I.  
CAPITOL  
OBSERVATIONS  

ACCOMPLISHMENTS FOR LAWYERS, BAR AND  
PUBLIC MARK PORTIS ASB PRESIDENCY  

As we mentioned in the last issue, our  
own Cole Portis concluded his year of  
service as the 141st President of  
the Alabama State Bar on July 15, 2017. The  
theme that governed his presidency was  
“Love Your Neighbor.” That theme was  
applied in three main areas: loving  
Alabama lawyers, loving the Alabama State  
Bar, and loving the citizens of Alabama  
beyond. Following are the three main  
accomplishments of each of these areas of focus.

Loving Alabama lawyers  

Cole, along with Bar representatives,  
traveled the state with the goal of  
meeting with the lawyers in these  
circuits to see what they had to say. This  
was accomplished in cooperation  
with the Alabama State Bar Local Bar  
Task Force, whose purpose was (and  
will continue to be) to reach out to  
the local bars in the circuits, including  
local minority bars, in order to  
strengthen relationships with these  
constituent groups. The task force  
also hosted a Local Bar Leaders  
Retreat in conjunction with the  
meeting of the Board of Bar  
Commissioners.

During conversations with lawyers  
throughout the state, lawyers admitted  
to many struggles as the dynamics  
for practicing law have changed  
quickly. As a result, Cole established  
Lawyer University, a practical education  
for lawyers to compete in the  
current legal environment. Lawyer  
University focused on the business  
of the legal profession, available  
technology to be more efficient, and  
emerging areas of law to expand  
one’s practice.

Cole created the health and wellness  
initiative at the Alabama State Bar.  
Being a lawyer is one of the most  
stressful occupations in America. We  
must be cognizant of the need to care  
for our own well-being so that we can  
continue to render service to others. The  
task force began the foundation to  
educate and assist lawyers to pay  
attention to their physical health,  
mental health, and spiritual condition  
(mind, body & spirit).

A significant need voiced by members  
of the State Bar was an affordable and  
comprehensive health insurance program. Due to the current regulations  
established by the Affordable Care Act (ACA) and health insurance  
exchanges, it is no longer possible to  
establish a group policy through a  
professional organization. However,  
the Madison County Bar Association  
already had a health insurance program for its members that was  
established before ACA, so it was  
grandfathered in. The ASB partnered  
with the Madison County Bar to allow  
lawyers to join their association in  
order to participate in their health  
insurance plan. Representatives from  
the Madison County Bar will have a  
booth at the Beasley Allen Legal Con-  
ference Nov. 16-17 to provide informa-  
tion to Alabama lawyers about the plan.

Loving The Alabama State Bar  

Three huge goals were accomplished in  
the mission to love the Alabama State Bar  
and each will have a lasting effect.

ASB Executive Director—With the  
June 2017 retirement of longtime  
Alabama State Bar Executive Director  
Keith Norman, it was of critical  
importance to find a new leader for  
the organization. In February, it was  
announced that Birmingham lawyer  
Phillip McCallum had been selected  
as the new ASB Executive Director.  
Phillip is a founding shareholder of  
McCallum, Methvin & Terrell, P.C. He  
served as ASB President from 2012-  
2013. He was a tremendous selection  
for this position.

ASB General Counsel—Longtime  
Alabama State Bar General Counsel J.  
Anthony “Tony” McLain passed away  
on Jan. 1, 2017. He was a member of  
the Bar’s staff for 28 years. It was the  
sad duty of the Bar President and staff  
to find someone to fill the sizeable  
shoes he left behind. Douglas McElvy  
was appointed General Counsel to the  
Alabama State Bar in March 2017.  
McElvy has been very involved in the  
Alabama State Bar and served on the  
Board of Bar Commissioners from  
1991 to 2003, as well as serving four  
terms on the Executive Council. He  
was elected Vice President of the Bar  
in 2002, then served as its President  
for the 2004-2005 term. Doug is a  
man of high integrity who under-  
stands the importance of balancing  
mercy and justice.

Finally, Cole helped lead efforts to  
develop a new strategic plan to carry  
the Alabama State Bar forward into  
the future. It had been 10 years since  
the development of the last strategic plan.

Loving the Public  

During his term, Cole made sure that  
pro bono efforts continue to grow  
and expand, and to educate lawyers  
and the community to be able to  
serve them and provide access to  
courtrooms for those unable to pay.  

Lawyers at the Alabama State Bar  
participated in a very successful Legal  
Food Frenzy. This was the third year  
for the event, which helps to raise  

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money and collect food to benefit Alabama's eight regional food banks. The campaign raised the equivalent of more than 72,000 pounds of food. Additionally, lawyers helped to successfully gather a number of needed and necessary goods for lawyers in Louisiana after a period of significant flooding earlier this year.

Cole and Joy are foster parents. Due to his passion to help these children, he wanted lawyers to join him in a project to provide foster children with new suitcases filled with necessities. Dubbed the “Suitgrace” Initiative, the program realizes that often foster children are removed from abusive or otherwise dangerous situations with little but the clothes on their back. The “Suitgrace” Initiative strives to provide them with clothing, toiletries and other items to help them as they transition to a foster family.

In addition to these major accomplishments, Cole says the Bar was able to work closely with the Chief Justice and Judges through Alabama to secure additional court funding beyond what has been allocated in recent years. Cole was grateful for the opportunity to educate our Governor and members of the Legislature on the necessity to properly fund the third branch of government.

Augusta S. Dowd of White Arnold & Dowd, PC, (Birmingham) succeeds Cole as the Bar’s leader. She was installed as the Bar’s 142 nd President at the Annual Meeting.

We want to thank Cole for his excellent service. He set an extremely high bar, but I believe the new president will carry on the tradition of looking out for lawyers in Alabama and will do a fine job.

II.
MORE AUTOMOBILE NEWS OF NOTE

JUDGE REDUCES SCOPE OF GENERAL MOTORS IGNITION MDL

A New York federal court has reduced the scope of the General Motors ignition switch multidistrict litigation. In his opinion analyzing consumer protection laws in eight different states, District Court Judge Jesse Furman dismissed the devaluation claims, claims by Plaintiffs who bought their cars before GM’s 2009 bankruptcy or who claimed lost value in sales before the 2014 recall announcement, and the majority of the state law unjust enrichment claims. However, Judge Furman kept most of the Plaintiffs’ other state law claims and the claims for damages from time lost to repair intact. Judge Furman wrote:

In sum, many claims asserted by the named plaintiffs in this motion survive, but the court yet again rejects plaintiffs’ novel theory of damages—the brand devaluation theory—as impermissibly repleading claims previously dismissed with prejudice and, in any event, as insufficient as a matter of law.

In December GM moved to dismiss 64 named Plaintiffs from the states of Alabama, Illinois, Massachusetts, Michigan, New York, Pennsylvania, Texas and Wisconsin. GM said that six of those states—Alabama, Michigan, New York, Pennsylvania, Texas and Wisconsin—don’t recognize economic loss claims from an alleged defect that never manifested.

Judge Furman had dismissed the “brand devaluation” claims in July 2015 without prejudice, calling the damages theory “unprecedented and unsound.” In his latest opinion, Judge Furman said the Plaintiffs’ revised complaint had not corrected the defects, saying they had provided no reason why recovery should be limited to them and not all owners of all GM models. Judge Furman wrote:

Additionally, whether the claims are asserted on behalf of all GM car owners or some subset of that universe, the claims suffer from the more fundamental problems identified in the court’s earlier opinion—namely, that existing law does not provide a guarantee of both “the product’s resale value and the brand’s continuing good name.”

Judge Furman disagreed with GM on the lost time damages, saying the law in some states would support recovery and that a categorical dismissal was not justified, but he agreed the reorganized GM was not responsible for sales prior to 2009 and that the Plaintiffs could not blame GM for diminished resale value for sales before the defect became public knowledge. Judge Furman wrote:

That said, for reasons not discussed by the parties, it does not necessarily follow that the claims of all such plaintiffs must be dismissed in their entirety. “In theory, a plaintiff who purchased her car after the sale order, but sold it before the recall was announced, could still plead and prove damages in the form of out-of-pocket expenses and lost time.

Judge Furman went over each named Plaintiff’s state law claims in his order. Of the eight states, Judge Furman found only Illinois and Pennsylvania law supported the Plaintiffs’ unjust enrichment claims. In the case of Pennsylvania, only one of the claims of the two Plaintiffs from that state survived. In the other cases the claims were barred by the existence of a contract, the existence of other valid claims or a combination of both.

Some other claims involving either the class as a whole or for individual named Plaintiffs were also dismissed. However, the majority of the state law claims were allowed. The MDL is In re: General Motors LLC Ignition Switch Litigation, (case number 1:14-md-02543) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

WIN FOR GM IN FIRST BELLWETHER TRIAL INVOLVING THE REVISED IGNITION PART

General Motors (GM) won the first case tried in the second phase of bellwether trials over its deadly ignition-switch defect that has caused so many problems for so many people. The case ended last month with a verdict for the automaker. The claim in this case involved the revised version of the defective ignition switch, saying it too was defective.

The case was brought by Dennis Ward, whose 2009 Chevrolet HHR was factory-outfitted with an ignition that included a part called the “Catera Spring.” In April 2006, GM replaced the more infamous “Delta Spring” that had been failing for a very long time, causing cars to stall while in motion.

The trial of the Ward case, the first of six planned in a second bellwether round in the multidistrict litigation (MDL), was the first to involve the replacement Catera part. The crash involving Ward took place in 2014. He was driving on a rough road under construction in Tucson, Arizona. Ward says he lost power braking and steering and rear-ended the car in front of him, and was hurt badly in the crash.

Interestingly, six bellwether trials last year—phase one—resulted in only one completed trial. The single verdict came in March in the trial of Plaintiffs Dionne Spain and Lawrence Barthelemy. In that case, a jury found that GM vehicles were unreasonably dangerous, but didn’t find that the Plaintiff’s injuries were caused by the defect in the automaker’s car. Of the five other cases selected for the first bellwether group, one was dismissed by the
Plaintiff before trial, one was dropped during trial by a Plaintiff facing claims of falsifying financial documents and three were settled.

Source: Law360.com

**TAKATA ORDERED TO PAY $8 MILLION IN U.S. VIRGIN ISLANDS AIR BAG SUIT**

A U.S. Virgin Islands judge ordered Takata Corp. to set aside $8 million to cover civil penalties and the cost to drivers who have to replace the defective and potentially fatal air bags. This ruling came a day before the company’s U.S. business filed for bankruptcy protection. Superior Court Judge Michael Dunston signed off on the U.S. Virgin Island government’s request for a speedy ruling on its request for a preliminary injunction. The judge noted that financial markets had frozen Takata stock from trading, and that multiple news outlets at the time were reporting that Takata’s bankruptcy was imminent.

Takata was ordered to put into escrow about $4 million for civil penalties related to violations of the U.S. Virgin Islands’ Criminally Influenced and Corrupt Organizations Act, $1 million for consumer outreach and about $3 million to recoup out-of-pocket expenses incurred by consumers over the air bags. Judge Dunston pointed out that there are slightly fewer than 12,000 affected cars with 18,140 recalled air bags—which have a tendency to explode, especially in humid conditions—and the rate of repair for affected vehicles is significantly lower than the national repair rate.

The Virgin Islands Attorney General Claude Walker said in a statement that the U.S. territory’s suit was filed a year ago, and that at least one air bag explosion had occurred on St. Croix. At a hearing, Deputy Attorney General Carol Thomas-Jacobs asked the court to order Takata to deposit the funds, despite an automatic stay that came into effect when the company filed for bankruptcy. Judge Dunston said that whether his order survives the stay is up to the bankruptcy court. Attorney General Walker said in a statement:

> Takata’s bankruptcy filing should not impact [Virgin Island’s Department of Justice’s] prosecution of its case against Takata on behalf of consumers, because an exception to the rule automatically staying cases against bankrupt entities permits government police powers actions to proceed. Otherwise, bankruptcy court would become a safe haven for corporations seeking relief from law enforcement.

A Takata spokesman had this to say relating to the prospects of how the litigation will be affected by the bankruptcy:

> Much of the litigation will be stayed while Takata works through the Chapter 11 proceedings. The bankruptcy will help determine how the litigation is ultimately resolved.

As we have previously reported on numerous occasions, Takata said earlier this year that it would plead guilty and pay $1 billion to end a U.S. Department of Justice investigation into the company’s deadly air bag inflators. A little more than a year ago, the National Highway Traffic Safety Administration (NHTSA) levied a $200 million fine on Takata—its largest ever—in a deal that saw the company admit that it failed to tell the agency about the defect despite knowing about it and withholding important information.

Source: Law360.com

**III. A LOOK AT THE TAKATA BANKRUPTCY**

As has been widely reported, Takata has filed for bankruptcy. The Takata bankruptcy has lots of moving parts. In the early stages things are changing almost daily. I will give a summary of some of the activity below.

**Bid To Halt Air Bag Suits Will Be Heard**

The Delaware bankruptcy judge presiding over the Takata Chapter 11 will hear the company’s bid to halt lawsuits connected to its defective air bag inflators. Government agencies and personal injury claimants will strongly oppose Takata’s request. During an emergency hearing in Wilmington, U.S. Bankruptcy Judge Brendan L. Shannon set the hearing date for Aug. 9.

Takata had filed a motion for a temporary injunction related to an adversary action it filed earlier seeking to halt a large number of lawsuits over the company’s air bag inflators. The lawsuits Takata wants to freeze include much of the multidistrict litigation based in the Southern District of Florida, as well as actions brought by government agencies in Hawaii, New Mexico and the U.S. Virgin Islands.

Typically, the Chapter 11 automatic stay can halt litigation or collection efforts against a debtor unless a bankruptcy judge permits them to go forward. But Takata argues there are “gaps” in that power, and wants to have the same power extended to other named Defendants in the targeted suits, such as its major automobile customers—which include some of the world’s largest like Toyota Motor Corp., Ford Motor Co. and Honda Motor Co. Ltd.—that are helping to fund the case.

Judge Shannon set the August hearing date, despite calls from the official committee of unsecured tort claimant creditors to push it out further in order to perform “substantial discovery” before the proceedings.

The agencies in Hawaii, New Mexico and the U.S. Virgin Islands also signaled their opposition, saying they would be objecting to the preliminary injunction on the grounds that their actions fall under an exception to bankruptcy’s automatic stay that allows for exercise of state police powers.

**Key Safety Systems**

Takata’s restructuring plan depends on a global transaction in which competitor Key Safety Systems Inc. proposed to buy the debtor’s assets for $1.6 billion, with the money going toward paying off the $850 million still owed to the U.S. Department of Justice from Takata’s plea settlement earlier this year.

**Committee Appointed With Personal Injury Victims**

Takata’s Chapter 11 case has had an official committee appointed that includes personal injury victims of the defective airbag inflators. This gives claimants a rare and potentially powerful voice in the proceedings. The U.S. Trustee’s Office, which appoints official committees in Chapter 11 cases, put together a committee of unsecured tort claimant creditors consisting of seven individuals who say they were injured by defective Takata airbags linked to at least 11 deaths.

**$125 Million Fund**

A fund in the amount is $125 million is also slated to be set up to benefit...
wrongful death, personal injury and general unsecured claims. With the formation of an official committee, claimants will not only have a major vehicle with which to influence the case, but typically such panels' legal fees are covered by the bankruptcy estate. The committee will be tasked with ensuring its members and constituency are treated fairly and it could make an effort to increase money available in the bankruptcy estate, potentially through litigation. That would be a good thing for all of the victims and families of deceased victims.

**Unsecured Credits Committee**

The U.S. Trustee's Office has also appointed a committee of unsecured trade creditors in the case that includes XPO Logistics Worldwide Inc. and Mitsubishi Chemical Performance Polymers Inc. The sale transaction at the heart of the case has an expiration date of sorts because Takata must perform on its plea deal with the U.S. government by the end of February 2018, or the federal government can reopen the case and once again pursue criminal charges. Takata was scheduled to return to the bankruptcy court for a second-day hearing on July 26. However, at press time we didn’t have any information from that hearing.

**Representation Sought For Future Air Bag Injury Claimants**

Takata has also asked the bankruptcy judge to appoint a special representative to handle the claims of customers who sustain injuries from the company’s air bags in the future. With the certainty that more claims will be filed post-petition, Takata says it is seeking to avoid any conflicts between the two classes of claimants. Takata asked the judge to appoint a lawyer to represent the interests of future claimants and act as an independent fiduciary to represent those claimants’ interest with regard to the treatment of future personal injury and wrongful death claims in the debtors’ reorganization proceedings.

**Judge Selects Harvard Professor as Overseer Of $1 Billion Takata Fund**

Harvard Law School professor and long-time mediator Eric D. Green has been chosen by U.S. District Judge George Caram Steeh to serve as special master overseeing the handling of nearly $1 billion restitution fund in the criminal lawsuit over Takata's deadly air bag inflators. Judge Steeh said he trusts Green's “impeccable” credentials and that Green is the best candidate among several considered after former FBI director Robert S. Mueller III withdrew from the role to serve as special counsel in the U.S. Department of Justice’s investigation into possible Russian influence of the 2016 presidential election.

Professor Green is familiar with the automotive industry and has taught law at Harvard and during his presidential election.

**Takata Recalls 2.7 Million Additional Air Bag Inflators**

Takata Corp. has recalled 2.7 million more air bag inflators built between 2005 and 2012 and installed in Ford, Nissan and Mazda vehicles sold in the U.S. The recall was because tests have shown predictors of future explosions. The National Highway Traffic Safety Administration (NHTSA) announced this recall. Takata says it isn’t aware of any ruptures involving the inflators at issue in NHTSA’s report. The inflators all use calcium sulfate as a desiccant, or drying agent, and were used in the U.S. as original driver-side airbags.

The latest report by NHTSA applies only to the earliest generation of such inflators, which were installed in vehicles sold by Ford Motor Co., Mazda North American Operations and Nissan North America Inc. Takata and Nissan started recovering and evaluating vehicles with the inflators in March 2016, and Ford agreed to a similar project three months later. Since then, those inflators have been tested, and Takata determined that they are at risk of future explosions. Inflators installed in Mazdas haven’t been tested, according to NHTSA.

None of the inflators ruptured during testing, but some showed a pattern of declining propellant density over time that’s understood to predict a future risk of inflator rupture, which could send metal shrapnel through the airbags, hurting or killing vehicle occupants. Inflator design and vehicle environment differences may influence how they age, according to NHTSA. Based on the tests, the potential for such ruptures may happen after several years of exposure to persistently high humidity, but other factors may also play a role, the government said.

Takata told NHTSA that it plans to work with the automakers to implement appropriate recalls to replace the inflators. A Mazda spokeswoman said in a statement that about 6,000 B-Series trucks from model years 2007-2009 sold in the U.S. are affected by the recall. She also said that there have been no incidents or abnormal air bag deployments in the Mazda vehicles covered by the recall.

Nissan told Law360 that the inflators were installed on nearly 627,000 Nissan Versas sold worldwide—about $15,000 in the U.S.—from model years 2007-2012 and that there are no known incidents associated with the inflator. Owners of the affected vehicles will be given further instructions within the next 60 days, Nissan said. Ford said that it’s aware of Takata’s plan and has been in regular contact with NHTSA on the issue. The company also said it isn’t aware of any incidents involving the inflator.

**Special Master Says Honda Engineer Should Testify In Takata MDL**

The special master in the multidistrict litigation (MDL) over Takata air bags has asked a Florida federal judge to compel the deposition of a Honda engineer who appears to know a lot about the defective inflators and his testimony should be very important. Special master Ryan K. Stumpfether recommended that the court grant the drivers’ motion to compel the testimony of Takeru Fukuda, an assistant chief engineer at Honda R&D Co., who is a 25-year veteran of the company and based in Japan.

Reportedly, in his 2013 email, Fukuda called himself “a witness in the dark who knows the truth about Takata’s inflator recall,” and said that if he told something to the National Highway Traffic Safety Administration (NHTSA), it would cause a “complete reversal” in the automobile industry that adopted Takata’s air bag inflators. In that same email, Fukuda also compared himself to National Security Agency leaker Edward Snowden, indicating that Honda wouldn’t “let [him] go easily.”

Fukuda said that Honda had taken him off of air bag-related work because of his knowledge. The drivers had argued Honda could be compelled to present Fukuda for a deposition, since his job responsibilities
show that he is a “managing agent” under the Federal Rules of Civil Procedure. The drivers had complained they had to piece together Fukuda’s job responsibilities at Honda from documents produced by Takata and Ford. They said Honda hadn’t produced the Engineer’s file or an organization chart for Honda R&D.

Honda said Fukuda had not consented to being deposed. The automaker also said he is a union member with no decision-making authority and thus not a managing agent. Interestingly however, a spokesman for Honda told Law360 that the company doesn’t oppose Fukuda’s testimony and will work with him to comply with the ruling. In determining whether Fukuda could be deposed as a managing agent, Stumphauzer analyzed a number of factors, such as whether there was anyone else at the company with more authority regarding the information being sought and also Fukuda’s general responsibilities relating to the air bag inflators.

The special master recommended to the court that Honda should be ordered to provide three deposition dates for Fukuda. Hopefully, Fukuda will be deposed and I suspect what he has to say will be helpful to the litigation efforts by our firm and others in cases involving Honda.

The case is In re: Takata Airbag Products Liability Litigation, (case number 1:15-md-02599) in the U.S. District Court for the Southern District of Florida.

Source: Law360.com

A REPORT ON THE ONGOING VOLKSWAGEN LITIGATION

There has been a great deal of activity in the ongoing Volkswagen litigation. I will give a summary of some of what has gone on so far.

More Bad News For Volkswagen In Investors’ Emissions Suit

It appears that Volkswagen AG’s attempt to get a proposed class action—brought by bondholders alleging the automaker knowingly misled investors about its emissions-cheating scandal—dismissed will likely fail. U.S. District Judge Charles R. Breyer said during a hearing last month that Volkswagen had made a “misstatement by omission” in an offering memo to the investors. The judge said Volkswagen’s May 2014 offering memo to bondholders “goes on, line-after-line” discussing the government’s standards for emissions controls and what systems monitor emissions. Judge Breyer added that the memo failed to disclose the fact that Volkswagen had developed and installed a device in its vehicles to cheat the system. Judge Breyer said he felt there was “a misstatement by omission.” The judge’s assessment can’t be considered good news for Volkswagen.

Judge Breyer’s comments came during a hearing on Volkswagen’s motion to dismiss a Puerto Rican employee pension fund’s proposed class action against the automaker and its former CEOs Martin Winterkorn and Michael Horn. The suit followed Volkswagen’s 2015 announcement that the company deliberately installed software designed to cheat federal and state emissions tests in nearly 600,000 2009-2015 vehicles.

The bondholders’ putative class action filed in June 2016 claims that the company and its executives intentionally failed to disclose it had a systemic practice of cheating emissions tests by software trickery and misled investors in the offering memo and public statements by implying that Volkswagen vehicles were compliant with emissions regulations.

Judge Breyer did not rule on the motion and during the hearing he suggested that the bondholders might want to get another lead Plaintiff. This was because Volkswagen’s lawyer argued that the pension fund never alleged it relied on the statements in the memo to purchase bonds.

The Puerto Rican employee pension fund was represented by Ian David Berg of Abraham Fruchter & Twersky LLP. The case is BRS v. Volkswagen AG et al., (case number 3:16-cv-03435) in the U.S. District Court for the Northern District of California. The MDL is In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation, (case number 3:15-md-02672) in the same venue.

Volkswagen Urges 9th Circuit To Approve $14.7 Billion Emissions Settlement

Volkswagen has urged the Ninth Circuit Court of Appeals to uphold its $14.7 billion settlement with drivers of its 2.0-liter diesel vehicles and the government over the automaker’s emissions cheating scandal. Volkswagen says that the settlement has garnered broad support from both consumers and federal regulators. A small group of drivers is challenging the settlement—to which U.S. District Judge Charles Breyer granted final approval in October—on grounds that the settlement allows consumers to keep driving their cars in violation of Virginia law.

Volkswagen said that despite appellant Ronald Fleshman’s contention, both the U.S. Environmental Protection Agency (EPA) and the California Air Resource Board (CARB) have stated that the diesel vehicles are legal to drive and a Virginia court has already rejected his argument as “pure speculation.” Volkswagen says the Virginia law in question bars consumers from tampering with a car’s pollution control system and doesn’t affect the manufacturer’s conduct at issue in the litigation and settlement.

The settlement requires Volkswagen to set aside up to $10 billion to buy back consumers’ cars. Thus far, the company says it has already paid out about $6.3 billion to consumers. Moreover, the settlement agreement compensates drivers for the value of their cars before Volkswagen admitted to using defeat devices to cheat emissions standards in the fall of 2015. Many consumers receive compensation for more than the pre-September 2015 value of their car, according to Volkswagen. Since the court approved the settlement over eight months ago, the automaker said more than 300,000 class members have benefited from the settlement in the form of vehicle buybacks, emissions fixes and restitution payments.

Out of a class of about 490,000, only 462 members objected to the settlement and around 3,300 people—fewer than one percent of eligible class members—opted to be excluded from the class.

Two regulators, the EPA and the Federal Trade Commission (FTC), were also involved in the settlement negotiations and Volkswagen says they made sure that the consumer settlements, and related deals with the federal government, were in the public interest. When Judge Breyer gave final approval to the $10 billion settlement in October, he also signed off on consent decree with the U.S. Department of Justice and a consent order with the FTC requiring Volkswagen to invest an additional $4.7 billion to fully address the environmental harm resulting from Volkswagen’s conduct.
The case is *Hill v. Volkswagen AG*, (case number 16-16731) in the U.S. Court of Appeals for the Ninth Circuit.

**Judge Says FTC Claims Are Already Settled In VW Emissions Suit**

A California federal judge has rejected the Federal Trade Commission’s (FTC) request to force Volkswagen AG to provide further testimony as part of an investigation into claims that Volkswagen intentionally destroyed documents shortly before and immediately after its diesel emissions cheating made international headlines. U.S. Magistrate Judge Jacqueline S. Corley issued an order denying as moot the FTC’s November request for the court to compel Volkswagen to provide another half-day of testimony on a variety of topics, including the company’s decision to fire whistleblower Dan Donovan, who worked in the general counsel’s office and whose duties involved preserving documents related to the litigation arising out of the diesel emissions-cheating scandal.

Judge Corley said the FTC’s deceptive marketing and other claims against Volkswagen have already been fully resolved in this litigation by the multi-billion-dollar settlements that Volkswagen made with the FTC covering its 2.0-liter and 3.0-liter “clean diesel” vehicles. The settlements were approved by the court in October and May. The FTC had sought the proposed additional discovery, saying it’s “proportional to the needs of this case,” which involves billions of dollars in consumer harm and corporate wrongdoing of historic proportions.


**New Jersey Appeals Court Says VW Emissions Suits Not Preempted**

A New Jersey appeals court has rejected Volkswagen’s argument that the federal Clean Air Act preempts state court actions in the company’s emissions cheating scandal. The three-judge appellate panel affirmed trial court rulings denying motions by Volkswagen Group of America Inc. to dismiss the complaints from two consumers. The panel said the cases are not barred by the act’s prohibition on efforts by any state or related political subdivision to enforce emissions standards because the matters center on the company’s allegedly deceitful behavior. The panel said:

> It may well be that plaintiffs will prove their vehicles failed to comply with EPA emission standards, something VW has publicly acknowledged, but the gravamen of plaintiffs’ complaint centers on VW’s alleged deceitful, fraudulent practices, and its alleged breach of a duty not to mislead consumers. We conclude § 7543(a) (of the act) does not expressly preempt plaintiffs’ causes of action.

The cases are *David L. Felix et al v. Volkswagen Group of America Inc. et al* and *Eduardo Deang v. Volkswagen Group of America Inc. et al*, (case numbers A-0585-16T3 and A-0586-16T3) in the Superior Court of New Jersey, Appellate Division.

Source: Law360.com

**VW Executive To Plead Guilty In Emissions Cover-Up Case**

A Volkswagen AG executive accused of aiding in a conspiracy to cover up a diesel emissions cheating scandal is set to enter a guilty plea before a Michigan federal judge this month. U.S. District Judge Sean F. Cox issued an order setting an Aug. 4 plea hearing in Detroit for Oliver Schmidt, the former general manager of VW’s environmental and engineering office in the U.S. who was accused earlier this year of playing a role in the conspiracy to cover up the German automaker’s “clean diesel” emissions testing scandal.

Schmidt, 48, was arrested in Miami in January and extradited to Michigan, where, along with five other Volkswagen executives, he was indicted on fraud and conspiracy charges connected with the diesel emissions scandal.

Source: Law360.com

**Ford Sued By Consumers After Recalling 402,000 Transit Vans**

A putative class action lawsuit was filed against Ford Motor Co. last month in a California federal court. The filing came after Ford recalled more than 402,000 Transit vans because of a defective driveshaft.
component. The recall issued in late June affects 2015, 2016 and 2017 models of Transit vans. The consumers’ complaint claims that Ford knew that the vans have a defect in the “flex disc” (a type of rubber joint that connects the transmission to the driveshaft) that can cause vehicle damage and pose a safety risk. The complaint states:

Yet despite this knowledge, Ford failed to disclose and actively concealed the defect from class members and the public, and continued to market and advertise the class vehicles as ‘tough,’ ‘safe,’ ‘durable’ vehicles ‘designed to do its job all day, every day and for many years to come,’ which they are not,” the complaint says. The affected vehicles are often used by small companies like home maintenance companies, daycares and patient transport services.

The recall announcement by Ford said the flex disc cracks after about 30,000 miles. That can possibly causing the driveshaft to separate from the transmission. The cracking can result in a loss of power while driving or the unintended movement of parked vehicles not anchored by a parking brake. The recall information says such separation can also damage surrounding components, including brakes and fuel lines. The recall will cost Ford an estimated $142 million in repairs.

The complaint claims that Ford knew about the defect as early as 2014 as a result of vehicle evaluations and testing, field data, replacement part sales data and consumer complaints made directly to Ford and collected by federal regulators at the National Highway Transportation Safety Administration (NHTSA).

The suit also claims Ford’s recall notice doesn’t indicate that Ford has a permanent fix for the defect. Vehicle owners are told they should repair the disc every 30,000 miles. There is no plan to reimburse buyers like All Care for lost business opportunities from disc-related repairs.

Claims include breach of express warranty and breach of implied warranty as well as claims brought under the Magnuson-Moss Warranty Act, unjust enrichment, fraud by concealment and violations of California’s Unfair Competition Law. The proposed class includes anyone who leased or purchased a 2015-2017 Transit in California for purposes other than personal or household use.

The Plaintiffs are represented by Jonathan D. Selbin, Annika K. Martin and Mark P. Chalos of Lieff Cabraser Heimann & Bernstein LLP; Marc Godino of Glancy Prongay & Murray LLP; and Jasper Ward of Jones Ward PLC. The case is All Care Transport LLC et al. v. Ford Motor Company, (case number 5:17-cv-01390) in the U.S. District Court for the Central District of California.

Source: Law360.com

CLASS ACTION FILED AGAINST VOLVO INVOLVES REAR VIEW CAMERA PROBLEM

A proposed class action filed in January by David and Jacquelyn Oberfell alleged that a glitch exists in Volvo’s rear-view cameras for car models produced since at least 2014. The lawsuit claims that Volvo knowingly sold cars containing cameras that would freeze or show no image at all.

The issue before U.S. District Judge Kevin McNulty concerned whether the complaint’s references to “Volvo’s knowledge” of the defect refer to Volvo Cars of North America LLC or the dealer that sold the vehicle. Also being disputed was whether the company had “general knowledge” of the allegedly defective cameras or was notified specifically of the potential problems.

The Court noted that the Oberrfells were required to notify the “seller” of the defect before making their breach of warranty claim, but it was unclear whether the term “seller” refers to the local dealership or Volvo Cars North America.

Without making a final determination, the Judge decided that more investigation and development of the facts was required. The Oberfellrs are represented by Williams Cuker Berezofsky, LLC. The case is David Oberfell et al v. Volvo Cars of North America LLC, (2:17-cv-00161) in the U.S. District Court for the District of New Jersey.

Source: Law360.com

PROBE EXPANDED INTO POSSIBLE CARBON MONOXIDE LEAKS IN FORD SUVS

The National Highway Traffic Safety Administration is expanding its investigation into reports of carbon monoxide leaks in some Ford SUVs. The agency announced that it is now looking into 791 complaints of Ford Explorers model years 2011-2017. That’s up from the initial 154 complaints regulators began investigating a year ago in model years 2011-2015. A report from NHTSA says an additional 2,051 complaints were lodged with the manufacturer. There have been 41 reported injuries, according to NHTSA.

The potential carbon monoxide exposure in the SUVs has drawn pointed scrutiny in Austin, Texas, where the police department has already pulled more than 60 of its vehicles from the streets. A modified version of the Ford Explorer, called a Police Interceptor Vehicle, is popular with law enforcement agencies across the country. In addition to the more than 60 SUVs Austin PD parked over the concerns, the department has installed carbon monoxide detectors in the rest.

Customers with concerns about Explorers and Police Interceptor Utilities can call Ford’s dedicated hotline at 888-260-5575 or visit their local Ford dealership.

Source: NBC News

IV. DRUG MANUFACTURERS FRAUD LITIGATION

OKLAHOMA ATTORNEY GENERAL SUES PRESCRIPTION OPIOID DRUG MANUFACTURERS

Oklahoma Attorney General Mike Hunter has joined the ranks of state attorneys general who have sued manufacturers of opioid pain medication, alleging that deceptive marketing campaigns by the drug makers have fueled the state’s opioid epidemic. More than a dozen such drug manufacturers were sued by the attorney general. It was alleged in the lawsuit that they “executed massive and unprecedented marketing campaigns through which they misrepresented the risks of addiction from their opioids and touted unsubstantiated benefits.”

The U.S. Centers for Disease Control and Prevention (CDC) reports that opioids, including prescription painkillers, were factors in more than 33,000 deaths across the U.S. in 2015, and opioid overdoses have more than quadrupled since 2000. More Oklahoma residents have died since 2009 from opioid-related deaths than in vehicle crashes in the state. The lawsuit states that Oklahoma is one of the leading states in prescription painkiller sales per capita, with 128 painkiller prescriptions dispensed per 100 people in 2012.

Source: Tim Talley, Insurance Journal

V. PURELY POLITICAL NEWS & VIEWS

A REPORT ON THE ALABAMA SENATE RACE

The Democratic and Republican primaries in the special election to fill the seat vacated by Jeff Sessions and now held by

BeasleyAllen.com
Luther Strange will take place on Aug. 15. Thus far there hasn’t been a great deal of interest in this race. By the time this issue is received there will only be a few days left before the voting takes place. I have predicted an extremely low turnout, but some of my friends who are “political experts” disagree with me. They say there is a large interest and that folks will vote.

I believe Judge Roy Moore will lead the ticket in the Republican primary with either Rep. Mo Brooks or Luther Strange running second. However, it’s possible that State Senator Trip Pittman could move into second place. That’s because Brooks and Luther are going after each other pretty hard, leaving an opening for Sen. Pittman.

The appointment by then Gov. Robert Bentley, who was under criminal investigation by the Attorney General’s office, has been a huge stumbling block for Luther. Also, it appears Luther’s support—primarily financial—from Washington may also have actually hurt his candidacy. Based on past history, I am not sure support from “The Washington Crowd” helps a candidate very much in Alabama.

Doug Jones, who during his career has accomplished a good record, should win the Democratic primary. Doug served as U.S. Attorney in Birmingham and he is better known than any of the other Democratic candidates. However, the interest in the Democratic primary will likely be a record low. If that happens, it could help a candidate like “Robert Kennedy, Jr.” Even so, I believe Doug will be the Democratic nominee.

There may be some late surprises during the last few days prior to the voting on Aug. 15 and things could change as a result. However, with a combination of hot weather and summer activities involving families, politics may not be such a hot topic during an important Senate race. In my opinion all of this gives Judge Moore a decided advantage in the Republican primary. It should also help Doug Jones in the Democratic primary. A general election featuring Judge Moore and Doug would be most interesting.

VI.
COURT WATCH

NINTH CIRCUIT COURT OF APPEALS ALLOWS FUKUSHIMA LITIGATION TO PROCEED

The Ninth Circuit Court of Appeals has upheld a lower court’s decision to allow U.S. sailors to pursue their $1 billion lawsuit against Tokyo Electric Power Co. (TEPCO). The litigation involves radiation injuries the sailors suffered during their response to the 2011 Fukushima nuclear disaster. TEPCO had sought to dismiss the suit claims that U.S. courts lack jurisdiction.

TEPCO had also argued that federal courts lack jurisdiction over the case because of the international comity doctrine, which allows a court to dismiss a case when another country has a strong interest in handling the claims and can adequately do so. The panel noted that the Fukushima incident did happen in Japan, giving that country “a strong interest” in the litigation. But the panel also acknowledged that the Plaintiffs are U.S. service members, which also gives this country a strong interest in the case.

The sailors are represented by Charles A. Bonner, Adam Cabral Bonner and Paul C. Garner of the Law Offices of Bonner & Bonner and John R. Edwards and Catharine E. Edwards of Edwards Kirby. The government is represented by Benjamin C. Mizer, Laura E. Duffy, Douglas N. Letter, Sharon Swingle and Dana Kaersvang of the U.S. Department of Justice; Brian J. Egan of the U.S. Department of State; and Jennifer M. O’Connor of the U.S. Department of Defense.

The case is Lindsay R. Cooper et al. v. Tokyo Electric Power Co. Inc., (case number 15-56424) in the U.S. Court of Appeals for the Ninth Circuit.

Source: Law360.com

J&J’s McNeil GETS NEW TRIAL AFTER $48 MILLION MOTRIN REACTION LOSS

We wrote last month about the $48 million jury verdict returned against McNeil Consumer Healthcare, the Johnson & Johnson subsidiary that makes Motrin. The Defendant will now get a new trial. A California appeals court found that the jury’s findings were “irreconcilably inconsistent.” The appeals court found errors in the way two claims of the Plaintiffs were considered in relation to one another and in the trial court’s instructions to the jury. McNeil will get a new trial under the court’s ruling. As we wrote in the July issue the Plaintiff, Christopher Trejo, suffered Stevens-Johnson Syndrome and its more severe variation, toxic epidermal necrolysis, after taking Motrin at the age of 16 to treat aches and pains. Trejo, who is now in his mid-20s, suffered pulmonary damage, near blindness and hypoxic brain injury and he claimed that was as a result of complications caused by the syndrome.

The appeals panel remanded the case to the lower court for a retrial on the two failure to warn claims against McNeil. The case on appeal is Christopher Trejo v. Johnson & Johnson et al., (case number B238339) in the Court of Appeal of the State of California, Second Appellate District.

Source: Law360.com

VII.
THE NATIONAL SCENE

THE ENVIRONMENTAL PROTECTION AGENCY MUST BE SAVED

In his State of the Union address in 1970, President Richard Nixon announced the creation of the Environmental Protection Agency (EPA). The speech has been archived by the American Presidency Project and quotes President Nixon saying, “Clean air, clean water, open spaces—these should once again be the birthright of every American.” That Republican president encouraged the nation to be better stewards of the country’s natural resources, explaining that it was time to repay a debt to nature incurred “[t]hrough our years of past carelessness.” He implored that “[r]estoring nature to its natural state is a cause beyond party and beyond factions.”

The agency lived up to its mission of reducing pollution and protecting the country’s public health and environment for 46 years, despite well-funded efforts by the energy industry to circumvent those efforts. Yet, similar recent efforts to thwart the agency may be its toughest assault. The new EPA Administrator, Scott Pruitt, who had been a staunch adversary of the agency with strong ties to corporate energy giants, creates a situation akin to putting the fox in charge of guarding the hen house. The budget Pruitt proposed guts the agency’s primary programs and his plan to roll back a record number of regulations jeopardizes the health and safety of Americans from all parts of our country.

Fox Guarding the Hen House

Before he was appointed EPA Administrator, Scott Pruitt served for six years as Oklahoma’s Attorney General and frequently sued the agency—fighting to block “efforts to regulate mercury, smog and other forms of pollution,” the Washington Post reported. The New York Times sums up more than 6,000 pages of emails made public in February just days after Pruitt was sworn in as EPA Administrator. The emails show how Pruitt “closely coordinated with major oil and

JereBeasleyReport.com
gas producers, electric utilities and political groups with ties to the libertarian billionaire brothers Charles G. and David H. Koch to roll back environmental regulations." The backdrop of the emails make it obvious that Pruitt’s “back to basics” approach to running the EPA will benefit the companies that cozied up to him and other political operatives over the last few years.

**Slashing EPA’s Budget**

This conflict of interest became even more apparent when Pruitt submitted the agency’s fiscal year 2018 budget to congress. The proposed budget slashes agency funding by more than 30 percent, *Fortune* explains. When questioned by congressional members of his own party about the drastic cuts and the administration’s reasoning, Pruitt remained tight-lipped on details and just referred to his “back to basics” plan for running the agency, CNN noted. However, the new administrator has found some support among a few members of congress including newcomer Congressman Matt Gaetz (R–Florida) who recently proposed legislation (H.R. 861) that seeks to “terminate” the agency.

- Experts explain that the new administration’s so-called “back to basics” approach to running the EPA sets the agency’s budget back by nearly 40 years. The *Washington Post* says the “sledgehammer” budget tactic leaves few programs intact, preventing the agency from carrying out its basic mission and blocking it from holding bad corporate actors accountable. The cuts include:
  - Eliminating major regional programs including ones designed to clean up freshwater sources such as the Great Lakes, Chesapeake Bay and Puget Sound, which have all suffered from decades of industrial contamination. These bodies of water provide millions of people with drinking water. (*Washington Post*)
  - Reducing Superfund cleanup funding by approximately 30 percent. The Superfund program was established to clean up toxic chemicals, radioactive materials and hazardous waste carelessly discarded into local communities.
  - Cutting in half the amount for grants that help state and local efforts to address issues such as air quality. Thousands of dollars will be taken out of local communities reducing their ability to monitor the air for toxic chemicals and tackle air exposure to hazardous pollutants such as pesticides. (*Washington Post*)
  - Decimates the Environmental Justice Program with a 78 percent crushing blow to its funding, the Huffington Post reports. The program works to assist low-income communities with cleanup efforts and hold industrial polluters accountable for the damages inflicted on areas with populations that have been marginalized.
  - National Public Radio described how one program that is popular across the board is also on the “back to basics” chopping board. The Energy Star program, which “saves consumers billions of dollars a year by boosting products’ efficiency,” Lowell Ungar with the nonprofit American Council for an Energy-Efficient Economy explains that cutting the program will “destroy jobs and make air pollution worse.”

**Sacrificing Successes**

In its first 46 years the EPA ushered in a number of successes, including:

- Cleaner and healthier air, which is expected to prevent 230,000 early deaths annually by 2020 as a result of the 1990 Clean Air Act. This includes helping 2.4 million asthma sufferers breathe more easily, cuts missed school days by 5.4 million and reduces the number of lost workdays by 17 million.
- Reducing harmful diesel exhaust from trucks, school buses and other equipment by 95 percent since 2000, which saved 40,000 lives each year and prevented millions of respiratory illnesses linked to diesel exhaust.
- Uncovering Volkswagen’s emissions cheating software that hid the amount of toxic fumes produced by at least 500,000 of the manufacturer’s vehicles. The discovery helped expose other automobile manufacturers’ similar schemes and allowed the EPA to hold the industry accountable. (A cover-up addressed previously in this Report.)
- These successes by the EPA are likely to be sacrificed through a combination of budget cuts and deregulation efforts currently underway. Since taking office Pruitt has begun the process of jettisoning EPA regulations that help protect public health and safety, the *New York Times* reports, in an attempt to lessen the regulatory impact on companies, which the administration believes will spur job growth and pass along the economic benefits to Americans. Yet, environmentalists and even some in the energy industry fear these efforts to let bad corporate actors off the hook will backfire and harm health and safety with very little economic benefit.

Some examples of the administration’s efforts to dismantle the EPA through deregulation include the following:

- Repealing the Clean Water Rule or Waters of the United States (WOTUS) rule, which the *Washington Post* explains expanded the EPA and Army Corps of Engineers authority to regulate the pollution of wetlands and tributaries that run into the nation’s largest rivers. The goal of the rule was to clarify the ambiguity of the Clean Water Act that was passed in 1972, according to the Huffington Post.
- Chiseling away recent efforts to strengthen the Clean Air Act. As previously mentioned, the Clean Air Act of 1990 helped reduce harmful air pollution and restoring the air to healthier, breathable standards. Pruitt’s EPA has delayed rules including: the oil, coal and gas royalties rule (which closed the loophole that allowed energy companies to pay lower royalties on their products produced on federal lands); the methane leak rule (which required energy companies to prevent leaks of methane and other hazardous gases from all new wells and drilling equipment); and the revised, stronger smog standards. It has also withdrawn rules including the methane emissions reporting request (which required energy companies to measure and provide detailed reports about the methane emitted from all their facilities in order to provide a clearer picture on the emissions and guidance on how to best control them).
- Weakening the Toxic Substances Control Act, which was the most significant overhaul of chemical-safety rules in decades. It was a rewrite of the 1976 Toxic Substance Control Act and with “major bipartisan support, the updated standards strengthened the EPA’s authority to ban known carcinogens such as asbestos.” The new administration was left with the duty to implement the new standards. Yet, the rules it announced that would guide the implementation of the new standards included several business-friendly provisions including “giving manufacturers and other parties more time to submit information to influence whether the agency reviews a chemical’s risks and the conclusions it reaches,” Bloomberg BNA reports.

So while the EPA was created to be an independent agency, and while for years the agency was vigilant of large companies and big cities, the Washington Post explains, under Pruitt and the Trump Administration, it will no longer meet polluters with strong-armed aggressive
responses. Rather, if it cannot fight the obvious efforts to demolish the agency, the EPA will wither away as promised during the past campaign season. Tragically, corporate bad actors will once again be allowed to freely pollute our land, air and water. I don't believe that is what the overwhelming majority of Americans want. Hopefully, Congress will listen to people and not the polluters. That’s a decision that all Americans should be watching closely and our future depends on it.


VIII. WHISTLEBLOWER LITIGATION

TWO JPMORGAN WHISTLEBLOWERS COULD RECEIVE $61 MILLION

Two whistleblowers are set to share a record $61 million award from the Securities and Exchange Commission (SEC) for helping make the case that JPMorgan Chase & Co. failed to disclose to wealthy clients that it was steering them into investments that would be most profitable for the bank. The SEC issued letters on July 19 notifying six whistleblower applicants of the preliminary decision.

Two of the whistleblowers would share almost a quarter of the record asset-management settlement that the SEC reached with the bank in December 2015. JPMorgan agreed to pay $307 million, with $267 million going to the SEC and $40 million to the Commodity Futures Trading Commission (CFTC). The four parties whose SEC awards were rejected provided information that didn’t lead to successful enforcement, the agency said.

Under the Dodd-Frank Act of 2010, the SEC and CFTC operate separate whistleblower programs. Each of the agencies can provide claimants between 10 percent and 30 percent of recoveries, based on the value of the information they provide. At press time the CFTC hasn’t made any whistleblower award determination in the JPMorgan case. The whistleblower set to receive the higher SEC award has also applied to the CFTC. The SEC says it is opposed to a whistleblower receiving a “double recovery” and that it will delay making a final determination until the CFTC renders its own decision or the whistleblower withdraws his or her application.

JPMorgan, the largest U.S. bank by assets, admitted disclosure failures from 2008 to 2013 related to two units that manage money—its securities subsidiary and its nationally chartered bank—as part of the SEC settlement. The New York-based bank said that the omissions in its communications were unintentional and that it has since enhanced its disclosures. Hopefully, the bank learned a lesson and will follow through on its pledge to folks who do business with them.

Source: Law360.com

SOME FCA CLAIMS OVER FAULTY BODY ARMOR ARE REVIVED

A federal judge has restored government claims that were dismissed two years ago from a False Claims Act (FCA) suit against the materials supplier of a now-defunct bulletproof vest maker. U.S. District Judge Paul L. Friedman said the prior judge had failed to look at evidence the government would not have bought the vests if it knew of unfavorable test results. The order revived government claims that it had been defrauded by Toyobo Co. Ltd.’s failure to disclose degradation issues with the plastic fibers it manufactured for use in bulletproof vests prior to 2002. While the applicable standards were not written into the vest purchase contracts until then, the government had provided evidence that receiving the information earlier could have influenced its purchasing decision.

The government sued in 2007, accusing Toyobo of violating the FCA by profiting from government purchases based on false information about vests containing Zylon, a plastic fiber manufactured by the company. The government claims Toyobo internal testing uncovered as early as July 2001 shows Zylon degraded under certain temperature and humidity conditions but that the company continued to sell the fiber without revealing the results until government testing uncovered the degradation in 2005.

The vests were purchased by the General Services Administration under so-called multiple award schedule contracts and distributed to other federal agencies for use. The government claimed vests made from the fiber failed to measure up to a contractual standard that the vests fall within a 6 percent statistical variation for five years after purchase on a performance benchmark called V-50. That benchmark measures the speed at which at least half of incoming bullets are stopped by the vest.

The cases are U.S. v. Toyobo Co. Ltd. et al., (case number 1:07-cv-01144) and U.S. ex rel. Westrick v. Second Chance Body Armor Inc. et al., (case number 1:04-cv-00280) both in the U.S. District Court for the District of Columbia.

Source: Law360.com

COURT SAYS GILEAD FCA SUIT SATISFIES ESCOBAR

The False Claims Act (FCA) is the government’s primary civil remedy to recover money that should not have been paid by the government in various areas such as health care, defense and national security, food safety and inspection, federally insured loans and mortgages, highway funds, small business contracts, agricultural subsidies, disaster assistance, and import tariffs. In 1986, Congress strengthened the Act by amending it to increase incentives for whistleblowers to file lawsuits alleging false claims on behalf of the government.

Most false claims actions are filed under those whistleblower, or qui tam, provisions, which allow private citizens with independent knowledge of fraud against the government to come forward and help recoup money on behalf of the state or federal government. It is so effective that the FCA has allowed for the recovery of more than $4.7 billion just in the 2016 fiscal year, alone. Of the $4.7 billion recovered, $2.5 billion came from the health care industry, including drug companies, medical device companies, hospitals, nursing homes, laboratories, and physicians. The $2.5 billion recovered in fiscal year 2016 reflects only federal losses. In many of these cases, the recoveries included additional millions of dollars for state Medicaid programs. This is the seventh consecutive year where health care fraud recoveries have exceeded $2 billion.

The next largest recoveries came from the financial industry in the wake of the housing and mortgage fraud crisis. Settlements and judgments in cases alleging false claims in connection with federally insured residential mortgages totaled nearly $1.7 billion in fiscal year 2016—the second highest annual recovery in this area. In large part because of its effectiveness, it should come as no surprise that the FCA has come under attack in recent years. In 2015, the United States Supreme Court issued an opinion that verified the theory of “implied certification;” the Court urged careful scrutiny of the facts underlying whistleblower’s complaints. Since that decision, (Universal Health Services v. U.S. ex rel. Escobar) courts across the country have dismissed more and more complaints. Until recently, that is.

In a win for the Plaintiff’s bar, the Ninth Circuit Court of Appeals resurrected a
multibillion-dollar FCA suit accusing Gilead Sciences Inc. of defrauding taxpayers by concealing information about drug suppliers and contamination, saying the whistleblower suit passes muster under Escobar. In a unanimous decision, the Ninth Circuit rekindled the complaint, brought by Jeffrey and Sherilyn Campie, who have worked on quality control matters at Gilead.

At issue is whether Gilead breached the FCA by secretly switching to a Chinese active ingredient supplier after winning approval for several HIV drugs and by concealing information about contaminated ingredients when it later sought approval to use that supplier. The case involves HIV drugs Atripla, Truvada and Emtriva. In 2008 and 2009—a key period in the case—Gilead received more than $5 billion from the government for those drugs. In the case at bar, the Ninth Circuit wrote, quoting from Escobar:

As was the case in Escobar, the claims in this case do more than merely demand payment. They fall squarely within the rule that half-truths—representations that state the truth only so far as it goes, while omitting critical qualifying information—can be actionable misrepresentations.

Importantly, the Appeals Court also rejected the idea that continued U.S. Food and Drug Administration (FDA) approval and government reimbursement for Gilead drugs meant that any violations weren’t “material” under the FCA. Although the Escobar decision called continued reimbursement strong evidence of immateriality, the Ninth Circuit distinguished Gilead's situation. The panel said:

To read too much into the FDA's continued approval—and its effect on the government's payment decision—would be a mistake. First, to do so would allow Gilead to use the allegedly fraudulently obtained FDA approval as a shield against liability for fraud. Second ... there are many reasons the FDA may choose not to withdraw a drug approval, unrelated to the concern that the government paid out billions of dollars for nonconforming and adulterated drugs.

This decision is a much-needed step in the right direction for the future of FCA cases. Fraud-based allegations, like those required for an FCA case, are difficult to bring even without case law altering the statutory pleading requirements. We must remember that the FCA is designed to encourage individuals to come forward to help recover government money; money that should never have been paid to line the pockets of companies like the pharmaceutical companies in this case. Hopefully, the trend will continue. If you need more information, contact Rebecca Gilliland, a lawyer in our firm's Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Rebecca.Gilliland@beasleyallen.com.

Sources: Law360.com

IX. AN UPDATE ON ACTIVITY IN THE PERSONAL INJURY & PRODUCTS LIABILITY SECTION AT BEASLEY ALLEN

Lawyers in our firm’s Product Liability and Personal Injury Section handle cases involving catastrophic injuries and deaths arising out of any type of accident, including car crashes, 18-wheeler accidents and industrial and workplace accidents. Potential product liability claims are often overlooked by some lawyers when investigating what many view as routine accidents.

In many motor vehicle crashes, some defect—either design or manufacturing—played a major role in causing the accident. A product liability claim focuses on whether or not the product is defective. An entire product may be defective or it may be that a component part of the product contains the defect. The product may well contain design, manufacturing, or warning defects. In some cases, it will be a combination of these problems.

Personal Injury Claims include heavy truck litigation, slip and falls and automobile accidents. Cole Portis heads up the Section and Sloan Downes is the Section Administrator. Below are some of the types of cases lawyers in the Section handle on a regular basis.

GM Ignition Switch Litigation

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

Lawyers in the Section have handled numerous cases involving the GM ignition switch defect. Some of those claims were settled through the GM Ignition Switch Compensation Fund. Many others were settled directly with GM. Recently, the United States Supreme Court declined to review a lower-court ruling that the company was liable for claims for deaths or injuries arising before it filed for bankruptcy in 2009. This means many of the other outstanding claims can be filed in federal and state courts and proceed to trial. Cole Portis, Graham Esdale, Mike Andrews and Ben Baker in the Section are involved in these cases. They can be reached at 800-898-2034 or by email at Cole.Portis@beasleyallen.com, Graham. Esdale@beasleyallen.com, Mike. Andrews@beasleyallen.com or Ben. Baker@beasleyallen.com.

Cab Guards

A hundred thousand pounds of timber travels down the county roads and interstate highways of this country. Most folks do not realize just how dangerous these loads are to the hard-working log truck driver tasked with delivering these loads to the sawmills and papermills. Most drivers themselves are often not aware of the danger they are in from not being properly protected from their heavy cargo.

Cab guards are supposed to be protecting these drivers. The shiny, metal pieces positioned behind the cab of almost every log truck in the United States are purchased with the belief they will protect cab occupants from cargo shifting forward and crushing the cab during a crash.

Cab guards, however, are woefully and inadequately designed because manufacturers use weak aluminum instead of a stronger metal like steel. Lawyers in our firm have successfully handled a number of cases over the years involving defective cab guards on big log trucks or any big truck hauling large and heavy loads. For more information about cab guards and trucking injuries, contact LaBarron Boone or Ben Baker in our Montgomery office at LaBarron.Boone@beasleyallen.com, Ben. Baker@beasleyallen.com or Chris Glover in our Atlanta office at Chris.Glover@beasleyallen.com. You can call them at 800-898-2034.

Takata Airbags

The drip, drip, drip of recalls related to one of the worst worldwide automotive manufacturing fiascos in recent history continues. Just this week, Takata added an additional 2.7 million airbags to its recall list that apply to vehicles produced by Ford, Mazda and Nissan. During this same time, Honda confirmed another death connected to the exploding airbags, bringing the total number of confirmed fatalities in
the U.S. linked to the Takata inflators to 12. In late February, Takata pled guilty and agreed to pay $1 billion for concealing a defect in millions of its airbag inflators.

The potential dangers posed by these airbags are that the airbags can unexpectedly explode with excessive force, causing serious injury or death to occupants. The defect is linked to the airbags’ inflator systems, which can shoot metal fragments from the devices into the car like shrapnel. Airbags on both the driver’s and passenger’s side can explode, even as a result of a fender bender or other minor collision. Tokyo-based Takata is one of the world’s largest automotive suppliers. It manufactures airbags, safety belts, steering wheels and other auto parts for a variety of automakers. Vehicles containing the defective airbags include certain models made by Toyota, Honda, Mazda, BMW, Nissan, Chrysler, Audi, Volkswagen and General Motors. Cole Portis, Ben Baker, and Chris Glover in our Products Liability Section are involved in these cases. They can be reached at 800-898-2034 or by email at Cole.Portis@beasleyallen.com, Ben.Baker@beasleyallen.com and Chris.Glover@beasleyallen.com.

**Heavy Trucking Accidents**

There are significant differences between handling an interstate trucking case and other car wreck cases. It is imperative to have knowledge of the Federal Motor Carrier Safety Regulations, technology, business practices, insurance coverages, and to have the ability to discover written and electronic records. Expert testimony is of utmost importance. Accidents involving semi-trucks and passenger vehicles often result in serious injuries and wrongful death. Trucking companies and their insurance companies almost always quickly send accident investigators to the scene of a truck accident to begin working to limit their liability in these situations.

Chris Glover, a lawyer in the firm’s Personal Injury & Product Liability Section, has represented numerous folks who have been seriously injured or lost a family member as a result of the wrongful conduct of a trucking company. He recently wrote and had published a book that explains how to properly litigate a heavy trucking case. The book is titled “An Introduction to Truck Accident Claims: A Guide to Getting Started.” The book covers topics including the basics of trucking regulations and requirements, how to prepare for your case, potential Defendants including the carrier, the broker and the driver, and common issues that arise in commercial vehicle litigation, such as hours of service, fatigue, maintenance and products liability. This book is available free to lawyers in either hard copy or downloadable digital format. For your free hard copy, call us at 800-898-2034. The book also can be downloaded at chrisglover-law.com/book.

**Tire Defects, including RV Tires**

Tire failure can result in a serious car crash causing serious injury or death to the car’s occupants. Air, heat and sunlight can cause the rubber in tires to break down. When a tire is defective, potentially serious problems like detreads and blowouts can occur long before the tire would be expected to wear out. If the tire failure is the result of design or manufacturing defects, and the manufacturer is aware of the problem, they have an obligation to alert consumers to the potential danger.

But an often overlooked area of tire litigation relates to tires manufactured for RVs. A large RV typically seats up to six people and has a kitchen, living area, bathroom and bedroom. Many are loaded with pricey extras such as ceramic floors, granite countertops and slide out sections that enlarge the motor home when it is parked at a campground.

These heavy loads, coupled with weight-shifting inside the RV, put too much pressure on tires that are inadequate for the load, resulting in sudden tire failures. The problem is that RV manufacturers under-rate the axle weight of their vehicles and equip them with tires that can’t bear the load. The tire failures typically occur in the front end of the RV, which has only single tires on each side instead of doubles. This is particularly dangerous because a front-wheel blowout makes it almost impossible to steer.

The risk is compounded when the RV owners load their vehicles with luggage, food, gasoline and passengers. Also, because many RVs are used only a month or two a year, the tires are often old, heightening the risk of tread separation. The tire will pass inspection because the tread depth is fine, but it’s being run during the summer through high ambient temperatures. It may be five or six years old, and it’s not really designed for the application for which it’s being used. Those factors combined are a recipe for disaster.

Lawyers in the Section have pursued numerous claims against both tire manufacturers and importers of the defective Chinese tires. If you have questions regarding a potential tire case, contact Cole Portis or Ben Baker at 800-898-2034 or by email at Cole.Portis@beasleyallen.com or Ben.Baker@beasleyallen.com.

**Bad Boy Buggy Litigation**

Lawyers in the Section continue to handle cases involving injuries from the off-road vehicle known as the Bad Boy Buggy. The Buggy was initially designed by a gentleman who owned an auto salvage yard in Natchez, Mississippi, but the company was sold a couple of times and now is owned by Textron, Inc.

The Bad Boy Buggies are currently marketed for hunting and utility work but they are designed very poorly. They are unstable on uneven terrain. The static stability factor of the Bad Boy vehicles is very low, which is caused by a design that has a narrow track width and a high center of gravity. The vehicles are also very heavy primarily because of the weight of the numerous batteries located internally. When the Bad Boy vehicle turns over, it has the potential to cause significant injuries.

As of today, the Bad Boy Buggies are still not equipped with doors or adequate measures to prevent “leg-out injuries.” Yamaha performed a recall on all of its Rhino vehicles in 2007 because it was seeing numerous leg-out injuries when the vehicles tipped over. The primary problem was that, in a side-by-side vehicle, the driver or passenger will reflexively put their foot out as the vehicle tips. The vehicle typically still has forward momentum as the tip-up occurs, so as the occupant plants his foot on the ground, the foot/leg will be pulled under the backside of the vehicle. Quite often, this causes severe fractures and even amputations.

While Bad Boy has now upgraded its design to add a shoulder net and seatbelt, its foot-out protection is still very bad. Textron added a trip bar in the foot well area, which it claims is a foot-out preventative device. But Textron has performed no testing on the vehicle to see if the trip bar is effective. The vehicles have no protection for occupants who are younger, or of short stature, because their legs may not be long enough to reach the area where the leg-out device is located. These vehicles need doors and netting to prevent leg-out and arm- and hand-out injuries.

Hopefully, Textron, Inc. and its subsidiary Textron Specialty Vehicles, Inc. will recognize the design flaw and start equipping their vehicles with doors and other proper safety devices to reduce the danger. In the meanwhile, some very bad and defective vehicles are in use and are an extreme hazard for folks who use them.

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

**Industrial Accidents and Workplace Defects**

Each year, thousands of workers are injured or killed at their workplace. Although a state’s workers’ compensation system places limitations on the ability of employees to hold employers accountable for these work-related injuries, many people do not realize that there may be another available source of recovery. Injuries in the workplace are often caused by defective products, such as a machine where a dangerous nip-point is not properly guarded nor is the employee warned of the dangerous nip-point. If a product causes an on-the-job injury, a product liability suit may be brought against the product’s manufacturer. Catastrophic injuries, deaths, and amputations unfortunately too commonly occur from defective products found in the workplace.

Lawyers in the Section handle numerous product cases each year that arise in the context of an accident that occurred on the job or in the workplace. Currently, Kendall Dunson, a lawyer in the Section, is handling a tragic case that occurred in Tennessee. While working in the maintenance department for his employer, the employee was setting up a roll stack on an extruder. The roll stack is one machine in an entire line. The roll stack consists of 3 large rollers. The middle roller is the master and the other two are slaves. While working to get the rollers in sync, he was pulled through the rollers and his head was crushed, leading to his death. No one saw the incident but the rollers were found spinning at maximum rate. The rollers have in-running nip points that should have been guarded, but, in this tragic case, the nip-points were not guarded. The manufacturer outfitted the rollers with a stop pull cord along the edges and at the top and bottom of the roll stack. But the roll stack is so large that someone standing in the middle of the roll stack cannot reach the pull cord. The roll stack was defective and unreasonably dangerous for lack of adequate guarding and/or a presence sensing device that would have prevented this needless death. Kendall Dunson and Evan Allen are among the lawyers in the Section handling these cases. They can be reached at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com or Evan.Allen@beasleyallen.com.

**Aviation Accidents**

Soaring through the sky at hundreds of miles an hour, thousands of feet above the ground in an airplane or helicopter leaves little room for error. One small mechanical problem, misjudgment or faulty response in the air can spell disaster for air passengers and even unsuspecting people on the ground. This is why it’s crucial for the aviation industry, including manufacturers, pilots, mechanics and air traffic controllers, to adhere to the highest possible standards at all times.

Statistics indicate mechanical failures cause up to 22 percent of aviation crashes. Historically, aircraft manufacturing defects, flawed aircraft design, inadequate warning systems and inadequate instructions for safe use of the aircraft’s equipment or systems have contributed to numerous aviation crashes. In such cases, the pilot may follow every procedure correctly but still be unable to avert disaster. Mike Andrews, a lawyer in the Section, handles aircraft litigation for the firm.

Currently, Mike is pursuing two most interesting aviation cases. One case involves a crash of the V22 Osprey in Hawaii resulting in death of a young marine. The Osprey has a long history of defects involving the aircraft’s hydraulics and software. This crash resulted from the engines ingesting sand, which was kicked up into the air by the downwash from the Osprey’s rotor-blades as it attempted to land. The aircraft is equipped with a filtration system referred to as an engine air particle separator, which is intended to prevent sand and other particle ingestion. However, the system is faulty. Bell and Boeing have tried various iterations and designs but have not yet implemented a safe and effective filter. Several crashes have resulted in deaths and serious injuries.

The other case involves the crash of a light aircraft off the coast of Georgia. Two inexperienced pilots were attending flight school in North Carolina and were assigned to fly an aircraft to Jacksonville, Florida, to the flight school maintenance facility. Unfortunately, the aircraft was dispatched with inoperable equipment. Specifically, the pilots were sent up in an aircraft which had faulty vacuum pumps—one was completely inoperable and the other failed in flight. The vacuum pumps provide the pilots’ horizon and orientation information while in flight. Without such information, pilots lose spatial awareness and become disoriented. Due to the inoperable and faulty equipment, the plane crashed, killing both student pilots. You can contact Mike at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com.

**Non-Auto Product Defects**

Lawyers in the Section also handle cases involving defective products, including smoke detectors, flammable clothing, industrial equipment, and heaters just to name a few. Most of the time, family members do not suspect that a defective product is the cause of a death or injury, and manufacturers readily blame the victim’s actions. Our firm has discovered that defective products are increasingly a major cause of unexpected deaths and injuries. LaBarron Boone, one of our lawyers who handles Product Liability litigation, has successfully handled several of these types of cases and has been leading a campaign to make smoke detectors safer and more effective. Contact LaBarron if you have any questions about a potential case at 800-898-2034 or by email at LaBar ron.Boone@beasleyallen.com.

**Premises Liability Litigation**

Premises liability cases can involve claims arising out of falls caused by a foreign substance on the premises, falls caused by a part of the premises, as well as injuries caused by falling items. Specifically, in a case involving a foreign substance on a floor, a Plaintiff must establish that the foreign substance caused the fall and that the Defendant premises owner had notice or should have had notice of the substance at the time of the accident.

The law is different when injuries are caused by part of the premises that is in a dangerous condition, such as part of a doorway, curb, or stairs, or where the injury is caused by a display created by a store employee. In situations where the injury is caused by part of the premises or a display that was set up by the store, proof of notice is not a prerequisite but the Plaintiff must still prove the injury was caused by a defective or dangerous condition.

Injuries caused by falling objects most often involve items falling from displays that are either part of the premises, or were set up by the store. If the falling object is the result of a display set up by the store or some part of the premises falling, then the customer does not have to prove notice.

Mike Crow and Julie Beasley in the Section have extensive experience in handling premises liability cases. If you need any guidance or have any questions, contact Mike or Julie at 800-898-2034 or by email at Mike.Crow@beasleyallen.com or Julie.Beasley@beasleyallen.com.

As you can see, the lawyers and support staff in this Section have been very busy dealing with the litigation mentioned above. If you need to discuss anything—including a potential claim in any area—contact Sloan Downes, Section Administrator (Sloan.Downes@beasleyallen.com), and she will put you in touch with the appropriate lawyer. You can also call Sloan at 800-898-2034.
Lawyers in our Mass Torts Section have been very busy during the first seven months of 2017. The lawyers in the section will investigate any medication or medical device claim involving catastrophic injury or death. Andy Birchfield is the Section Head, assisted by Melissa Prickett, Section Administrator. The following are some of the drugs and devices lawyers and support staff in the section are currently working on:

**Talcum Powder**

Johnson and Johnson has been linked to cases of ovarian cancer. But J & J has failed to warn women of the risk of using these products in the genital area. A well-respected Harvard medical doctor has studied the link between talc and cancer for 30 years and believes talc is the likely cause for as many as 2,200 cases of ovarian cancer each year. J&J has shown no concern for its actions or for the thousands of victims.

Lawyers: Ted Meadows, Danielle Mason and David Dearing
Primary Staff Contacts: Katie Tucker, Gwynn Harris and Amy Brown

**Xarelto®**

Approved by the FDA in 2011, Xarelto® is one of the newest blood thinners on the market. It is manufactured by Janssen Pharmaceutical (a subsidiary of Johnson & Johnson) and co-marketed by Bayer Healthcare. It is prescribed to prevent blood clots in patients suffering from atrial fibrillation, pulmonary embolism, deep vein thrombosis, stroke and patients who have recently undergone hip or knee replacement surgery. Since its approval, it has been linked to hundreds of injuries and deaths. Our lawyers are currently investigating claims of GI bleeding, hemorrhagic strokes or any other serious or fatal bleeding involving Xarelto®.

Lawyers: Andy Birchfield, David Byrne and Melissa Prickett
Primary Staff Contacts: Susan Harding and Penny Davies

**Bone Cement**

The type of bone cement used during knee replacement surgery affects the outcome of that surgery. High viscosity bone cement (HVC) boasts shorter mixing and waiting times and longer working and hardening phases, meaning surgeons can handle and apply the cement earlier than with low- or medium-viscosity cements. Although HVC may be more convenient to use, there is mounting evidence that the bond it produces is not as strong. Researchers have observed more early failures with the use of HVC, even when used in combination with a previously well-performing implant. Complications associated with knee replacements performed with HVC include loosening and debonding (where the implant fails to adhere to the cement interface on the shin or thigh bone), which requires revision surgery. Other reported problems include new onset chronic pain and instability.

Lawyers: Ted Meadows, Danielle Mason and David Dearing
Primary Staff Contact: April Worley

**3M™ Bair Hugger**

The 3M™ Bair Hugger is a forced hot air warming blanket, used primarily to help maintain a patient’s body temperature during surgery. The 3M™ Bair Hugger pushes warm air through a flexible hose into a blanket draped over a patient. However, warming blankets can recirculate contaminated air over a patient’s body, including over an open surgical site. This may result in infections like MRSA or sepsis. In particular, patients undergoing knee or hip replacement surgery are at risk of infections deep in the joint, which is very difficult to treat. Complications from these infections include hospitalization, implant revision surgery, limited mobility, permanent disability, amputation and death.

Lawyers: Roger Smith and Liz Eiland
Primary Staff Contact: April Worley

**IVC Filter**

Retrievable IVC filters are wire devices implanted in the inferior vena cava, the body’s largest vein, to stop blood clots from reaching the heart and lungs. These devices are used when blood thinners are not an option. Manufacturers include Bard, Cook and Johnson & Johnson. While permanent IVC filters have been used since the 1960s with almost no reports of failure, retrievable IVC filters were introduced in 2003, promoted for use in bariatric surgery, trauma surgery and orthopedic surgery. Risks associated with the retrieval of IVC filters include migration, fracture and perforation, leading to embolism, organ damage and wrongful death.

Lawyers: Melissa Prickett
Primary Staff Contact: Penny Davies

**Metal-on-Metal Hip Replacements**

Metal-on-Metal hip replacement manufacturers have been under heavy scrutiny over the past few years regarding the dangers of their metal-on-metal hip devices. The main hip devices under scrutiny are:

- Johnson & Johnson/DePuy: ASR Total Hip Replacement and ASR Resurfacing System hip (Recalled on August 24, 2010);
- Johnson & Johnson / DePuy: Pinnacle metal-on-metal hip;
- Zimmer: Durom Cup hip;
- Stryker: Rejuvenate and ABG II Stems (Recalled on July 26, 2012); LFIT Anatomic v40 Femoral Head (Recalled August 29, 2016);
- Biomet: M2a and 38 Diameter hips, and
- Wright: (a) Conserve, (b) Dynasty, (c) Lineage and (d) Profemur (femur fracture) hips.

Metal-on-metal hip patients from the above manufacturers have similarly reported problems after their initial
implant surgery resulting in revision surgery. All have reported a variety of symptoms, including pain, swelling and problems walking. These symptoms are normal for patients following a hip replacement, but can be a sign that something is wrong if they continue or come back frequently. Additionally, metal debris spreading in the hip area has been reported due to the metal-on-metal friction involved from the metal components moving together.

Our lawyers will review any cases involving individuals who have had any of the above metal on metal hip devices implanted and all individuals unsure of the type of hip device implanted if the person has had revision surgery, or the person is experiencing hip pain, hip swelling or difficulty walking.

**Physiomesh**

Physiomesh is a flexible polypropylene mesh used for hernia repair, designed to reinforce the abdominal wall to prevent future hernias. However, Physiomesh is actually linked to a higher rate of hernia recurrence than other similar meshes. In May 2016, Ethicon issued a voluntary recall of its product, citing unpublished data that showed that people who underwent hernia repair with Physiomesh were more likely to need future surgeries than patients treated with competitor products. Other potential complications include organ perforation, mesh migration, bacterial infection, sepsis, and even death. A multidistrict litigation (MDL) has been created for claims against makers Ethicon and Johnson & Johnson. The MDL will be in the Northern District of Georgia located in Atlanta with Judge Richard W. Story presiding.

**Abilify Multidistrict Litigation Approaches 200 Lawsuits**

A multidistrict litigation (MDL) has been established for nearly 200 lawsuits filed against Bristol-Myers Squibb and Otsuka Pharmaceutical Co., the makers of Abilify. The U.S. Judicial Panel on Multidistrict Litigation centralized the Abilify MDL in the U.S. District Court for the Northern District for Florida with Judge M. Casey Rodgers presiding. Abilify, the top-selling antipsychotic drug in the U.S., was first approved by the Food and Drug Administration (FDA) in 2002 to treat adults with schizophrenia. It was approved later to treat symptoms of a variety of mental disorders, including bipolar disorder and depression. Lawsuits that have been combined in the MDL involve impulse-control problems the Plaintiff developed while taking Abilify.

Abilify’s label did not mention “gambling” until January 2016. Four months later, the FDA issued a drug safety communication about “compulsive or uncontrollable urges to gamble, binge eat, shop and have sex.” The notice was based on numerous reports from patients who had taken the drug.

In 2007, the drug cost its makers $515 million when, according to the U.S. Department of Justice, the companies settled with state and federal regulators for numerous civil claims including marketing the drug to treat elderly patients with dementia-related psychosis. The following year, the FDA issued a black box warning cautioning against that particular use of the drug due to an increased risk of death for elderly dementia patients. The companies agreed in 2016 to pay another $195 million to 42 states and Washington D.C. to settle additional claims that they improperly marketed and promoted the drug for off-label uses.

**DePuy Synthes Attune Knee System**

Knee replacement surgery is considered highly effective for the treatment of degenerative joint disease or arthritis. It is also considered one of the most successful surgical procedures in medicine. Implant survival rates are reported at more than 90 percent at 10-19 years of follow-up. With over 600,000 knee implants per year in the United States, the substantial public health impact of total knee replacements is undeniable. In response to the demand for operational efficiency, DePuy Synthes, part of the Johnson & Johnson conglomerate of companies, developed the ATTUNE® Knee System, a novel design total knee arthroplasty (TKA) system. The ATTUNE® Knee System features new designs and lighter innovative patient specific instruments for implant of the prosthesis. In 2013, DePuy Synthes launched the ATTUNE® Knee System on the market.

DePuy Synthes obtained market approval from the FDA based on the representation that the ATTUNE® Knee System was substantially equivalent to prior proven models. DePuy Synthes was not required to establish that the knee system was safe and effective. As a result, arthroplasty patients and the public are experiencing the harm caused by no clinical testing for a product with new features based on the representation as “substantially equivalent” to prior proven models.

Initially, the ATTUNE® Knee System marketing was very successful, resulting in embracement by the medical community. However, within two years, surgeons began encountering high failure rates. In addition, researchers found numerous adverse reports with the U.S. Food and Drug Administration (FDA) of the tibial component failure in the ATTUNE® Knee System. In a June 2017 study, researchers identified similarities in the failures. All revisions in the study had the failure of cement-to-implant.

Several design features were identified as possible reasons for increased failure of this implant including increased constraint of tibial polyethylene, reduced cement pockets in tibia, reduced rotational stabilizers on keel (i.e., all smooth surfaces on tibial fixation surface), and roughness factor on fixed bearing was only 60 versus 220 on the previous generation system (Sigma, DePuy Synthes).

The 2017 study alerted that the failure rate within the FDA database is likely underreported as competing companies cannot provide data on the revision components that they replace. The authors recommended that patients who present with unexplained pain undergo a thorough workup for a painful joint, which includes blood work and imaging and consider the diagnosis of debonding at implant-cement interface.

**Proton Pump Inhibitors**

Proton pump inhibitors (PPIs) were introduced in the late 1980s for the treatment of acid-related disorder of the upper
gastrointestinal tract, including peptic ulcers and gastrointestinal reflux disorders, and are available both as prescription and over-the-counter drugs. Popular PPIs include Prilosec, Prevacid, and Nexium. Use of PPIs has increased in the U.S. from 3.4 percent to 7.0 percent among men and from 4.8 percent to 8.5 percent among women from 1999-2000 to 2011-2013, according to the National Health and Nutrition Examination Survey; 14.9 million patients received 157 million prescriptions for PPIs in 2012.

Our lawyers are currently investigating cases involving PPI use and Acute Interstitial Nephritis (AIN), which is a condition where the spaces between the tubules of the kidney cells become inflamed. Case reports have linked PPI use to AIN as early as 1992, and observational studies in 2014 and 2015 provided further evidence of the link between PPIs and AIN. The injury appears to me more profound in individuals older than 60. While individuals who suffer from AIN can recover, most will suffer from some level of permanent kidney function loss. In rare cases individuals suffering from PPI-induced AIN will require kidney transplant. Beasley Allen is currently investigating cases involving PPI-induced acute interstitial nephritis.

Lawyers: Roger Smith and Liz Eiland
Primary Staff Contact: April Worley

RISPERDAL®

Risperdal® is an atypical antipsychotic drug used to treat schizophrenia and certain problems caused by bipolar disorder and has been linked to the development of gynecomastia in boys and young men. Gynecomastia is a condition that causes boys to grow breasts.

Lawyer: James Lampkin
Primary Staff Contact: Crystal Jacks

STEVENS-JOHNSON SYNDROME

Stevens-Johnson Syndrome (SJS) is an immune complex hypersensitivity reaction that can be caused from an infection or immune response to drugs. It is a severe expression of a simple rash known as erythema multiforme. SJS is also known as erythema multiforme major. It affects all ages and genders including pediatric populations. The most severe form of SJS is toxic epidermal necrolysis (TENS). SJS occurs twice as often in men as in women. Most cases of SJS appear in children and young adults younger than 30. Females with SJS are twice as likely as males to develop TENS, and have an even higher chance if taking a category of drugs known as NSAIDs, non-steroidal anti-inflammatory drugs.

Lawyers: Frank Woodson and Matt Munson
Primary Staff Contact: Renee Lindsey

TESTOSTERONE REPLACEMENT THERAPY

Testosterone Replacement Therapy products for men have been linked to an increased risk of death, heart attack and stroke. Researchers found men who used testosterone therapy were 30 percent more likely to have a heart attack, stroke, or die after three years of use. Furthermore, men who started the study with clear, unobstructed coronary arteries were just as likely to have a heart attack, stroke, or die as men who entered the study with established coronary artery disease. Testosterone therapy, such as the prescription topical treatments Androgel, Testim and Axiron, are used to help boost testosterone levels in men who have a deficiency of the male hormone. Symptoms of low testosterone include decreased libido and low energy. Lawyers in the section are currently investigating claims of heart attack, stroke, DVT, pulmonary embolism and prostate cancer.

Lawyer: Matt Teague
Primary Staff Contact: Heath Hall

VIAGRA®

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

Lawyer: Melissa Prickett
Primary Staff Contact: Penny Davies

ZIMMER NEXGEN KNEE REPLACEMENT

Since 2003, more than 150,000 Zimmer NexGen Flex-Knee implants have been sold. Several different components used as part of the Zimmer NexGen Flex-Knee replacement system have been associated with increased risk of complications, including pain, swelling, loosening of component parts, and the need for follow-up/revision surgery. Several prominent surgeons want a Zimmer NexGen knee replacement recall to be issued. At a March 2010 conference of the American Academy of Orthopedic Surgeons, two knee surgeons presented data suggesting that the Zimmer NexGen Flex-Knee failure rate could be as high as 9 percent, and that the actual number of complications that require revision surgery could be even higher. The lead author of the study, Dr. Richard Berger, described the failure rate of the Zimmer NexGen CR-Flex Porous Femoral Component as “unacceptably high.”

Our lawyers will review any cases involving individuals who have had a Zimmer NexGen knee device implanted, or individuals unsure of the type of knee device implanted, if that individual has had revision surgery.

Lawyers: Navan Ward
Primary Staff Contact: Donna Puckett and Stephanie Dean

ZOFRAN®

Manufactured by GlaxoSmithKline, Zofran® (ondansetron) was approved to treat nausea during chemotherapy and following surgery. Zofran® works by blocking serotonin in the areas of the brain that trigger nausea and vomiting. Between 2002 and 2004, GSK began promoting Zofran® off-label for the treatment of morning sickness during pregnancy, despite the fact the drug has not been approved for pregnant women and there have been no well-controlled studies in pregnant women. The U.S. Food and Drug Administration (FDA) has received nearly 500 reports of birth defects linked to Zofran®. Birth defect risks include cleft palate and septal heart defects.

Lawyers: Roger Smith and Liz Eiland
Primary Staff Contact: April Worley

TAXOTERE

Taxotere is a chemotherapy drug that belongs to a family of drugs called taxanes. Taxotere is administered intravenously and is approved to treat breast cancer and other forms of cancer. In 2007, manufacturer Sanofi-Aventis touted the efficacy results of a clinical study involving Taxotere, but failed to inform the U.S. Food and Drug Administration (FDA), health care providers, and the public that a number of patients taking Taxotere experienced permanent hair loss. While
hair loss during chemotherapy is a well-known side effect, patients undergoing chemotherapy with Taxotere were not warned that they could potentially experience permanent hair loss, which is a devastating condition, particularly for women. In December 2013, the FDA announced that it had ordered Sanofi-Aventis to change Taxotere’s label to warn patients of the risk of permanent hair loss. Our lawyers are currently investigating cases of women who suffered permanent hair loss following Taxotere chemotherapy.

Lawyers: Beau Darley and Melissa Prickett
Primary Staff Contact: Penny Davies

XI.
MORE ON MASS TORTS LITIGATION

FDA TO INVESTIGATE PHARMACEUTICAL COMPANY ‘OVERWARNINGS’

In documents recently published in the Federal Register, the U.S. Food and Drug Administration (FDA) said that it plans to investigate whether “overwarning” consumers will cause them to ignore warnings about drugs. The FDA wants to investigate whether the long list of warnings, risks and side effects often placed on drug ads could potentially overwhelm consumers and lessen their attention to the warnings. The agency will examine how repetition of warnings affects people reading print advertisements. The warnings are usually on the main page of an ad and on a summary page. The agency states that it is concerned that duplicative warnings could cause consumers to stop paying attention to the information.

The FDA study will use eye tracking technology to monitor the perception of consumers about risks presented in two ads. Consumers will be given 60 minutes to read the ads and then complete a questionnaire that assesses risk perception, risk recall, efficacy perceptions, efficacy recall and demographic and health literacy information. The agency hopes to receive about 1,800 responses.

Source: Law360

JUDGE REVERSES J&J’S WIN IN PELVIC MESH MASS TORT CASE

A Pennsylvania state court judge has overturned part of a jury verdict that gave Johnson & Johnson its first win in five pelvic mesh trials in Philadelphia, ordering the company to face damages from allegations that an implant was defectively designed. Philadelphia Court of Common Pleas Judge Michael Erdos ruled last month in favor of Plaintiff Kimberly Adkins on one part of her post-trial motions. Ms. Adkins had contended the jury had been inconsistent in its conclusion that while the mesh she received was defectively designed, it was not the cause of injuries that were acknowledged by both sides.

Jurors in the trial agreed that J&J subsidiary Ethicon Inc. had defectively designed its so-called TVT Secur pelvic mesh, which Adkins was implanted with in July 2010 to treat her urinary stress incontinence, and had failed to provide adequate warnings about its risks. But the jury declined to find that the Plaintiff had suffered any injuries as a result of the implant.

Ms. Adkins argued in post-trial motions that three doctors who testified in the case—her treating physician, a Plaintiff’s expert and a Defense expert—all acknowledged that the mesh caused injuries including bleeding during sex and that, as a consequence, it needed to be removed.

Ms. Adkins had filed suit in July 2013 seeking damages after a portion of the TVT Secur implant eroded into her vaginal canal, causing significant pain. The mesh erosion resulted in her undergoing surgery to remove a portion of the implant in September 2012.

The Plaintiff is represented by Bryan Aylstock, Daniel Thornburgh and James Barger of Aylstock Withkin Kreis & Overholtz PLLC; Benjamin Anderson of Anderson Law Offices; and Lee Balefsky, Christopher Gomez and Christine Clarke of Kline & Specter PC. The case is Kimberly Adkins v. Ethicon Inc. et al., (case number 130700919) in the Court of Common Pleas of Philadelphia County, Pennsylvania.

Source: Law360.com

XII.
AN UPDATE ON SECURITIES LITIGATION

RECORD NUMBER OF SECURITIES CLASS ACTIONS FILED IN 2017

The number of class action securities fraud suits filed in federal court surged to a record high in the first half of 2017, according to a report released on July 25, hitting the highest level in two decades as both traditional filings and merger and acquisition litigation continued to increase. The semiannual report released by Cornerstone Research and the Stanford Law School Securities Class Action Clearinghouse found that 226 securities fraud class actions were filed in federal courts in the first six months of this year, the highest number of filings for any half year since the Clearinghouse began tracking the data in 1997.

The report said that if the filings continue at the same pace for the second half of the year, reaching 452 cases total, 2017 will see the highest level of securities fraud filings in 21 years.

The Cornerstone report does suggest that some of the new filings are for lower values than in previous years. The report measures cases by what it calls “Disclosure Dollar Loss,” a metric of the difference between a Defendant’s market capitalization on the trading day before the end of the class period and the trading day immediately after the end of the class period, to estimate the impact of information revealed at the end of the period. Although the total disclosure dollar loss increased from the second half of 2016 to the first half of 2017, the median loss was 26 percent lower over the same period while the average loss declined by 15 percent. Another metric, the “Maximum Dollar Loss,” measures the change in market cap between the trading day with the highest capitalization during the class period and the day immediately after the end of the period; the median MDL was 64 percent lower in the first half of 2017 compared to the latter half of 2016.

Filings against companies headquartered outside of the U.S. also rose in the first part of 2017, according to the report, which found suits against European-based companies in particular jumped 83 percent from the second half of 2016.

Source: Law360.com

XIII.
EMPLOYMENT AND FLSA LITIGATION

INSURER-FRIENDLY CASE LAW UNDER FIRE IN FIFTH CIRCUIT

The U.S. Court of Appeals for the Fifth Circuit announced on July 10 that it would rehear en banc a recent case raising questions about the proper standard of judicial review in disputes over denied employee benefits that fall under the purview of the Employee Retirement Income Security Act

BeasleyAllen.com
In that earlier decision, three of the court's judges, though they apparently disagreed with the binding caselaw forcing them to do so, affirmed Humana Health Plan of Texas Inc.'s refusal to cover a teenager's eating disorder treatment. The judges' decision was guided by the Fifth Circuit's 1991 insurer-friendly ruling in *Pierre v. Conn. Gen. Life Ins. Co.* Notably, all three judges said Pierre should be re-examined or overturned.

Under the earlier *Pierre* decision, courts are forced to give deference to an ERISA plan administrator's factual determinations, regardless of what a given plan document says. In calling for *Pierre* to be revisited, the judges emphasized that the standard of review in an ERISA case is often outcome-determinative in favor of insurers and benefit plans. The judges also criticized *Pierre* for frustrating the growing collection of state laws giving ERISA plan beneficiaries a better chance of prevailing in court. This deference is one factor among many that discourages litigation, ultimately preventing insureds from recovering when they are denied services.

Currently, ERISA cases are made or destroyed by the factual record as it is developed during the internal appeals process. The internal appeals process, which typically involves tight deadlines and requires specific language in requests, is not forgiving. Unfortunately, most participants attempt to complete this process without a lawyer, thinking they will receive a fair result and can handle these requests on their own. The result, usually, is an incomplete record that limits the possibility of success in litigation. Reversing *Pierre* could help change that. Perhaps more importantly, insurers will have to bear in mind the reduced deference when making all earlier decisions on ERISA cases, which could also benefit insureds. If you need more information on this case, contact Rebecca Gilliland at 800-898-2034 or by email at Rebecca.Gilliland@beasley-allen.com.

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**XIV. PREMISES LIABILITY UPDATE**

**Wisconsin Appeals Court Upholds $39 Million Verdict In Parking Garage Death**

The Wisconsin Court of Appeals has upheld a $39 million jury verdict against the builder of a Milwaukee parking garage where a 15-year-old boy was killed in 2010 when a concrete slab fell. A 13-ton panel that fell in a city-owned parking garage killed Jared Kellner and injured two other people. The parking garage was constructed in the late 1980s. Advanced Cast Stone (ACS) was hired by the county to manufacture and install decorative concrete panels hung on the outside of the structure. The panels were designed by an engineering firm. Upon investigation, it was determined that the slab that fell was not manufactured or installed according to the engineering firm's specifications.

Liberty Insurance, the insurer, argued against the trial court's finding of coverage as a matter of law and argued that it had not breached its duty to defend and duty of good faith and fair dealing, thereby requiring the insurer to be responsible for the entire verdict amount. The court said that Liberty Insurance is not responsible for the full amount levied against ACS.

A lower court had said Liberty “breached its duty” to defend ACS and was responsible to pay the full award. The appeals court disagreed and said the insurer is responsible only for the limit in ACS's policy, which was $10 million at the time ($1 million Commercial General Liability policy limit and $9 million excess policy limit). However, the appeals court said the amount of damages awarded to Milwaukee County will be revised, since they are subject to the “your work” exclusion.

*Source: Claims Journal*

**$11.2 Million Verdict In Wrongful Death Case**

The parents of Sarah Jones, the camera assistant who was killed during filming of a movie in Georgia in 2014, have won their case. The family was awarded $11.2 million in damages in the case by the jury. Ms. Jones, 27, was fatally struck by a train that crashed into a crew filming a scene on a railway for the Gregg Allman biopic “Midnight Rider.” Several other crew members also were injured during filming of the scene on a historic trestle outside of Savannah. The producers did not have permission to film on the railway. The accident prompted multiple state and federal investigations and galvanized the film industry, prompting calls for greater attention to safety on sets worldwide.

Lawyers for CSX, the train's operator, had argued that they had not authorized the “Midnight Rider” filmmakers to shoot on the railway. However, the jury found that CSX was primarily liable for the accident and should pay 35 percent of the total judgment. Jurors said that Jones' parents should be given just under $2 million for pain and suffering and $9.2 million for economic losses. CSX said in a statement that it would appeal.

Jones’ parents agreed to a confidential settlement with the film’s producers in 2014. The film's director, Randall Miller, pleaded guilty to involuntary manslaughter in 2015. He was sentenced to up to two years in prison and fined $20,000. Miller was found responsible for 28 percent of the amount of the jury award. Rayonier Performance Fibers, owners of the land where the accident occurred, were responsible for 18 percent and the rest of the liability was divided between individual members of the film’s production company. Sarah Jones was found not to have been responsible in any respect for the accident.

*Source: Los Angeles Times*

**XV. TRANSPORTATION**

**Truck Speed Limiting Rule Is On The Trump Chopping Block**

A rule mandating the use of speed limiting devices in commercial rigs is one piece of valuable legislation among many others on Donald Trump’s regulatory chopping block, despite the rule’s widespread support among industry groups, trucking companies, and safety advocates.

The proposed speed limiter rule calls for the implementation of devices that cap the maximum speeds of commercial trucks between 62 and 68 mph. It is the product of a decade’s worth of brokering, compromise, and refinement that not only promises to save hundreds of lives each year, but would lower fuel consumption and bring up to $6.5 billion in additional benefits per year.

Still, despite its support among most trucking companies and safety groups, there is little chance the rule will survive the crudest and most indiscriminate anti-regulatory measures the U.S. has ever seen. Shortly after taking office, Donald Trump signed an executive order that requires regulators to eliminate two regulations for every new one passed.
“It is common sense that speed kills. That is especially the case for a large tractor trailer. This regulation will save lives,” says Beasley Allen lawyer Chris Glover, who handles truck accident cases from the firm’s Atlanta office. “I’ve handled case after case where people’s lives wouldn’t have been turned upside down and loved ones wouldn’t have been lost if the truck would have just slowed down. I cannot comprehend the rationale for not implementing a regulation that is clearly the right thing to do simply because it would be a new regulation.”

Trump’s executive order targeting new regulations also brought an immediate halt to all pending legislation. More than 40 other rules regulating automobiles, highways, aviation, and rail face the same fate. Eighty percent of those rules, many of which emerged as our knowledge of deadly disasters grew, are designed to improve safety. Killing them would be akin to throwing out years of insight stemming from costly National Transportation Safety Board (NTSB) investigations and recommendations. It’s as if the NTSB has spent the past 15 years probing transportation disasters for fun.

Unfortunately, American citizens are the ones who are going to pay for the Trump Administration’s anti-regulatory zeal, not just with their money, but with their lives. Elimination of the speed limiter rule for commercial trucks and more than a dozen other pending rules in the Transportation Department would cost taxpayers nearly $200 billion in deaths and injuries in accidents, higher fuel consumption, and a multitude of other losses, according to DOT estimates.

Chris Glover works out of our firm’s Atlanta office, where one of his specialties is the handling of truck accident cases. If you would like to talk to Chris about a case involving any sort of heavy truck, you can email him at Chris.Glover@beasleyallen.com or call him at 800-898-2034.

Source: Insurance Journal

$2.75 Million Verdict Will Stand In Airplane Crash Lawsuit

A Pennsylvania federal judge has rejected engine maker Continental Motors Inc.’s request to alter a jury’s decision to award a U.S. Forest Service employee’s widow $2.75 million in a case arising out of a 2010 plane crash. U.S. District Judge J. Curtis Joyner said the company could not escape liability under the General Aviation Revitalization Act of 1994 (GARA) because the company manufactured a replacement part for the engine not too long before the accident and the jury was provided sufficient evidence to determine what caused the crash. Judge Joyner wrote:

In reviewing the trial record of this case under the lens of the preceding authority, we find that plaintiff produced sufficient documentary and testimonial evidence at trial that Continental manufactured a replacement part which was installed in the accident aircraft’s engine some six years prior to the June 2010 crash so as to fall within GARA’s rolling provision.

The Act says that actions can’t be brought for damages related to death or injury caused by a plane crash if the aircraft was delivered more than 18 years before the accident or if parts that allegedly caused the crash were replaced more than 18 years prior. The separate estates of Forest Service employees Daniel Snider and Rodney Whiteman and pilot Patrick Jessup filed three lawsuits against Continental Motors. The suits arose out of the crash of a Cessna T210L aircraft equipped with a Continental Motors TSIO-520-H engine in 2010. All three of the occupants were killed in the crash.

The suits filed on behalf of Jessup and Whiteman were settled and only Snider’s suit went to trial. The jury returned a $2.75 million verdict in that case against Continental Motors. The engine maker then filed a renewed motion for judgment as a matter of law in an effort to have the verdict altered, claiming that Snider’s claims fail under GARA.

The court determined that Snider’s estate sufficiently proved during trial that Continental Motors did manufacture a replacement part that was installed in the engine about six years before the crash, consequently falling within GARA’s “rolling provision.” The court also rejected Continental Motors’ contention that Snider failed to prove the replacement part caused the accident, calling the argument “meritless.” The court said Snider presented a “number of expert witnesses” and evidence that was “more than sufficient” to enable the jury to come to a conclusion.


Source: Law360.com

‘Helicopter Fuel System Safety Act’ Introduced to Reduce Post-Crash Fires and Save Lives

Safer helicopters may be closer than safety advocates and industry experts anticipated and that’s because the “Helicopter Fuel System Safety Act” has been introduced in Congress. The proposed legislation “would require helicopter manufacturers to place crashworthy [also known as crash-resistant] fuel systems onboard every newly built helicopter starting a year after the bill’s passage.”

As we discussed in the July Report, the Federal Aviation Administration (FAA) was coming up on a deadline for acting to close a loophole in its 1994 standards update that allowed all helicopters certified before 1994—even if they rolled off the assembly line new this year—to continue using flimsy fuel tanks that were designed decades ago. The deadline was part of the FAA Extension, Safety, and Security Act of 2016, which was a 14-month extension of the FAA Reauthorization Act outlining reforms across the aviation industry.

These outdated fuel tanks are not crash-resistant and have resulted in post-crash fires that caused nearly 40 percent of the fatalities in helicopter crashes since the standards were purportedly updated in 1994. The FAA’s inaction has been a major problem. Hopefully, the legislation will pass and become law. If not more lives will be lost because of a loophole that puts helicopter manufacturers’ profits over safety.

A tragic crash in Colorado was said to have been the reason this legislation was introduced by Colorado lawmakers. The helicopter involved in the July 2015 fiery crash of Air Methods Flight for Life that occurred in Frisco, Colorado, was manufactured in 2014. Because the model had been certified in 1977, the FAA 1994 loophole said that it could use an outdated fuel system. The fuel system caused a post-crash fire that claimed the life of the pilot and seriously injured a flight nurse on board. We described this tragic incident in a previous Report.

Congressmen Jared Potts and Ed Perlmutter co-sponsored the legislation. In a show of bipartisan support, Sen. Cory Gardner, R-Colorado, added an amendment to the FAA Reauthorization Act "that would require the FAA to alert helicopter owners of fuel system retrofits" and “urge owners to install the retrofits ‘as soon as practicable.’”

Nearly 84 percent of the helicopters manufactured between 1994 and 2016 still rely on the outdated fuel tanks—demonstrating the need for faster action to mandate safer standards. Hopefully this
needed legislation will pass and become law.
Source: KUSA 9News

**Crash In Georgia Shows Need For Stronger Underride Safety Guards On Trucks**

This summer marks the fourth anniversary of a tragedy that occurred on a stretch of I-20 in Georgia between Augusta and Atlanta. It was a tragedy that forever changed the lives of the Karth family. The tragedy sparked a renewed focus on strengthening rear underride safety guards on heavy trucks such as tractor-trailers or semitrailer trucks. The incident has also helped heighten awareness about a similar growing need for protection from side underride crashes.

As we discussed in the June Report, Marianne Karth and three of her nine children were traveling from their home in North Carolina to Texas for two of their siblings’ graduations and a wedding in Texas when their Ford Crown Victoria was hit by one tractor-trailer, which sent it reeling under the side of another tractor trailer, as recalled on Marianne’s website. All four occupants were trapped and had to be extricated with the jaws of Life. Marianne and her son Caleb were in the front seat and survived. Her two daughters were in the backseat, which went underneath the trailer, despite the rear underride safety guard, according to Bloomberg. AnnaLeah died instantly and Mary died days later from catastrophic injuries because of the accident.

The grieving mother, Bloomberg explains, learned that a $100 design change for the tractor-trailer underride guard could have saved her daughters’ lives—“wider spacing of support bars that hang from the end of truck trailers to prevent cars from sliding underneath.” She has joined efforts to improve rear guards and also advocates for mandated side guards so that no other family suffers a similar loss.

Rear underride guards have been used on the back of most tractor-trailer or semitrailer trucks since the 1950s to block cars from sliding under the back of a truck during a collision. They are intended to enable “air bags, crumple zones, and seat belts to save passengers.” Yet, the rear guards’ designs have not always been effective. Transportation safety advocates first began calling for improved safety measures following and underride crash that claimed the life of actress Jayne Mansfield 50 years ago. Although rear guards were finally mandated by Congress in 1968, they claimed the life of actress Jayne Mansfield 50 years ago. Although rear guards were finally mandated by Congress in 1968, they claimed the life of actress Jayne Mansfield 50 years ago. Although rear guards were finally mandated by Congress in 1968, they claimed the life of actress Jayne Mansfield 50 years ago. 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that goal while the Settlement Program adjusts to implement the decision.

The Fifth Circuit’s order again changed the way in which Business Economic Loss (BEL) claims are calculated under the settlement agreement. In October 2013, the Fifth Circuit ruled that certain BEL claims had to be calculated under industry-specific methodologies to ensure that the financial statements used in those calculations were “sufficiently matched.” In other words, both the revenue and expenses incurred to generate that revenue had to be reported in the same month. Policy 495, enacted to accomplish this matching, set forth five different calculation methodologies based on industry—construction, education, professional services, agriculture, and one catch-all category titled the Annual Variable Margin Methodology (AVMM).

On May 22, 2017, the Fifth Circuit overturned all but the AVMM, reasoning that the four other matching categories were not consistent with the terms of the settlement agreement because they infringed on a claimant’s right to choose its own compensation period. The order also prevents the Settlement Program from moving, smoothing, or reallocating revenues unless to correct errors. This ruling does not apply to claims that have been paid or that were closed after all appeals of a denial were exhausted.

This ruling was a win for the Plaintiffs’ Steering Committee, which argued that only AVMM should be used to accomplish matching. Now, all claims will either be calculated under AVMM or under the settlement’s original calculation methodology if the Settlement Program determines a claimant’s financial records are sufficiently matched. The review of claims could actually pick up because these two calculation methodologies are much simpler than those that are no longer valid.

**Mesothelioma**

Lawyers in the Section are currently handling several cases against multiple Defendants for folks who have mesothelioma. Unfortunately, mesothelioma is a non-curable cancer caused by exposure to asbestos. Rhon Jones handles these cases for our firm and says that while it was hard to watch two of our clients, Melvin Ridgeway and Doil Anderson, pass away recently from this terrible cancer—it strengthened his resolve to fight for Mrs. Ridgeway and Mrs. Anderson.

Rhon, like the rest of our lawyers, gets to know the folks we represent. We know that our clients are real people with real problems, often very severe, that they need help with. Helping clients fight the wrongdoers is vital to our mission.

If you need help with a mesothelioma claim, contact Rhon at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com.

**An Update On E-cigarette Explosion Litigation**

A married couple from Illinois recently filed a lawsuit against two electronic cigarette specialty shops and a lithium-ion battery manufacturer alleging that batteries for an e-cigarette exploded in the husband’s pants, causing second- and third-degree burns. The negligence and product liability lawsuit alleges the batteries were defective and that no warnings were provided of the risk of explosion. The wife alleges that she lost her husband’s companionship following the incident. To date, the husband’s medical bills have topped $200,000.

Similar lawsuits have been filed by e-cigarette users across the country alleging spare lithium-ion batteries exploded while being stored in pockets. Many suits claim that the 18650 lithium-ion batteries were dangerous owing to the fact that they had no protective circuitry or internal temperature control, and that the manufacturers sold the batteries knowing that they had manufacturing defects and did not comply with safety standards. Many times, the battery cells used to power e-cigarettes are pulled from larger battery packs by Chinese distributors who break up the packs, repackage the cells, and sell them to American vape shops making it difficult to identify the original manufacturer.

The chemicals used in lithium-ion batteries are known to be extremely flammable. However, they can be safe if manufactured and processed correctly, and if the vaping device is designed properly. Unfortunately, however, manufacturers, integration, and design is far from perfect. The batteries can short circuit or catch on fire as a result of “thermal runaway,” a chemical reaction that causes the battery to catch on fire. Both these accidents, in turn, can be caused by battery damage, too rapid recharge, extreme temperatures, the juxtaposition of other metal material, or using improper chargers.

In addition to the risk of explosion, electronic cigarettes may produce cancer-causing toxins that are unknowingly inhaled in the form of vapor. From a marketing perspective, e-cigs present a danger to public health since they are advertised to a younger group of consumers with seemingly innocuous flavors ranging from cotton candy to bubble-gum. The sweet odors produced by vaping have lured some children to drink the liquid and become poisoned. Additionally, inhalation, direct skin and/or eye exposure can cause acute nicotine toxicity.

If you would like more information about these cases, you can contact Will Sutton, a lawyer in the Section. He can be reached at 800-898-2034 or by email at William.Sutton@beasleyallen.com.

source: Righting Injustice

**Litigation Involving Workers Harmed By On-The-Job Exposure To Spray Foam Insulation**

In past issues of the Report we have discussed the dangers associated with workplace exposure to isocyanate chemicals in spray polyurethane foam (SPF) insulation. Spray application of SPF insulation generates isocyanate vapors and aerosols that can migrate throughout the building if it is not isolated and properly ventilated. Both inhalation and skin exposures can lead to the worker suffering serious health effects.

According to the United States Environmental Protection Agency (EPA), research data indicate that inhalation exposures during SPF application will typically exceed Occupational Safety and Health Administration (OSHA) occupational exposure limits and require skin, eye, and respiratory protection. Adverse health effects caused by isocyanate exposure include asthma, chemical sensitization, liver damage, other respiratory and breathing problems, serious allergic reactions, and severe skin and eye irritation.

The National Institute for Occupational Safety and Health (NIOSH) has found that isocyanates are a leading chemical cause of work-related asthma. According to NIOSH, some workers who become sensitized to isocyanates are subject to severe asthma attacks if they are exposed again. Death from severe asthma in some sensitized persons has been reported. Sensitization may result from either a single exposure to a relatively high concentration or repeated exposures to lower concentrations over time. If a worker is allergic or becomes sensitized to isocyanates, even exposure to low concentrations can trigger a severe asthma attack or other lung effects, or cause a potentially fatal reaction. There is no recognized safe level of exposure to isocyanates for sensitized individuals.

Lawyers in the Section currently represent clients who suffer from occupational asthma, chemical sensitization, or other illnesses resulting from on-the-job exposure to isocyanates during the spray application of SPF. In one case, pending in Rhode Island, our client developed occupational asthma and can no longer be exposed to the chemicals in SPF. As a result, the client has been injured and incurred medical expenses, lost wages, and other damages.

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In another case, pending in Delaware, our firm represents a man, the former owner of a company that installed spray foam insulation, who became chemically sensitized to isocyanate and developed occupational asthma due to his workplace exposure to SPF chemicals. Because of his injuries, our client lost his business and income potential because he could no longer be near SPF or any of its chemical components without risk of catastrophic injury or death. Our co-counsel in these cases is Dawn Smith of the Smith Clinic-Smith law firm in Dallas, Texas. Both cases are scheduled for trial in the first half of 2018.

Our lawyers are currently investigating other cases where workers have been exposed to isocyanates during or after the application of SPF insulation and who now suffer from occupation asthma or other related illnesses. If you would like more information or have questions you can contact Chris Boutwell, a lawyer in the Section, at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com.

**PFC Contamination is a Nationwide Problem**

Prior issues of the Report have discussed the ongoing contamination issues caused by perfluorinated chemicals (PFCs) and the health hazards associated with exposure to these chemicals. Water systems across 27 states that supply water to 15 million Americans have been impacted by these chemicals.

PFCs persist in the environment for years without degrading and, as a result, can accumulate with repeated exposure. EPA testing from 2013-2015 found PFCs present in 194 water systems nationwide; 64 of those systems contained levels over the Environmental Protection Agency’s (EPA) lifetime health advisory (LHA) of 70 parts per trillion. The EPA has warned that exposure to elevated levels of PFCs can lead to a number of health problems including testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, high cholesterol and pregnancy-induced hypertensions.

In June, Congressman Brendan Boyle, D-13, of Philadelphia, announced he has reintroduced a bill that would set a national drinking water standard for perfluorinated compounds for the first time. The bill would be a significant step because PFCs currently are not regulated under the Safe Water Drinking Act. In the absence of a standard, the EPA tested for PFC levels as part of the Unregulated Contaminated Monitoring Rule and issued its LHA, which are not enforceable but, rather, merely guidelines.

If you would like more information about these cases, you can contact Rhon Jones at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com.

**Water Systems Fight Back Against Polluters**

Impacted water systems are not waiting on the government to address the problem. They have, instead, filed lawsuits to hold the polluters accountable. Sources of the contamination typically include industrial sites operated by corporations such as 3M and DuPont, amongst others, and military bases, airports, and fire stations that used aqueous film forming foam (AFFF) to combat fuel fires.

Settlements have recently been negotiated by some water systems. In Massachusetts, the town of Barnstable reached a $2.95 million settlement with the county, which owned and operated the Fire and Rescue Training Academy where trainees used AFFF until 2009. These funds will reimburse the county incurred to install filtration systems at four public water supply wells.

An Alabama federal judge also approved a $5 million class action settlement between the West Morgan-East Lawrence water system, its customers and Daikin America. The lawsuit, filed in September 2015, also blames 3M and Dynene for discharging PFCs upstream of WM-EL’s water intake site. Under the settlement, Daikin agreed to pay for a permanent advanced water filtration system.

Our firm, along with Roger H. Bedford of Roger Bedford & Associates, has filed lawsuits on behalf of the water systems in Gadsden and Centre, Alabama. These complaints allege that carpet and textile companies, manufacturers, and chemical suppliers located upstream in Dalton, Georgia, are responsible for contaminating the Coosa River and Weiss Lake. The lawsuits were filed to ensure that these entities, not ratepayers in Gadsden and Centre, would pay to decontaminate their drinking water.

Lawyers in the Section are investigating other PFC contamination cases. If you have any questions about this subject, contact Ryan Kral, a lawyer in the Section, at 800-898-2034 or by email at Ryan.Kral@beasleyallen.com.

**OSHA Considers Retracting Protective Measures for Beryllium Exposure**

The Occupational Safety and Health Administration (OSHA) has proposed rolling back rules to protect workers exposed to the toxic chemical beryllium, which can lead to the serious 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 involved in abrasive blasting in shipyards and construction, as well as welding in shipyards.

Early this year, OSHA published a final rule reducing the permissible eight-hour exposure limit to 0.2 micrograms per cubic meter. The rule also included nine ancillary protections requiring businesses to provide medical exams and periodically train workers who could be exposed to beryllium while on the job.

This rule was set to take effect in March, however, the U.S. Department of Labor indicated it would delay implementation pursuant to an executive order issued by the Trump administration. The agency ultimately concluded that the ancillary provisions of the rule, including requirements for assessing methods for controlling beryllium exposure, may be redundant alongside existing standards in the construction and shipyard industries. This decision does not, however, strip the new exposure limits across all industries and equivalent ancillary provisions in other industries.

Lawyers in the 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 Ryan Kral, a lawyer in the Section, at 800-898-2034 or by email at Ryan.Kral@beasleyallen.com.

**Fighting For Victims Of Nursing Home Neglect And Abuse**

As the number of elderly Americans has increased in past years, nursing homes and long-term care facilities have become an important component of the American health care industry. Today, nearly 2 million elderly and infirmed Americans live in nursing homes and long-term care facilities. Unfortunately, many recent studies indicate that residents in nursing homes suffer abuse and neglect more and more frequently at the hands of nursing home corporations. In many cases, residents have died or been severely injured as a result of this abuse or neglect.

Nursing homes exist to provide skilled nursing care to elderly and disabled residents. As a business, quality care should be their basic product and mission. However, the quality of care in the nursing home industry has markedly
declined over the past decade. One of the main causes of this decline is that many nursing homes do not employ enough nurses and other qualified care givers to allow them to provide quality care for all of the residents in their facilities. This understaffing creates a heavier workload for nurses and care givers and often leads to patient neglect or poor quality care for residents, which can result in avoidable illnesses or injury, many of which are serious and can lead to death. This fact is not only tragic and heartbreaking, but also completely unacceptable because these sicknesses or injuries are easily prevented with proper care.

If a nursing home cannot adequately care for all its patients, its is falling in its legal responsibilities and putting innocent lives at risk. However, all too often an injured person is hampered in their ability to seek full redress for the injuries they suffered because of a nursing home’s negligence, abuse, or neglect. The reason for this is that the vast majority of nursing homes have pre-dispute binding arbitration clauses in their admission contracts, which deprive an injured person their right to a trial by jury as guaranteed by the Seventh Amendment to the United States Constitution. Nursing homes put these arbitration agreements in the admission documents for their own benefit because they know the deck is stacked in their favor in arbitration.

Lawyers in our firm are fighting to protect the safety and rights of elderly and infirm Americans by representing the injured in litigation—both lawsuits and arbitration—to hold nursing home facilities accountable for their acts of abuse and neglect. Our cases include many of the common injury types typically found in nursing home cases. We are currently handling cases involving the death of nursing home residents due to decubitus ulcers, malnutrition, medication errors, dehydration, and falls. We are also handling cases involving catastrophic injuries caused by severe pressure sores, infections, and amputations resulting from delayed or poor nursing care.

If you have suffered serious injury, your loved one had been catastrophically injured or died, or you have any questions about nursing home abuse and neglect, contact Chris Boutwell at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com.

XVII. MORE ENVIRONMENTAL CONCERNS

TRANSOCONE & HALIBURTON SETTLEMENTS UPDATE

BP is rightfully blamed for the events causing the explosion aboard the Deepwater Horizon rig and the disastrous oil spill that resulted. However, other companies also bear some responsibility for the tragic disaster. Halliburton and Transocean each entered into separate settlement agreements that combine to pay $1,239,750,000 to impacted businesses and individuals. Claimants will be grouped into two different classes:

- The New Class will receive punitive damages associated with the oil spill based on physical damages to real and personal property and, to a lesser extent, losses related to commercial fishing, charterboat operations, and subsistence fishing.
- The Old Class consists of hundreds of thousands of businesses and individuals who previously filed compensable claims with the BP Settlement Program.

The approved distribution model will pay the lion’s share—72.8 percent—to the New Class while the Old Class will receive the remaining 27.2 percent. Compensation for New Class members will be based on the base loss calculated under the BP Settlement (excluding the RTP multiplier) or, for those excluded claims, according to a claim-specific methodology. Old Class members’ compensation will be determined on a pro rata basis according to how much an eligible claimant received from the BP Settlement Program.

Thus, the BP Settlement Program must first finish processing all its claims before compensation from the Transocean & Haliburton settlements is determined. Although our lawyers do not have any precise figures, they expect these New and Old Class members to receive pennies on the dollar compared to what was paid under the BP Settlement. Nonetheless, it is good to see all responsible parties held accountable for their actions.

Source: http://gulfspillpunitivedamagessettlement.com/

MECHANIC SETTLES HIS BENZENE LAWSUIT

Michael Butts worked as a maintenance and repair mechanic for many different employers over the period from 1965 to 2014, and was exposed to benzene in gasoline, oil, solvents, adhesives, and degreasers during the span of his career. Benzene is a sweet-smelling toxic chemical that quickly evaporates. Over time, breathing benzene increases the risk for cancer, particularly Acute Myeloid Leukemia (AML), in addition to other forms of leukemia and lymphoma.

Butts filed suit in January 2015 alleging that he had been exposed to benzene in gasoline and oil, and that this exposure was the cause of his AML. Defendants in the case included oil companies such as ExxonMobil, BP and Chevron. Manufacturers of benzene-containing products such as Liquid Wrench and CRC Brakleen were also Defendants.

The lawsuit claimed that the products at issue lacked warnings and instructions of the dangers benzene represents to human health, “including the risk for contracting cancer, leukemia and other blood and bone marrow disease.” The trial began April 2017 and lasted three weeks, with a confidential settlement being reached after the close of evidence.

If you would like more information about these cases, you can contact Grant Cofer, a lawyer in our Toxic Torts Section. Grant can be reached at 800-898-2034 or by email at Grant.Cofe@beasleyallen.com.

Source: The Daily Hornet

XVIII. AN UPDATE ON ACTIVITY IN OUR CONSUMER FRAUD & COMMERCIAL LITIGATION SECTION

This month, we will write on activity in the Consumer Fraud & Commercial Litigation Section of the firm. Dee Miles, in his capacity as Section Head, manages the Section. Michelle Fulmer serves as the Section Administrator. The Section has been very busy during 2017. Currently, lawyers in the section are investigating and/or litigating the following cases:

USFL COMPLAINT FILED IN OHIO FEDERAL COURT

Beasley Allen lawyers recently filed a class action lawsuit in the Southern Dis-
trict of Ohio against U.S. Financial Life Insurance Co. (an AXA Company) for its unfounded cost of insurance (COI) increases. The complaint alleges that these increases are being implemented ultimately to benefit shareholders and rid U.S. Financial Life (USFL) of near-term liabilities it has accrued due to its wrongful use of captive reinsurance companies.

Similar to the arrangement our lawyers have seen implemented by several life insurance companies, USFL has also engaged in a captive reinsurance scheme whereby USFL has dumped more than $865 million worth of liabilities into a wholly owned reinsurance company—effectively transferring these liabilities elsewhere. Nonetheless, this creates a false surplus on USFL’s financial documents, allowing the company to present itself as a financially healthy insurer. All the while, USFL and its captive reinsurers are incapable of satisfying its assumed obligations.

For more than a decade, USFL has pretended to offload billions of dollars of liabilities to its wholly owned captives and other affiliates. These captive companies are strategically domiciled in jurisdictions that allow the “reinsurers” not to file any public financials, hiding the true nature and details of these transactions.

In 2013, the North Carolina Department of Insurance notified USFL that it had been charging above the guaranteed maximum COI rate for a block of 3,000 policies. USFL was required to reimburse both lapse and existing policyholders within the affected policies. Beginning in 2014 and throughout 2015, tens of millions of dollars were set aside and paid out to those affected policyholders. In 2015, the same year USFL finished paying off this costly mistake, it suddenly announced the COI increase charged to certain universal life policyholders.

Because of the reinsurance scheme described above, and USFL’s required reimbursement to policyholders charged in excess of their policy guarantees, USFL does not have sufficient reserves to pay the death benefits coming due in the near future. Faced with the unprecedented death benefit obligations, and a significant reserve shortfall, USFL chosen to increase the COI charges on the Nova and SuperNova universal life policies, believing that the owners of these policies either (1) had the resources to pay exorbitant COI charges, or (2) would allow their policies to lapse, thus relieving USFL of its payment obligations. This COI increase was as high as 40 percent for many policyholders.

USFL has told policyholders that dramatic COI increases are necessary because USFL “anticipate[d] the future mortality experience for this product to be worse than was anticipated when the current schedule of cost of insurance rates was established.” However, in reality, this was a strategic increase implemented by USFL so that it could systematically raid policyholders accounts in order to accomplish three objectives:

- find new cash with which to fund the company;
- rid itself of near-term liabilities and delay inevitable financial disaster; and
- recoup for past losses.

Because of these actions, Plaintiffs and Class Members are seeking relief under breach of contract, unjust enrichment, conversion, and fraud theories.

Unfortunately, USFL is not the only insurance company raising premiums and cost of insurance in order to account for its wrongful use of captive reinsurance schemes. Multiple other life insurers have sent their universal life and/or flexible premium policyholders letters informing them of an upcoming raise in costs—usually claiming these increases are due to “an increase in mortality rates.” In order to avoid a loss of coverage, consumers are paying these increases—oftentimes tripling or quadrupling the policyholders’ original costs.

Lawyers at Beasley Allen have filed numerous lawsuits based on this wrongful activity. They are currently preparing to file additional lawsuits against other companies. If you have seen this practice by any life insurance company, there may be a claim that our firm can investigate and help with. You can contact Andrew Brashier or Rachel Boyd, lawyers in our Consumer Fraud & Commercial Litigation Section, at Andrew.Brashier@beasleyallen.com or Rachel.Boyd@beasleyallen.com. You can call them at 800-898-2034 to discuss further.

Life Insurance

Our firm has recently filed three class action lawsuits against separate companies, Banner Life, William Penn Life and Voya/Lincoln Life Insurance Company, alleging that the cost of insurance increases these companies have implemented on certain policies are unfounded. Policyholders are seeing increases of more than 500 percent in some cases, and the cash value of their policies are being stripped down to zero dollars in a matter of months. It appears that these increases have been executed ultimately to benefit shareholders and rid the company of near-term liabilities it has accrued due to its wrongful use of captive reinsurance companies. We have also filed some individual cases against Transamerica Life Insurance Company and AXA for the same reasons.

We are attempting to recover the excess insurance costs paid out-of-pocket or stripped from the value of these policies. Additionally, we are looking into many other life insurance companies with similar unfair practices and welcome the opportunity to review additional policies that have seen sudden increases in costs or premiums.

Lawyers: Dee Miles, Andrew Brashier, and Rachel Boyd
Primary Staff Contact: Michelle Fulmer, Ashley Pugh, and Ashley Burgin

Class Actions

Our firm’s class action practice is continuing to grow. Lawyers in the Section have cases filed all over the country ranging from consumer fraud, antitrust, employment abuses, ERISA to product liability cases. This area of our practice continues to grow due to the corporate abuses in the business world.

While arbitration clauses have had some impact on class action filings, it has not proved to be the effective deterrent corporate America intended. This is mainly due to the courts finally recognizing that arbitration was never intended to be utilized in consumer transactions. Arbitration was designed for complex business transactions involving sophisticated parties in specialized areas of business. However, corporations have manipulated the use of arbitration clauses to frustrate consumer resistance to their fraudulent practices.

Recently, the Consumer Financial Protection Bureau (CFPB) mandated a ban on most types of mandatory arbitration clauses in credit card agreements and back account agreements. The CFPB issued this ban on some mandatory arbitration clauses as part of the 2010 Dodd-Frank Act, which created the CFPB and empowered it with rule-making authority regarding consumer mandated arbitration clauses. However, congress will ultimately have a final say on the arbitration bill. Stay tuned.

Just because a consumer contract has an arbitration clause, that doesn’t mean a class action on the abusive corporate conduct is barred. There may be ways around the arbitration clause and a lawyer familiar with the ever-changing law on this issue can make that determination. Our lawyers in the consumer fraud/commercial litigation section are well versed in the area of the law surrounding both class actions and arbitration clauses. We review many potential class actions daily and welcome the opportunity to review more.
Volkswagen/Audi/Porsche Emissions Defect

It is no secret that our firm joined with other firms to file a nationwide class action lawsuit on behalf of consumers that own Volkswagen, Audi and Porsche vehicles who were deceived by the automaker’s deliberate “end-run” around Environmental Protection Agency (EPA) pollution controls. We were most fortunate to have been selected by Judge Charles R. Breyer, United States District Judge in California, located in San Francisco, California, to serve on the Plaintiff’s Steering Committee of this most important case. Dee Miles was selected by the court and he has been quite busy on this case over the last year and a half, but we are pleased to be part of the three-part Volkswagen settlement of the “cheat device” class; the $15 billion 2.0 Volkswagen settlement announced in July 2016; the $4 billion 3.0 settlement announced in February 2017; and the Bosch Volkswagen settlement of $27.5 million also announced in February 2017.

In addition Volkswagen agreed to pay $4.3 billion in civil/criminal penalties to the federal government as part of a plea bargain. To date the Volkswagen scandal has cost Volkswagen nearly $24 billion. However, there are still other Volkswagen cases that remain pending, including the cases our firm has filed on behalf of the Environmental Protection Commission of Hillsborough County, Florida, to recover statutory penalties for violations of a local clean air ordinance for these allegations.

The illegal defeat devices installed in the Defendants’ diesels affect more than 1,000 vehicles in the greater Tampa area. If you own one of the affected vehicles, and need help with your class claim, please contact one of our class action attorneys for more details.

Lawyers: Dee Miles, Archie Grubb, and Clay Barnett
Primary Staff Contacts: Michelle Fulmer, Ashley Pugh and Whitney Gagnon

Fiat Chrysler Emissions Defect

On June 19, 2017, U.S. District Judge Edward Chen appointed Dee Miles to the Plaintiffs Steering Committee for the Fiat Chrysler Emissions fraud MDL (multidistrict litigation) along with nine other firms. Our friend Elizabeth Cabraser, from the firm of Leiff Cabraser, was named as the sole lead counsel and we were selected for the “VW like” litigation in the Northern District of California located in San Francisco.

Though similar to the VW litigation on emission cheat devices, the Fiat Chrysler case involves only about 100,000 Jeep Cherokees and Dodge Ram pickup trucks, but involves Bosch as a Defendant and the Plaintiffs class is joined by the U.S. Department of Justice, the California Air Resources Board and other government agencies.

We look forward to prosecuting our class action in the MDL and working together with the team of fine private and government lawyers representing this MDL.

Lawyers: Dee Miles, Archie Grubb, and Clay Barnett
Primary Staff Contacts: Michelle Fulmer, Ashley Pugh and Whitney Gagnon

Takata Airbags

Lawyers in the Section have filed a class action lawsuit for economic losses related to the potentially defective airbags manufactured by Takata Corporation. We were fortunate to have been selected by the MDL Leadership to conduct discovery in this case and are working furiously to move this case along to trial and class certifications. While vehicle owners and drivers could not have known about the potential danger posed by the airbags, the Defendants knew about the defect and failed to disclose it to consumers and actively concealed that defect from the public and federal regulators. It was not until December 2011, when the fifth recall was issued related to the same defect, that Honda finally reported the injuries and deaths related to the Takata airbags to federal regulators. To date, more than 14 million vehicles with Takata-manufactured airbags have been recalled due to the defects.

Recently, Toyota, Mazda, Subaru and BMW collectively reached a settlement agreement with consumers for $553 million to cover economic losses to the value of their vehicles due to the Takata airbag defect.

Also, Takata filed for Chapter Eleven bankruptcy protection, but a panel has been set up to provide relief to personal injury victims for other losses through the bankruptcy court in Japan. We will continue to prosecute the class claims against Honda, Ford and Nissan, and will keep our readers updated on any new developments in this cases.

Lawyers: Dee Miles, Archie Grubb, Clay Barnett, and Andrew Brashier
Primary Staff Contact: Michelle Fulmer, Ashley Pugh, and Whitney Gagnon

General Motors

The consumer fraud section is also involved in the class action lawsuits against general motors concerning GM model vehicles (listed below), alleging 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.

We have filed the complaint in the Northern District of California federal court. Filed on Dec. 12, 2016, the case name is Monteville Sloan, Jr., Raul Siqueiros et al, vs General Motors 3:16-cv-07244.

Lawyers: Dee Miles, Clay Barnett, Archie Grubb and Andrew Brashier
Primary Staff Contact: Michelle Fulmer, Ashley Pugh and Whitney Gagnon

BeasleyAllen.com
Talc

The firm is representing a class of California citizens who were deceived into believing that Johnson and Johnson’s talc-based products were safe and purchased those products for genital hygiene use. Some recent studies have demonstrated a significantly increased risk of ovarian cancer for women who use talc-containing products on their genitals. Johnson and Johnson has been aware of the risk, or should have been, for years, yet the company continues to market its products as safe for daily use. These citizens would not have purchased the baby powder and other talc products had they known of the increased risk of ovarian cancer, but thanks to Johnson and Johnson’s marketing, believed they were purchasing and using a safe product. Beasley Allen represents these citizens in an effort to recover the money they spent on these cancer-causing products that they would not have spent absent Johnson and Johnson’s marketing.

Lawyers: Dee Miles, Lance Gould, and Ali Hawthorne
Primary Staff Contacts: Holly Busler and Jessica Stapp

Oil and Gas

The firm has also filed a class-action complaint against oil and gas companies involving royalties owed to landowners for the sale of natural gas. The landowners signed leases with the oil and gas companies granting them the right to drill and produce natural gas and constituents. In exchange, the companies were to pay the landowners royalties as a share of the production income. Instead of selling the gas in arm’s-length transactions on the open market, the companies sell to affiliates at grossly inadequate prices. Landowners’ royalty payments are calculated off that first sale. The company affiliate or related entity that first purchased the gas then sells the products at market price. The company keeps the difference between what it would have paid in royalties to the landowners had those first sales been made at market price and the fraudulently low royalties it actually did pay the landowners.

Lawyers in the Section are representing the class of landowners and are seeking to recover the money those landowners would have received had XTO properly sold the natural gas on the market.

Our lawyers are pursuing a similar case in Monroe, Louisiana.

Lawyers: Lance Gould, Larry Golston and Leslie Pescia
Primary Staff Contact: Holly Busler and Whitney Gagnon

Home Depot Data Breach

Dee Miles was appointed to the Plaintiffs Steering Committee (PSC) representing financial institutions in the multidistrict litigation (MDL) over a massive Home Depot data breach. The litigation involves consumer and financial institution Plaintiffs who were affected by the incident, which compromised up to 56 million credit and debit card numbers. The cyberattack is believed to have occurred at Home Depot stores between April and September of 2014. The MDL Court recently and preliminarily approved a settlement valued at $27 million for the financial institutions and we will be moving forward to finalize this important settlement.

Lawyers: Dee Miles, Larry Golston, Andrew Brasher, and Leslie Pescia
Primary Staff Contact: Michelle Fulmer, Ashley Pugh, and Ashley Burgin

Silent Recalls

Lawyers in the section are investigating numerous safety defects involving multiple auto manufacturers and varying models. Although there are more active recalls now than ever before, every potential defect has not necessarily been placed under a mandatory recall. Auto manufacturers commonly conduct “silent recalls”—where the dealer only repairs a defect once a consumer complains about the specific defect even though the manufacturer is aware of the defect. This practice leaves thousands of American motorists unaware of the defective components in their vehicles. Alternatively, auto manufacturers are able to conduct regional recalls that are only disseminated to a particular region, leaving consumers outside the specified region unaware of the recall. Under this process, the same make and model under recall in one state may not be under recall just over the state line. If you have a vehicle with a safety defect and the manufacturer has refused to repair your vehicle under the warranty, then you may have a case. Please contact one of our class action attorneys for more details.

Lawyers: Dee Miles, Archie Grubb, Clay Barnett, and Andrew Brasher
Primary Staff Contacts: Whitney Gagnon and Ashley Burgin

ERISA litigation

The Employee Retirement Income Security Act of 1974 (ERISA) dictates certain minimum standards for voluntarily established health and benefit plans. Employers sometimes violate the requirements of ERISA, to the detriment of their employees. If these violations are plan-wide, or affect a large number of employees, it is possible to form a class to seek reimbursement and/or to force compliance. Please contact us with information regarding any instances where ERISA’s requirements have been violated; we are particularly interested in self-funded employee health benefit plans.

Lawyers in the section recently filed an ERISA class against Wells Fargo for withholding information concerning the Wells Fargo stock within the ERISA plan, which caused losses to the plan. The information involved the fraudulent accounts scheme that Wells Fargo engaged in. The bank has now paid more than $100 million to the federal government in fines and restitution. This fraudulent scheme was ongoing while bank members with knowledge of the scheme continued to suppress it while managing the assets of the ERISA plan and were authorizing more company stock purchases for the plan.

Lawyers: Dee Miles and Rebecca Gilliland
Primary Staff Contact: Michelle Fulmer and Ashley Pugh

Qui Tam Cases

A qui tam action involves a private party, called a relator, who asserts claims on behalf of the government. Although the government is considered the real (named) Plaintiff, if the action is successful, the relator receives a share of the award. Most qui tam actions are brought under the federal False Claims Act (FCA), 31 U.S.C. § 3729, et seq., although many states have adopted their own false claims acts. The successful results speak for themselves—more than $34 billion in recoveries since 1986—and that tells us a powerful story. Our firm is currently involved in a number of these qui tam cases throughout the country.

Qui tam actions typically begin with an employee witnessing his/her employer defrauding the government. The employee may later consult with an attorney on another matter, but convey their knowledge of false information being given to the government. Attorneys need to be on the lookout for such information and recognize potential claims. It takes vigilance and courage for these private individuals, commonly referred to as “whistleblowers,” to report fraudulent activity; but without them, the vast majority of fraud against our government would go undetected. Recognizing the perils faced by whistleblowers, legislators have passed laws protecting individuals who take a stand against fraud. 51 U.S.C. § 3750 prohibits discrimination and retaliation against whistleblowers and imposes strict penalties.
penalties, including double back pay with interest, on violators.

Additionally, if a qui tam action is successful, the whistleblower receives between 10-30 percent of the Government’s recovery. Damages under the FCA include penalties and “3 times the amount of damages which the Government sustains” due to the fraud. 31 U.S.C. § 3729(a)(1)(G). In short, the law protects and rewards whistleblowers for their instrumental role in exposing and prosecuting fraud. Lawyers in our firm have waged war against corporate fraud for more than 30 years and would welcome the opportunity to assist with any qui tam actions that any of our readers may have.

Lawyers: Dee Miles, Larry Golston, Archie Grubb, Clay Barnett, Ali Hawthorne, Andrew Brasher, and Rebecca Gilliland
Primary Staff Contact: Holly Busler

Antitrust Cases

Lawyers in the Section continue to investigate and litigate antitrust cases. Antitrust law is the law of competition. The consuming public is better off if buyers and sellers act independently, not in concert. Antitrust law focuses on the promotion of competition through restraints on monopoly and cartel behavior. Typical cases involve attempts to monopolize, price fixing, exclusive distributorships, refusals to deal, tying arrangements, and mergers and acquisitions. We believe that antitrust is a growing area, as corporations increasingly tend to “cross the line” as they seek to gain advantage in this tough economy. The firm is currently heavily involved in antitrust litigation against Blue Cross Blue Shield companies.

Blue Cross Blue Shield

Lawyers in the Section are currently involved in an antitrust cases dealing with Blue Cross Blue Shield’s illegal actions. The BCBS case involves the Blues’ agreements not to compete with each other. BCBS has separate companies that cover different geographical regions of the country. Those individual companies agreed amongst themselves to stay out of other geographic regions. For example, BCBS of Alabama and BCBS of Mississippi agreed to not compete with each other for providers (hospitals and physicians) or subscribers (individual and group policyholders). Normally, competition in a certain area drives costs down with each company trying to be the lowest available. Absent competition, the companies were able to set prices for both reimbursement and premiums at any price they chose.

Fortunately, we are honored to be serving on the leadership of this multidistrict litigation (MDL) and are diligently pursuing discovery in the case as the Alabama portion of this MDL is headed for trial in 2017.

Lawyers: Dee Miles, Archie Grubb, and Rebecca Gilliland
Primary Staff Contact: Michelle Fulmer, Ashley Pugh and Whitney Gagnon

Capacitors

The capacitor litigation involves a price-fixing scheme. Capacitors are, generally, tiny but are in nearly every electronic device on the market. The manufacturers agreed amongst themselves to only sell their products at a certain price, one that is above what normal market conditions would dictate. Their actions caught the attention of several United States and foreign agencies, including the Department of Justice, who are investigating the illegal agreements. Beasley Allen and other national firms are working with moved quickly to recover damages for those directly injured by the price-fixing scheme.

Lawyers: Archie Grubb, Ali Hawthorne, Andrew Brasher, and Rebecca Gilliland
Primary Staff Contact: Jessica Stapp, Holly Busler, Whitney Gagnon and Brenda Russell

Pharmaceutical Litigation

Lawyers in the Section handle a wide array of cases dealing with the pharmaceutical industry. These cases include AWP, unapproved drugs, Actos, Granuflo and many others.

State Attorney General Representation

AWP

Our firm has represented the States of Alabama, Alaska, Hawaii, Kansas, Louisiana, Mississippi, South Carolina and Utah in a series of cases against pharmaceutical companies, known as the Average Wholesale Price (AWP) litigation. These States allege that pharmaceutical companies falsified pricing information, causing state Medicaid agencies to grossly overpay for prescription drugs. The Manufacturers’ false and inflated AWPs caused pharmacies to shop for drugs that offered the highest reimbursement from the State. The inflated AWPs in turn provided higher sales revenue, volume and market share for the drug companies, and created dramatically steeper costs for the States. Juries have returned more than $600 million in verdicts for the States of Alabama, Mississippi, Kentucky, Wisconsin, Missouri and Massachusetts. We recently won the appeal of a $30 million verdict in Mississippi Supreme Court regarding Sandoz, Inc. Meanwhile, our firm has settled with many companies in all eight states for more than $1 billion and completed the litigation in all states, with the exception of two trials remaining in Utah.

Lawyers: Dee Miles and Ali Hawthorne
Primary Staff Contacts: Jessica Stapp and Brenda Russell

Molina/Unisys

At the conclusion of the AWP cases in Louisiana, the State discovered that its’ data-processing firm, Molina, had not been utilizing the correct reimbursement rate in processing payments to pharmacies. Instead of the computer system automatically calculating reimbursements with the state-approved formulary, Molina programmers apparently input the wrong data points, resulting in overpayments. Beasley Allen represents the State in seeking to recoup those overpayments from the party that caused them, which appears to be Molina.

Lawyers: Dee Miles and Ali Hawthorne
Primary Staff Contact: Jessica Stapp

Unapproved Drugs

In order for a state to reimburse pharmacies for dispensing drugs to state Medicaid beneficiaries, those drugs must be approved as Covered Outpatient Drugs. By manipulating the system, some pharmaceutical manufacturers have been able to sneak certain drugs that have not been approved for Medicaid reimbursement onto the state Medicaid reimbursement list and charged state Medicaid agencies to grossly overpay for prescription drugs. The Manufacturers’ false and inflated AWPs caused pharmacies to shop for drugs that offered the highest reimbursement from the State. The inflated AWPs in turn provided higher sales revenue, volume and market share for the drug companies, and created dramatically steeper costs for the States. Juries have returned more than $600 million in verdicts for the States of Alabama, Mississippi, Kentucky, Wisconsin, Missouri and Massachusetts. We recently won the appeal of a $30 million verdict in Mississippi Supreme Court regarding Sandoz, Inc. Meanwhile, our firm has settled with many companies in all eight states for more than $1 billion and completed the litigation in all states, with the exception of two trials remaining in Utah.

Lawyers: Dee Miles and Ali Hawthorne
Primary Staff Contacts: Jessica Stapp and Brenda Russell

Granuflo

Granuflo is a dialysate product used in the hemodialysis process. Several years ago Fresenius, the manufacturer of Granuflo, realized that through a natural biological process, its product created a significantly increased risk of cardiac distress and death when not administered in
a different dosage than every other dialysate product on the market. It appears that instead of warning clinics, physicians, consumers, and the states, Fresenius remained silent about the risk. Once the risk came to attention of the U.S. Food and Drug Administration (FDA), Fresenius notified its own clinics to adjust their dosage, but it appears it did not notify those owned and operated by non-Fresenius companies. Eventually, the true risk information became public.

There are several cases filed against Fresenius alleging that the Defendants actions caused injuries to individual users. Beasley Allen represents the states of Louisiana and Kentucky in seeking to recover for the reimbursements it made and damages it suffered because of the claims submitted to the states’ Medicaid office for this substandard product and Fresenius’s failure, through its marketing to physicians, clinics, and citizens, to inform its customers of the proper dosage requirements.

Lawyers: Dee Miles, Lance Gould, Ali Hawthorne, and Rebecca Gilliland
Primary Staff Contacts: Holly Busler and Jessica Stapp

**Actos**

Actos is commonly prescribed drug used in treating Type 2 Diabetes Mellitus. Diabetes affects more than 26 million people nationwide. Approximately 90 to 95 percent of those 26 million Americans with diabetes suffer from Type 2 Diabetes. Actos received U.S. Food and Drug Administration (FDA) approval in 1999, but prior to that, an unreferenced clinical study was conducted, whereby the Defendants discovered an association between Actos and an increased risk of bladder cancer. Subsequent studies over the years have demonstrated that there is in fact a statistically significant increase in the risk of bladder cancer for individuals that have been prescribed and consumed Actos. The Defendants, manufacturers of Actos, were aware of the increased risk of bladder cancer, but downplayed and tried to discredit the numerous studies that demonstrated that risk. Beasley Allen represents the State of Louisiana in seeking to recover for the reimbursements it made and damages it suffered because of the claims submitted to the state’s Medicaid office for this substandard product and the manufacturer’s failure, through its marketing to physicians and citizens, to inform its customers of the proper dosage requirements.

Lawyers: Dee Miles, Lance Gould, and Ali Hawthorne
Primary Staff Contact: Jessica Stapp

**Usual and Customary**

State Medicaid agencies reimburse pharmacies for the drugs they dispense to Medicaid beneficiaries within their states. The amount that a pharmacy receives is determined by a reimbursement formula that is set by the state and approved by the federal government.

Most states will reimburse using a “lesser of” or “lower of” formula where four to five factors are considered and the pharmacy is paid whichever amount is the lowest. These factors usually include: Wholesale Acquisition Cost (WAC), Average Wholesale Price (AWP), the Federal Upper Limit (FUL), a State-set Maximum Allowable Cost (SMAC), or the pharmacies’ Usual and Customary price (U&C) as reported by the pharmacy seeking reimbursement. U&C is generally understood to be the price charged to a cash-paying customer.

Historically, the AWP, WAC, FUL, or SMAC were lower than a pharmacy’s reported U&C, so U&C was very rarely utilized in reimbursement. However, around May of 2006, the historical U&C pricing model underwent a drastic change when Walmart and Kmart introduced their nationwide discount generic drug programs. Walmart’s discount program offered hundreds of generic drugs at $4 for a 30-day supply and $9 for a 90-day supply.

Similarly, Kmart’s discount drug program offered hundreds of generic drugs at $5 for a 30-day supply and $10 to $25 for a 90-day supply. Those low, flat-rate prices became the pharmacy’s U&C price and should have been reported to state Medicaid agencies as the U&C. Lawyers in the Section uncovered evidence that many pharmacies with discount drug programs are not, however, reporting their flat-rate prices as their U&C, causing state Medicaid agencies to overpay large, chain pharmacies by millions of dollars. Our lawyers have filed cases for the State of Mississippi to hold these pharmacies accountable and are working closely with other state attorneys general regarding their potential state claims.

Lawyers: Dee Miles, Ali Hawthorne, Rebecca Gilliland, and Clay Barnett
Primary Staff Contacts: Michelle Fulmer, Ashley Pugh and Jessica Stapp

**FLSA Litigation**

Our firm has been handling FLSA (Fair Labor Standards Act) cases for many years. FLSA cases range from mischaracterizing an employee as a “manager” to avoid having to pay overtime wages, to employers having employees “work off the clock” to save on labor cost, but both are violations of the law under the FLSA.

Lawyers: Lance Gould
Primary Staff Contact: Holly Busler and Brenda Russell

**Equal Pay/Race Discrimination/Age Discrimination**

Several Lawyers in the Section are handling other employment cases involving discrimination due to gender, race, age, culture and other factors. We recently settled several cases involving these issues and hopefully bettered the work environment for many others.

Lawyers: Larry Golston and Lance Gould
Primary Staff Contact: Holly Busler

**Wills and Estates**

Creating a will to plan for what happens to your estate after you pass is critical. Without a will, all of a person’s possessions pass through their state’s intestate succession laws—meaning that heirloom you want your cousin to have probably will not get into your cousin’s hands without a will; it will pass to whomever the law dictates receives your estate. For some people, those with a lot of assets, even a trust is necessary to protect the estate assets for years to come. This is particularly important for people who own their own business. A trust can dictate who controls the business, what happens to business assets, and how the company profits are handled. Though the decedent would hope it does not create a dispute, sometimes the heirs of an estate dispute the validity of the will/trust or dispute the meaning of the language in the will/trust. Beasley Allen lawyers are looking into these disputed wills and trusts involving large estates.

**Kessler**

Beasley Allen teamed up with The CBC Law Group in Nashville to litigate an estate dispute involving the estate of the late Gerald A. Kessler. Mr. Kessler died in March 2015 at the age of 80, leaving an estate believed to be valued at more than $800 million. In dispute is an Amendment created in 2013 to the Gerald A. Kessler Revocable Trust that gives Melanie Kay Williams (an actress also known by the stage name Meadow Williams) control over almost all of his assets as Trustee. It further established her as, essentially, the sole and exclusive beneficiary of the estate. The Petition filed on behalf of the Kessler family alleges Ms. Williams, who is 31 years younger than Mr. Kessler, manipulated and unduly influenced him to
execute new estate planning documents through actions including bigamy, undue influence and elder abuse.

Lawyers: Dee Miles, Lance Gould, and Leslie Pescia
Primary Staff Contact: Holly Busler

Conclusion

These are some of the highlights of the Section's work. Our lawyers continue to dedicate their practice to all issues involving corporate misconduct and abuse and do an excellent job in this area of the law. Michelle Fulmer, the Section Administrator, can be reached at 800-898-2034 or by email at Michelle.Fulmer@beasley-allen.com.

XIX.
AN UPDATE ON CLASS ACTION LITIGATION

As mentioned above, class action litigation has grown rapidly over the past several years. There have been a number of significant developments recently in the class action litigation. I will mention several settlements and other matters of interest below.

JPMORGAN AND DEUTSCHE SETTLE LIBOR RIGGING CLAIMS FOR $148 MILLION

JPMorgan Chase & Co. and Deutsche Bank AG have agreed to pay a combined $148 million to settle two investor suits alleging they rigged the Libor benchmark rate. JPMorgan would pay $71 million, while Deutsche would pay $77 million, according to a motion for preliminary approval of the settlement. Both banks also agreed to cooperate with the settlement class in specific ways, including providing proffers of fact and other information about a conspiracy to fix the yen-denominated London interbank offered rate.

UBS AND HSBC AGREE TO $28 MILLION SETTLEMENT IN SWAPS-RATE CLASS ACTION

Banking giants UBS AG and HSBC Bank USA NA have each agreed to pay $14 million to settle class action claims that they participated in a conspiracy with other banks to manipulate a benchmark interest rate used to set terms for swaps transactions. The agreements totaling $28 million come in the wake of major settlements put in place by New York's Department of Financial Services and through compliance with regulations and requirements put in place by New York's Department of Financial Services and through the National Mortgage Settlement. The settlement must receive final approval by the court.

Sjunde AP-Fonden, which is part of the Swedish national pension system and manages about $18 billion in pension assets for more than 6 million Swedish investors, is the lead Plaintiff in the case.

OCEWEN REACHES $56 MILLION SETTLEMENT IN INVESTORS’ SUIT

Ocwen Financial Corp. has reached a $56 million settlement to resolve a stock-drop suit arising from the company's problematic servicing operations. The case was scheduled to start trial last month but the parties reached the agreement to settle through a mediation process.

Under the terms of the settlement, Ocwen will make a total cash payment of $49 million to the various Plaintiffs, of which it expects $12 million to $14 million to be covered by insurance. The balance of the settlement would come through the company's issuance of a total of 2.5 million shares of company common stock.

In December 2014, Ocwen agreed to pay $150 million to settle claims by New York's Department of Financial Services that the company's shoddy mortgage servicing practices harmed homeowners. William Erbey was forced to step down from his position as executive chairman as part of that settlement. The instant class action case, which is a consolidation of several investor suits, was triggered by a 63 percent drop in Ocwen's share price between February and December 2014 amid the investigation by New York regulators. Misrepresentations and omissions were made to purchasers of Ocwen's common stock regarding the company's compliance with regulations and requirements put in place by New York's Department of Financial Services and through the National Mortgage Settlement. The settlement must receive final approval by the court.

The UBS and HSBC settlements bring the total recovery to more than $408 million for the class.

Five Defendants still remain in the litigation: Morgan Stanley & Co. LLC, BNP Paribas SA, Wells Fargo Bank NA, Nomura Securities International Inc. and ICAP Capital Markets LLC.

The banks worked closely with interdealer broker ICAP PLC, which until January 2014 was tasked by the International Swaps and Derivatives Association with managing the daily setting of the U.S. dollar-rate version of ISDAfix. The banks were responsible for submitting rate quotes, which ICAP essentially compiled.

It's claimed in the suit that the parties worked together to set the rate at the point where it was most profitable for them, including engaging in a process known in the industry as "banging the close" where they bought and sold derivative products just before the fix was closed in order to get the price they wanted.

The proposed settlement class includes all persons or entities who “entered into, received or made payments on, settled, terminated, transacted in or held an ISDAfix Instrument” between Jan. 1, 2006, and Jan. 31, 2014.

SETTLEMENT INVOLVING FORMER DEVRY STUDENTS

A settlement between Downers Grove-based DeVry University and the Federal Trade Commission (FTC) will help some former students at the school over deceptive advertising. As part of its settlement with the for-profit college, the FTC began mailing 173,160 refund checks worth a total of $49.4 million to some students who attended the school between 2008 and 2015. Besides the more than $49 million in refunds, DeVry also has agreed to provide $50.6 million in debt relief.

The FTC alleged in a 2016 lawsuit that DeVry misled students about their post-graduation job prospects and earning potential. The lawsuit alleged DeVry deceptively claimed that 90 percent of its graduates actively seeking jobs landed positions in their fields within six months of graduation and on average its graduates had 15 percent higher incomes one year
after graduation than other universities' graduates. Such claims are "false and unsubstantiated," the FTC said. To qualify for one of the 173,000 refund checks going out Wednesday, students must meet four requirements:

- They must have enrolled for the first time in a bachelor's or associate degree program between Jan. 1, 2008, and Oct. 1, 2015;
- Must have completed at least one class credit;
- Must have paid at least $5,000 with cash, loans or military benefits; and
- Cannot have received debt or loan forgiveness as part of the settlement.

The FTC says on its website that accepting the refund payment doesn't prevent former students "from seeking other relief that may be available under federal or state law." The debt forgiveness part of the settlement has been completed, FTC spokeswoman Nicole Jones said. The refund checks, delivered from Analytics Consulting, will expire after 60 days.

In May, DeVry Education Group, the company that owns DeVry University, changed its name to Adtalem Global Education. The company also faced an investigation in New York into misleading advertising. It agreed to settle in January. Analytics Consulting can be reached at 844-578-2645.

Source: Becky Yerak, Chicago Tribune

**$51 Million Settlement In Long-Running Oppenheimer Junk Bond MDL**

Oppenheimer Funds Inc. has agreed to pay almost $51 million to settle litigation that it invested in junk bonds and risky derivatives despite claiming to focus on investment-grade municipal bonds. This ends long-running multidistrict litigation (MDL) after a separate $90 million settlement and an appeal has to the Tenth Circuit Court of Appeals. A Colorado federal judge has preliminarily approved the "all-cash deal," which would resolve claims brought by investors in Oppenheimer's California municipal bond fund. These investors were the only Plaintiffs in six of the funds in 2013, but the California Municipal Fund's suit was kept intact. U.S. District Judge John L. Kane earlier granted certification to the California class, but the Tenth Circuit Court of Appeals reversed the ruling and remanded the case for a more "rigorous analysis" under the U.S. Supreme Court's "Omnibus" decision. Judge Kane again granted the California class certification in October 2015, finding that the class was suitable for certification even under the new case law.

Oppenheimer then appealed that ruling to the Tenth Circuit, saying class certification would be a "death knell" that forced it into settlement because of the size of the suit's potential damages. But the appellate court rejected that argument in December 2015, denying Oppenheimer's petition for permission to appeal the certification ruling.

Source: Law360.com

**$97.5 Million JC Penney Investor Settlement Gets Initial Court Appeal**

A Texas federal judge has granted preliminary approval to an agreement for J.C. Penney to pay $97.5 million and make other concessions to a class of investors who accused the retailer of "lying about its financial health." U.S. District Judge Robert W. Schroeder III granted preliminary approval to the proposed settlement of a suit from investors who sued J.C. Penney in 2013, claiming that their decision to purchase stock within the class window was the result of false statements made by company executives late that summer about how much cash the company would have on hand at the end of the year.

The settlement covers a class of those who purchased J.C. Penney Co. Inc. shares between Aug. 20 and Sept. 26, 2013, on June 20. The class is led by the National Shopmen Pension Fund.

**Wells Fargo Nears $142 Million Consumer Settlement Over Fake Accounts**

Wells Fargo has set aside money to compensate customers who are part of a class-action lawsuit involving claims regarding consumer or small business bank accounts, credit cards or loans, as well as identity theft protection, between May 2002 and April of this year. It plans to begin reaching out to those affected customers soon.

Among the revisions included are a simpler opt-out process, a more comprehensive class notification procedure and an expanded anticipated scope of credit-impact damages, according to the judge's order. Judge Vince Chhabria wrote:

"[T]he parties negotiated a revised settlement that guarantees class-wide compensation for actual damages, supplements compensation for noncompensatory damages and provides a better process for claimant input and court oversight prior to final approval," adding that he is satisfied this latest version of the settlement is "fair, reasonable and adequate."

Judge Chhabria also rejected several intervention bids filed by several groups of Plaintiffs in related suits against the bank, saying that their concerns about such issues as discovery and the size of the settlement don't warrant a denial of preliminary approval. The revisions to the settlement have addressed some of these objections, the judge said, while other objections either are meritless or are outweighed by the costs and risks of further litigation. Judge Chhabria wrote:

As the proposed intervenors have offered no reason to believe the ordinary objection process is an inappropriate or inconvenient means of making themselves heard through the remainder of this case, the motions to intervene are denied.

The settlement is an important component of holding Wells Fargo accountable for its abuse of its customers' trust. Wells Fargo in March first announced that it had reached a $110 million settlement resolving 12 putative class actions alleging that bank workers opened unauthorized accounts in customers' names or enrolled them in the bank's services without their consent.

Those putative class actions piled up after Wells Fargo agreed to a $185 million settlement with the Consumer Financial Protection Bureau (CFPB), the Office of the Comptroller of the Currency and the Los Angeles City Attorney's Office in September. Those agencies alleged that bank
employees created more than 2 million deposit and credit card accounts without customer authorization between January 2011 and Sept. 8, 2015. The initial proposed settlement class consisted of those claiming that Wells Fargo opened an account in their name without consent, enrolled them in a product or service or submitted an application for a product or service in their name without consent between Jan. 1, 2009, and the execution of the settlement. Wells Fargo subsequently agreed to extend the claims to 2002, adding an additional $30 million to the settlement pot on April 21.

Wells Fargo has had lots of problems—all self-inflicted—starting with the scandal that erupted in September after it reached a $185 million settlement with a Los Angeles prosecutor and the Consumer Financial Protection Bureau. Wells Fargo still faces probes from federal, state and local government agencies, including the U.S. Department of Justice, as well as a number of private lawsuits, according to its quarterly securities filing in May. If the settlement agreement receives final approval, Wells Fargo expects it will close out the vast majority of claims in 10 class action lawsuits related to the one it is trying hard to settle.

Sources: Law360.com and Insurance Journal

XXI. RECALLS UPDATE

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

**Ford Recalls 117,000 Vehicles Over Possible Seatbelt Defect**

Seatbelts can prove to be a literal lifesaver in the event of a crash, but they have to work properly for that to happen. For this reason, Ford is recalling nearly 117,000 trucks and SUVs.

Ford announced on July 26 the recall of 116,796 model year 2015 F-150 trucks and E-series, model year 2014 to 2015 Escape SUVs, and 2015 Lincoln MKC vehicles that may contain defective seatback, seatbelt or seatbelt buckles. According to Ford, improperly tempered bolts used to attach the seatback, seatbelt, or seatbelt buckle could fracture. If this happens, the structural integrity of the seat or the seatbelt system could be compromised, and performance may be weakened in a sudden stop or crash, increasing the risk of injury. Ford says it is unaware of any accidents or injuries related to the issue. Dealers will examine the affected vehicles and replace the affected bolts at no cost to the customer.

**Honda To Recall 2.1 Million Accords Over Risk Of Battery Fire**

Honda Motor Co. is recalling about 2.1 million vehicles worldwide due to a possi-

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**Summer tires are those that perform better in warm weather and are not designed to operate in temperatures below freezing.**

- All-Terrain tires are typically used on trucks or SUVs that have 4-wheel-drive capabilities. This type of tires works well on both on- and off-road driving.

So be prepared to discuss with your retailer how, where and when you will be using the tires that you plan to purchase for your vehicle.

Additionally, it is very important to discuss the size tire that will be used on your vehicle. Vehicles come with a recommended tire size and tire pressure sticker that is typically mounted inside the door seal on the driver’s side. This sticker will provide consumers and the retailer with the manufacturer’s recommended tire size and recommended tire pressure for tires used on the particular vehicle. Retailers should be familiar with the location of this information and be prepared to discuss with consumers.

These are just a few tips that can assist consumers and retailers in making sure that the proper size and type tires are fitted on any given vehicle.

Source: NHTSA.gov

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**XX. THE CONSUMER CORNER**

**WHAT TIRES SHOULD YOU BUY?**

When purchasing tires, there are many options available to consumers. For this reason, it is very important that consumers ask retailers about the appropriate size and type of tire that should go on their vehicle. For example, there are a variety of tire types.

- There are All-Season tires that are for a variety of road conditions and have some capabilities in snow and mud conditions.
- Winter tires are much more effective in deep snow than All-Season tires.
- Some people in locations where it regularly snows actually alternate tire types depending on the season.
- Summer tires are those that perform better in warm weather and are not designed to operate in temperatures below freezing.

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**FAILURE TO HAVE AN ESTATE PLAN RESULTS IN LITIGATION**

Estate planning allows people to control their property while they are alive, care for their loved ones and give what they want to whom they want. If you don’t have an estate plan, state law will control administering the estate and distributing the assets to the heirs. With all the millions some celebrities have, you would think they obtained good estate planning advice. But too often after a celebrity’s death, we learn that they made some simple blunders that trigger years of court battles. Without an estate plan, more potential heirs surfaced, which prompted DNA testing and additional estate among his six siblings. However, other potential heirs surfaced, which triggered DNA testing and additional court battles. Without an estate plan, more than half of Prince’s estate will go to state and federal taxes.

Sonny Bono died in a skiing accident, leaving behind a wife and four children. His widow filed to open Sonny’s estate, intestate because there was no will. Another man came forward and said he was Sonny’s child from a prior relationship. The man convinced the probate court to allow DNA testing. After the results came back, the man went away quietly. Public records do not reveal whether the man did not have the right DNA or if there was a cash settlement.

Lawyers at Beasley Allen are involved in litigating probate disputes concerning wills, trusts, and estates. This litigation covers a multitude of situations like the ones above, cases involving undue influence and lack of capacity, as well as cases involving financial elder abuse. If you have a possible probate litigation issue, contact Lance Gould or Leslie Pescia, lawyers in our firm, at 800-898-2034 or by email at Lance.Gould@beasleyallen.com or Leslie. Pescia@beasleyallen.com.

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**Honda Motor Co. is recalling about 2.1 million vehicles worldwide due to a possi-**
ble fire risk associated with 12-volt battery sensors in 2013-16 Honda Accords, the company said Friday. A company spokesman said that the recall will affect vehicles in 75 countries, mainly ones sold in North America and China. There are about 1.15 million affected vehicles in the United States, and four engine fires tied to the battery sensor have been reported there, with no reports of injuries, the company said. Honda said it will voluntarily recall the vehicles and replace the battery sensor for free.

The sensor is on the negative battery cable and monitors the battery's charge in order to notify the driver of problems with the battery or charging system. The sensors in the affected vehicles might not be completely sealed, and moisture containing road salt or other electrically conductive substances may get inside them, Honda said. That in turn can lead to corrosion and the sensor eventually shorting out, causing more electrical resistance that could result in smoke under the hood or even a fire, the company said.

Honda started notifying the vehicles' owners by mail last month. Owners are to take their vehicles to a Honda dealership to have their sensor checked. If it's not functioning properly, the dealership will replace the sensor. Due to the large number of parts required to facilitate the recall, any vehicles with battery sensors still in good condition will receive a temporary repair in which the dealership applies an adhesive to the battery sensor case to prevent moisture from getting in. When enough parts are available, Honda said any owners who received the temporary solution will get another letter advising them to take their cars in for a final repair.

**Fiat ChryslerRecalls 1.34 Million Cars Over Fire And Air Bag Risks**

Fiat Chrysler Automobiles NV is recalling 1.34 million vehicles globally in two separate recalls to address potential fire risks from worn alternators as well as concerns that wiring issues might inadvertently deploy air bags. Fiat Chrysler’s North American unit FCA US LLC announced the pair of recalls, saying it’s recalling an estimated 442,214 vehicles in the U.S. to replace alternators that are potentially prone to premature diode wear, which could trigger a warning light or emit a burning odor or even smoke. The recall applies to certain 2011-2014 Chrysler 300 and Dodge Charger sedans, Dodge Challenger coupes, and Dodge Durango SUVs as well as 2012-2014 Jeep Grand Cherokee SUVs.

An estimated 29,625 vehicles of the same makes, models and years will be recalled in Canada, while an estimated 7,879 cars in Mexico, and an estimated 85,929 outside of North America are covered in the recall, Fiat Chrysler said. The automaker said it’s aware of two potentially related accidents, but no injuries, from the alternator issue. It said the premature wear can happen after frequent load cycling in hot ambient temperatures and can ultimately mess with the car’s anti-lock braking system or electronic stability control. However, the company said, basic braking capability is unaffected.

Fiat Chrysler said it’s recalling an estimated 363,480 older-model crossover sport utility vehicles in the U.S. “to provide additional protection for certain wiring that accommodates air-bag function” after a company investigation found that the wiring may chafe against pieces of steering-wheel trim, potentially causing a short-circuit. The automaker said this may lead to a second short-circuit that is potentially capable of generating inadvertent deployment of the driver-side front air bag.

The recall affects certain 2011-2015 Dodge Journey crossovers. An estimated 120,336 vehicles in Canada and an estimated 54,072 in Mexico are covered in the recall. In addition, the company said an estimated 232,965 of certain 2011-2015 Fiat Freemont crossovers that were sold outside North America are subject to the recall. Drivers and car owners might be alerted to the wiring issue by an illuminated air-bag warning light, unintended wiper operation, inoperative switches, or some combination thereof, the company said. The company said it knows of five minor injuries that are potentially related to the wiring issue, but no accidents. Fiat Chrysler said customers affected by the alternator recall can get their alternators replaced free of charge. For the second recall, dealers will inspect and replace the wiring, as needed, while equipping it with additional protective covering.

**Audi To Recall 850,000 Diesel Vehicles**

Audi AG is recalling up to 850,000 diesel vehicles outside of the U.S. and Canada to fix emissions-related software. The decision was made in part to counteract possible driving bans tied to excessive diesel emissions. The German automaker said the recall affects vehicles with six- and eight-cylinder diesel engines and will involve updating the cars’ software at no cost to the vehicles’ owners. The software update will improve emissions expended during real driving conditions beyond existing legal requirements and will help Audi reduce overall emissions in cities, the company said. The update also applies to Porsche and Volkswagen brands with identical turbocharged direct injection motors, and the recall will be conducted in conjunction with Germany’s Kraftfahrt-Bundesamt, or KBA—the country’s federal transportation agency. Audi also said that some KBA investigations are ongoing.

**Polaris Recalls Vehicles For Fuel Leak, Fire, Crash And Injury Hazards**

Polaris is recalling more vehicles after receiving 30 reports of fuel leaks and four incidents involving a fire. The Minnesota powersports leader said the recall involves more than 25,000 2014 Polaris Sportsman 570 all-terrain vehicles in several colors. The items in question have “Polaris” printed on the front grill and “Sportsman 570” on the side panel. “Consumers should immediately stop using the recalled ATVs and contact Polaris to schedule a free repair,” a statement said on the U.S. Consumer Product Safety Commission’s website. “Polaris is contacting all known purchasers directly.” No injuries have been reported in connection with the recall. The ATVs cost between $6,500 and $7,700 and were available from April 2014 to May 2017.

Polaris is also recalling all 2017 Polaris RZR 570 and RZR S 570 recreational off-highway vehicles, including RZR EPS 570 or RZR S 570 EPS vehicles with electronic power steering. The recall includes model number Z17VJE57A2 in red, model number Z17VHA57A2 in silver and model number Z17VHA57A2 in white. The two-seat ROVs have “Polaris” stamped on the front grill and RZR or RZR S on the side of the rear cargo. The company is initiating the recall because the front brake can detach, posing crash and injury hazards. No injuries have been reported. Polaris is offering a free repair to all known pur-
changers and urging consumers to stop using the vehicles, which were sold for about $8,500 from December 2016 until June 2017.

**Polaris Recalls More Off-Highway Vehicles For Fuel Leak And Fire Hazards**

More Polaris off-highway vehicles are under recall for fuel leak and fire hazards. The Minnesota company is recalling all model year 2015 through 2017 youth RZR 170 ROVs, which have two seats and were sold in red, blue and white. Polaris has received more than 100 reports of cracked fuel tank necks and 28 reports of burning, smoking, melted and/or shorted wires, including four reports of fires. No injuries have been reported in connection to the recall. “Consumers should immediately stop using the recalled ROVs and contact Polaris to schedule a free repair,” a statement reads on the Consumer Product Safety Commission website. “Polaris is contacting all known purchasers directly.” The items, which were made in Taiwan, were sold from $4,600 to $4,800 from February 2015 until July 2017.

**Cub Cadet Recalls Utility Vehicles**

Hisun Motors Corp. U.S.A., of McKinney, Texas, has recalled about 4,000 Cub Cadet 2016 Challenger utility vehicles. Air in the brake system can cause brake failure, posing a crash hazard to the user or bystander. This recall involves four-wheel drive Cub Cadet 2016 Challenger utility vehicles. Model numbers included in the recall are: CX500 (37AW7CKD010, 37AW7CKD710, 37AW7CLD010, 37AW7CLD710, 37AW7CMD710, 37AW7CN7D10); CX700 (37AX7CKD010, 37AX7CKD710, 37AX7CLD010, 37AX7CLD710, 37AX7CMD710, 37AX7CN7D10); and CX750 Crew (37AY8CKD710, 37AY8CLD710, 37AY8CMD710, 37AY8CN7D10). The utility vehicles were sold in yellow, red, blue and camouflage. The recalled vehicles were manufactured between February 2016 through November 2016. A label located under the driver’s seat lists the model number and the month and year of manufacture. Cub Cadet has received 80 reports of brake failure. No injuries have been reported.

The vehicles were sold at independent Cub Cadet dealers nationwide from March 2016 through May 2017 for between $8,500 to $9,500. Consumers should immediately stop using the recalled vehicles and contact an authorized Cub Cadet dealer or Cub Cadet customer service to arrange for a free repair. Contact Cub Cadet toll-free at 888-848-6038 from 8 a.m. to 8 p.m. ET Monday through Friday, 9 a.m. to 5 p.m. ET Saturday or Sunday, or online www.cubcadet.com and click on “Product Recalls” for more information. Pictures available here: https://www.cpsc.gov/Recalls/2017/Cub-Cadet-Recalls-Utility-Vehicles-Recall-Alert

**Yongkang Dingchang Industry & Trade Co., Ltd Recalls The ‘Off-Road 8-Inch’ Self-Balancing Scooter**

Yongkang Dingchang Industry & Trade Co., Ltd produced 436 self-balancing scooters (hoverboard) identified as “Off-Road 8-inch” from March 23-26. The product bears the markings identifying it as Model Number LBW01 along with a holographic UL label identified as issued to Yongkang Dingchang Industry & Trade Co., Ltd. This product has not been certified by UL, therefore should not contain the UL label. The company is alerting the public that 239 (of the 436) scooters have been sold. All consumers who have bought this product from our retailers should be aware that the product has not been evaluated by UL and are not authorized to bear a UL Mark. The company will continue to provide the after-sales service for these products. For those who do not want to keep this product, please contact the original retailer for a refund. The product bears an unauthorized holographic UL label number E484387.

**Design Solutions International With Home Depot Recalls Light Fixtures**

Home Depot Product Authority, LLC of Atlanta, Georgia, has recalled about 64,000 Home Decorators Collection 3-Light and 4-Light Comitti Vanity Fixtures. The light shades can detach and fall, posing laceration and burn hazards. This recall involves Home Decorators Collection 3-Light and 4-Light Comitti Vanity Fixtures. The light fixture styles have 3 or 4 chrome-colored glass shades with clear acrylic ball strands that surround a halogen light. The wall plate is made of opaque aluminum. The fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage.

**Lumicentro Internacional With Home Depot Recalls Crystal Chandeliers**

Home Depot Product Authority, LLC of Atlanta, Georgia, has recalled about 10,500 Crystal chandeliers. The halogen bulbs sold with the chandeliers can melt parts of the fixture, posing fire and burn hazards. The recall involves Hampton Bay 3-Light Crystal Chandeliers and Home Decorators Collection 4-Light Crystal Chandeliers. The Hampton Bay 3-light chandelier has model number 03179-4 and the Home Decorators collection’s model number is 19161-4. The model numbers can be found on the top of the unit. The chrome ceiling fixtures have dangling crystals, weigh about 16 pounds and have three or four 50-watt halogen bulbs. There have been 39 reports of plastic on the unit burning and melting, wires burned, or overheating in the 4-Light Chandelier and one report of the unit catching fire. No injuries or property damage have been reported.

Home Depot stores in Puerto Rico and U.S. Virgin Islands exclusively sold the Hampton Bay 3-Light Crystal chandeliers from September 2013 through February 2017. Home Depot stores nationwide sold the Home Decorators Collection 4-Light Crystal chandeliers from October 2015 through February 2017. Both sold for about $220. Consumers should immediately stop using the recalled chandeliers and contact Lumicentro Internacional S.A. for a free upgrade kit which includes 5 watt LED bulbs, suction cup, upgraded installation manual and new warning labels. The new labels identify that the fixture is only rated for LED bulbs with a maximum of 6.5 allowable wattage. Contact Lumicentro Internacional toll-free at 888-356-6430 from 8 a.m. to 5 p.m. ET Monday through Friday or online at www.lumicentro.com and click on the recall link for more information. Pictures available here: https://www.cpsc.gov/Recalls/2017/Lumicentro-Internacional-with-Home-Depot-Recalls-Crystal-Chandeliers

**Burt’s Bees Baby Coveralls Recalled**

Burt’s Bees Baby has announced the recall of its popular infant coveralls, due to a potential choking hazard. The snap at the bottom of the page for more information.
the crotch can detach, which poses a choking hazard to infants, according to the recall. The recall involves Butterfly Garden Coverall & Hat Sets. The coveralls were 100 percent cotton and were sold in blossom pink with white butterflies. The recalled clothing was sold in sizes NB, 3M, 6M and 9M and has a manufacture code of Aug. 2016, which is printed on the inside tag. Only coveralls with the style number LY24195 on the hangtag are included in the recall. The coveralls were sold at Babies R Us, BuyBuy Baby, and online at babiesrus.com, buybuybaby.com, amazon.com, kohls.com, target.com, zulily.com, diapers.com, hautelook.com, and burtsbeesbaby.com from December 2016 through May 2017 for about $18. The company has received 11 reports of the snaps detaching from the coveralls. No injuries have been reported. Customers are urged to stop using the recalled coveralls and contact Burt’s Bees Baby to receive a pre-paid envelope to return the garment for a $20 e-gift card. Customers can also call 877-907-7511 for more information, or visit the Burt’s Bees website.

Salmonella Outbreak Linked To Papayas Kills One And Sickens 47 In 12 States

The U.S. Food and Drug Administration (FDA) has warned consumers to avoid all Caribeña brand Maradol papayas linked to a Salmonella outbreak. The FDA reports Grande Produce, the Texas company that distributes the papayas, said it would initiate a limited recall of its papayas from July 7 through July 18. A press release notifying customers of the recall was not issued as of July 25, prompting the FDA to publish details on its own. The agency said:

FDA and state partners continue to investigate the distribution of the papayas involved in this outbreak. It appears the distribution pattern of Caribeña brand Maradol papayas does not explain all of the illnesses, meaning other firms likely have distributed contaminated Maradol papayas as well. At this time, the farm(s) producing these papayas appear to only be in Mexico.

Forty-seven cases, 12 hospitalizations and one death in 12 states have been reported in connection to the Salmonella outbreak, according to The Centers for Disease Control and Prevention. States include Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Texas, Utah and Virginia.

Salmonella symptoms include diarrhea, fever, and abdominal cramps over a period of four to seven days. Symptoms usually appear 12 to 72 hours after infection.

Children younger than 5, elderly people, and those with weakened immune systems are more likely to have severe infections from Salmonella.

Bush's Baked Beans Issues Recall Due To Defective Cans

Bush’s Baked Beans has issued a product recall due to defective cans. The recall affects some 28-ounce cans of Bush’s Brown Sugar Hickory Baked Beans, Country Style Baked Beans and Original Baked Beans. The recall was issued due to potentially defective side seams on the cans. “This recall was initiated after our internal quality assurance checks identified the issue,” the company said in a statement. “Subsequent investigations indicated a temporary quality issue from one of our can suppliers. The problem was corrected and no other product is affected.” The company said there have been no reports of illness, but customers should dispose of the cans even if they do not seem spoiled. The recalled products are:

- 28-ounce Bush’s Best Brown Sugar Hickory with case UPC of 003940001977.
- 28-ounce Bush’s Best Country Style with case UPC of 000394001974 and 00340001974.
- 28-ounce Bush’s Best Original with case UPC of 003940091614 and 00394001614.

All the affected products have a best-by date of June 2019. Anyone with questions may call 1-800-590-3797 Monday through Friday from 7 to 4 p.m. or visit the company website, www.bushbeans.com.

TOMY Recalls Thousands Of Munching Max Chipmunk Toys

A stuffed animal sold at Babies R Us, Toys R Us and online has been recalled due to a laceration hazard. According to the U.S. Consumer Product Safety Commission, parts inside TOMY’s Munching Max chipmunk toys could break and puncture the fabric. So far, the company has only received one report of a child being hurt on the hand because of the issue. The toy being recalled was sold at stores nationwide and online from May 2016 to July 2017. It has an item number of L27578. That number along with “TOMY” and “Lamaze” are printed on the fabric label near the stuffed animal’s tail. Parents who purchased the toy are encouraged to take it away from their children and contact TOMY International at 866-725-4407 to receive a free replacement toy and an online store coupon.

Once again there have been a number of recalls since the last issue. While we didn’t include all of them in this issue, we included those we deemed to be 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.RightingInjustice.com or www.BeasleyAllen.com. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

XXII. FIRM ACTIVITIES

Employee Spotlights

Carol Thompson

Carol Thompson has worked as a Legal Assistant for Greg Allen in our Personal Injury & Product Liability Section since 1990 and she has been a critical asset in many of our most important Product Liability cases. Carol is in charge of handling myriad daily tasks, including the drafting of correspondence, complaints and discovery, meeting with clients, working with our experts, maintaining all medical records and bills, trial preparation and much more.

A native of Montgomery, Carol is a graduate of Jeff Davis High School who first began working in the Montgomery County Circuit Court, then later transferring to Circuit Court. Carol has worked in the legal industry for her entire career and has been married to Mark Thompson, the Chief of Police in Prattville, for 35 years. Mark and Carol have three sons—Jason, Todd and Ty—as well as five grandchildren—Gavin (14), Mason (8), Kolby (6), Kaden (4) and Griffin (2).

Carol enjoys spending as much of her free time with her grandchildren as she can. In 2016, three of her grandchildren played on baseball teams, meaning she had 40 games to attend throughout the season! Some of her other hobbies include fishing and making crafts.

We are truly blessed to have Carol with us. She does a tremendous job and cares deeply about her cases and the folks

JereBeasleyReport.com
involved. Carol is totally dedicated to the cause and has helped hundreds of persons and families receive justice. Her work has also helped to make products safer.

KRISTI SMITH

Kristi Smith was hired in 1999 and is now working on her 18th year in Beasley Allen’s Toxic Torts Section, which was called the Commercial Business Litigation Section when she first began. As a Legal Assistant to Chris Boutwell, Kristi assists with legal research, drafting pleadings, discovery and working with clients. While Kristi admits that the position can be challenging at times, she feels each day presents new opportunities and is never boring.

Kristi is a graduate of Auburn University at Montgomery where she earned her Bachelors of Science in Justice and Criminal Law, as well as her Paralegal Certificate in Legal Studies. She and her husband, Patrick Smith, a Lieutenant and Paramedic with Montgomery Fire Department, have been married almost 14 years and together have two children—Blake (11) and Brooke (9)—both of whom attend Redland Elementary School. Most of her family’s free time is spent at swim meets and practice for her two children, which she loves to watch. Her family, including her parents Ronnie and Linda, sister Holly and niece Katie, all live in Wetumpka and enjoy many family rituals together, including Family Game Night on Sundays at her parents’ house. She feels blessed each and every day to have such a fun and loving family.

Kristi enjoys painting, photography, music, playing cards, spending time with her family, as well as teaching the “tweens” at Centerpoint Church. As a cancer survivor, Kristi takes time to support the Relay for Life, Little Pink House of Hope, the American Cancer Society and Joy to Life. She loves sharing her personal story about the fight with cancer and encouraging others fighting the same battle in which she persevered. At the end of the day, Kristi’s absolute favorite thing is thanking her Lord and Savior for the amazing life He has blessed her with.

We are blessed to have Kristi with us. She is a very good employee who is dedicated to her work. Kristi has been an inspiration to all of us because of how she and the Lord handled her battle with cancer.

TODD WALL

Todd Wall, who is in Beasley Allen’s Information Technology (IT) Department, has been with the firm for 13 years, performing tasks from maintaining the firm’s SQL servers to assisting with our case management software ProLaw. Many responsibilities as Database Administrator rely on Todd’s ability to troubleshoot difficult technical issues that spring up day-to-day in our firm. Previously, Todd served in the U.S. Air Force from 1986 until 1994 and was stationed at Maxwell Air Force Base here in Montgomery. He and his wife Stephanie have been together for 10 years and have two adult sons—Casey, who is in the U.S. Navy and is stationed at Yokosuka, Japan, and Michael, who works in the food service industry. Todd and Stephanie are also very blessed with their 12-year-old granddaughter Shelby. When Todd isn’t working with computers, he enjoys spending time with his family, as well as outdoor hobbies including kayaking and hiking.

LAW CLERKS GAIN REAL WORLD EXPERIENCE

Beasley Allen welcomed several law clerks this summer from law schools across Alabama and the Eastern United States. Though some of our law clerks have been with us for months or even years, we welcomed more than 10 new law students into our ranks this summer to allow them to gain real-world legal experience.

Over the summer, our law clerks have been given an insightful look into the world of each of our Sections. They have even been able to hear Alabama Supreme Court arguments. They were also able to have lunch with newly appointed Justice Will Sellers. Though mostly from law schools across the state, including Faulkner’s Thomas Goode Jones School of Law and the University of Alabama School of Law, one law clerk traveled from Michigan and another from Wisconsin to spend time with us.

The students who clerked this summer include: Albert Copeland (University of Alabama School of Law), Ashley Ross (Michigan State University School of Law), Daniel Roach (Faulkner University’s Thomas Goode Jones School of Law), Danielle Ingram (Thomas Goode Jones School of Law), Sara McCabe (University of Alabama School of Law), Will Hodge (Thomas Goode Jones School of Law), Adele Mantiply (University of Alabama School of Law), Quanisha Holloway (Thomas Goode Jones School of Law), Justin Nolen (University of Alabama School of Law), Kristen Beavers (Thomas Goode Jones School of Law), LaSheryl Dotch, who was admitted to the Alabama State Bar in May, Olivia Jones (Thomas Goode Jones School of Law), Megan Williams (Thomas Goode Jones School of Law), and Bethesda Zewdie (University of Wisconsin Law School).

We hope that through their experiences at the firm, these law clerks are better able to understand the differences between studying law and practicing law and the ways they can help make an impact through their chosen profession. Many of the law clerks who were with us this summer will be with us through the Fall, allowing them to further develop the skills they will need to be successful in their careers.
respond to that attack and then recover from it.

While each law firm should do an intense study and self-evaluation of its need, the following are recommendations for law firms.

First, firms should immediately patch any vulnerabilities that have been exposed by previous ransomware attacks on other systems. For instance, an earlier attack by the WannaCry ransomware exposed an Achilles heel that Petya effectively kicked.

Defenses should improve with every cyberattack, so firms should assess how open their networks are, eliminate any deficiencies, and perform vulnerability tests on their computer networks regularly. Open networks between firms are worms, viruses and other malicious bugs.

Firms must also be sure their networks are structured and layered in a way that requires levels of access. Doing so can create chokepoints where ransomware gets held up, Luke Demborsky, a former top cybercrime official at the U.S. Department of Justice, told Law 360, which explained the potential damage as the difference between a brush fire and blazing forest fire.

Assuming that your firm's backup system, whether on the cloud or somewhere else, is the quick solution to recovering from a cyberattack can be a costly mistake. Even backup systems can hold glitches, bugs, and corrupted files, so firms must avoid the false sense of security that backup systems may impart and test those systems to ensure they're clean, functional, and uncorrupted.

Firms that have experienced a cyberattack should find and hire a forensics company to figure out how the attack occurred and why. It's also a good idea to find and retain the services of such a company in times of safety because that will give you privilege in times of need. As Law 360 puts it, "just like searching the Yellow Pages or Yelp for a plumber after a pipe has burst and you're ankle-deep in water, the time to dial for help is not in the middle of a cyberattack."

Many firms hit by cyberattacks quite often learn a hard lesson about their insurance. Some traditional policies exclude damage for cyberattacks or will cover only a fraction of the resulting losses. Some insurers will deny firms coverage if they were using pirated software or software licensed for one computer across an entire company. Insurers may deny claims if the firm has failed to patch its network after a previous attack.

Consider also, how prepared your firm is to calculate the true cost of an interruption in business and to demonstrate for your insurer that the business wasn't just deferred. Firms should also be aware that no insurance companies currently provide coverage for reputational hits. In fact, as many real-life cases have shown, many insurers' policies haven't evolved to cover all the unique damages that new malware inflicts, and that's a problem that could leave any firm facing costly out-of-pocket expenses.

Source: Law360

XXIV.
THE MYTHBUSTER SERIES

A NEW FEATURE FOR THE REPORT

I have asked Frank Woodson, in his role as new President of the Alabama Association for Justice (ALA), to write a series of monthly articles involving actual court cases across the country. This new series will be called “The Mythbuster Series.” Frank, who practices in the firm's Mass Torts Section, has agreed to handle this project.

It is the mission of ALAJ to make sure that any person who is injured because of another's misconduct or negligence has access to justice in the courtroom. ALAJ works to preserve and strengthen the civil justice system so that all persons can have their day in court and receive equal access to justice. The first in the series involves a case that was used by the Tort Reformers to mislead the public and push their agenda.

THE MCDONALD'S COFFEE CASE

This is perhaps the most well known so-called “frivolous” case, but a great example of how well our country's product liability laws work and effect needed change. McDonald's got a fair trial, was even given post trial relief, but ultimately changed their practices for serving coffee for the better.

Stella Liebeck of New Mexico was in the passenger seat of her grandson’s parked car when she was severely burned by McDonald’s coffee in February 1992. Liebeck ordered coffee that was served in a styrofoam cup at the drive-through window of a local McDonald’s.

After receiving the order, the grandson pulled his car forward and stopped momentarily so that Liebeck could add cream and sugar to her coffee. (Critics of civil justice, who have pounced on this case, often charge that Liebeck was driving the car or that the vehicle was in motion when she spilled the coffee; neither is true.) Liebeck placed the cup between her knees and attempted to remove the plastic lid from the cup. As she removed the lid, the entire contents of the cup spilled into her lap.

The sweatpants Liebeck was wearing absorbed the coffee and held it next to her skin. A vascular surgeon determined that Liebeck suffered full thickness burns (or third-degree burns) over 6 percent of her body, including her inner thighs, perineum, buttocks, and genital and groin areas. She was hospitalized for eight days, during which time she underwent skin grafting. Liebeck sought to have McDonalds pay her medical bills and settle her claim for $20,000, but McDonald's refused.

During discovery, McDonald's produced documents showing more than 700 claims by people burned by its coffee between 1982 and 1992. Some claims involved third-degree burns substantially similar to Liebeck's. This history documented McDonald's knowledge about the extent and nature of this hazard.

McDonald's also said during discovery that, based on a consultant's advice, it held its coffee at between 180 and 190 degrees Fahrenheit to maintain optimum taste. Other establishments in the area sold coffee at substantially lower temperatures, generally 135 to 140 degrees.

Further, McDonald's quality assurance manager testified that the company actively enforced a requirement that coffee be held in the pot at 185 degrees, plus or minus five degrees. He also testified that a burn hazard exists with any food substance served at 140 degree or above, and that McDonald's coffee, at the temperature at which it was poured into styrofoam cups, was not fit for consumption because it would burn the mouth and throat. The quality assurance manager admitted that burns would occur, but testified that McDonald’s had no intention of
reducing the “holding temperature” of its coffee.

Plaintiff’s expert, a scholar in thermodynamics as applied to human skin burns, testified that liquids at 180 degrees will cause a full thickness burn to human skin in two to seven seconds. Other testimony showed that as the temperature decreases toward 155 degrees, the extent of the burn relative to that temperature decreases exponentially. Thus, if Liebeck’s spill had involved coffee at 155 degrees, the liquid would have cooled and given her time to avoid a serious burn.

McDonald’s asserted that customers buy coffee on their way to work or home, intending to consume it there. However, the company’s own research showed that customers intend to consume the coffee immediately while driving. McDonald’s also argued that consumers know coffee is hot and that its customers want it that way. The company admitted its customers were unaware that they could suffer third-degree burns from the coffee and that a statement on the side of the cup was not a “warning” but a “reminder” since the location of the writing would not warn customers of the hazard.

The jury awarded Liebeck $200,000 in compensatory damages. This amount was reduced to $160,000 because the jury found Liebeck 20 percent at fault in the spill. The jury also awarded Liebeck $2.7 million in punitive damages, which equals about two days of McDonald’s coffee sales.

Post-verdict investigation found that the temperature of coffee at the local Albuquerque McDonald’s had dropped to 158 degrees Fahrenheit. The trial court subsequently reduced the punitive award to $480,000—or three times compensatory damages—even though the judge called McDonald’s conduct reckless, callous and willful. After remittitur, the parties entered a post-verdict settlement.

Instead of being made fun of, Ms. Liebeck should be given an award for standing up for Justice, and promoting safety. McDonald’s did the right thing to make their coffee safe for its customers. Our civil justice system worked very well in this circumstance for all parties involved.

This McDonald’s case is a prime example of how tort-reform groups can stretch the truth and put a just result in a civil case in a bad light. When you read the truth about such cases things are put in a totally different light. We will feature cases each month that will help our readers understand how critically important the court system—and especially the jury system—is in this country.

Sources: AAJ and Georgia AJ websites

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**XXV. FAVORITE BIBLE VERSES**

Cj Falcione, a pastor at Gateway Baptist Church in Montgomery, furnished two verses for this issue. Cj had this to say: “I love this glorious truth that God the Father made Jesus, who knew no sin, to be sin for me. Jesus took my place in death and atoned for my sin. In doing so, God the Father, the Judge, declared me “not guilty,” so that I may become the righteous of God and be His ambassador of reconciliation to the world.”

*Therefore, we are ambassadors for Christ, as though God were making an appeal through us; we beg you on behalf of Christ, be reconciled to God. He made Him who knew no sin to be sin on our behalf, so that we might become the righteousness of God in Him. 2 Cor. 5:20-21*

Cj added these comments concerning Psalm 23:4: “What a comforting verse to know that when those ‘valley times’ come, there is no need to fear because our Great Shepherd, Jesus, is right there with us. For there to be a ‘shadow’ of death, there must be Light present. Our Shepherd King is intimately close to His sheep in the valley as He leads us through to higher ground.”

*Even though I walk through the valley of the shadow of death, I fear no evil, for You are with me. Psalm 23:4*

Mike Crow, a lawyer in our firm, also supplied a timely verse for this issue. He says when he thinks about a favorite verse Titus 3:37 comes to mind.

*At one time we too were foolish, disobedient, deceived and enslaved by all kinds of passions and pleasures. We lived in malice and envy, being bated and bitter one another. But when the kindness and love of God our Savior appeared, be saved us, not because of righteous things we had done, but because of his mercy. He saved us through the washing of rebirth and renewal by the Holy Spirit, whom he poured out on us generously through Jesus Christ our Savior, so that, having been justified by his grace, we might become heirs having the hope of eternal life. Titus 3:3-7*

Apreill Hartsfield, one of the staff writers for our firm, sent in two verses for this issue. She says as both a Christian and a person with a strong desire to be in control at all times, she often struggles with reconciling the two competing internal voices. A verse from Proverbs reminds Apreill who truly is in control.

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

Apreill also says it is challenging for her not to be overwhelmed with circumstances beyond our control or when we are faced with decisions that seemingly have no good options. She says her second verse gives her peace of mind, comfort and encouragement.

*I can do all things through Christ who strengthens me. Philippians 4:13*

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**XXVI. CLOSING OBSERVATIONS**

**FRANK WOODSON IS THE NEW ALAJ PRESIDENT**

Frank Woodson, a lawyer in our firm’s Mass Torts Section, is now the President of the Alabama Association for Justice, having been installed on June 16 at the organization’s annual meeting. This is quite an honor and Frank is certainly well deserving. Frank had this to say:

*As a 33-year member and now in my sixth year as an officer of the Alabama Association for Justice, I know firsthand the importance of the work we do, not only for members, but for the citizens of the*
State of Alabama. As President, I will work closely with our staff, lobby team, officers and board of directors to keep the doors of the Courthouse open for our clients, educate and assist our members and fight to uphold the 7th amendment rights of the Citizens of our State.

It is the mission of ALAJ to make sure any person injured through another’s misconduct or negligence can get justice in the courtroom. ALAJ works to eliminate restrictions on the civil justice system so that every person can have their day in court and have equal access to justice. It’s very important that the civil justice system not only be preserved, but strengthened.

Frank has practiced in the firm’s Mass Torts Section since 2001, handling cases involving dangerous drugs and defective medical devices. Frank has served in important leadership roles in multidistrict litigation.

Among many notable verdicts and settlements, Frank was responsible for successful resolutions of our Rezulin, Baycol and shoulder pain pump cases and a $5.1 million verdict for a woman who developed breast cancer after taking hormone replacement therapy. Frank served as Vice Chairman of the Sales and Marketing Committee for the Vioxx MDL and was an integral part of the successful Vioxx trial team.

Frank is a former president of Mobile County Young Lawyers. He was also a member of the Mobile County Bar Association Executive Committee and of the State of Alabama Young Lawyers Committee. In addition, Frank currently serves as a trustee on the Executive Committee of the Alabama Association for Justice. He is a member of the Montgomery and Mobile Bar Associations and the American Association for Justice. Frank is also a member of the Alabama Association for Justice’s first Board of Directors.

ALAJ has had a number of presidents who worked very hard to make it possible for victims of corporate wrongdoing and abuse to obtain justice in Alabama courts. I am confident that Frank will serve with distinction in his role as President of ALAJ.

Our Monthly Reminders

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

2Chron7:14

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

Edmund Burke

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

To rob the needy of justice, And to take what is right from the poor of My people, That widows may be their prey, And that they may rob the fatherless.

Isaiah 10:1-2

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

Martha Washington (1732 - 1802)

The 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

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Jere Beasley, the founding member of Beasley Allen Law Firm, has practiced law as an advocate for victims of wrongdoing since 1962. During his career, he has tried hundreds of cases. Jere's numerous courtroom victories include landmark cases that have made a positive impact upon our society. His areas of practice include litigation in products liability, insurance fraud, business, nursing home and personal injury.

Jere established a one-lawyer firm that officially opened on Jan. 15, 1979, and he filed his first case on behalf of the practice on Jan. 17, 1979. Now, it has been 30 years since he began with the intent of "helping those who need it most." Today, the firm is known as Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., still located in Montgomery, Alabama. Beasley Allen is one of the country's leading firms involved in civil litigation on behalf of claimants, having represented hundreds of thousands of people. The firm employs more than 250 people in Montgomery, including more than 70 attorneys.