illinois federal judge overseeing the multidistrict litigation (MDL), denied a motion by AbbVie Inc., the manufacturer of AndroGel, to strike certain medical and scientific articles from the report of Dr. B. Bud Gerstman, a professor at San Jose State University.

Dr. Gerstman is an expert for the Plaintiffs’ Steering Committee (PSC). He wrote his original report in October and expanded his December report to include additional medical articles following the production of AbbVie’s expert reports. Judge Kennelly entered his notice the day before Dr. Gerstman’s deposition and held the articles are admissible in court and “properly part of a rebuttal report.”

AbbVie, maker of the top-selling brand AndroGel, is the first Defendant scheduled for bellwether trials in the MDL. The first trial is currently for June 2017. Plaintiffs argue Defendants failed to adequately warn consumers about the risks of stroke, deep vein thrombosis, pulmonary embolism and cardiovascular injury associated with testosterone therapy while improperly marketing their drugs as a remedy for age-related conditions rebranded as “Low T.” The testosterone lawsuits were consolidated for the purpose of general pretrial discovery.

In March 2015, The U.S. Food and Drug Administration (FDA) cautioned consumers that prescription testosterone products are approved only for men who have low testosterone levels caused by certain medical conditions. The FDA made clear that the benefit and safety of these drugs, including Androgel, Testim, Axiron, Fortesta, and Androderm, have not been established for the treatment of low testosterone levels due to aging, or “Low T,” even if a man’s symptoms seem related to low testosterone.

The FDA required all testosterone replacement manufacturers to change their labeling to clarify the approved uses of these medications. The FDA also required new warnings about a possible increased risk of heart attacks and strokes in patients taking testosterone. Finally, the FDA required manufacturers of approved testosterone products to conduct a well-designed clinical trial to more clearly address the question of whether an increased risk of heart attack or stroke exists among users of these products.

Source: Law 360

**4th Circuit Court Of Appeals Upholds $3 Million Pelvic Mesh Verdict**

The Court of Appeals for the Fourth Circuit has upheld a $3.27 million jury verdict handed down two years ago in a bellwether trial over Johnson & Johnson subsidiary Ethicon Inc.’s defective transvaginal pelvic mesh implants. The court found that the woman who brought the suit showed sufficient evidence that the mesh caused her injuries. In a published opinion, the Fourth Circuit rejected Ethicon’s argument that Jo Huskey had failed to prove there was a specific flaw in the design of her TVT-O sling, finding that the record belied that assertion as she offered sufficient evidence for a reasonable jury to find that the company’s use of heavyweight polypropylene mesh in the sling caused her severe scarring and pelvic pain.

Ms. Huskey’s expert witnesses had testified about the body’s reaction to heavyweight polypropylene. One witness was also a former Ethicon employee, Dr. Brigitte Hellhammer, who testified that she had no reason to believe that lightweight mesh couldn’t effectively treat stress urinary incontinence. The court said in its opinion:

*Drawing all inferences in the Huskeys’ favor, a reasonable jury could conclude from this expert testimony that Ethicon’s use of a heavyweight quantity of polypropylene mesh in the TVT-O constituted a design defect that caused Mrs. Huskey’s inflammation and pelvic pain.*

Huskey sued Ethicon in 2012, claiming the polypropylene mesh in her TVT-O sling eroded, causing her severe, ongoing pain as the mesh could not be entirely removed through surgery. Her husband, Allen, also sued for loss of consortium. The suit was the first bellwether case to go to trial in the massive multidistrict litigation (MDL) against Ethicon over its mesh implants. The trial concluded on Sept. 5, 2014, with the jury returning its compensatory damages verdict.

U.S. Judge Joseph Goodwin solidified the jury’s verdict in August 2015, refusing to throw out the verdict as a matter of law, or alternatively to allow a new trial, finding that the Plaintiffs had brought sufficient evidence that Ethicon failed to warn Huskey’s doctor of certain risks in implanting the company’s TVT-O polypropylene mesh product, and even stronger evidence.
that there were defects in the product’s design.

The appeals court also rejected Ethicon’s argument that a product liability doctrine known as “comment k” – which holds some products, such as vaccines, are unavoidably unsafe though not unreasonably dangerous - provided a shield from Huskey’s claims. Huskey is an Illinois resident and courts in that state determine on a case-by-case basis if a specific product is covered by that doctrine, the panel noted.

Much of the same trial evidence that indicated the use of heavyweight polypropylene mesh constituted a design defect also suggested that “comment k” doesn’t shield Ethicon, the panel said. For one, a jury could reasonably infer from Hellhammer’s testimony that if Ethicon had used a lightweight mesh, the TVT-O would have stayed effective and patients would have a lower risk of reacting to the mesh, the panel said. “Taken together, the expert testimony allowed the jury to infer that Ethicon could have designed the TVT-O with lightweight mesh without sacrificing any performance,” the panel said.

Huskey is represented by Edward A. Wallace and Mark R. Miller of Wexler Wallace LLP, Fidelma L. Fitzpatrick of Motley Rice LLC, and Jeffrey Kuntz and Adam Davis of Wagstaff & Cartmell LLP. The case is Huskey et al. v. Ethicon Inc. et al., (case number 15-2118) in the U.S. Court of Appeals for the Fourth Circuit.

Source: Law360.com

MORE PROBLEMS FOR ZIMMER

The U.S. Food and Drug Administration (FDA) has once again found issues with one of medical device maker Zimmer Biomet’s plants. The agency took the British drug maker to task over the presence of metal particles in a leukemia drug and criticized fishy safety protocols at an Icelandic fishery.

An inspection of Zimmer Biomet’s Warsaw, Indiana, plant from September to November revealed some serious problems. There were 14 observations of objectionable conditions and practices at the plant, two of which were repeats from another FDA inspection in 2014.

• One of those observations concerned a sterilization process in which results couldn’t be verified by a later inspection.

• The other was about inadequately established procedures for monitoring cleaning process, according to the report.

The FDA inspectors also observed that the medical device maker hadn’t adequately set in place procedures to control environmental conditions. The plant’s water system has processed water to use in manufacturing and cleaning medical devices since 2005, but the company hasn’t adequately monitored the system’s water quality in accordance with established procedures. Work and controlled environments also weren’t maintained to make sure that clean products won’t be contaminated. The FDA also took issue with the company’s lack of adequate procedures for handling complaints.

Source: Law360.com

XI. BUSINESS LITIGATION

DOJ WINS BID TO BLOCK $37 BILLION AETNA-HUMANA MERGER

A District of Columbia federal judge has ruled for the U.S. Department of Justice (DOJ) in the government’s suit to block the proposed $37 billion merger between health insurance giants Aetna Inc. and Humana Inc. U.S. District Judge John D. Bates, in a 156-page opinion, said if the companies proceeded with their merger it would substantially reduce competition for Medicare Advantage plans in 364 counties. Judge Bates agreed with the DOJ that the Medicare Advantage market does not include traditional Medicare plans, one of the major points of contention during the 13-day trial in December. Judge Bates said:

Aetna and Humana compete in a Medicare Advantage product market that does not include Original Medicare, as both contemporary business documents and econometric evidence confirm. In that market, which is the primary focus of this case, the merger is presumptively unlawful — a conclusion that is strongly supported by direct evidence of head-to-head competition as well.

Although government-provided Medicare and Medicare Advantage plans offered by private insurers may be functionally interchangeable regarding their basic offerings, the evidence shows that Medicare Advantage plans are a distinct market, Judge Bates said. For one, competition is fierce among Medicare Advantage providers and is less rigorous outside of that market, he said. Also, when seniors decide to switch from a Medicare Advantage plan, they typically opt for another Medicare Advantage plan, rather than moving over to traditional Medicare, Judge Bates said. And the companies’ own business documents draw a distinction between Medicare Advantage and traditional Medicare plans, he said.

Judge Bates also blasted Aetna over its decision to pull out of Affordable Care Act public health insurance exchanges in three states, saying the company made the move to dodge court scrutiny. As a result, the judge

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said he gave Aetna's withdrawal from the exchanges little weight in his analysis of the merger's competitive effects, though he did not go so far as to agree with the DOJ that he should look at the case as though the move had never been made. Judge Bates said:

"The court finds that Aetna is likely to offer plans on the exchanges only in the three complaint counties in Florida in 2018 and beyond, and that the merger is likely to substantially lessen competition in those counties."

Humana to divest Medicare Advantage plans

Aetna and Humana had characterized Aetna's decision to withdraw from the markets as a business decision unrelated to the potential anti-trust consequences. Judge Bates was not convinced by the insurers' arguments that the merger's detrimental effects to competition would be overcome by efficiencies created by the transaction. Aetna and Humana claimed their union would generate some $2.8 billion in savings that could be passed on to consumers, but a significant share of that amount would likely be retained by the merged firm, he said. Proposals by Aetna and Humana to divest Medicare Advantage plans to managed care company Molina Healthcare were also not enough to assuage Judge Bates' concerns about the anti-competitive effects of the deal.

The plan to merge two out of the remaining five large national health insurance companies was revealed in the summer of 2015. The DOJ announced its decision to challenge the merger in July and at the same time said it would seek to block Anthem Inc.'s $54 billion plan to acquire Cigna Corp. The Anthem-Cigna trial ended last month. It remains to be seen whether Judge Bates' decision to enjoin the Aetna-Humana deal will influence U.S. District Judge Amy B. Jackson, who is overseeing the Anthem-Cigna case.


Source: Law360.com

XII.
AN UPDATE ON SECURITIES LITIGATION

GM PAYS $1 MILLION FINE OVER IGNITION SWITCH ACCOUNTING

General Motors (GM) has agreed to pay a $1 million fine to the U.S. Securities and Exchange Commission (SEC) to settle charges its accountants were not promptly informed of the defective ignition switches and, therefore, failed to properly assess the defect would lead to a recall. GM agreed to the penalty without admitting or denying the SEC's charges that its faulty accounting controls prevented it from properly assessing potential losses or the impact of a recall over the ignition switch defects for more than a year, because company personnel failed to bring the defect to the attention of GM's accountants.

SEC New York Regional Office Director Andrew M. Calamari said that GM's internal accounting controls failed to consider relevant accounting guidance on disclosure of potential vehicle recalls. He added:

"Proper consideration of loss contingencies and assessment of the need for disclosure are vital to the preparation of financial statements that conform with Generally Accepted Accounting Principles."

Generally accepted accounting principles codified in the Accounting Standards Codification require issuers to accrue for any future losses it deems are probable and can be reasonably estimated, and disclose probable losses that can't be reasonably estimated. GM's Warranty Group was responsible for accounting for possible losses related to vehicle recalls and other issues.

According to the SEC's order instituting proceedings, GM's Warranty Group was responsible for accounting for possible losses related to vehicle recalls and other issues, and would record a specific accrual for large recall campaigns costing more than $5 million whenever the recall became probable and the cost could be estimated. However, according to the SEC, the Warranty Group failed to accrue for a possible recall of GM vehicles for more than a year after engineers became aware of a possible defect in the vehicles' ignition switches, which was later determined to cause a loss of power and prevent airbags from deploying during collisions. Sadly, General Motors knew about the defect for at least 10 years and withheld information from the National Highway Traffic Safety Administration (NHTSA) and the public.

The Warranty Group failed to accrue for the recall because it was not promptly informed of any potential safety issues, according to the order. Instead, GM's recall process began with engineers in the automaker's Product Investigations group, who investigated safety and compliance issues and presented their findings to GM decision makers, but did not generally communicate findings with the Warranty Group, the SEC said.

The decision makers would then escalate any issue they found significant enough to three committees, called the Field Performance Evaluation (FPE) committees, responsible for making recall decisions, according to the order. The Warranty Group was only made aware of problems and other defects when the issue was esca-
lated to the FPE committees, as the issue was placed on an "emerging issues list" and a recall was considered probable, the order said. But the Warranty Group had no role in deciding which issues were placed on the emerging issues list, and was not consistently provided with information about potential defects before the problem was escalated to the FPE committees, according to the order.

The SEC said that GM's engineers began reviewing claims that airbags in some models were failing to deploy in 2012, and an electrical engineer reported as early as April 2012 that the problem was likely caused by a defect in the vehicles' ignition switches. Despite being aware of the problem, however, none of the engineers reviewing the issue informed the Warranty Group of the defect until after the ignition switch supplier confirmed that it had changed a part in the switch in October 2013, more than a year after GM personnel understood the switch presented a safety issue, the SEC said. I find it difficult to understand why any person in any official capacity at GM was not informed about the ignition switch problems at a much earlier date. Discovery in the Melton case revealed that GM knew about the defect for about 10 years.

The Warranty Group finally accrued $41 million in estimated costs for recalling three models with the switch in December 2013, according to the order. GM initiated its first recall of 619,122 vehicles in February 2014, and ultimately recalled millions of vehicles worldwide. The automaker also paid $900 million in September 2015 in a deferred prosecution agreement with the U.S. Department of Justice, and as of December 2015 GM's ignition switch compensation fund had paid nearly $600 million to 399 eligible death and injury claims.

The Melton case mentioned above that our firm, along with Lance Cooper, handled in Georgia was the sole reason GM's bad conduct was initially uncovered. Because of the Melton case, the recalls the MDL, and massive settlements came about. I find it difficult to comprehend how any key person at GM could not have known about a defect that was killing folks since GM knew about the defect for about 10 years prior to the Melton case and withheld the information.

Source: Law360.com

XIII. INSURANCE AND FINANCE UPDATE

FIVE BLUE CROSS AND BLUE SHIELD PLANS IN ANTI-TRUST MDL TRY TO OVERCOME DISMISSAL LOSS

Five Blue Cross and Blue Shield plans asked an Alabama federal court to certify an interlocutory appeal to the United States Eleventh Circuit Court of Appeals to present three questions to the Court. First, the five Defendants want the Eleventh Circuit to determine whether a court should look into the amount of business a company transacts in a district to see whether there is jurisdiction under section 12 of the Clayton Act. Second, the five Defendants would like for the Eleventh Circuit to determine whether the Plaintiffs must satisfy due process, which includes "minimum contacts requirements of purposeful availment and a substantial causal relationship between the alleged contacts and Plaintiffs' cause of action" in order to establish personal jurisdiction for a conspiracy theory. Finally, the five Defendant plans are asking whether minimum contacts have been established in this case.

This move follows a Dec. 31, 2016, ruling by Alabama U.S. District Judge R. David Proctor rejecting motions to dismiss filed by nine of the 38 Blues accused of a decades-old conspiracy to avoid competing in certain areas and to fix prices paid to doctors and hospitals. In their motion to dismiss, the nine Blues argued that they have limited operations in Alabama. Specifically, the Defendants argued that their sales in northern Alabama represented a small percentage of their total sales and, thus, were insufficient to establish minimum contacts with the jurisdiction. Judge Proctor, however, disagreed. He concluded that the insurers had in fact been conducting "substantial business in this district" and that any conclusion to the contrary "favors large corporations over small corporations because, in marginal cases, a large corporation could make an identical amount of sales as a small business in a particular district but avoid jurisdiction under Section 12 [of the Clayton Act] based on its larger pool of total sales."

This motion to dismiss is not the first time these same Defendants have sought to be dismissed from the case on personal jurisdiction grounds. In fact, Judge Proctor, who is overseeing the multidistrict litigation (MDL), denied an earlier motion to dismiss on Oct. 30, 2015. The court's earlier ruling commented that Plaintiffs were willing to stipulate that the Defense was not waived and could be decided after the cases were remanded to their home courts, but that the Defendants declined to agree, instead choosing to push for dismissal.

In the October 2015 order, the judge also noted that because of the peculiar nature of the MDL proceeding, even should he determine that personal jurisdiction was lacking in some of the class actions as to the moving Defendants, each moving Defendant had filed an answer (instead of a motion to dismiss) in at least one of the cases. Specifically, Judge Proctor noted "[e]ach of the Moving Defendants, by filing an Answer (rather than a Motion to Dismiss) in at least one of the cases conditionally transferred to this MDL, has conceded that they are
properly participating in the MDL through at least one case."

The MDL was created in 2012, when nine antitrust actions in Alabama, North Carolina and Tennessee were consolidated in Alabama federal court. Subscribers of Blue Cross of Oklahoma then sued the company in their own putative class action in February, making similar antitrust claims over the insurer’s alleged efforts to “establish and maintain monopoly power” in health insurance throughout the state. The lawsuits generally contend that under normal market conditions, the companies would compete against one another, but have instead allocated among themselves regional health insurance markets, in violation of the Sherman Antitrust Act.

The Court heard arguments on their request to certify an interlocutory appeal to the United States Eleventh Circuit Court of Appeals on January 9. If you need more information, contact Rebecca Gilliland, Jessi Meeks, or Claire Burns, lawyers in our Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Rebecca.Gilliland@beasleyallen.com, Jessi.Meeks@beasleyallen.com, or Claire.Burns@beasleyallen.com.

Source: Law360.com

XIV. TRANSPORTATION

FIFTEEN-PASSENGER VANS ARE VERY DANGEROUS

Fifteen-passenger vans are a staple mode of transportation amongst churches, schools, retirement homes and daycares. These vans are a cheaper alternative to buses and do not require the driver to have a commercial driver’s license. The utility of these vehicles is obvious; however, they are some of the most dangerous vehicles on the road. Lawyers in our firm have handled a number of cases involving the 15-passenger vans.

In the late 1970s, Ford and Dodge designed and released versions of the 15-passenger van that were modified versions of their already existing cargo vans. Both manufacturers extended their cargo van’s length, kept the original wheelbase, and added passenger seats. These alterations made an already rollover prone vehicle even more unstable. When a 15-passenger van is loaded with occupants, the vehicle’s center of gravity raises. Additionally, because the bulk of the seating is toward the rear of the vehicle, as more occupants are loaded into the vehicle, the weight becomes distributed more toward the rear.

Raising the vehicle’s center of gravity and distributing the weight toward the rear of the vehicle causes the vehicle to handle worse and be more prone to rollover. The National Highway Transportation Safety Administration (NHTSA) found that 15-passenger vans with 10 or more occupants had a rollover rate nearly three times higher than one carrying fewer than five people.

Alarmingly, a vehicle that is advertised and sold for its ability to carry 15 passengers becomes three times more likely to roll over if fully loaded. As alarming as that proposition is, it is even more shocking that these dangerous characteristics were recognized early in the design of these vehicles and that numerous alternative designs have existed for years. As early as the 1970s, Ford engineers appreciated the lack of stability associated with the 15-passenger van.

In fact, one such engineer, who has since left Ford, recalled watching a 15-passenger van prototype show signs of instability on a test track prior to production. The engineer described watching a trained test driver struggle to maintain control of the prototype vehicle during a series of turning maneuvers. Internal Ford documents even show some of the engineers working on the 15-passenger van suggested extending the vehicle’s wheelbase, or adding dual rear tires as a means to address the unstable condition. These ideas were rejected by Ford.

On April 9, 2001, NHTSA issued a “consumer advisory” alerting the public about the increased rollover risk under certain conditions after reviewing nearly 10 years of statistics related to the vehicles. However, Ford is still producing virtually the same 15-passenger van that its engineers worried about in the late 1970s. These vans not only suffer from poor stability and a heightened propensity to rollover, but, to make matters worse, have weak roof structures and inadequate seat belts. In addition to being inherently dangerous due to their faulty design, many of these vehicles are poorly maintained, and driven by ordinary people not accustomed to operating such large vehicles. This deadly combination has resulted in catastrophic consequences. All too often those injured or killed are young adults and children due to the popularity of the vans by schools, day cares, camps, and churches.

These vehicles are common, and yet the dangers are not widely known. NHTSA warns those who travel in 15-passenger vans to not overload the vehicle, regularly maintain the vehicle, insure all tires are properly inflated and for occupants to wear their seatbelts. I would caution anyone to avoid these vehicles at all cost. The dangers are real and no amount of caution can prevent all accidents. If you need more information on this subject, contact Evan Allen, a lawyer in our Personal Injury and Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.

JereBeasleyReport.com
SUIT ALLEGES APPLE COULD HAVE PREVENTED TEXTING AND DRIVING BUT FAILED TO DO SO

A suit filed in California alleges that Apple is responsible for the deaths and injuries of all motor vehicle wrecks resulting from a driver being distracted while texting on their iPhone. The suit claims that Apple has had the capability to install a “lock-device” on iPhones that could have prevented California drivers from texting while driving.

MLG Automotive Law brought the suit, claiming unlawful, unfair, and fraudulent business acts and practices by Apple. The claims rely in part on the fact that Apple was granted a patent in 2014 for the “lock-out” technology, but decided not to install it for fear of losing market share to competitors. The suit alleges that Apple made $8.5 billion in profits stemming from the sale of its iPhone in the third quarter of 2016 alone.

Throughout 2016, Apple averaged sales of about 586,000 iPhones per day. The suit alleges that 26 percent of accidents are caused by motorists using their cell phones, and that Apple has a 40 percent market share of the smartphone market. That translates into roughly 52,000 automobile accidents that could have been caused by Apple iPhone users each year.

If you need more information, contact Warner Hornsby, a lawyer in our Personal Injury and Products Liability Section, at 800-898-2034 or by email at Warner.Hornsby@beasleyallen.com. The case is Julio Ceja v. Apple, Inc., (case number BC647057) in the Superior Court of the State of California, County of Los Angeles.

XV. ENVIRONMENTAL CONCERNS

THIRD PFC BELLWETHER TRIAL RESULTS IN PLAINTIFF’S VERDICT

Perfluorinated chemicals (PFCs) are commercially manufactured compounds that are widely used to make everyday products more resistant to stains, grease, and water. For example, PFCs are used to make non-stick cookware, are used in sprays to make fabrics stain-resistant, and are even used in certain food packaging materials. PFCs break down extremely slowly, and as a result there is widespread human exposure to PFCs that have been released into the environment as the result of manufacturing processes.

The most common route of PFC exposure is through consuming PFC-contaminated drinking water. Many types of PFCs are carcinogenic or otherwise toxic if consumed, and can cause a wide range of health problems. Unfortunately, the use and disposal of most PFCs is largely unregulated by the government.

The DuPont company has used a type of PFC called perfluorooctanoic acid (PFOA) in the production of Teflon for non-stick frying pans since the 1950s. At one of DuPont’s chemical sites in Parkersburg, West Virginia, the company spent decades brazenly dumping PFOA-containing waste into the Ohio River, thereby contaminating local water supplies and farmland. DuPont continued dumping this waste despite having known since at least 1961 that PFOAs were toxic and could cause health problems.

By the 1970s, DuPont discovered that its factory workers had high concentrations of PFOAs, and in 1991 DuPont established an internal safety limit for PFOA concentration in drinking water. Meanwhile, the company hid evidence that the chemical had contaminated the local water supply well beyond what the company’s own scientists considered safe and far beyond what independent scientists considered safe.

Litigation against DuPont over PFOA-contaminated drinking water began in 2001, when a class action was filed in West Virginia state court. In 2004, DuPont settled the case, agreeing to install filtration plants in the six affected water districts and pay a cash award of $70 million. DuPont also agreed to fund a scientific study to determine whether there was a scientific link between PFOA and any diseases — if any such link was found, class members with those diseases could sue for personal injury. In December 2011, that study found a “probable link” between PFOA and kidney cancer, testicular cancer, ulcerative colitis, thyroid disease, high cholesterol, and pre-eclampsia. Since the study was released, more than 3,500 Plaintiffs have filed personal-injury lawsuits against DuPont, and these cases have been consolidated into a multidistrict litigation (MDL) in Ohio’s Southern District.

The MDL’s third bellwether trial recently resulted in a $12.5 million verdict in favor of a 56-year-old truck driver diagnosed with testicular cancer. This verdict is composed of $2 million in compensatory damages, and $10.5 million in punitive damages. The punitive damage award comes as a result of the jury’s finding that DuPont had acted maliciously by hiding the risk of PFOA exposure, and is a large increase over the punitive damages awarded in previous trials. Two previous bellwether trials also resulted in Plaintiff’s verdicts, with one jury awarding a kidney cancer survivor $1.6 million in compensatory damages (no punitive damages awarded), and the other jury awarding a testicular cancer survivor $5.1 million in compensatory damages and $500,000 in punitive damages.
If you would like more information about these cases, contact Grant Cofer, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at Grant.Cofe@beasleyallen.com.

**$10.5 Million in Punitive Damages Awarded Against DuPont For Water Contamination**

An Ohio federal jury awarded $10.5 million last month in punitive damages to Kenneth Vigneron, a cancer survivor who claimed DuPont’s chemical dumping caused his cancer. This award, which was in addition to the jury’s award of $2 million in compensatory damages and payment of Vigneron’s attorney’s fees, is the largest punitive award to date against DuPont in the multidistrict litigation (MDL) pending in the U.S. District Court for the Southern District of Ohio.

In his lawsuit, Vigneron alleged that DuPont withheld information from the public showing exposure to perfluorooctanoic acid, also known as PFOA or C-8, an ingredient in Teflon, could cause cancer in humans. Despite its knowledge, for decades DuPont dumped untreated PFOA into the air and water from its West Virginia factory located on the Ohio River. These PFOA-contaminated groundwater sources surrounding the factory allegedly caused a cancer cluster in several Ohio water districts – including the district from which Vigneron received his water.

The jury found that despite knowing the toxic and cancer-causing nature of PFOA, DuPont releasing that substance untreated into the air and Ohio River constituted malicious conduct deserving of a substantial punitive damage award.

The MDL involving DuPont’s PFOA dumping consists of approximately 3,500 individual cases. In addition to Vigneron’s victory, to date juries have awarded verdicts in favor of two MDL plaintiffs. Another 11 cases are set for trial in 2017. If you need more information, contact Chris Boutwell, a lawyer in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com.

Source: Law360.com

**F.D.A. Heightens Regulatory Efforts Surrounding E-Cigarettes**

The U.S. Food and Drug Administration (FDA) will hold a two-day public workshop in April to discuss the potential safety risks of e-cigarettes. The announcement comes on the heels of the FDA’s latest report documenting the rise in the number of e-cigarette explosions. We previously reported on the problems caused by e-cigarettes.

The workshops will be part of the FDA’s efforts to increase oversight of the electronic smoking industry. Last August, the agency “finalized a rule extending its regulatory authority to all tobacco products, including e-cigarettes, cigars and hookah and pipe tobacco, as part of its goal to improve public health.” Its end goal is to better protect U.S. residents.

The announcement also comes days after another U.S. Senator called for federal action to address the “dangerous devices.” In a press release posted on Politicalnews.me, U.S. Senator Richard Blumenthal (D-CT) called on the FDA and the U.S. Consumer Product Safety Commission (CPSC) to better protect consumers from exploding e-cigarettes. The Senator was prompted to act after a constituent became one of the latest victims of exploding e-cigarettes.

Sen. Blumenthal wants defective products recalled and clear safety standards for future devices along with the lithium-ion batteries that power them. According to Righting Injustice, U.S. Senator Charles Schumer (D-NY) also demanded similar action to address the defective devices. The explosions have been linked to overheating of the lithium-ion batteries that power electronic smoking devices. The lithium-ion batteries have caused similar problems in hoverboards and various smartphones.

Sen. Blumenthal issued a similar call to action in a letter to major U.S. airlines, demanding that they voluntarily follow the lead of the U.S. Department of Transportation (DOT) and expand the ban of electronic smoking devices, issued early in 2016, to include the passenger cabin as well as checked baggage.

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

Sources: The Hill; The U.S. Food and Drug Administration; Politicalnews.me; and Righting Injustice

**Lawsuit Filed Over Health Effects of Roundup**

John Holm, a Colorado resident, has filed a lawsuit against Monsanto over the health risks linked to the popular weed killer Roundup. The complaint, filed in the U.S. District Court of Colorado, alleges that the Plaintiff developed diffuse non-Hodgkin’s lymphoma from Roundup use over a period of nearly 40 years, starting in 1979. The lawsuit further alleges that Monsanto failed to provide proper warnings and directions about the dangers associated with Roundup use.

The Plaintiff maintains that he was unaware of the link between Roundup and lymphoma until last year, when the World Health Organization’s International Agency for Research on Cancer (IARC) determined that glyphosate contained in Roundup is likely a cancer-causing agent. In particular, the IARC report linked the side effects of Roundup to an increased risk of non-Hodgkin’s lymphoma.
This recently filed case joins a growing number of Roundup lawsuits filed against Monsanto by farmers, landscapers, agricultural workers and others exposed to the weed killer throughout the United States. Many of these Plaintiffs allege that Monsanto’s reckless promotion of Roundup without disclosing the potential health risks or providing sufficient safety instructions to minimize exposure caused their injuries.

Plaintiff Holm’s lawsuit will be consolidated with all other Roundup cases pending in the federal court system, which are centralized before U.S. District Judge Vince Chhabria in the Northern District of California, for coordinated discovery and pretrial proceedings. A number of state-court cases are also preceding outside of the federal multidistrict litigation (MDL).

John Tomlinson, a lawyer in our Toxic Torts Section, has filed a number of Roundup cases in both state and federal courts. He is currently investigating other Roundup exposure cases. If you need more information on this subject, contact John at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com.

Source: AboutLawsuits.com

OSHA LOWERS BERYLLIUM EXPOSURE LIMIT

The Occupational Safety and Health Administration (OSHA) has issued a new rule limiting the workplace exposure of beryllium, which is a chemical element than can cause the severe lung disease berylliosis. Berylliosis can cause complete failure of the lungs and ultimately result in death without a lung transplant.

Beryllium is a strong, lightweight metal used in a variety of industries including energy, electronics, aerospace, and defense. It is arguably the most toxic substance on earth when processed in a manner that releases airborne dust, fume, or mist into the workplace environment. OSHA estimates 62,000 workers are exposed to beryllium in the workplace. Workers at the greatest risk are those in foundry and smelting operations; machining, fabricating, and grinding beryllium alloys and metals; beryllium oxide ceramics manufacturing; and dental lab work.

The final rule is set to reduce the eight-hour permissible exposure limit from 2.0 micrograms per cubic meter to 0.2 micrograms per meter. Additional protections, such as medical exams, protective equipment, and other types of medical training and surveillance will also be required under the new rule.

Lawyers in our Toxic Torts Section are investigating cases where individuals are diagnosed with berylliosis or sarcoidosis, which is pathologically similar to berylliosis. If you have any questions about this subject, contact Chris Boutwell or Ryan Kral, lawyers in the Section, at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com or Ryan.Kral@beasleyallen.com.

Source: Law360.com

XVI.
UPDATE ON NURSING HOME LITIGATION

DUTIES TO REPORT INFECTIOUS OUTBREAKS IN NURSING HOMES

A growing problem exists in American nursing homes. There has been a tremendous increase in infectious bacterial infections, drug-resistant infections, and diseases spreading throughout facilities. While that thought is frightening enough for our loved ones who are in long-term care facilities, the problem is worsened by the fact that these outbreaks often go unreported or are reported late, resulting in more residents of nursing homes being infected than should occur. Most states require that outbreaks such as these be reported to the state health agency within 24 hours of when the outbreak becomes known to the facility, yet this simply does not happen and virtually nobody is being punished or held accountable for this serious problem.

This issue was recently brought to light in an article that appeared in Reuters Magazine (Dec. 22, 2016). The article, titled “How hospitals, nursing homes keep lethal ‘superbug’ outbreaks secret,” authored by Deborah J. Nelson, David Rohde, Benjamin Lesser and Ryan McNeill, explored numerous cases of bacterial outbreaks in nursing homes and hospitals in the last few years. While the number of outbreaks around the country cannot possibly be known for the reasons discussed below, the Reuters’ investigation determined that there were at least 300 superbug outbreaks in public health facilities between 2011 and 2016, and this information was simply gleaned from the study of incomplete records from 29 states. Inspection of death certificates of long-term care residents who died between 2003 and 2014 revealed a 62 percent increase in deaths associated with superbug infections.

Dr. Nelson and her cohorts, in their investigation, addressed that the problem of countless outbreaks is made worse for a number of reasons that include:

• The lack of a continuity in the Centers for Disease Control (CDC) reporting, tracking and sharing of information with regard to outbreaks;
• The reliance of CDC on local health departments to report the outbreaks to it and to handle and follow up on those outbreaks;
• Vague, uncertain and unenforced rules on what must be reported and when;
The fact that many health departments see themselves merely as a facilitator to the facility in addressing outbreaks;

- Presence of some state laws that protect the identities of the facilities where there are outbreaks;

- The lack of punishment of facilities that fail to report or are slow in reporting, despite the presence of civil remedies under most states’ laws;

- The denial of medical professionals that lack a properly trained education infection-prevention officer to monitor, track and report outbreaks at the facilities.

The authors investigated several incidents of outbreaks. The primary ones that were focused on were:

- A January 2014 outbreak of Clostridium difficile (c. diff.) at Casa Maria nursing home in New Mexico: In this incident, the New Mexico regulations required that a nursing home notify state public health officials within 24 hours of an outbreak in a public health facility, but the outbreak was not reported until March 2014. By the time it was reported, nine residents had contracted c. diff. By June 15 residents had contracted it, and eight had died. The public was not advised of the outbreak.

- A September 2014 outbreak of c. diff at St. Mary’s Regional Medical Center in Reno Nevada, where 15 or more patients became infected and three died. The state health department conceded that the outbreak was reported much too late.

- Between 2008 and 2011, as many as 21 patients were infected with Acinetobacter baumannii (A. baumanii) at St. Anthony's Medical Center in St. Louis, Missouri. The outbreak was never reported until it was discovered by a family member whose father died following surgery at the hospital.

- In 2016, more than 22 patients were sickened and seven died in an Ohio hospital and seven long-term care facilities as a result of A. baumanii. The public was never notified of the multiple identified cases. A family member of the last person to die was only told that he died from a “mysterious infection.”

- An outbreak of Klebsiella pneumonia in January 2011 in West Virginia. This outbreak became known only after a local hospital, Berkeley Medical Center, notified state health agents of the increased diagnoses. An investigation revealed that more than nine people had contracted the infection at a local nursing home, but it was only reported as “LTCF A,” rather than by the name of the facility. By the time all infected persons were identified, the list was two-feet long. Reuters was able to identify the facility as Heartland of Martinsburg. A local health official expressed her frustration that she could not, by law, let people know of the problem in this facility. This outbreak resulted in litigation, and the nursing home and hospital pointed the finger at one another, contending that the other was responsible for the outbreak.

While other facility outbreaks were discussed by Reuters, the authors/investigators bring to light a serious problem that needs to be addressed more seriously by state health officers, the CDC, and lawyers who investigate hospital and long-term care facility illnesses and deaths.

If you need more information on this subject, contact Ben Locklar at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com. Ben handles Nursing Home Litigation for our firm.

Source: Reuters

XVII. AN UPDATE ON CLASS ACTION LITIGATION

Halliburton Agrees To $100 Million Settlement In Asbestos Class Action

Halliburton Co. has reached a $100 million settlement to end a more than 14-year-old securities class action pending in Texas federal court. The suit was brought over claims from investors that the energy giant misled them about the company’s asbestos liability. The settlement, reached in principle in December, puts an appeal of a class certification order on hold, pending the lower court’s approval of the settlement. In a statement, Halliburton said it will have to pay about $54 million of the settlement fund, with the rest covered by its insurer. The long-running class action is now over claims Halliburton artificially inflated its stock price by issuing misstatements about its financial liability for asbestos claims. However, Halliburton has said there’s no evidence...
the statements at issue had an actual impact on its stock price.

U.S. District Judge Barbara M. Lynn in July 2015 granted in part the investors’ motion for class certification, finding that Halliburton had not met its burden of showing that a Dec. 7, 2001, announcement from the company did not affect its stock price. That statement announced that a Baltimore jury found that a Halliburton subsidiary, Dresser, was liable for $30 million following a trial in an asbestos lawsuit. The company’s shares dropped about 40 percent soon thereafter. The case started in 2002 and has gone up to the U.S. Supreme Court on two occasions.

In its first time at the high court, the justices overturned a Fifth Circuit ruling that the class action could not be certified because the investors had failed to prove affirmatively that their losses had been caused by Halliburton’s alleged misrepresentations. The Supreme Court ruled there was no such requirement. The Texas district court then certified the class, rejecting Halliburton’s effort to use price impact evidence to negate the investors’ presumed reliance on the statements. The Fifth Circuit affirmed that decision, leading to another high court battle which ended with the Supreme Court declining to overturn its landmark Basic v. Levinson decision but finding that securities Defendants may rebut the fraud-on-the-market presumption of reliance before the class certification stage by showing a lack of price impact.

The Supreme Court found that Halliburton did not show a “special justification” to overturn Basic, which in 1988 established the fraud-on-the-market presumption of reliance that rests on the principle that public, material information about a publicly traded company affects the price of the company’s stock and that investors thereby rely on that information when they purchase securities. However, the justices found that Defendants should be allowed to rebut that presumption of reliance before class certification by showing evidence that an alleged misrepresentation did not affect the stock’s price.


Source: Law360.com

**JURY AWARDS $20 MILLION IN DISH TELEMARKETING CLASS ACTION TRIAL**

A jury awarded $20.5 million last month in a post-Spokeo Telephone Consumer Protection Act class action against Dish Network over 51,000 unwanted phone calls. The jury awarded $400 for each unwanted call placed by authorized Dish dealer Satellite Systems Network. In response to the question, “Was SSN acting as Dish’s agent when it made the telephone calls at issue from May 11, 2010, through Aug. 1, 2011?” the jury answered, “Yes.” Brian Glasser, one of the Plaintiffs’ lawyers, had this to say:

_Dish’s authorized retailer program was a corporate shell game, developed so Dish could have all the benefits of illegal telemarketing – the customers – but shoulder none of the responsibility for violating the law._

Plaintiff Thomas Krakauer said that he was called over and over despite his presence on the Do Not Call registry. He said that Dish was responsible in no uncertain terms for the actions of SSN. It was stated in the complaint:

_Dish took the view that compliance was the dealers’ responsibility, and fell back on self-serving contractual provisions to attempt to shield itself from liability for the illegal telemarketing conducted on its behalf._

Even after signing an “Assurance of Voluntary Compliance” after getting in hot water with 48 state attorneys general in 2009, the company continued to turn a blind eye to its dealers’ flagrant violations. After the Spokeo decision, however, Dish believed it had a good chance of getting the suit dismissed. In May, the U.S. Supreme Court ruled that a consumer could not sue Spokeo Inc. for mere technical violations of the Fair Credit Reporting Act, but left the door open for Plaintiffs in other cases to use statutory violations to establish standing, finding that the Ninth Circuit used an incomplete analysis when it ruled consumers can sue companies without alleging actual injury.

Dish filed a motion in June of 2016 asking for decertification of classes that had been approved in September 2015 by U.S. District Judge Catherine Eagles, telling the judge:

*When this court certified the two classes in this case, it rejected DISH’s objections to standing, holding that ‘where the statutory language provides a clear answer [as to standing], [the] analysis begins and ends with that language.’ The Supreme Court has now clarified that statutory language alone is insufficient to convey standing.*

In August, Judge Eagles denied Dish’s motion and stated, “These calls form concrete injuries because unwanted telemarketing calls are a disruptive and annoying invasion of privacy.” Dish moved for an interlocutory appeal of that ruling, which Judge Eagles also denied. Krakauer is
represented by Brian Glasser, Matthew McCue, Matthew Norris, Ryan Donovan, John Roddy and John Barrett of Bailey & Glasser and Edward A. Broderick and Anthony Paronich of Broderick & Paronich. They did an exceptional job in this case. The case is Krakauer v. Disb Network LLC in the U.S. District Court for the Middle District of North Carolina.

Source: Law360.com

XVIII. THE CONSUMER CORNER

FAKE NEWS AND THE GREEN COFFEE BEAN – THE MODERN “SNAKE OIL”

It is a problem old as time – false advertisement or deceptive marketing practices. The Bible tells us that when Satan, appearing to Eve as a snake, deceived her into eating the fruit of the Tree of Knowledge. She did so even though God told Adam and Eve they could eat fruit from any tree, but that particular tree.

Similarly, National Public Radio (NPR) recounts how a legitimate medicine brought to the U.S. in the 1800s by Chinese immigrants working on the Transcontinental Railroad eventually became the symbol of fraud. The Chinese medicine, “snake oil,” was derived from the fat of the Chinese water snake. The same oil helped ease tired muscles and aching joints of weary Chinese laborers.

As word spread about the powerful medicine’s benefits, an enterprising cowboy, Clark Stanley, seized his opportunity to swindle many consumers. Stanley created his own snake oil. He demonstrated a process and led customers to believe was his process for creating the oil. Yet, in 1917, federal investigators seized some of the salesman’s oil and found that it did not contain any snake oil at all. The federal government fined Stanley $20 (about $429 today) for “misbranding” his product and “falsely and fraudulently represent[ing] it as a remedy for all pain.”

The Federal Trade Commission (FTC) has been working to reign in advertisers that use fake news advertising – a refined approach to deceptive marketing. In 2014, the FTC sued Pure Green Coffee and other companies that were using the deceptive marketing practices similar to the one Stanley used 100 years ago with his fake snake oil. Most of the companies settled out of court in 2015 agreeing to pay restitution in the amount of $30 million; however, Law360 notes that almost all of the judgment was suspended based on the company’s inability to pay. One defendant, Nick Congleton, opted to take his case to court.

Late last year, the U.S. District Court for the Middle District of Florida Tampa Division reinforced the FTC efforts to stop fake news advertising. It found Congleton, the pitchman behind Pure Green Coffee Extract, and his various businesses including Florida-based NPB Advertising, Inc., misled consumers with false weight-loss claims, phony testimonials and fake news websites to exploit the latest diet craze.

The supplement became popular after Dr. Mehmet Oz overstated its benefits on his show, “The Dr. Oz Show.” Congleton and co-Defendants used information from the show as a basis for their marketing pitch. However, they did not realize the information was unconfirmed and they failed to conduct the clinical trials required by the FTC to substantiate the weight-loss claims. Further, the Defendants created fake news websites to promote the product and to make it appear as legitimate news. A report by LegalNewsLine said “[t]he scheme included using mastheads on [sic] fictitious news outlets, along with logos from actual news sites, to attempt to trick consumers.”

Following the ruling, the FTC announced that it was pleased the court shut down Congleton’s scheme and explained that this case demonstrates how seriously it takes such cases and the extent it will go to pursue justice. It’s time for the modern-day snake oil salesmen to be put out of business. That is the joint responsibility of the government agencies and the judicial system. Hopefully, the federal government will continue to do its part.

Sources: Law360.com and Federal Trade Commission

NATION’S LARGEST STUDENT LOAN PROVIDER CHEATED CUSTOMERS

Navient, the country’s largest servicer of student loans, is being sued by the federal government. Navient “systematically and illegally (failed) borrowers at every stage of repayment,” according to the federal lawsuit filed last month by the Consumer Financial Protection Bureau (CFPB). It’s alleged that Navient used “shortcuts and deceptions” to provide customers with bad information about their loan repayments. The company also failed to process payments correctly and illegally cheated some customers out of their rights to lower payments, the CFPB said.

It was also alleged that Navient deceived private student loan borrowers about requirements to release cosigners from their loans and harmed the credit of borrowers, including military veterans and people with disabilities. CFPB Director Richard Cordray said:

For years, Navient failed consumers who counted on the company to help give them a fair chance to pay back their student loans. At every stage of repayment, Navient chose to shortcut and deceive consumers to save on operating costs. Too many

JereBeasleyReport.com
Borrowers paid more for their loans because Navient illegally cheated them and (the suit) seeks to hold them accountable.

Navient, a spin-off of Sallie May, provides customer service, repayment support and student loan consolidation information for more than 12 million customers with some $300 billion in government and private student loans. Also named in the suit were Navient Solutions (which is responsible for loan servicing operations) and Pioneer Credit Recovery (which specializes in the collection of defaulted student loans). The suit is seeking restitution for affected borrowers, as well as financial penalties to the companies. As many as half of Navient customers could be affected, according to the lawsuit.

There is precedent for recovery on Navient loans. Last year, the Department of Justice announced almost 80,000 U.S. service members would receive part of a $60 million judgement in compensation for having been charged excess interest on their Navient student loans. The company is seeking restitution for affected borrowers, as well as financial penalties to the companies. As many as half of Navient customers could be affected, according to the lawsuit.

The Delaware-based company is disputing the claims made in the suit and said it would vigorously defend these false allegations.

Source: AL.com

ADT AGREES TO SETTLE ALARM HACKABILITY SUITS

ADT LLC has reached a settlement with groups of device owners in five separate proposed class actions. It was alleged that the home security company deceived consumers about the efficiency of its devices and their vulnerability to hacking. ADT was facing claims by consumers in Illinois, Arizona, Florida and California, with claims in the latter state filed by Michael Edenborough in March alleging ADT violated California’s Consumer Legal Remedies Act (CLRA), Unfair Competition Law (UCL) and fraudulently hid material information from consumers about the hackability of its devices.

U.S. District Judge Jon Tigar dismissed Edenborough’s CLRA and UCL claims in March, but allowed his fraudulent omission claim to proceed. The two sides continued to exchange discovery materials and take part in mediation sessions. According to a joint notice of settlement submitted by Edenborough, that mediation resulted in an agreement to settle, through a nationwide class, the claims alleged in his own suit, along with those filed by lead Plaintiffs Dale Baker, Janet Cheatham, Santiago Hernandez and Patricia Wilson.

At press time, the terms of the deal had not disclosed. Edenborough had alleged that at the time he signed up for ADT’s service in early 2012, the company was fully aware that wireless systems like its own were vulnerable to disruption because they lacked encryption, yet failed to share that information.

Judge Tigar ruled that Edenborough’s complaint “need not specify in detail the exact methods of hacking to which ADT knew its devices were vulnerable.” Judge Tigar partially denied ADT’s dismissal motion. The judge ruled that the “Plaintiff need only generally allege that ADT had knowledge of, and withheld, a material fact: that its devices were unencrypted and vulnerable to hacking.”

The publications cited by Edenborough said that the industry to which ADT belongs knew of wireless device vulnerabilities long before he signed his 2012 contract. His complaint alleged that the manufacturers of ADT’s devices have acknowledged, and disclosed to ADT, that since 2012 its home systems were vulnerable – an acknowledgment ADT itself made in 2016.

Arizona resident Janet Cheatham had made similar claims against ADT in September 2015, and recently sought to certify a class of state consumers she said were deceived by the company since 2012.

Florida resident Santiago Hernandez filed suit against ADT around the same time as Edenborough. CFPB Director Richard Cordray said that the company boasts that it uses the most innovative technology in the market, yet its signals are easily intercepted. The company’s knowing omissions and misrepresentations about its security systems and failure to encrypt or secure its wireless signals is a violation of the Florida Deceptive and Unfair Trade Practices Act, Hernandez said.

The consumers are represented by Mark Chavez and Dan Gildor of Chavez & Gertler LLP, Francis J. Balint Jr. and Andrew S. Friedman of Bonnett, Fairbourn, Friedman & Balint PC, and Tom Zimmerman of Zimmerman Law Offices PC. The case is Edenborough v. ADT LLC, (case number 3:16-cv-02233) in the U.S. District Court for the Northern District of California.

PEDICIATRICANS ARE CONCERNED OVER THE USE OF BABY POWDER

Pediatricians are showing real concern over the use of baby powders. As you probably know, for decades a staple of many parents’ changing tables was a container of baby powder. However, pediatricians are now recommending that the product be avoided completely. The American Pediatric Association recommends against using baby powder, initially over concerns that talc, which was used in some products, but has been largely phased out, could be inhaled and harm babies’ lungs.

There are currently safer baby powder options that use cornstarch as a talc-substitute, like the Honest Company’s organic baby powder, which was recently voluntarily recalled over rash concerns. But despite the alterna-
tive powders, Dr. David Soma, a Pediatrician with the Mayo Clinic Children’s Hospital, says the overall message is that the potential of inhaling any powder could be harmful, especially for premature babies or those with heart disease and asthma. Dr. David Soma added:

*The talc powder is more concerning than cornstarch based powder, but the big take home message is that we don’t recommend powders.*

Dr. Soma said over the last five to eight years, he has noticed a drop-off in parents using baby powder on their babies. But if it’s not recommended, Dr. Soma observed, why do we have it on shelves? It would appear that the manufacturers would phase out baby powders. However, that may not happen. In any event, it should be noted that for parents desperate to prevent diaper rash, there are options other than baby powder.

Source: USA Today

**XIX. RECALLS UPDATE**

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

**652,000 Cars Add To Takata Air Bag Recall**

More than a dozen automakers, including Tesla, BMW and Nissan, have agreed to recall another 652,000 vehicles equipped with faulty Takata Corp. air bag inflators. Outside of several Audi and Nissan models and one Tesla model being recalled for replacement of the vehicles’ front side passenger air bags, multiple models of Jaguar Land-Rover, Subaru, Mercedes-Benz and Daimler, Mitsubishi, BMW, Ferrari, Mazda, McLaren and Karma vehicles are also being recalled as part of the largest recall in history. The recalls are expected to begin this month.

As part of the National Highway Traffic Safety Administration (NHTSA) plan to roll out the replacement of the Takata air bags, which are prone to rupture and explode under certain environmental conditions and have been linked to at least 11 deaths, other automakers have announced expanded recalls in recent weeks. Toyota, for example, added 543,000 vehicles to its already substantial recall over the inflators, which now involves more than 6 million vehicles in the U.S. and many millions more internationally. I will write on Toyota below. Honda similarly announced an expansion of its Takata-related recall, adding about 772,000 of its vehicles to the millions the automaker has already recalled. All of the vehicle manufacturers are replacing the affected Takata parts with different inflators free of charge. NHTSA in May expanded the recall to cover about 40 million of the air bag parts.

**Toyota Expands Recall Of Vehicles With Takata Air Bags**

Toyota Motor Corp. will recall 543,000 more vehicles in the U.S. to replace front passenger air bags manufactured by Takata Corp., which the automaker said contain potentially fatal defects. The recall involves 12 different Toyota, Lexus and Scion vehicles including model year 2009 and 2012 Toyota Corolla and Corolla Matrix vehicles, and 2006-2009 and 2012 Lexus IS250 and IS350 sedans. The issue stems from inflator propel-

lant in the air bags, which can degrade due to prolonged exposure to high absolute humidity or high temperatures, causing the unit to rupture when the air bag deploys.

The other vehicles recalled by Toyota are the 2008 - 2009 and 2012 Scion xB, 2007-2009 and 2012 Toyota Yaris, 2012 Toyota 4Runner and Toyota Sienna, the 2012 Lexus IS250C/350C, Lexus GX460 and LFA, 2008-2009 and 2012 Lexus IS-F, and the 2007-2009 and 2012 Lexus ES350. Toyota’s U.S. recall is part of a larger global campaign expansion involving 730,000 vehicles, 690,000 of which are located in North America. In total, Toyota has recalled 6 million vehicles in the U.S. related to the Takata airbag defect, and millions more globally. The widespread use of these possibly faulty inflators has resulted in massive recall campaigns by automakers on a global scale.

In the U.S. alone, numerous vehicle manufacturers have launched efforts to repair millions of vehicles equipped with Takata airbag inflators. For example, Toyota’s announcement came the same day Ford Motor Co. expanded its own Takata recall by 800,000, and just one day after Honda added 772,000 vehicles. In May the National Highway Traffic Safety Administration (NHTSA) ordered the recall of up to 40 million airbag units. The faulty airbags are linked to the death of at least 11 people in the U.S., and the injuring of at least 100 others. The announcement came several months after the agency fined Takata $70 million as part of a settlement related to the airbags, but said that amount could rise to as much as $200 million if the company does not comply with the terms of the deal.

**Trek Recalls Disc Bicycles Due To Fall Hazard**

Trek Bicycle Corp., of Waterloo, Wisconsin, has recalled Trek 720 Disc bicycles and wheel sets. The front
brake caliper can come into contact with a broken spoke, posing a fall hazard to the rider. This recall involves model year 2015, 2016, and 2017 Trek model 720 Disc bicycles and Bontrager Approved TLR disc 700C 24H Front and Rear Wheels with silver spokes. Trek’s model 720 Disc have a lightweight aluminum frame and vibration-damping carbon fork. The bicycle models were sold in 49 through 61 cm frame sizes. “Trek” is printed across the bicycle frame. The model number can be found on the down tube. The aftermarket wheels are marked “Bontrager TLR” on the rim, and will have 24 silver spokes. Trek has received reports of 10 incidents where either the wheel spoke contacted the bike’s brake caliper or the spokes broke at the hub. There has been one reported injury involving a broken vertebra.

Consumers should immediately stop using the recalled bicycles and wheel sets and return the bicycles to a Trek retailer for a free inspection and free replacement wheels. Contact Trek at 800-573-4594 from 8 a.m. to 6 p.m. CT Monday through Friday or online at www.trekbikes.com and click on Safety & Recalls at the bottom of the page for more information. Bicycle stores nationwide sold the bicycles from November 2014 through October 2016 for between $80 and $90 for bikes and March 2015 through November 2016 for aftermarket wheels for between $80 and $90.

**Polaris Recalls Sportsman 570 All-Terrain Vehicles Due To Fire Hazard**

Polaris Industries Inc., of Medina, Minnesota, has recalled almost 10,000 Sportsman 570 all-terrain vehicles (ATVs). The air intake duct can contact the fuel rail and cause a fuel leak, posing a fire hazard. This recall involves model year 2014 through 2016 Sportsman 570 Touring and X2 model ATVs and model year 2017 Sportsman 570 6x6 model ATVs. The recalled ATVs have one or two seats with four or six tires. “Sportsman” and the model type are printed on the side of the steering column and “Polaris” is printed near the front grill. The ATVs were sold in several colors. The vehicle identification numbers (VIN) are printed on the front or rear frame near the back tire. Recalled VIN numbers are at www.polaris.com. View Models here: https://cpsc.gov/Recalls/2017/Polaris-Recalls-Sportsman-570-All-Terrain-Vehicles. Polaris has received 35 reports of damaged fuel rails and leaks. No injuries have been reported.

The ATVs were sold at Polaris dealers nationwide from May 2013 through December 2016 for between $7,700 and $11,000. Consumers should immediately stop using the recalled ATVs and contact Polaris to schedule a free repair. Polaris is contacting all known purchasers directly. Contact Polaris at 800-765-2747 from 7 a.m. to 7 p.m. CT Monday through Friday or online at www.polaris.com and click on “Off-Road Safety Recalls” at the bottom of the page for more information.

**Toshiba Expands Recall Of Laptop Computer Battery Packs Due To Burn And Fire Hazards**

Toshiba America Information Systems Inc., of Irvine, California, has recalled its Panasonic battery packs used in Toshiba laptop computers. The lithium-ion battery packs can overheat, posing burn and fire hazards to consumers. This expanded recall involves Panasonic lithium-ion battery packs installed in 41 models of Toshiba Satellite laptops, including the Satellite models affected by the March 30, 2016 recall. Toshiba has expanded the number of battery packs to include those sold between June 2011 and November 2016. The battery packs were sold at Office Depot, Staples and other electronics stores nationwide, and online at Toshibadirect.com and other websites from June 2011 through November 2016 for between $500 and $1,000 for the laptop and between $70 and $130 for the battery pack. Consumers should immediately go to the company’s website and click on the battery pack utility link in the first shadowed box on the page. Consumers also can perform a manual check using the laptop and battery pack’s model, part and serial numbers. If it is part of the recall, consumers should power off the laptop, remove the battery and follow the instructions to obtain a free replacement battery pack. Until a replacement battery pack is received, consumers should use the laptop by plugging into AC power only. Battery packs previously identified as not affected by the March 30, 2016 recall are included in this expanded announcement. Contact Toshiba America Information Systems toll-free at 866-224-1346 any day between 5 a.m. and 11 p.m. PT, online at http://go.toshiba.com/battery or at www.us.toshiba.com and click on “Consumer Notices” under the Support heading at the bottom of the page. Photos available here: https://www.cpsc.gov/Recalls/2017/Toshiba-Expands-Recall-of-Laptop-Computer-Battery-Packs
Country Home Products Inc., of Vergennes, Vermont, has recalled about 830 Field & brush mowers. The fuel tank valve can malfunction and cause the fuel tank to expand and gasoline liquid or vapors to be unexpectedly released, posing fire and burn hazards. This recall involves the Pro-XL-44 model of the DR® brand tow-behind field and brush mower manufactured by Country Home Products. The mowers are towed behind a riding mower or ATV to clear acres of thick grass and brush. The recalled mowers have an electric start 20 HP Briggs & Stratton engine and a serial number between TB21001001-TB21002555. The recalled mowers are black and orange and have two blades and four wheels and are 44 inches wide. There is a large label below the machine’s fuel tank that with “DR Field and Brush Mower” printed on it and a round DR logo is in the right hand corner. The serial number is printed on the rear right corner of the frame near the engine control panel. The company has received 10 reports of fires, including one report of a burn injury to a consumer’s hand.

The mowers were sold at Country Home Products catalog, website and authorized independent DR dealers nationwide from October 2015 through July 2016 for about $3,600. Consumers should immediately stop using the recalled mowers and contact Country Home Products to schedule a free repair from a dealer. Country Home Products is sending a repair kit to all registered owners. Contact Country Home Products toll-free at 877-271-5677 from 8 a.m. to 7 p.m. ET Monday through Friday, email at tbm-recall@chp.com or online at www.DRPower.com and click on “Product Recalls” at the bottom of the page for more information. Photos available at https://www.cpsc.gov/Recalls/2017/Country-Home-Products-Recalls-Field-and-Brush-Mowers

Michaels Recalls Rock Salt Lamps Due To Shock And Fire Hazards

SportTex US, of New York, has recalled about 80,000 Rock Salt Lamps. The dimmer switch and/or outlet plug can overheat and ignite, posing shock and fire hazards. This recall involves three rock salt lamps sold under the Lumière brand. The lamps are pink in color and are mounted on a wooden base or in a black metal basket. The lamps were sold in black cardboard boxes with a photo of the lamp on the front of the box and the UPC bar code on the bottom of the box.

The lamps were sold at Michaels stores from July 2016 through November 2016 for between $15 and $30. Consumers should immediately stop using the lamps and return them to any Michaels store for a full refund. Contact Michaels at 800-642-4235 from 9 a.m. to 7 p.m. CT Monday through Friday or online at www.michaels.com and click on “Product Recalls” at the bottom of the page for more information. Photos available at https://www.cpsc.gov/Recalls/2017/Michaels-Recalls-Rock-Salt-Lamps

Glopo Recalls Children’s Scooters Due To Fall Hazard

Glopo Inc, South El Monte, California, has recalled about 520 Joyrider three-wheeled scooters. The front wheels of the scooter can detach when riding, posing a fall hazard. This recall involves Joyrider three-wheeled scooters. The front wheels of the scooter can detach when riding, posing a fall hazard. This recall involves Joyrider three-wheeled scooters. They have a low, foot-gripping deck, multicolored handgrips, and an adjustable metal T-bar handle. The scooters are made of metal and plastic and come in a variety of colors. The tracking label sticker can be found on the back of the scooter, with batch PO number of G20140423. Recalled model numbers are: GT5048R, GT5110R, GT5121R, GT5124R, GT5125R, GT5122R, GT5117R, GT5123R. Model numbers can be found on the bottom of the scooter base, on the receipt and on the packaging. GLOPO has received one report of the front wheels detaching from the scooter, resulting in an injury to a child who fell off the scooter.

Boosted Recalls Electric Skateboards Due To Fire Hazard

Boosted Inc., of Mountain View, California, has recalled about 3,200 Electric-powered skateboards. The lithium-ion battery pack can overheat and smoke, posing a fire hazard. This recall involves 2nd “Generation Boosted Dual+ electric skateboards with lithium ion battery packs. “Boosted” is printed on the wooden skateboards. Serial numbers that start with S2634 through S2634 are located on a white sticker on the bottom of the boards. The battery packs were sold as original equipment with the skateboards and are attached to the bottom of the board in a black thermoplastic enclosure. Model number B2SR and “Boosted Lithium” are printed on the battery pack. The battery packs have an orange power button. Boosted has received two reports of the battery packs overheating and smoking. No injuries have been reported.

The skateboards were sold at online at boostedboards.com from September 2016 through November 2016 for about $1,500. Consumers should immediately stop using the recalled skateboards and contact Boosted for a free replacement battery pack. Contact Boosted toll-free at 844-395-0070 from 9 a.m. to 5 p.m. PT Monday through Friday or online at https://boostedboards.com and click on Battery Pack Recall for more information. Photos available at https://cpsc.gov/Recalls/2017/Boosted-Recalls-Electric-Skateboards
The scooters were sold at online at Amazon.com from October 2014 through January 2016 for about $80 and at Zulily.com from June 2014 through July 2015 for about $50. Consumers should immediately stop using recalled scooters and contact GLOPO for instructions on receiving a free repair kit. Contact GLOPO toll-free at 855-965-1704 from 9 a.m. to 5 p.m. PT Monday through Friday or online at www.GlopoUsa.com and click on “Online Form” for more information. Photos available here: https://cpsc.gov/Recalls/2017/GLOPO-Recalls-Children-Scooters.

**DUNKIN’ DONUTS RECALLS GLASS TUMBLERS DUE TO LACERATION AND BURN HAZARDS**

Dunkin’ Brands Inc., of Canton, Massachusetts, has recalled about 8,300 Dunkin’ Donuts Glass Tumblers. The glass tumblers can crack or break, posing laceration and burn hazards. This recall involves 16-ounce glass tumblers for hot and cold beverages, sold in three styles. They are approximately 8 inches tall and approximately 3 inches in diameter. The first style has “BUT FIRST, DUNKIN” written in white font on the inside layer of glass, a clear lid and pink plastic where the lid connects with the base of the tumbler. The second style has “BUT FIRST, DUNKIN” written in white font on the inside layer of glass, a clear lid and pink plastic where the lid connects with the base of the tumbler. The third style has a black and gray plaid pattern on the inside layer of glass, a black silicone grip with the letters “DD” embossed on it, and a black lid. Dunkin Donuts has received 19 reports of the glass tumblers cracking or breaking. No injuries have been reported.

The tumblers were sold at Dunkin’ Donuts stores from September 2016 through November 2016 for between $13 and $15. Consumers should immediately stop using the recalled glass tumblers and return them to the Dunkin’ Donuts restaurant where purchased for a full refund. Contact: Dunkin’ Donuts at 800-859-5339 from 7 a.m. to 7 p.m. ET Monday through Friday, or online at www.dunkindonuts.com and click on “Learn More” next to the safety recall alert for more information. Photos available at https://www.cpsc.gov/Recalls/2017/Dunkin%E2%80%99%20Donuts%20Recalls%20Glass%20Tumblers

**TEA COLLECTION RECALLS CHILDREN’S DENIM JACKETS DUE TO CHOKING HAZARD**

About 500 children’s knit denim jackets were recalled by Tea Living Inc., d/b/a Tea Collection Inc. of San Francisco, California. The metal snaps on the jackets can detach, posing a choking hazard to children. This recall involves Tea Collection Inc. children’s knit blue denim jackets with metal buttons and snaps. A tag sewn inside the neck reads “Tea.” Style number 6F22400-405 is printed on a hangtag attached to the garment. The jackets were sold in sizes XS to XL (sizes 2 through 12). Tea Collection Inc. has received reports from six consumers about snaps falling off the jackets. No injuries have been reported.

The jackets were sold at specialty and other stores nationwide from August 2016 through December 2016 for about $60. Consumers should immediately take the recalled jackets away from children and contact Tea Collection Inc. to receive a full refund. Contact Tea Collection toll-free at 866-374-8747 from 6 a.m. to 6 p.m. PT Monday through Friday, email at service@teacollection.com or online at www.teacollection.com and click on “product recall” for more information. Photos available here: https://cpsc.gov/Recalls/2017/Tea-Collection-Recalls-Childrens-Denim-Jackets

**WHITESTONE FEEDS, INC. RECALLS ALL JES PREMIUM 40 TUBS DUE TO POTENTIAL HEALTH RISK**

Whitestone Feeds, Inc. has initiated a voluntary recall of a single product from its beef cattle feed line. Effective immediately, all JES Premium 40 Tubs are being recalled. A farm located in Alabama reported that five of its beef cows died after having access to the subject batch of cattle tubs. Samples from the subject batch were assayed following a customer complaint. While the exact cause of the death remains under investigation, elevated levels of non-protein nitrogen (NPN) may be the cause. Cattle exposed to elevated NPN may exhibit rapid breathing, tremors and slight incoordination followed by severe incoordination, excessive salivation and labored breathing. Eventually, afflicted animals lose the ability to stand. Generally, if not treated, animals may die within four hours. If producers have animals that have consumed this product and have any of these symptoms, producers should contact their local veterinarian for assistance. In a precautionary move to prevent any further loss of livestock, this particular product will be removed from the line and unavailable for purchase until further notice.

The beef cattle product subject to this recall was purchased by two distributors, one in Georgia and one in Alabama, who resold the product to farm supply dealers and ranchers located in Mississippi, Alabama, Georgia, Florida and Illinois. The cattle feed subject to this recall can be identified by its label, which describes the product as “JES Premium 40 Tub” and includes the product number JES 3104-8. The subject batch was manufactured between Sept. 29 and Dec. 15, 2016, and packaged in 250-pound blue plastic tubs. Cattle producers who have purchased JES Premium 40 Tub labeled as product number JES 3104-8 should discontinue use of the
product and return any unused tubs to the place of purchase for a refund of the purchase price. Producers should contact their veterinarian for assistance if their cattle have consumed from tubs of product number JES 3104-8.

Cattle producers with questions concerning this recall may contact Whitestone Feeds, Inc. at hardin@integrityfeeds.com or by calling 270-970-0787 Monday through Friday 8 a.m.-5 p.m., Central Time.

**HP Expands Recall of Batteries for HP and Compaq Notebook Computers Due To Fire and Burn Hazards**

About 101,000 Lithium-ion batteries used in HP notebook computers have been recalled by HP Inc., of Palo Alto, California. An additional 41,000 batteries were previously recalled in June 2016 and about 3,000 were sold in Canada and 4,000 in Mexico that are included in the recall. The batteries can overheat, posing fire and burn hazards. This expanded recall involves lithium-ion batteries containing Panasonic cells that are used in HP notebook computers. The batteries are compatible with HP, Compaq, HP ProBook, HP ENVY, Compaq Presario, and HP Pavilion notebook computers.

HP has expanded the number of recalled batteries, which were shipped with notebook computers sold between March 2013 and October 2016. The black batteries measure about 8 to 10.5 inches long, 2 inches wide and about 1 inch high. The battery bar code is printed on the back of the battery. “HP Notebook Battery” and the model number are printed on the battery. The batteries included in this expanded recall have bar codes starting with: 6BZLU, 6CGFK, 6CGFQ, 6CZMB, 6DEMA, 6DEMH, 6DGAL and 6EBVA. HP has received one additional report of the battery overheating, melting and charring and causing about $1,000 in property damage.

The batteries were sold at Best Buy, Walmart, Costco, Sam’s Club and authorized dealers nationwide and online at www.hp.com and other websites from March 2013 through October 2016 for between $300 and $1,700. The batteries were also sold separately for between $50 and $90. Consumers should immediately stop using the recalled batteries, remove them from the notebook computers and contact HP for a free replacement battery. Until a replacement battery is received, consumers should use the notebook computer by plugging it into AC power only. Batteries previously identified as not affected by the June 2016 recall could be included in this expanded announcement. Consumers are urged to recheck their batteries. Contact HP toll-free at 888-202-4320 from 8 a.m. to 7 p.m. CT Monday through Friday or online at www.hp.com/go/batteryprogram2016 or www.hp.com and click “Recalls” at the bottom of the page for more information. Photos available at: https://cpsc.gov/Recalls/2017/HP-Expands-Recall-of-Batteries-for-HP-and-Compaq-Notebook-Computers

**Pulse Performance Recalls Children’s Electric Scooters Due To Fall Hazard**

Pulse Performance Products, a division of Bravo Sports, of Santa Fe Springs, California, has recalled about 8,900 children’s electric scooters. The knuckle that joins the wheel to the axle can break, posing a fall hazard to the rider. This recall involves Pulse Safe Start Transform electric scooters for children with manufacturing date codes between Sept. 10, 2016 and Oct. 11, 2016. The date code is printed on a label located under the platform in format XX(month)/XX(day)/2016-066QY. The scooters were sold in blue and have two wheels in front and one in the rear.

The scooters were sold exclusively at Target stores nationwide from October 2016 through November 2016 for about $100. Consumers should immediately take the recalled scooters away from children and contact Pulse Performance Products for a full refund. Contact: Pulse Performance Products toll-free at 844-287-8711 from 7:30 a.m. to 4 p.m. PT Monday through Friday or online at www.pulsescooters.com and click on “CPS Safety Recalls” for more information. Photos available at: https://cpsc.gov/Recalls/2017/Pulse-Performance-Recalls-Childrens-Electric-Scooters

**Walt Disney Parks and Resorts Recalls Minnie and Mickey Mouse Infant Hoodie Sweatshirts Due to Choking Hazard**

About 15,000 Minnie and Mickey Mouse infant hoodie sweatshirts have been recalled by Disney Destinations, LLC, d/b/a Disney Theme Park Merchandise, of Lake Buena Vista, Fla. The snaps on the hoodies can detach, posing a choking hazard to young children. This recall involves Minnie and Mickey Mouse infant hoodie sweatshirts with a three snap closure. The garments are cotton and polyester blend. They were sold in four sizes: 6M, 12M, 18M and 24M. The size and “Disney Parks” are printed on the inside back of the hoodie’s neck.

The Minnie Mouse hoodie is black with ears attached to hood of the sweatshirt. A red fabric bow with white polka dots is attached to the top of the hood between the ears. The artwork shows a screen print of Minnie’s body up to neck. The date code FAC-010635-16194 or FAC-010635-16015 is printed on a label sewn to the left side seam. The UPC code is printed on a hangtag at the time of purchase. UPC codes include (6M) 400000175690, (12M) 400000175676, (18M) 400000175683, and (24M) 400000175690. The Mickey Mouse hoodie is black with ears attached to hood of the sweatshirt. The artwork shows a screen print of Mickey’s body up to neck. The date code FAC-
010635-16220, FAC-010635-16015 or FAC-010655-16280 is printed on a label sewn into the left side seam. The UPC code is printed on a hangtag at the time of purchase. UPC codes include: (6M) 400000145433, (12M) 400000145440, (18M) 400000145457 and (24M) 400000145464.

The hoodies were sold exclusively at Walt Disney World® Resort in Lake Buena Vista, Florida, Disneyland® Resort in Anaheim, California, and on the Shop Disney Parks mobile app from April 2016 through October 2016 for about $30. Consumers should immediately stop using the recalled infant hoodies and contact Walt Disney Parks and Resorts US, Inc. for instructions on returning them for a full refund. Contact Walt Disney Parks and Resorts US, Inc. toll-free at 844-722-1444 from 9 a.m. to 5:30 p.m. ET Monday through Friday or online at www. disparks.com and click on “Safety Recall” at the bottom of the page or at www.disneystore.com/disney-parks-merchandise/mn/1029804/ for more information. Photos available here: https://www.cpsc.gov/Recalls/2017/Walt-Disney-Parks-and-Resorts-Recalls-Minnie-and-Mickey-Mouse-Infant-Hoodie-Sweatshirts

We have included recalls that we felt were 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.

XX.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

ANDREW BRASHIER

Andrew Brashier, a lawyer in our firm’s Consumer Fraud Section, began his career with Beasley Allen in September 2010. His practice focuses primarily on consumer class actions along with qui tam litigation under the False Claims Act. Andrew has also represented whistleblowers through the IRS, SEC and Department of Transportation/NHTSA whistleblower programs.

Andrew became interested in the legal profession because of his uncle, former Shelby County Public Defender Billy R. Hill. For years Billy Hill was a small-town solo practitioner in Clanton. While growing up, Andrew would spend some of his summers watching his uncle attend hearings, docket calls, and actually trying cases. Andrew says he knew from a young age that his fascination with trying cases would one day develop into his career.

Andrew found that his favorite part of practicing law is righting a wrong done to a client by and through the civil justice system. He believes the jury trial system inherited by Americans from English common law courts, and as enshrined by the Seventh Amendment right to a trial by jury, is nearly sacrosanct. Andrew also believes that the Beasley Allen family is what makes a difference in our clients’ lives. The firm makes it a priority to surround itself with good people trying to live up to its motto of “helping those who need it most.”

Andrew is married to Cara and they have one daughter, Holland. The family resides in Prattville, Ala., and they attend Christ the King Anglican Church. Andrew is a very good lawyer who works hard and is dedicated to helping clients retain justice. We are blessed to have him with us.

CINDY CISKIE

Cindy Ciskie, a native of Montgomery, Ala., is a Clerical Assistant in our firm’s Mass Torts Section. After beginning her tenure at Beasley Allen in the fall of 2015, Cindy’s job has consisted of updating a database of active and inactive legal professionals, as well as requisitioning medical records for one of the Section’s ongoing litigations.

Cindy graduated from Jefferson Davis High School in Montgomery and later graduated from Auburn University-Montgomery with a B.S. degree. She also earned her Associate of Science degree in Nursing from Troy School of Nursing in Montgomery as well. As a proud single mother, Cindy has two adult children – Sarah, a graduate of Florida State University and resident of Austin, Texas; and Steven, a graduate of Churchill Academy and a college freshman living in central Florida.

Cindy enjoys spending time cooking, reading, hiking, singing and traveling to new places. She is a hard-working, dedicated employee who says she enjoys her work and helping folks who need our help. We are fortunate to have Cindy with the firm.

BRITTANY CLEMONS

Brittney Clemons, an Intake Specialist in our Mass Torts section, started her employment with Beasley Allen in June of 2015. In her position, she takes new client calls, retrieves the information necessary to open a new case, assists clients with their questions and ensures that clients receive all of our paperwork.

Brittney is thankful for her two loving parents, Tonya and Brad Short, her older brother Kacey Clemons, her boyfriend Jesse James, and lastly, her two spoiled puppies, Trigger and Gunter. Brittney loves to be outdoors during her free time. Some of her hobbies include fishing, hunting, painting, building and playing board
games with her friends and family. Brittany is another hard worker who is dedicated to her work. We are fortunate to have her with us.

ALEX HAWKINS

Alexandra “Alex” Hawkins began her employment with Beasley Allen a little over a year and a half ago and is currently a Clerical Assistant in the firm’s Personal Injury/Products Liability section. Being a Clerical Assistant means that she typically handles a little bit of everything, but her main responsibility is to ensure all new cases are open, reviewed and assigned to the correct lawyer. She also helps the section with trial preparation as needed.

Born in England, Alex and her parents moved to the U.S. when she was 11. She graduated summa cum laude from Troy University with a Bachelor’s Degree in Criminal Justice.

While attending Troy, she was the President of the university’s chapter of Alpha Phi Sigma – the National Honor Society for students of Criminal Justice – from 2013 through 2014 and organized many of the chapter’s charity events. In her spare time, Alex enjoys swimming, going to the movies, taking trips to the beach and reading. We are fortunate to have Alex with us. She is another dedicated employee who takes her work seriously and does a good job.

TODD WALL

As Beasley Allen’s Database Administrator, Todd Wall has spent 13 years in our Information Technology (IT) department performing responsibilities pertaining to the firm’s SQL servers and all of its contained databases. His duties also include installing, troubleshooting and maintaining the firm’s essential case management software, Prolaw – a program nearly all of our lawyers and staff work with on a daily basis.

Todd previously served in the U.S. Air Force from 1986 until 1994 and was stationed at Maxwell Air Force Base here in Montgomery, Alabama. He has been married to his wife Stephanie, also employed by Beasley Allen, for 10 years and has two sons – Casey, who is in the U.S. Navy and stationed at Yokosuka, Japan, and Michael, who is a Correctional Officer at Draper Correctional Facility. Todd also has a 12-year-old granddaughter, Shelby. In his spare time, Todd enjoys spending time with his family, hiking and kayaking. Todd does exceptional work in his job, which is very important to the success of the firm. He is truly a professional in every sense of the term. We are fortunate to have Todd with us.

invokana mdl

Beasley Allen lawyer Danielle Ward Mason has been appointed to serve on the Plaintiffs’ Steering Committee (PSC) for the consolidated multidistrict litigation (MDL) pending in New Jersey federal court concerning Invokana’s link to kidney damage and diabetic ketoacidosis.

Invokana is a prescription medication used to treat Type 2 Diabetes. One of a number of serious side effects associated with the drug, diabetic ketoacidosis (DKA) is a type of acidosis that develops when insulin levels are too low or during prolonged fasting. Complications of DKA include difficulty breathing, nausea, vomiting, abdominal pain, confusion and unusual fatigue or sleepiness. The condition can result in a diabetic coma, extended hospitalization and even death.

The lawsuits allege Janssen Pharmaceuticals, a subsidiary of Johnson & Johnson, failed to properly test the Type 2 diabetes drug and warn consumers, health care professionals and the medical community of the risks and consequences of using it. The Judicial Panel on Multidistrict Litigation appointed U.S. District Judge Brian R. Martinotti to preside over the MDL, which consolidated 55 cases filed in federal courts across the country. Consolidating the cases into a MDL allows the PSC to put more pressure and focus on moving the case forward.

Danielle is Beasley Allen’s lead lawyer for Invokana litigation and has been with the firm since 2009. In 2015, she was named a Principal in the firm, becoming the first African-American woman at the firm to achieve that status. In addition to her work with Invokana, Danielle has handled cases involving Reglan and is on the Talcum Powder Litigation team.

STATE BAR, LEADER HONORED

ALABAMA LOSES A GREAT AND GOOD MAN

Long-time Alabama State Bar General Counsel J. Anthony “Tony” McLain died on Sunday, Jan. 1, 2017. Tony was a member of the bar’s staff for more than 28 years and was named as general counsel in 1995. Alabama State Bar President J. Cole Portis of the Beasley Allen Law Firm had this to say:

Tony McLain was an encourager. He possessed wisdom and he was a servant leader. These three traits are vital when one holds the position of general counsel for the Alabama State Bar. I think his most important trait, though, was his ability as the prosecutor to show compassion even when discipline was being leveled against an attorney. In his role as general counsel, I am certain that Tony wasn’t beloved by every lawyer, but Tony, who was universally respected, became one of the icons in our bar.

As general counsel, Tony was responsible for overseeing the operations of the Center for Professional
Responsibility, which investigates and prosecutes bar complaints, issues ethics opinions to lawyers, represents the bar in state and federal litigation and provides legal advice to the bar’s governing and policy-making body, the Board of Bar Commissioners.

"Although he served in a very tough position, enforcing the legal profession’s ethical rules, he did so with fairness, professionalism and great compassion," said Alabama State Bar Executive Director Keith Norman. “Tony has left an indelible mark on the legal profession in Alabama and his state bar colleagues and fellow lawyers mourn his loss and will miss his wisdom and friendship.”

Tony was raised in Headland. He received his undergraduate degree from Auburn University and earned his law degree from Samford University’s Cumberland Law School. After graduating from law school, Tony served as an assistant attorney general during the administrations of Attorneys General Bill Baxley and Charlie Graddick. He then practiced law in the firm of McLain & Hampton for nine years before joining the state bar in 1988 as assistant general counsel.

Tony was widely known as an expert in legal ethics and conducted numerous continuing legal education seminars on the subject. He served as president of Cumberland’s National Alumni Association and was the recipient of the school’s distinguished alumnus award. In 2014, the bar awarded Tony with the Alabama State Bar Professionalism Award. Following the presentation, it was announced that the award would be further known as the J. Anthony “Tony” McLain Professionalism Award. Tony McLain was a good man in every sense of the word and he will be greatly missed.

**Beasley Allen Lawyer Soo Seok Yang Honored By Korean Association For Community Service**

We are pleased to announce that Soo Seok Yang, a lawyer in our Mass Torts Section, has been presented the Commendation Award by the Federation of Korean Associations of Southeast USA, in recognition of his service to the Korean community of Montgomery.

The Federation of Korean Associations of Southeast USA is an organization that represents about 200,000 Koreans and their communities in the six southeastern states (Georgia, Florida, Alabama, Tennessee, North Carolina and South Carolina). It consists of 35 regional Korean American Associations representing 35 major cities in those states.

Each year, the Federation selects a few Koreans (or Korean Americans) and awards this Commendation Award to recognize their consistent service, effort and commitment to make their communities better. Soo Seok was given the award this year and was honored at the Korean Association’s 2017 New Year’s Annual Meeting (the largest gathering of the year) for his service to the Korean community of Montgomery. Soo Seok serves as Executive Director of the Korean American Association of Greater Montgomery, covering Korean communities in Montgomery and other adjacent cities including Auburn, Opelika and Birmingham. Soo Seok had this to say:

*I am so humbled and honored to receive this award. I think of it as an encouragement to better serve our communities. As the State of Alabama becomes more diverse and the Korean population increases, it is my hope that I can be a contribution to promoting unity among people.*

Soo Seok was presented the award by Mr. Sang Yong Lee, a member of the Board of Directors of the Federation, and also the Chairman of the Special Committee on Reunification Affairs. He is from Atlanta and attended the meeting to present the award on behalf of Mr. Hwan Sohn, the President of the Federation of Korean Associations of Southeast USA.

Soo Seok was born in Seoul, South Korea, and first came to the U.S. as part of the U.S. Congress-Korea National Assembly Exchange Program with Congressional Internship in 2006. Graduating summa cum laude from high school, he went to Handong Global University, a pioneering Christian university, where he double majored in Political Science and English. He graduated with Meritiorious Commendation, an award given to a graduating member recognized for his outstanding contribution to the school.

After graduation, Soo Seok applied for the Korean Air Force and finished the Officer Training School as sixth among about 400 candidates. He served in the Korean Combat Operations Intelligence Center (K-COIC) at the Osan Air Base and worked with the U.S. 7th Air Force to analyze North Korea’s military activities. He also served as the Co-President of the U.S.-Korea Company Grade Officers’ Council in the K-COIC.

In December 2007, Soo Seok graduated cum laude from Handong International Law School (HILS), a Christian law school that teaches U.S. common law in English, also located in South Korea. After graduation, Soo Seok came to Montgomery, Alabama, and interned for Supreme Court Justice Tom Parker. He and his wife both passed the Alabama Bar Examination in 2008 and became two of the first few Korean Alabama lawyers. Soo Seok pursued his LL.M. degree in intellectual property law at the George Washington University Law School with an emphasis on trademark and copyright.

Soo Seok is a member of the Alabama State Bar and the Montgomery...
Soo Seok was selected by the Alabama State Bar to be one of 30 lawyers in the State Bar’s 2017 Leadership Forum. The forum is a highly competitive program designed to bring together and train tomorrow’s leaders of the Bar from across the State.

Soo Seok and his wife, Doh Ah, have four children: Yookyum Abraham, Yoojin Johanna, Yooha Elijah and Yooeun Hannah Grace. Both their parents serve as missionaries in Taiwan. Soo Seok speaks Korean and conversational Chinese. We are most fortunate to have Soo Seok in our firm.

**BIRMINGHAM LAWYER NAMED EXECUTIVE DIRECTOR OF STATE BAR**

Birmingham lawyer Phillip McCalum has been named the Alabama State Bar’s new executive director. Phillip, who is a past president of the state bar, will replace longtime Executive Director Keith Norman when he retires in June. “I am pleased that Phillip was selected as the Alabama State Bar’s new executive director,” Alabama State Bar President J. Cole Portis stated in the announcement. “He is a servant leader who has answered a unique calling to serve his beloved profession and the public. Phillip possesses the ability to motivate others and the vision necessary to help Alabama lawyers.”

Phillip is a founding shareholder of McCallum, Methvin & Terrell, P.C. He is a graduate of Samford University’s Cumberland School of Law and was admitted to practice law in Alabama in 1988. From 1989 to 1992, he worked as a prosecutor in the Jefferson County District Attorney’s Office before becoming a civil litigator. Phillip had this to say:

*I am deeply humbled to be selected to serve as the executive director of the Alabama State Bar. It is a privilege to have practiced as an Alabama lawyer for almost 30 years. I now embrace the opportunity to serve our bar in helping lawyers maintain the highest of ethical standards as they deliver critical services to the people and businesses of Alabama.*

Phillip has served as president of the Birmingham Bar Association’s Young Lawyers Division; member of the Alabama Supreme Court Chief Justice’s Commission for Professionalism; and member of the Alabama State Bar’s Board of Bar Commissioners representing the 10th Judicial Circuit of Alabama. He served as president of the Alabama State Bar (2012-2013).

In addition to being a member of the Alabama State Bar, Phillip is also a member of the Texas Bar Association, Oklahoma Bar Association, West Virginia Bar Association and the American Bar Association. He is also a member of the National Conference of Bar Presidents and the Southern Conference of Bar Presidents. The Alabama State Bar is the official statewide organization of lawyers in Alabama that currently has more than 17,800 members.

**XXII. FAVORITE BIBLE VERSES**

Andrew Brashier, a lawyer in our firm, furnished a verse this month.

*And Jesus answered them, saying, The hour is come, that the Son of man should be glorified. Verily, verily, I say unto you, Except a corn of wheat fall into the ground and die, it abideth alone: but if it die, it bringeth forth much fruit. He that loveth his life shall lose it; and he that hateth his life in this world shall keep it unto life eternal. John 12*

Lisa Harris, our firm’s Executive Director, sent in the following verse. Lisa says Isaiah is one of her favorite books in the Bible.

*No weapon that is formed against thee shall prosper; and every tongue that shall rise against thee in judgment thou shalt condemn. This is the heritage of the servants of the LORD, and their righteousness is of me, saith the LORD. Isaiah 54:17*

Sloan Downes, who is Section Head Administrator of our firm’s Personal Injury and Products Liability Section, also sent in a verse. She said it was hard to pick only one, but the one she selected according to Sloan sums things up. Keeping God the center of everything is the way to handle anything life puts in front of you.

*Don’t let your hearts be troubled. Trust in God, and trust also in me. There is more than enough room in my Father’s home. If this were not so, would I have told you that I am going to prepare a place for you? When everything is ready, I will come and get you, so that you will always be with me where I am. And you know the way to where I am going. John 14:1*

**XXIII. CLOSING OBSERVATIONS**

Beasley Allen lawyer Roman Shaul appointed circuit judge for fifteenth judicial circuit of Alabama

Roman replaces The Honorable Eugene W. Reese, who retired effective Dec. 31 after a long and distinguished career on the bench. In a letter notifying Roman of his official appointment, Gov. Bentley had this to say:

Appointing you to this position comes with great responsibility, as you will be making important decisions that affect the citizens of Alabama. ... You are a servant of the people of Alabama and I trust that you will fulfill your duties and set a standard for others to follow.

Roman has been a lawyer with Beasley Allen for nearly 17 years. He practices in the firm's Consumer Fraud section. Roman's practice areas include Appellate Advocacy, the Fair Labor Standards Act, Civil Fraud, Predatory Lending and Finance. He has successfully handled cases in more than 15 states and litigated in more than 30 federal jurisdictions around the country.

In December 2010, Roman was selected as Beasley Allen’s Lawyer of the Year for the Fraud Section. In 2016, he was selected as the recipient of the Chad Stewart Award. This honor was created in memory of Beasley Allen lawyer Chad Stewart, who passed away unexpectedly in April at the very young age of 41. In addition to being a dedicated lawyer who worked hard for his clients, Chad truly modeled Christ in his daily walk. The Chad Stewart Award was created to recognize an attorney who best exemplified Chad's spirit of service to God, his family and the practice of law in the service of “helping those who need it most.”

Roman, in a statement, had this to say about his appointment:

I am humbled by the opportunity the Governor and his staff have given me to serve the citizens of Montgomery County. I would like to thank the Governor and his staff for all their hard work. Following a distinguished judge like Gene Reese sets the bar very high. However, I am ready to work hard every day and bit the ground running. I have been blessed to work with the talented lawyers and staff at Beasley Allen for most of my legal career. Beasley Allen put me in a position to do all the things I wanted to do when I was a young person deciding to go to law school - which is to help people who really need it. I am thankful to God for what he has given me and have always wanted to use those talents to serve others. As a judge for all the people, I will work hard every day to ensure fairness, opportunity and justice for all that come before the court.

Roman earned his undergraduate degree from the University of Alabama, and his J.D. from the University of Alabama School of Law. He is married to the former Caroline Thames of Jackson, Mississippi, and they have three daughters - Anne Kingsley, Isabel and Thompson. They are members of First United Methodist Church in Montgomery. I am convinced Roman will be an outstanding judge, who will be fair and impartial as he carries out the responsibilities of his office.

**Welcome Reception Celebrates Opening Of Beasley Allen’s Atlanta Office**

Representatives from some of Atlanta’s top law firms, along with local community leaders and officials, attended a Welcome Reception in Atlanta on Jan. 25 to celebrate the grand opening of Beasley Allen’s new office. The event was an opportunity for folks to meet Navan Ward, who is serving as Parliamentarian of the American Association for Justice, and Chris Glover, each of whom will both be working in the Atlanta office.

Navan is a leader in our Mass Torts section, and has been instrumental in ongoing litigation related to defective metal-on-metal hip implants, serving on a number of Plaintiff Steering Committees for cases involving a number of medical device manufacturers. Chris is an experienced lawyer, particularly in the area of trucking accidents and product liability litigation. Chris recently wrote a book, An Introduction to Truck Accident Claims: A Guide to Getting Started, which is available free to lawyers.

We also will be working with Lance Cooper and The Cooper Firm, who we worked with on cases related to the defective GM ignition switch. Regular readers of The Report will remember Lance actually uncovered the General Motors ignition switch scandal through his great work in the Melton case. Lance is a former president of the Georgia Trial Lawyers and is very well respected in the Atlanta area, Georgia, and throughout the nation. Lance will be a Principal in our firm and will also maintain his own practice.

The Welcome Reception was held in the Ballroom at the Ritz Carlton Buckhead. We would like to offer a special thank-you to our Welcome Reception hosting law firms, Bey & Associates, Boddie McKnight Law Firm, Davis Bozeman Law, The Hood Law Group, Wade & Bradley Firm, and The Wotornson Firm. We appreciate very much these firms helping to welcome us to Atlanta.

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

2 Chron 7:14

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

Edmund Burke

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

Isaiah 10:1-2

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

Martha Washington (1732—1802)

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

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

Vincent Lombardi

XXV. PARTING WORDS

Leadership in government and in business is a very hot topic these days. I have had the good fortune to meet and deal with leaders of all sorts and in all walks of life. Some have been good leaders, but others have been pretty bad. One of the really good ones is Dr. Jack Hawkins, who now serves as Chancellor of the Troy University System. I met Jack in 1971 when he was working at UAB. My wife Sara and I had been invited by the administration at UAB to visit and see firsthand what all was going on at the school. Jack, who was an Assistant Dean at the time, was our “tour guide” that day. He was most knowledgeable and quite impressive.

Jack says he learned valuable lessons from Dr. Joseph Volker, his “mentor” at UAB, and that he has utilized those lessons throughout his career. Jack says Dr. Volker told him “to hire the very best people you can, support and empower them; then turn them loose. You will have to fight the desire to micro-manage them, but they will do great things and create a fun environment – but of course, you hold them accountable.” What great advice and counsel!

Jack is a tremendous leader and is widely respected. In fact, Jack is the best “college boss” I have ever dealt with and there have been some very good ones. He is an effective leader and who understands what all it takes to be effective in a leadership role.

We are blessed to have a man with such tremendous ability and great character in charge of Troy University, a great educational institution in Alabama. In addition to being a great leader, Jack also is a man of integrity with very high moral standards. In my opinion, those traits are required if a person is going to be a truly effective leader. Jack had this to say recently in an interview:

I still believe there is room in this world for respect, civility, decorum, proper dress, and I want our students to have the benefit of good role models and function in an environment where those values are important.

There is an urgent need for persons in leadership positions to be real leaders and also to be role models for others. It’s quite obvious that Dr. Jack Hawkins understands what leadership is all about. We simply need more like him in today’s world.

My prayer today is for those who are in leadership roles in government, business, education, sports and in the home to be real leaders and role models for others. It’s critically important for men and women to include God as they go about learning how to be effective leaders. Leaders should also honor God in all that they do.

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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.