I. CAPITOL OBSERVATIONS

Beasley Allen Legal Conference Set For Nov. 16 & 17 in Montgomery

The 11th annual Beasley Allen Legal Conference & Expo is set for Nov. 16 and 17 in Montgomery, Alabama. As many as 2,000 lawyers are expected to attend the two-day event, the largest gathering of its kind in the state. Actually, it will be one of the top five legal conferences in the nation.

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

Lawyers who attend the conference can earn a full 12 hours of Continuing Legal Education (CLE) credit, certified by the Alabama State Bar. The event also provides a legal services expo where conference attendees can visit with more than 20 of the nation’s top legal service providers. This is a great place to learn about the leading products and services that will help enhance and support your litigation efforts.

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

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

If you are an Alabama lawyer and are on our email list, you should already have received some information about the conference. Visit our conference registration website at expo.beasleyallen.com to reserve your spot. We look forward to seeing you!

Inaugural Atlanta Legal Summit Draws More than 100 Lawyers

Last month it was an honor for our firm to partner with The Cooper Firm and host the inaugural Atlanta Legal Summit for the Georgia Plaintiffs’ Bar. More than 120 of the best and brightest lawyers in private practice in the state gathered in the Ritz Carlton Ballroom for a day of training and networking.

Lance Cooper of The Cooper Firm welcomed attendees and shared the story of how the partnership between our firms originated. He praised the culture of servant leadership and humility at Beasley Allen. Lance also expressed appreciation for the more than 100 General Motors cases our firms have worked on together successfully and said that “at the end of the day we do good for our clients and have fun.”

Danielle Mason updated colleagues on the Talcum Powder Litigation against Johnson & Johnson and Imerys Talc America. She explained the important role internal company documents have played in the talc trials and the difference they have made in exposing the dangers of talc that Johnson & Johnson hid for decades. Summit participants were very engaged during Danielle’s presentation, asking questions and seeking more information about the litigation. Throughout the day, additional speakers provided tips on jury selection and how to recognize a products liability claim, as well as current trends in the legal profession.

Special guests, including Georgia Court of Appeals Judge John J. Ellington and Michael A. Prieto, president of the Georgia Trial Lawyers Association, joined attendees during lunch. Beasley Allen’s Navan Ward, currently serving as Treasurer for the American Association for Justice, brought a national perspective with an update on the Association’s work.

Chris Glover closed out the day thanking the State Bar of Georgia and its members for welcoming him and his family to the state with open arms. Participants enjoyed a dinner reception later that evening. All in all, the event was a complete success.

For more information about Beasley Allen’s Atlanta office, contact Chris Glover at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

II. AUTOMOBILE NEWS OF NOTE

General Motors Agrees to $120 Million Ignition Switch Settlement with States

General Motors Co. (GM) will pay $120 million to state attorneys general to settle claims that the automaker concealed the now well-known ignition-switch defect.

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The settlement, announced on Oct. 18, comes three years after GM issued recalls for more than 9 million vehicles in the U.S. for a defect that could cause cars to suddenly lose electrical systems, including power steering and power brakes. Air bags would also fail to deploy in some collisions.

The settlement benefits the attorneys general of 49 states and the District of Columbia. Only Arizona, which has its own lawsuit, did not participate. GM claims that improvements will be made, including continuation of a new organizational structure it says is devoted to global vehicle safety.

As we have previously reported, GM has paid about $2 billion to the Department of Justice, the Federal Trade Commission, consumers and shareholders. That amount includes nearly $600 million placed in a victims’ compensation fund overseen by Ken Feinberg. GM filed for bankruptcy in 2009. The states claimed GM employees knew as early as 2004 that the defective ignition switch created a safety risk. But recalls were delayed for years. GM agreed as part of the settlement not to tell consumers a vehicle is safe unless it meets federal motor vehicle safety standards. The agreement required that used vehicles may not be called “safe” or “subject to rigorous inspection” unless there are no open recalls affecting them. The settlement also requires GM to instruct dealers to complete recall repairs before making a car eligible for certification or delivering it to a customer.

The defect that gave rise to this suit, the massive recalls, the multidistrict litigation (MDL), and all of the individual civil actions filed was discovered by Beasley Allen’s colleague Lance Cooper, a lawyer with The Cooper Firm in Marietta, Georgia. Lance’s 2011 wrongful death case against GM (Melton v. GM, 2011-A-2652) exposed the automaker’s knowledge and cover-up of the faulty ignition switches. In my opinion, without Lance’s good work, GM would have continued to get away with hiding a known defect from the public and the National Highway Traffic Safety Administration (NHTSA).

The GM investigation and negotiation that resulted in the states’ settlement was led by the attorneys general of Connecticut, Florida, Maryland, Michigan, New Jersey, Ohio, Pennsylvania, South Carolina and Texas. New Jersey Attorney General Christopher Porrino said in a statement:


Like any other business—large or small—automakers have an obligation to represent the products they sell honestly, to ensure those products are safe, and to alert consumers when they discover a product defect that threatens consumer safety. When they fail to do so, as was the case with GM, we are committed to holding them accountable.

The $120 million settlement includes $6 million for Florida, $4.3 million for New York, $4.1 million for New Jersey, $7.3 million for Texas and $3.2 million for Connecticut. Other states will get lesser amounts. New York Attorney General Eric Schneiderman said in a statement:

Instead of prioritizing customers, General Motors turned a blind eye for years and chose to conceal the safety defects associated with several models of their vehicles. New Yorkers should not have to worry about their steering or brakes failing or their air bags not deploying when they get behind the wheel. Today’s settlement ensures that drivers receive the transparency they deserve when they purchase a car.

It’s good seeing state attorneys general protecting the cities of their respective states. This is a prime example of being willing to take on Corporate America when they do wrong and hurt people.

Source: Daily Business Review

**Final Approval Sought For $741 Million In Settlements In Takata MDL**

Class counsel have asked a Florida federal court to grant final approval for the $741 million in settlements with four automakers in class actions over dangerously defective Takata Corp. air bags. The class counsel highlighted two ways the agreements are below average: the number of objections and the portion going to attorneys’ fees. The settlements were reached with Toyota Motor Corp., BMW of North America LLC, Subaru of America Inc. and Mazda North American Operations. During the final fairness hearing in Miami, lead class counsel Peter Prieto of Podhurst Orseck urged approval and said the $166 million that will go to pay the class attorneys, while a substantial sum, is only 22 percent of the total value, well below the Southern District of Florida’s recent averages, which studies have found range between 30 to 33 percent.

The 30 objections filed from a class of nearly 20 million members is well below the approximately 230 that is typical for these types of multidistrict litigations. The number is far below the more than 400 in Volkswagen’s recent settlement related to its diesel emissions scandal. The substantial work of the 26 Plaintiffs’ firms involved in the case included reviewing more than 10 million documents produced by the Defendants and deposing 70 class members and 45 Defense witnesses.

Under the terms of the settlements, BMW will pay $131 million; Subaru, $68.26 million; Mazda, $75.8 million, and Toyota, $278.5 million, for a total of $553.6 million. The overall value reaches $741 million when extended warranties of 10 years or 150,000 miles on the new inflators is factored in, according to a warranty valuation expert’s review. The four automakers were the first to settle and get out of the multidistrict litigation (MDL) over the largest auto recall in the nation’s history. Takata’s air bag inflators have been linked to at least 11 deaths in the United States. The cheap but volatile ammonium nitrate that inflates the bags can misfire, especially in humid conditions, blasting chemicals and shrapnel at passengers and drivers.

Takata has pled guilty to wire fraud and agreed to pay $1 billion in fines and restitution. The company also acknowledged that it ran a scheme to use false reports and other misrepresentations to convince automakers to buy air bag systems that contained faulty, inferior or otherwise defective inflators. Nissan also reached a settlement agreement in the case. Ford is the lone remaining defendant in the MDL.

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

**Ford’s Exhaust Gas Cabin Intrusion Defect Settled**

Ford Motor Co announced Oct. 13 that it will offer free repairs to North American owners of more than 1.4 million Explorer sport utility vehicles to help prevent carbon monoxide and other exhaust gases from entering the vehicles. This comes after the U.S. government’s
decision to upgrade an investigation in July.

Several U.S. police agencies raised concerns about potentially deadly carbon monoxide gas entering the cabins of Ford Explorers that had been adapted for law enforcement uses. Additionally, federal regulators said they are aware of more than 2,700 complaints for exhaust odors as well as reports of three crashes and 41 injuries that may be linked to exposure to carbon monoxide among police and civilian

11-2017 Explorer vehicles.

Ford, the second largest U.S. automaker, said starting Nov. 1 dealers will reprogram the air conditioner, replace the liftgate drain valves and inspect sealing of the rear of the vehicle. The fix covers about 1.3 million U.S. vehicles and about 100,000 in Canada and Mexico.

The U.S. National Highway Traffic Safety Administration (NHTSA) in July upgraded and expanded a probe into 1.33 million Ford Explorer SUVs over reports of exhaust odors in vehicle compartments and exposure to carbon monoxide. NHTSA said it is evaluating preliminary testing that suggests carbon monoxide levels may be elevated in certain driving scenarios.

Police agencies have reported two crashes that may be linked to carbon monoxide exposure and a third incident involving injuries related to carbon monoxide exposure. The city of Austin, Texas said in July it would remove all 400 of the city’s Ford Explorer SUVs from use for additional testing and repairs after the city said 20 police officers were found with elevated levels of carbon monoxide. The department returned the vehicles to service after repairs and testing.

In July, Ford said it would pay to repair police versions of its Ford Explorer SUVs to correct possible carbon monoxide leaks that may be linked to crashes and injuries after some police reports temporarily halted use of the vehicles over carbon monoxide concerns.

In 2016, Ford agreed to settle a U.S. class-action lawsuit involving 1 million 2011-2015 Explorer SUVs over exhaust odor complaints, including reimbursements of up to $500 for repairs and the company agreed to make repairs. That settlement was approved in June, but has not taken effect. An objection to the settlement was dismissed by the 11th Circuit Court of Appeals on Oct. 16, clearing the way for settlement initiation.

Ford has issued four technical service bulletins related to the exhaust odor issue to address complaints from police

fleets and other owners. Lawyers in our firm’s Personal Injury & Products Liability Section view Ford’s Oct. 13 repair plan as inadequate. For instance, Ford is offering exhaust gas defect repair options to law enforcement vehicles that its not offering to consumer vehicles. Ford’s decision to prioritize law enforcement personnel over ordinary consumers is suspicious, considering there are not material differences in the two sets of vehicles.

Lawyers in our firm are pursuing claims on behalf of owners/lessees of 2016-2017 Explorer, 2007-2014 Edge and 2007-2017 Mercury MKX vehicles. Clay Barnett, a lawyer in the firm who handles automotive defect class action litigation, is involved in this litigation. If you have experienced exhaust gas cabin intrusion or suspect that you have contact Clay at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

III. PURELY POLITICAL NEWS & VIEWS

THE ALABAMA GOVERNOR’S RACE IS HEATING UP EARLY

Alabamians have already seen a good bit of activity in the 2018 race for governor. Gov. Kay Ivey will face a challenge from Huntsville Mayor Tommy Battle in the Republican primary. There is also a Democratic primary fight involving Sue Bell Cobb and Tuscaloosa Mayor Walt Maddox. This means there will be a heated General Election in the governor’s race.

It appears at this juncture that Gov. Ivey, a very popular incumbent, will win the primary and then be elected to a full term next year in the General Election. Gov. Ivey has done a tremendous job of restoring confidence in government at the state level, having inherited a real mess. She has brought a breath of fresh air to the state capital. It’s significant that Gov. Ivey has a very high favorability rating—one of the highest for any governor in the U.S.—based on several recent polls.

Looking ahead, I believe the two mayors mentioned above will come out of the election cycle in 2018 as the brightest stars in their respective parties. I also predict that Gov. Ivey will have a highly productive and successful run as Alabama’s chief executive. I wish her the very best.

SPECIAL ELECTIONS IN ALABAMA

Special elections are becoming so common in Alabama that they are becoming pretty much “old hat.” Of course, the
nation has its eyes on the state’s most prominent special election, which will determine who is going to Washington, DC, to fill the vacant U.S. Senate seat. That battle has boiled down to two-time Alabama Supreme Court Justice Roy Moore—who upset the apple cart when he defeated Luther Strange, the Washington crowd’s choice, in the Republican primary runoff—and Democrat Doug Jones. The special election for the seat originally vacated by Sen. Jeff Sessions when he was appointed U.S. Attorney General will be held on Dec. 12. At this juncture it appears that Judge Moore is leading in the race and will win it.

But in addition to the U.S. Senate race, which has gotten a great deal of national attention, there are three vacant seats in the Alabama Legislature, two in the House and one in the Senate. The matter is complicated because all three positions are near the end of four-year terms, meaning almost as soon as they are filled they will be up for re-election. The vacancies include:

- House District 4—This seat, serving Morgan and Limestone counties, was vacated when House Majority Leader Micky Hammon (R-Decatur) was convicted for mail fraud.
- House District 21—Serving Madison County, this seat was vacated by the death of Rep. Jim Patterson (R-Meridianville).
- Senate District 26—Serving Montgomery; was vacated when Sen. Quinton Ross (D-Montgomery) resigned to accept a position as President of Alabama State University.

Due to the timing for the elections to fill these vacancies, all three seats will still be empty when the legislative session starts Jan. 9, and it’s possible that they could remain vacant until the legislature breaks on or around April 23.

Primary elections for the Alabama Senate seat and House District 4 seat have been set by Gov. Kay Ivey for Dec. 12 to coincide with the general election between Moore and Jones. The general elections for the Alabama Legislative seats will be held either Feb. 27, 2018, or May 15, 2018, depending on whether there is a need for a runoff. The primary election for House District 21 will be held Jan. 9, 2018. If a runoff is needed, it will be held March 27 and the general election June 12. However, if there is no need for a primary, the general election will be held March 27.

And, because in 2018 all 140 legislative seats will be on the ballot, it’s possible the newly elected candidate may not even get a chance to serve. This leaves countless people in these districts without representation; without a voice. Additionally, special elections cost the taxpayers money, and they usually have woefully low voter turnout, so barely any bang for the buck.

There is currently no other recourse because the state Constitution requires that when a legislative seat is vacated, a special election must be scheduled, and the seat must remain empty until that election is completed. But that may not always be the case. Sen. Rusty Glover (R-Semmes) has presented a bill that would change the state’s Constitution so that if a vacancy occurs during the last two years of the term, the governor would appoint a replacement to fill the term, and that appointee could not run for a full term.

Sources: AL.com and CNN

IV.

COURT WATCH

TRIBAL SOVEREIGN IMMUNITY - WHAT IS IT AND HOW DOES IT APPLY TO YOU

It is quite evident that most people do not know what Tribal Sovereign Immunity is. Actually, they don’t have any reason to know the ramifications of this legal defense. Unless you have a reason to be involved in litigation with an Indian tribe, there would be no reason to know how it might affect you. (*Note that Native Americans are referred to as Indians in legal reference to Tribal Sovereign Immunity.*) Our law firm had to deal with this immunity defense involved in litigation in Alabama and other parts of the United States. As a result, we have become very familiar with this matter and have seen how Indian tribes use it to avoid personal and corporate responsibility.

Tribal sovereign immunity is defined as: Indian tribes are domestic dependent nations that exercise inherent sovereign authority. The United States Constitution gives the U.S. Congress the power to allow the Indians to legislate themselves. The core aspect of sovereignty is that tribes possess the common-law immunity from lawsuits enjoyed by other sovereign powers.

In 1934, the U.S. Congress passed the Indian Reorganization Act. At that time, about 160 tribes were adopted by the Act. The Act restored to the Indians the management and control of their assets and the right to self-govern themselves and decease federal control over Indian affairs. Because this Act made each tribe a Nation unto itself, thus each tribe was entitled to the legal doctrine known as tribal sovereign immunity.

Over the next 40 years, the Indian tribes became more involved in commercial enterprises, more Indian groups sought tribe status. Currently 567 have tribe status. In May 1975, The Band of Poarch Creek Indians signified its intent to apply for recognition as a tribe and conveyed a tract of land in Escambia County, Alabama, in trust to the Department of Interior. This was a requirement to obtain tribe status.

The Department of Interior in 1984 granted the Poarch Band of Creek Indians recognition as a tribe. In 1985, a year after achieving federal recognition, the Indians opened their first casino in Escambia County, Alabama.

As early as the 1990s, legal challenges to tribal sovereign immunity began to make their way to the United States Supreme Court. In a 1999 case, Kiowa Tribe of Oklahoma v Mfg. Technologies, Inc., Justice Kennedy, writing for the majority stated the following:

There are reasons to doubt the wisdom of perpetuating the doctrine. At one time, the doctrine of tribal immunity from suit might have been thought necessary to protect nascent tribal governments from encroachments by States. In our interdependent and mobile society, however, tribal immunity extends beyond what is needed to safeguard tribal self-governance. This is evident when tribes take part in the Nation’s commerce. Tribal enterprises now include ski resorts, gambling, and sales of cigarettes to non-Indians. (citations omitted). In this economic context, immunity can harm those who are unaware that they are dealing with a tribe, who do not know of tribal immunity, or who have no choice in the matter, as in the case of tort victims.

These considerations might suggest a need to abrogate tribal immunity, at least
as an overarching rule. There had been several challenges over the years, both at the State and Federal level attempting to change or make an exception to the legal doctrine of Tribal Sovereign Immunity.

In 2016, The United States Supreme Court agreed to hear an appeal from the Supreme Court of Connecticut. This case involved a claim by Brian and Michelle Lewis. The Lewises were driving on I-95 in Norwalk, Connecticut, when a limousine driven by William Clarke, an employee of Mohegan Sun Casino, struck the Lewises’ car in the rear while transporting patrons to the Casino.

The Lewises sued Mr. Clarke, but not the tribe in Connecticut State Court for state claims. Mr. Clarke moved to dismiss the Lewis' lawsuit under the doctrine of Tribal Sovereign Immunity. The trial court denied Clarke's Motion to Dismiss. Clarke appealed to the State Supreme Court of Connecticut, which reversed the trial court, holding that Clarke was afforded Tribal Sovereign Immunity since he was an employee of the tribe and conducting tribal business and the Lewises could not circumscribe tribal immunity by merely naming Mr. Clarke as a Defendant.

On April 27, 2017, the United States Supreme Court issued its opinion in Lewis v Clarke. In a unanimous opinion written by Justice Sotomayor, the Court said: The lawsuit against Mr. Clarke to recover for his personal actions, “will not require action by the sovereign or disturb the sovereign property.” The Court went further to explain that to extend Tribal Sovereign Immunity to Clarke or other tribal employees would go beyond the common law sovereign immunity principals and can be no broader than other protection offered other persons who are entitled to immunity defenses.

On Sept. 29, 2017, the Alabama Supreme Court issued two opinions dealing with Tribal Sovereign Immunity and the Poarch Creek Indian tribe. One of the cases involved a casino employee who on New Year’s Eve 2014 drank alcohol all night and into the early morning hours. She came to work the next day at 8 a.m. Shortly after arriving at work, she left in a company vehicle to perform company business. Later that morning she was involved in a head on collision with two persons and one of them was seriously injured.

A lawsuit was filed on behalf of the two injured persons against the Poarch Creek Indians, the gaming authority and its employee. The trial court dismissed all claims against the tribe and gaming authority based on the legal doctrine of Tribal Sovereign Immunity.

In a unanimous opinion, with two justices recused, written by Chief Justice Stuart, the Court held that while they recognize the doctrine of Tribal Sovereign Immunity, there are no statutes or treaties defining the limits of Tribal Sovereign Immunity and that task has been left to the United States Supreme Court in situations where tribal and non-tribal members interact.

The Court took particular notice of prior U.S. Supreme Court cases in which sovereign immunity hurts those who have “no choice in the matter” and that Tribal Sovereign Immunity still applies to “contract” cases. The Court further recognized that the U.S. Supreme Court has never recognized that Tribal Sovereign Immunity applies to tort victims or to persons who had not chosen to deal with an Indian tribe.

The Court declined to extend Tribal Sovereign Immunity in this case, since the U.S. Supreme Court has not done so. The victims in this case did not choose to interact or engage with the Defendants. They were driving lawfully on a public road when they became innocent victims with no remedy and the Court was not going to shield the tribe from the tort claims based upon the legal doctrine of tribal sovereign immunity.

The two recent decisions addressing Tribal Sovereign Immunity are steps in the right direction to fix an archaic doctrine that no longer is needed. At the very least, Congress should amend the doctrine to conform with other immunity doctrines offered governmental employees. If you need more information on this subject, contact Mike Crow, a lawyer in our firm’s Personal Injury & Products Liability Section, at 800-898-2034 or by email at Mike.Crow@beasleyallen.com. Mike has handled a number of cases involving this area of litigation.

References:
1. The Supreme Court of the United States opinion, Brian Lewis v William Clarke, Opinion No. 15-1500, (released April 25, 2017)
2. Supreme Court of the United States opinion, Casey Wilkes and Alexander Russell v PCI Gaming Authority d/b/a Wind Creek Casino and Hotel, Wetumpka and Poarch Band of Creek Indians, Opinion No. 1151312 (released 9/29/17 and 10/3/2017)

V. THE CORPORATE WORLD

SENATE VOTES TO KILL CFPB ARBITRATION RULE

The U.S. Senate voted last month to overturn a Consumer Financial Protection Bureau (CFPB) rule that would have prohibited class action bans in arbitration clauses. The Senate voted 51-49 to nullify the CFPB's arbitration rule, with Vice President Mike Pence breaking a 50-50 tie. All but two Republicans voted in favor of the disapproval resolution, with Sens. Lindsey Graham of South Carolina and John Kennedy of Louisiana and all 48 Democrats voting against it.

The vote came after the U.S. House of Representatives voted in July to eliminate the CFPB's rule under the Congressional Review Act (CRA), a 1996 law that allows Congress to overturn recently finalized regulations with simple majority votes in both houses. President Donald Trump is expected to sign the resolution. He has put his full support behind this anti-consumer measure. CFPB Director Richard Cordray called the vote a "giant setback" for consumers that preserves a "two-tier" system of justice where consumers are shut out of court. Cordray said in a statement:

It robs consumers of their most effective legal tool against corporate wrongdoing. As a result, companies like Wells Fargo and Equifax remain free to break the law without fear of legal blowback from their customers.

The CFPB rule, released in July, would have barred companies from putting class action bans in their arbitration agreements, allowing consumers to sign on to class action litigation against banks, credit card companies, payday lenders and other companies that have used such bans in the past. The CRA also says regulators cannot issue rules that are substantially similar to ones that have been.
disapproved by Congress, making it impossible for the CFPB to come forward with a rule that takes the same tack in any future effort to rein in arbitration clauses. Sen. Sherrod Brown, D-Ohio, said in a statement:

*Forced arbitration takes power away from ordinary people and gives it to big banks and Wall Street companies that already have an unfair advantage.*

The rule had been opposed by the financial services industry. It would be interesting to see how much lobbyists for the affected industries have given in campaign donations to members of Congress. The power of the banks, credit card companies and payday lenders is beyond description. Ordinary citizens badly need friends in Washington who will protect their interests.

**Source:** Law360.com

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**Kobe Steel Metals Scandal Impacts Global Manufacturers**

Kobe Steel, one of Japan's largest metal manufacturers, has admitted that it falsified quality and durability data for at least 20,000 tons of steel it sold to manufacturers. In turn these manufacturers used the potentially inferior metals in cars, airplanes, rockets, high-speed trains, defense equipment and other products.

"The credibility of Kobe Steel has plunged to zero," Kobe's chief executive, Hiroya Kawasaki, said after the company admitted first to falsifying data about its iron ore powder. "The apparent fraud came to light after the Central Japan Railway Company tested parts of its high-speed bullet trains and discovered that more than 300 components made of Kobe Steel materials did not meet the required and agreed-upon standards."

The full scope of Kobe Steel's deception is not yet clear, but it is known that the company supplied falsely certified metals to Boeing, Toyota, Nissan, Honda, Mazda, Subaru, Mitsubishi Heavy Industries, Kawasaki Heavy Industries and about 200 other manufacturers. Many of the companies affected by the false safety certifications said they are analyzing components and running safety checks. "We recognize that this breach of compliance principles on the part of a supplier is a grave issue," said Toyota, which said potentially deficient Kobe metals were used to make the hoods and rear doors of vehicles manufactured in Japan, according to the Financial Times. Honda and Nissan have also said they used the affected metals to make auto hoods and doors.

Boeing commented on the matter, saying it was running comprehensive inspections and analyses of Kobe Steel materials since it was informed of the company's data falsification. "Nothing in our review to date leads us to conclude that this issue presents a safety concern, and we will continue to work diligently with our suppliers to complete our investigation," it said.

Yasuji Komiyama, director of metal industries at Japan's Ministry of Economy, Trade and Industry, said the Kobe Steel scandal was "threatening fair and proper trading" by other companies. The Japanese government became aware of the scandal last month. According to The Guardian, other possible data manipulations at Kobe Steel may stretch back a decade.

The Kobe Steel scandal is the latest major manufacturing scandal to tarnish the "made in Japan" image, coming amid the Takata airbag scandal that led to the biggest automotive recall in history, and in the wake of several other scandals, including Toyota's sudden unexpected acceleration crisis and Mitsubishi's fuel economy falsification scandal.

**Sources:** Financial Times and The Guardian

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**Investors Ask For $152 Million In Libor Settlements To Be Approved**

Exchange-based investors have asked a New York federal judge to approve $151.9 million in settlements reached with several banks in multidistrict litigation (MDL) that alleges a scheme to manipulate the London Interbank Offered Rate (Libor) benchmark. The investors sent a letter to U.S. District Judge Naomi Reice Buchwald, seeking permission to file a motion for preliminary approval of separate settlement agreements inked with Deutsche Bank AG, Citigroup Inc., Barclays PLC and HSBC PLC. They said in a memorandum supporting the expected motion that the settlements combined make them one of the largest of their kind. The memorandum said: "Here, the proposed settlements are, in aggregate, one of the largest in the history of Commodity Exchange Act manipulation cases."

The exchange-based investors, which include investment manager Metzler Investment GmbH, transacted in eurodollar futures and options on the Chicago Mercantile Exchange. Under the various agreements, Deutsche Bank will pay them $80 million, Citigroup will pay $33.4 million, Barclays will pay $20 million, and HSBC will pay $18.5 million, according to the memorandum. The settlements with Deutsche Bank, Citigroup and HSBC were all finalized in July and cover a proposed class period spanning from Jan. 1, 2003, through May 31, 2011. The settlement with Barclays was agreed to in October 2014 and received preliminary approval from the court the next month.

But Judge Buchwald declined to certify a class at the time. This recent motion said Barclays' agreement would be modified to harmonize the class period with that of the other banks.

In addition to the monetary considerations, the agreements all provide for continued access to documents and transactional data related to "Eurodollar unsecured borrowings or loans in the London interbank market," which the motion said would assist the investors in their continued litigation against the Defendants in the cases that are not settling.

The litigation arises from a multiyear investigation into banks' alleged rigging of Libor, which tracks how much banks charge one another to borrow funds. Investigations by government regulators around the world sparked a series of lawsuits that eventually were combined into multidistrict litigation in New York's Southern District.

In December 2016, Judge Buchwald preliminarily approved a $120 million "ice-breaker" settlement between Barclays and a group of investors that directly purchased financial instruments tied to the Libor rate from August 2007 and May 2010. These "over-the-counter Plaintiffs" include Yale University and Baltimore city officials. In August the same group agreed to a $130 million settlement with Citigroup.

The case is Metzler Investment GmbH et al. v. Credit Suisse Group AG et al., (case number 1:11-cv-02613) and the MDL is In re: Libor-Based Financial Instruments Antitrust Litigation, (case number 1:11-md-02262) both in the U.S. District Court for the Southern District of New York.

**Source:** Law360.com
A Georgia federal judge has ordered Hi-Tech Pharmaceuticals Inc. and three individuals last month to pay $40.1 million in compensatory sanctions for violating an injunction in a Federal Trade Commission (FTC) suit. U.S. District Judge Charles A. Pannell Jr. said the supplement maker, its CEO Jared Wheat, Senior Vice President Stephen Smith and Dr. Terrill Mark Wright, who endorsed certain products, violated permanent injunctions barring them from making unsubstantiated claims about weight-loss products when they printed unfounded advertisements about four products. Judge Pannell said:

The FTC has established that the defendants violated the injunctions. The record is clear that the misrepresentations were material, were widely disseminated, and that consumers purchased these four products.

The sanctions arise from a suit brought by the FTC more than 13 years ago, alleging the company and its executives made unfounded claims about two weight-loss products, Thermalean and Lipodrene. The court awarded the FTC summary judgment in 2008, and entered a permanent injunction against Hi-Tech, Wheat and Smith and a separate injunction against Wright. Three years later, the FTC contended Hi-Tech, Wheat and Smith had violated their injunction with an unfounded advertising campaign about four weight-loss products, Fastin, Stimerex-ES, Benzedrine and a reformulated version of Lipodrene. The FTC also argued that Wright had violated his injunction by backing Fastin with unsubstantiated statements.

Judge Pannell determined that the FTC proved “by clear and convincing evidence that the injunctions were valid and lawful, they were clear and unambiguous, and the Defendants had the ability to comply.” The judge found that the defendants clearly violated the injunctions.

Judge Pannell ordered Hi-Tech, Wheat and Smith to pay about $40 million in compensatory sanctions, and ordered Wright to pay $120,000 in compensatory sanctions. The FTC is to reimburse customers who bought the products with these funds, the court said. Judge Pannell stated:

The court recognizes that the compensatory sanctions are significant, but so, too, was the defendants’ contumacious conduct. While the defendants essentially claim that several of the violations were honest mistakes, the record is replete with evidence—both direct and circumstantial—showing an intentional defiance of the court’s injunctions.

The FTC’s counsel Amanda C. Basta said the court’s decision sends a “strong message” that companies marketing these products need proper scientific backing. She stated:

We are optimistic that this decision will enable us to eliminate the deceptive advertising that was in this case, and hopefully redress the consumers who were injured by the deceptive claims.

Hi-Tech, Wheat and Smith must also recall all products whose packaging includes unsubstantiated claims, Judge Pannell said. The FTC is represented in this matter by Amanda C. Basta, Evan M. Mendelson and Cindy A. Liebes. The case is FTC v. National Urological Group Inc., et al., (case number 1:04-cv-03294) in the U.S. District Court for the Northern District of Georgia.

Source: Law360.com

$60 Million Merck Pay-For-Delay Settlement Approved

A New Jersey federal judge has approved the $60 million settlement agreed to by Merck and Upsher-Smith with a class of direct purchasers who accused the drug companies of engaging in a pay-for-delay scheme related to potassium supplements. U.S. District Judge Stanley R. Chesler issued his final approval of the settlement that he had preliminarily approved in May, ending the long-running multidistrict litigation (MDL).

Judge Chesler then granted the class counsel one third in attorneys’ fees totaling more than $20 million, plus $3 million in costs and expenses, and interest. The lawyers working on the case—who are from Garwin Gerstein & Fisher LLP; Odom & DesRoches LLP; Cohn Lifland Pearlman Herrmann & Knopf LLP; Berger & Montague PC; Smith Segura & Raphael LLP; and Heim Payne & Chorush—put in more than 46,000 hours without being compensated, the order states. It was significant that no class members objected to the requested fees. Judge Chesler also granted $100,000 from the settlement fund to Louisiana Wholesale Drug Co., the class representative.

The suit deals with the supplement K-Dur, which treats potassium deficiencies including those that stem from taking diuretics to treat high blood pressure. It was made by Schering-Plough Corp., which merged with Merck & Co. Inc. during the litigation. Schering sued Upsher-Smith Laboratories Inc. in 1995 for patent infringement when the latter tried to bring a generic on the market. They settled that more than two years later, with Schering paying Upsher $60 million and Upsher putting its product on hold.

It was contended by the purchasers—including Walgreen Co., Rite Aid Corp. and CVS Pharmacy Inc.—that the payment was not for products that were under development, as the parties claimed, but rather an illegal payment to delay the release of generic versions of K-Dur. As a result, the brand name drug was priced artificially high in violation of the Sherman Act. The $60 million settlement between the direct purchasers and the drug companies was reached in February during the fourth round of mediation, the class said.

It’s most significant that this lawsuit led the U.S. Supreme Court to consider reverse payment settlements in the 2013 Federal Trade Commission v. Actavis Inc. case. The motion to approve the settlement stated:

This was one of the earliest antitrust cases challenging reverse payment settlement agreements between brand and generic pharmaceutical manufacturers as violative of the antitrust laws and class counsel litigated the cutting-edge legal issues presented in this case all the way up to the Supreme Court of the United States.

The case is Hip Health Plan Of F et al. v. Schering-Plough et al., (case number 2:01-cv-01652) and the MDL is In Re K-Dur Antitrust Litigation, (case number 1419) both in the U.S. District Court for the District of New Jersey.

Source: Law360.com
VI. WHISTLEBLOWER LITIGATION

FIFTH CIRCUIT FALSE CLAIMS ACT DECISION ON MATERIALITY

In late September, the United States Court of Appeals for the Fifth Circuit concluded that the Government was not defrauded under the False Claims Act due to its knowledge of alterations to guardrails purchased by state governments with federal funds. Joshua Harman, a customer of Trinity Industries (Trinity), filed a False Claims Act (FCA) suit in the Eastern District of Texas against Trinity, alleging that Trinity failed to disclose fabricated changes to its ET-Plus guardrail system through a Federal Highway Administration (FHWA) policy requiring disclosure of any changes to government funded highway systems. Specifically, Harman claimed that Trinity failed to disclose:

- the change from a 5-inch rail feeder chute to a 4-inch rail chute;
- changes to the exit gap;
- changes to the feeder chute assembly;
- changes to the feeder chute assembly length; and
- other changes to the ET-Plus system.

These allegations arise from a report sent from Trinity to FHWA in 2005 that included the changes made to the 31-inch guardrail height, but did not include the changes of the guide channel width or other related changes.

The federal government funds the enhancement of state highways through the reimbursement of the installations of guardrail end terminal systems. However, these systems are required to meet standards and obtain acceptance from the FHWA before they become eligible for federal reimbursement. Testing of the products may be required, unless the system changes “are nearly certain to be safe” or “so similar to currently accepted features that there is little doubt that they would perform acceptably.”

In response to the accusations in Harman’s FCA suit, the FHWA released a memorandum on June 17, 2014 maintaining that the FHWA “validated that the ET-Plus with the 4-inch guide channels was crash tested in May 2005” and that “[t]he Trinity ET-Plus with the 4-inch guide channels became eligible for Federal reimbursement … on September 2, 2005.” Additionally, the Department of Justice responded to Harman’s Touhy request to produce potential witnesses by deferring to the FHWA June 2014 memorandum as the government’s position.

Following a six-day jury trial, a verdict was reached in favor of Harman. Subsequently, the FHWA started an independent testing of the products that were installed around the country. A collection of state, federal, and other transportation experts examined the ET-Plus installations and concluded that:

- there was not any evidence to suggest there were multiple versions of the ET-Plus of the highways and
- the units that were tested were “representative of the devices installed across the country.”

Following these results, the district court denied Trinity’s motion for judgment as a matter of law and entered judgment in favor of Harman and the United States for $663,360,750, as well as $19,012,865 in attorney’s fees. The Fifth Circuit, sitting in review of the district court’s denial of Trinity’s rule 50(b) motion, looked to the question of whether Trinity was entitled to judgment as a matter of law on the issue of materiality.

The False Claims Act prohibits anyone from defrauding the government through false statements or fraudulent activity. In reversing the lower court’s decision, the Fifth Circuit held:

- the policy only required disclosure of significant changes, subject to an engineer’s judgment;
- there was not any proof presented that showed Trinity acted with knowledge of the falsity of its statement; and
- the activity did not materially cause the government to pay out money that it would not have otherwise done.

The Fifth Circuit noted that the 2005 changes did not affect FHWA’s choice to keep purchasing the guardrails at issue in the present or future. In fact, the Fifth Circuit further stated that the relevant question was not what Trinity disclosed to FHWA, but rather FHWA’s findings in a June 2014 memorandum that effectively dismissed Harman’s concerns.

In this case, FHWA knew of Harman’s allegations, yet still approved the continued reimbursement of the ET-Plus guardrail units despite the claims. The appeals court found that the evidence at trial fell short of demonstrating that material false statements were made. This action demonstrates the importance of ensuring every element of the FCA is met, especially materiality in light of the Supreme Court’s Escobar decision that held materiality is an element that is “rigorous” and “demanding.”


CHEMED TO PAY $75 MILLION OVER FALSE CLAIMS LAWSUIT

Chemed Corp and its subsidiaries, including Vitas Hospice Services LLC and Vitas Healthcare Corp, have agreed to pay $75 million to settle a federal lawsuit alleging false claims for hospice services to Medicare, the U.S. Justice Department announced the settlement on Oct. 30. The claims relate to billing for ineligible patients and inflated levels of care, the department said in a statement. Vitas Hospice Services is the largest U.S. for-profit hospice chain. We did not have all of the details of this settlement at press time.

FRAUD IN THE FOR-PROFIT EDUCATION INDUSTRY CONTINUES TO BE RAMPANT

Charlotte School of Law, a for-profit school, closed in August amid charges that it defrauded taxpayers out of $285 million over a five-year period. Whistleblower Barbara Bernier, a law professor, says the school cheated to circumvent American Bar Association accreditation and federal funding requirements. Her whistleblower lawsuit, filed under the federal False Claims Act, remains ongoing. One egregious example related by Bernier involves the school paying at-risk students to not take the bar exam so that the school would not lose accreditation due to a low bar passage rate.

In addition to Professor Bernier’s allegations, the school faces several state and federal lawsuits from disgruntled students stuck with thousands of dollars in student debt following the school’s closure. The North Carolina attorney general has opened a civil fraud investigation.
Fraud in the for-profit education sector has been a widespread problem for years. In 2015, Beasley Allen clients were instrumental in shutting down Corinthian Colleges, a for-profit school with campuses throughout the United States. Whistleblowers from the school’s Atlanta campus, who were primarily admissions and financial aid officers, disclosed the school’s scheme to inflate attendance, grades, and job placement rates in order to maintain accreditation and keep the spigot of federal dollars flowing. Due to the whistleblowers’ efforts, Corinthian Colleges filed bankruptcy and closed all of its campuses nationwide.

While schools may pay fines, file bankruptcy, and even close, the bad actors—executives, administrators, and complicit faculty—are rarely punished. The true victims are the students, who in many cases have wasted several years and thousands of dollars on worthless, unaccredited degree programs. Student debt forgiveness by third-party lenders is often unavailable.

Lawyers at Beasley Allen continue to investigate whistleblower claims related to the misuse of federal funds in the for-profit education industry. Recruiters, admissions counselors, and career services personnel are often in the best position to uncover such fraud. Successful whistleblowers are rewarded with a percentage of the recovery obtained on behalf of the government. For further information, contact Archie Grubb or Andrew Brashier, lawyers in our firm who are on the Whistleblower Litigation Team, at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com or Andrew.Brashier@beasleyallen.com.

Potential whistleblowers should consult with an experienced False Claims Act (FCA) lawyer to ensure they have a case that can be pursued under the FCA. These cases are very complicated and require a great deal of work in investigation and case preparation.

Are you aware of fraud being committed against the federal government, or a state government? If so, the FCA can protect and reward you for doing the right thing by reporting the fraud. However, it is crucial that you have an experienced attorney examine every facet of your case to determine if you qualify under the FCA to bring suit. If you have any questions about whether you qualify as a whistleblower, contact a lawyer at Beasley Allen for a free and confidential evaluation of your claim. There is a contact form on the firm’s website at beasleyallen.com, or you may contact one of the lawyers on our Whistleblower Litigation Team—Andrew Brashier, Archie Grubb, Larry Golston, and Lance Gould—at 800-898-2034 or by email at Andrew.Brashier@beasleyallen.com, Archie.Grubb@beasleyallen.com, Larry.Golston@beasleyallen.com or Lance.Gould@beasleyallen.com.

**University To Pay $2.3 Million For Safety Violations Exposing Employees To Asbestos**

California’s Sonoma State University will have to pay employees potentially exposed to asbestos and other toxins due to occupational health and safety violations, a judge ordered at the end of last month. Employees will split a portion of the $2.3 million penalty the school faces for its environmental violations, according to The Press Democrat. The penalty is in addition to the $387,000 awarded in March to a former employee turned whistleblower, Thomas Sargent, for raising concerns about asbestos in crumbling floor and ceiling tiles in Stevenson Hall, one of the campus’ original buildings.

Exposure to asbestos is linked to the development of mesothelioma, a deadly cancer that affects the lining of the organs, most commonly the lungs and abdomen. There is no known cure for mesothelioma.

The 231 employees of Stevenson Hall will share about $725,000 of the penalty, amounting to $3,100 per employee, according to the news source. The university must also rehire Sargent as an environmental health and safety specialist and pay him two years back wages. Dustin Collier, a lawyer for Sargent, stated:

*We are happy that between the judge and the jury, these violations have been exposed. The university can no longer deny their existence. We are hopeful this will be a catalyst for change.*

Sargent raised the alarm over how the school ordered employees to blow lead off a roof with a leaf blower and contacted environmental authorities when asbestos dust was found in Stevenson Hall. For those actions, he claimed in his lawsuit he faced retaliation at work and eventually felt he had to quit in July 2015 after 24 years with the school. The University says it will appeal the decision.

*Source: The Press Democrat*

**Recommendations For Potential Whistleblowers**

Potential whistleblowers should consult an experienced False Claims Act (FCA) lawyer to ensure they have a case that can be pursued under the FCA. These cases are very complicated and require a great deal of work in investigation and case preparation.

Are you aware of fraud being committed against the federal government, or a state government? If so, the FCA can protect and reward you for doing the right thing by reporting the fraud. However, it is crucial that you have an experienced attorney examine every facet of your case to determine if you qualify under the FCA to bring suit. If you have any questions about whether you qualify as a whistleblower, contact a lawyer at Beasley Allen for a free and confidential evaluation of your claim. There is a contact form on the firm’s website at beasleyallen.com, or you may contact one of the lawyers on our Whistleblower Litigation Team—Andrew Brashier, Archie Grubb, Larry Golston, and Lance Gould— at 800-898-2034 or by email at Andrew.Brashier@beasleyallen.com, Archie.Grubb@beasleyallen.com, Larry.Golston@beasleyallen.com or Lance.Gould@beasleyallen.com.
are successful and that is because they are emboldened by a variety of factors. I will discuss some of these factors:

- The federal regulatory agencies that have the responsibility to regulate the various industries are underfunded and understaffed. As a result the agencies are not able to properly do their jobs.
- There is a serious problem in Washington called the revolving door. We see this time and time again in our cases, but essentially, corporate wrongdoers will send their people to work in agencies that regulate them, and they will also hire people from those agencies in order to silence them or to cozy up to people that are still with the agency. These efforts can cause investigations that hold wrongdoers accountable to disappear.
- At the same time, these corporate wrongdoers will spend millions of dollars—not to fix their products, warn the public, or pay the families that they hurt—but to lobby lawmakers to quiet pass laws designed to insulate them from liability or to weaken the agencies that regulate them.
- These corporations pour their money into political races to stack the deck against people that could hold them accountable.

All of this is so the huge corporations can go about making as much money as possible to the detriment of their unsuspecting customers. To show folks that this sort of thing actually occurs, I will give you examples of a few of the cases handled by our firm.

During the 1950s, 1960s and 1970s, engineers, scientists, safety experts, and experts in the tractor industry requested tractor manufacturers to equip their tractors with roll bars and seat belts referred to as “ROPs” protection. For decades, tremendous numbers of operators were being killed by tractors that would become unstable and roll over, crashing the operators. The industry recognized in the 1960s that operators of all experience levels were going to make mistakes because there were so many variables in play when operating a tractor.

Instead of blaming the operators, the experts suggested an alternative in the 1950s—a roll bar and a seat belt. The design worked like magic. It was cheap, simple and highly effective. In Sweden, deaths from rollovers and tractor upsets dropped substantially due to incorporating these safety devices. Testing showed that these safety devices all but eliminated a hazard that had plagued agriculture for decades.

Yet, the tractor manufacturers and distributors refused to adopt ROPs protection as standard equipment. Instead, they blamed tractor operators and delegated the responsibility for tractor safety from their design engineers to the operators. Deaths continued to mount.

There was a good bit of litigation resulting from tractor roll-overs. However, the litigation didn’t get much attention. It took a lawsuit handled by our firm against Kubota to make the entire industry do the right thing. This lawsuit got international attention and finally the tractor industry responded, bringing about needed safety changes.

Most of the companies had internal committees calculating whether they should save lives and put ROPs protection on their tractors, or whether they should save money instead. We settled another of these recently and have another case pending in Arkansas now. For good reason, the facts shock juries.

The talc litigation is another perfect example of how some in Corporate America operate. For decades, Johnson and Johnson, along with its experts, knew its talcum baby powder was causing ovarian cancer in women that used its products in the genital area. Internally, memos circulated throughout the company for years warning about how dangerous the product was and acknowledging its link to ovarian cancer. Instead of pulling back, or using corn starch (which is known to be safe), the company doubled down on profits, and targeted African American and Hispanic users.

The cost of Johnson and Johnson’s recklessness is tremendous and is hard to bear. Tens of thousands of women have developed ovarian cancer as a result, and many have died at the hands of this company and more will certainly die. The internal discussions and documents that we have obtained from Johnson & Johnson show a clear indifference to human life, which is impossible to comprehend. Juries have been appalled by Johnson and Johnson’s conduct. The huge and powerful drug company has spent millions of dollars on political races and utilized lobbying efforts to avoid facing litigation. Johnson & Johnson is still fighting hard in the effort to shut down the litigation that has come. They will not be successful.

We could go on and on. The automobile industry is a prime example of how poor regulation can result in automakers putting defective vehicles on the market. Let’s start with General Motors and its 2500 program, where the automaker took $2,500 dollars worth of the structural support out of their vehicles so GM could make more profit per vehicle, making the vehicles less safe. This has caused catastrophic damages to its customers. The following are several other examples of cases handled by our firm:

- General Motors also knew about faulty ignition switches for more than 10 years, but elected not to take action that would have saved lives due to the costs associated with recalls;
- Toyota ignored about 10 years of sudden acceleration deaths, and blamed the user’s car mats when it knew the vehicles’ software Chrysler’s gaming of roof crush testing ignored the real-life consequences of a rollover accident;
- Takata’s air bag problems; and
- BP’s race to save money and harvest oil aboard the Deepwater Horizon cost 11 men their lives, tens of billions in economic damages to the states along the Gulf of Mexico, and caused the worst environmental disaster in United States history.

We are now experiencing the opioid epidemic—the worst drug disaster in United States history—which is actually turning into another example of extreme corporate greed and wrongdoing. A recent 60 Minutes program put on full display, in painstaking detail, how far the drug companies and their suppliers were willing to go to make money at the expense of the American people. Thousands of families are now suffering as a result of the drug companies concerted
effort to pressure doctors to overprescribe addictive drugs. When the companies were investigated a few years ago, they used the agency revolving door and their connections with politicians to kill the investigations—ensuring that their racket could continue to victimize our country. Sadly, we only know the tip of the iceberg and almost daily more bad news is reported.

I could write a book on how Corporate America has operated, putting profits over safety and putting products known to be defective on the market. All of these accounts that I mentioned above are real-life experiences that our lawyers and our clients have seen first hand. Sadly, there are so many examples of corporate greed leading to devastating results that there is not enough space to talk about them. Our political system is only making the situation worse.

If you or a loved one has been hurt by a dangerous product, lawyers in our firm want to help you. If you are concerned and want to make a difference, contact your public officials, and especially members of Congress, and let them know how important it is to you that they keep you and your families safe from dangerous products. Your involvement can help make a difference!

**Young Child Killed By Recalled IKEA Dresser**

A 2-year-old boy died in May when he was trapped under an IKEA Malm dresser. This is believed to be the first death since the recall last year of about 29 million chests and dressers prone to tipping over. IKEA said it learned of the May accident in Buena Park, California, through the U.S. Consumer Product Safety Commission (CPSC). An initial investigation indicates the dresser was not properly attached to the wall. The father of 2-year-old Jozef Dudek put him down for a nap on May 24 and later found the boy trapped underneath the Malm dresser.

In June 2016, the Swedish company recalled about 8 million Malm chests and dressers and another 21 million child and adult chests and dressers in the U.S. following the deaths of six children and nearly 30 injuries. Consumers who had bought the affected furniture could return the products for a full or partial refund; they could also order a free wall-anchoring kit and secure the dressers themselves or have an IKEA employee handle the installation.

The recall was publicized through a national advertising campaign and news coverage. IKEA says it sent millions of emails to consumers in its database and promoted the recall on social media. However, the Dudeks were unaware of the recall and said it was poorly publicized, according to Daniel Mann of Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig LLP, who is representing the family. The family has retained the law firm, but at press time no lawsuit had been filed. “Sadly, Jozef’s death was completely avoidable, had IKEA adhered to safe design standards,” Mann said.

The Feldman Shepherd law firm represented the families of three other young boys who were killed by the recalled dressers. In late 2016, IKEA agreed to pay $50 million to settle claims filed before and after the recall. The settlement funds were evenly divided between the three families. IKEA also agreed to donate $50,000 to a children’s hospital in the home state of each boy and $100,000 to Shane’s Foundation NFP, an organization devoted to children’s safety with a focus on furniture tip-over prevention.

IKEA had originally launched a repair program offering a free wall-anchoring repair kit for numerous chests and dressers, including the Malm units, the year before the recall. That program was brought about by the death of two young children in 2014. But in February 2016, a 22-month-old boy was killed in Minnesota when a six-drawer Malm unit fell on top of him, according to the CPSC. The agency said that none of the chests or dressers involved in those incidents had been anchored to the wall. IKEA has also received reports of 41 tip-over incidents involving its Malm dressers, resulting in 17 injuries to children between the ages of 19 months and 10 years, according to the CPSC.

A number of children’s health and consumer groups responded to the news released of the tragic incident, saying in a joint statement that Jozef’s death highlights the risks of tip-over accidents and that the retailer’s “lackluster” efforts didn’t fully communicate the hazards and the recall to the public. The groups said:

*Companies must be held accountable for their products’ safety, and the CPSC must be strong enough to force companies to take action in ways that successfully get recalled products out of homes.*

The American Academy of Pediatrics, Consumers Union, Public Citizen and other groups called on the CPSC to increase efforts to reach every home with an affected dresser and provide incentives for consumers to get rid of the dressers in their homes. The groups said:

*Unfortunately, the communication efforts focused on anchoring a deadly dresser to the wall are not enough on their own. Anchoring devices are meant as a second layer of protection for stable dressers—not as a replacement for making stable dressers in the first place.*

It is absolutely essential for defective products to be recalled. Equally important is the responsibility to make sure that owners and the public generally is made aware of all recalls.

Source: Law360.com

**Scientists Develop A Safer Lithium-ion Battery**

Lithium-ion rechargeable batteries, which are found in smartphones, e-cigarettes, hoverboards and many other products, have recently earned a reputation as being volatile following dozens of high-profile explosions throughout the country. One of the problems is that the electrolyte within lithium-ion batteries is highly flammable. So, whenever a lithium-ion battery overheats or short-circuits, there is a real risk the electrolyte can ignite and cause an explosion or fire.

Recently, a team of researchers from the University of Maryland and the U.S. Army Research Laboratory found a potential way around this, by developing a battery that contains a water-based salt electrolyte instead of a flammable electrolyte. This new battery reportedly hits the 4.0-volt mark needed for laptop computers and other household electronics without the risk of explosion and fire that traditional lithium-ion batteries present.

More importantly, it is significantly safer and can withstand repeated wear and tear that can be expected when used in combination with consumer electronics.

In the past, if a manufacturer wanted to produce high energy batteries, it would choose a non-aqueous lithium-ion battery, but would compromise safety in doing so. If a manufacturer preferred safety, it could use an aqueous battery, but it would have to settle for lower
energy. The new technology seems to combine the best of both worlds. However, to be commercially viable, the new batteries would need to handle thousands of cycles of discharging and recharging. Currently, the new battery can only handle between 50 and 100 cycles of discharge and recharge. If the new battery design makes it through this next stage of development, it would be ideal for use in all sorts of electronic devices, particularly e-cigarettes and cell-phones where lithium-ion battery failure is more common.

For more information, contact Will Sutton, a lawyer in our firm, at 800-898-2034 or William.Sutton@beasleyallen.com. Will is handling litigation in this area of concern.

Source: Science Daily

**RAILROAD COMPANY SUES OVER DEFECTIVE TIES MADE IN ALABAMA**

One of the nation’s largest railroads says it must replace millions of defective wooden railroad ties under its tracks because they are degrading faster than expected. In a lawsuit filed in federal court, Norfolk Southern Railway says that an Alabama company failed to use proper protective coating on more than 4.7 million railroad ties. Norfolk Southern says that instead of using materials that preserve the wood, officials with Boatright Railroad Products Inc. ordered workers to “make them black” so they only appeared to be properly treated. The Virginia-based railroad operates freight trains in more than 20 states in the southern and eastern United States. Multiple Amtrak routes also use Norfolk Southern’s tracks for passenger trains. We will have more on this litigation as things develop. The cost of replacing the cross ties will be enormous.

**VIII. MASS TORTS UPDATE**

**AN UPDATE ON THE JOHNSON & JOHNSON TALC LITIGATION**

A great deal has happened in the Baby Powder Ovarian Cancer litigation since Johnson and Johnson was hit with a $417 million verdict in August. Our trial team returned from that California court and immediately resumed preparations to restart the Blaes trial that was set for October 16. Unfortunately, the defendants were successful in getting the Missouri Supreme Court to issue a Writ of Prohibition to keep the trial from going forward. This occurred on the Friday night before the trial was set to start on Monday. Our trial team was already in St Louis and was ready to proceed. Suffice it to say, the Writ will keep us from going forward with that trial until a venue issue is briefed and resolved at the appellate level. This may take a few months.

In other news, just days after this Writ was issued the Missouri Court of Appeals “reversed and vacated” the Fox verdict. You will recall this was the first verdict we got in Missouri—it involved the claims of Alabama native Jacqueline Fox who used Baby Powder for decades and ultimately died of ovarian cancer. A St Louis jury agreed with her allegations and the supporting evidence and returned a verdict against Johnson and Johnson in the amount of $72 million dollars. That verdict was returned in February of 2016 and it has since been on appeal. The ruling by the Missouri Court of Appeals is based on the recent US Supreme Court BMS opinion establishing new rules for determining whether out of state claimants can maintain a lawsuit in a different state. The Missouri Court of Appeals says the Fox case should not have been filed in Missouri and therefore “reversed and vacated” the judgment.

We believe this court was incorrect and we are in the process of appealing to the Missouri Supreme Court. Not only was jurisdiction proper under the existing rules at the time of filing the suit and at the time of the verdict. We now know that the defendants in the case had been engaged in activities within the state of Missouri that comply with the new rules established under BMS—namely, the defendants have been contracted with a Missouri corporation to receive the talc from the supplier, Imerys, and thereafter bottle, package and label the body powder.

Just days later the California trial judge overseeing the Ecchvarria case issued post trial rulings reversing the $417 million verdict on grounds that it was excessive, a product of improper rulings on her part, and jury misconduct. Suffice it to say, this is highly unusual and we are told that the local lawyer handling the case will appeal this decision.

As you can see, we have reached the point in this litigation where jury verdicts are being scrutinized by trial courts and appellate courts. This is all part of the process, but this litigation is far from over. Expect more appellate rulings and more jury verdicts from California, Missouri and other states. While we are not likely to win all the preliminary battles, the science, facts and law are on the side of the brave women we represent and we fully expect the truth will prevail and we will ultimately win the war. Stay tuned.

**APPEALS COURT UPHELD $27 MILLION BOSTON SCIENTIFIC PELVIC MESH DECISION**

The Eleventh Circuit Court of Appeals has ruled that a Florida federal judge was right to consolidate the cases of four women who say they were injured by Boston Scientific Corp.’s defecetive pelvic mesh implants. The court upheld the jury’s $27 million verdict. A three-judge panel said that while each woman may have had different circumstances, their suits came down to the same legal questions: whether the Pinnacle Pelvic Floor Repair Kit was defective and whether the product had sufficient warnings.

The jury awarded a total of $27 million in November 2014, but did not award Plaintiffs punitive damages. Plaintiff Mania Nunez received $6.55 million, Juanita Betancourt and Amal Eghnayem each received $6.72 million and Margarita Dotres received $6.76 million.

The panel said the court didn’t abuse its discretion in consolidating the claims and made it clear to the jury that each case should be considered separately. The only individual claims that had to be decided were whether the device’s design caused the injury and whether the doctor was sufficiently warned. The difference in awards to the four women proves the women were able to keep the cases separate, the opinion states.

Among a few other rulings tailored to the individual cases, the panel cleared the judge to exclude evidence regarding Boston Scientific’s 510(k) clearance. Under Section 510(k) of the Federal Food Drug and Cosmetic Act, manufacturers must give the U.S. Food and Drug Administration (FDA) 90 days’ notice before bringing a new device to market to see if it’s “substantially equivalent” to a device already on the market. Since 510(k) isn’t a safety regulation, it “does not go to a product’s safety and efficacy—the very
subjects of the Plaintiffs’ products liability claims,” the panel said.

Boston Scientific said in a statement that it had “reached a confidential settlement with three of the Plaintiffs in this case earlier this year and recently settled with the fourth Plaintiff.

The appeal is Eghnayem et al. v. BSX, (case number 16-11818) in the U.S. Court of Appeals for the Eleventh Circuit. The MDL is In re: Boston Scientific Corp. Pelvic Repair System Products Liability Litigation, (case number 2:12-md-02326) in the U.S. District Court for the Southern District of West Virginia.

Source: Law360.com

Another Plaintiff’s Verdict in the Second Low T Bellwether Trial

An Illinois federal court jury on Oct. 5 awarded Plaintiff Jeffrey Konrad more than $140 million. Mr. Konrad was prescribed AndroGel in May 2010 after complaining to his primary care physician of fatigue and low energy after seeing advertisements on television. Two months later, he suffered a heart attack while using the drug. Mr. Konrad subsequently sued AbbVie, the maker of AndroGel, claiming that AbbVie failed to warn the drug was linked to an increased risk of adverse cardiovascular effects. The company also falsely marketed the drug as a treatment for age-related low testosterone, when the drug had never been approved for this purpose.

AndroGel and testosterone replacement products are generally prescribed for men with low levels of testosterone due to injury or disease, a condition called hypogonadism. However, AbbVie promoted its testosterone gel directly to men like Mr. Konrad through direct-to-consumer advertising by fabricating a condition called “Low T” to treat symptoms such as low libido, weight gain and muscle loss. Studies have linked testosterone replacement therapy to an increased risk of heart attacks, strokes, blood clots and death, especially in older men.

In early 2015, the U.S. Food and Drug Administration (FDA) warned that prescription testosterone products are only approved for men who have low testosterone levels due to certain medical conditions. The FDA made clear that the benefit and safety of these drugs, including AndroGel, Testim, Axiron, Fortesta, and Androderm, have not been established for the treatment of low testosterone levels due to aging, or “Low T.”

The FDA required all testosterone replacement manufacturers to change their labeling to clarify the approved uses of these medications.

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

The jury verdict in the Konrad case included $140,000 in compensatory damages and $140 million in punitive damages. Lawyers from Seeger Weiss, Levin Papantonio, and Robbins Cloud were leads in the Konrad case. Matt Teague and Jessica Taylor, lawyers from our firm, assisted in this trial. The case is Konrad v. AbbVie Inc. (case number 1:15-cv-00966). The MDL is In re: Testosterone Replacement Therapy Products Liability Litigation, (case number 1:14-cv-01748) both cases are in the U.S. District Court for the Northern District of Illinois.

The win in this case is the second Plaintiff victory in the multidistrict litigation (MDL) involving a number of testosterone treatment manufacturers. The first verdict also involved AbbVie, and ended in a $150 million verdict for the Plaintiff punitive damages. Jurors there also held the company liable for aggressive marketing for unapproved uses.

The MDL dates back to 2014 and names drug companies such as AbbVie, Besins, Eli Lily and GlaxoSmithKline, and includes products AndroGel, Testim and Axiron, among others. The lawsuits were consolidated in the U.S. District Court for Northern Illinois in Chicago under U.S. District Judge Matthew F. Kennelly. About 6,000 cases are now pending in the MDL, 4,200 of which name AbbVie’s top selling AndroGel.

Beasley Allen lawyer Matt Teague is handling testosterone replacement therapy litigation for the firm, and he serves on the Plaintiffs Steering Committee for the MDL. For more information, call 800-898-2034 or email Matt.Teague@beasleyallen.com.

Source: Law360

An Update on the Zofran Litigation

Due to a number of inquiries, I will give an update this month on the Zofran litigation. Discovery is well underway in the Zofran multidistrict litigation (MDL). The Plaintiffs’ Steering Committee (PSC) is working to review more than 2.3 million pages of documents that GlaxoSmithKline (GSK) has produced so far, including documents relating to an investigation by the Department of Justice into GSK’s off-label promotion of Zofran for use in pregnant women.

In August, U.S. District Judge F. Dennis Saylor granted GSK’s Motion to Dismiss lawsuits filed by women in Georgia, Indiana, Kentucky, Massachusetts, and Oklahoma who alleged that they used a generic form of Zofran. Judge Saylor reasoned that GSK should not be held responsible for injuries caused by a generic version of its product because the law generally recognizes that a manufacturer cannot be held liable for injuries caused by another company’s product.

However, due to the federal regulatory structure of brand and generic drugs, the United States Supreme Court ruled in PLIVA, Inc. v. Mensing, 564 U.S. 604 (2011), that generic drug manufacturers are insulated from liability for injuries caused by their products, so long as the generic drug’s label matches the branded drug’s. Combined, these two legal principles leave injured patients without a legal remedy. Judge Saylor’s ruling affects the viability of thousands of unfiled cases around the country. The PSC is working to clear a path for the generic cases to move forward.

There are currently 422 cases filed in the Zofran MDL, which is pending in the U.S. District Court for the District of Massachusetts, under Judge Dennis Saylor. MDL Plaintiffs allege that GSK promoted Zofran for the treatment of nausea and vomiting during pregnancy, when it had never been tested or approved for this use. Plaintiffs claim that their children were born with congenital heart defects or cleft palate after being exposed to Zofran in utero.

Lawyers in the Mass Torts Section at Beasley Allen continue to investigate cases involving children born with a heart defect or cleft palate after first trimester exposure to Zofran. If you would like more information about this litigation, or if your child suffered from a congenital heart defect or cleft palate after prenatal Zofran exposure, contact Roger Smith or Liz Eiland, lawyers in the Section, at 800-898-2034, or by email at Roger.Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

Source: Law360

BeasleyAllen.com
The first bellwether trial in the Cook Medical IVC filter multidistrict litigation (MDL) is now underway, having started with jury selection Oct. 23. Elizabeth Hill is the Plaintiff. Prior to back surgery, Ms. Hill was implanted with a Cook Celect inferior vena cava (IVC) filter as a precautionary measure. However, the filter migrated, perforating her vena cava and small intestine. After at least one failed retrieval attempt, the filter was finally removed two years after it was implanted.

The MDL was established in 2014 and now includes 2,650 claims. Ms. Hill and the other MDL Plaintiffs argue that Cook Medical failed to warn them about the risks of retrievable IVC filters. IVC filters are cage-like devices implanted in the inferior vena cava—the body's largest vein—and have been in use for decades. The devices are used to catch blood clots before they reach vital organs such as the heart and lungs. These devices are used when blood thinners are not an option. Retrievable filters are more prone to fracture, migrate, or tilt within the body than permanent versions. The injuries caused by retrievable IVC filters can be life-threatening.

Ms. Hill's experience is illustrative of those risks, including a high risk that the device will deteriorate and that fragmented pieces could travel through the body, puncturing organs and causing other potentially life-threatening injuries. Because of these risks, the devices have been labeled with the name “deadly missiles.” In August 2010, the U.S. Food and Drug Administration (FDA) warned that retrievable IVC filters should be implanted only for short-term use because of their tendency to deteriorate and fracture over time.

For more information about IVC filter litigation, contact Leigh O'Dell, Melissa Prickett, or Liz Eiland, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com, Melissa.Prickett@beasleyallen.com or Liz.Eiland@beasleyallen.com.


**IX. BUSINESS LITIGATION**

**BRIDGESTONE TO PAY $29.6 MILLION TO SETTLE PRICE-FIXING SUIT**

Bridgestone has agreed to pay $29.6 million to settle price-fixing claims in multidistrict litigation (MDL) contending that the company colluded with other companies to rig the market for certain rubber vehicle components. A proposed settlement was filed in a Michigan federal court last month. Bridgestone Corp., becomes the latest company to reach a settlement with a proposed class of end-payer Plaintiffs who had bought vehicles with the anti-vibration rubber parts at issue or purchased them as replace-
ment pieces. In addition to the $29.6 million settlement, Bridgestone says it will provide extensive discovery efforts to help end-payor Plaintiffs thoroughly prosecute companies that the Plaintiffs do not reach a settlement with or companies whose settlements are not approved. To aid in discovery under the proposed settlement agreement, Bridgestone will do the following:

- It will identify all current and former employees that were interviewed in any capacity during the U.S. Department of Justice (DOJ) investigation that underpins the case;
- It will identify vehicles that contain the parts and were sold during the time frame at issue;
- It will provide all transactional data relating to Bridgestone’s sale of the parts, provide documents not already turned over that were given to the government during its investigation; and
- It will make the company’s lawyers available for two additional meetings.

According to the DOJ investigation, the period of alleged violations began March 1, 1996, and runs through the period of the investigation. The case is part of an MDL filed in the aftermath of the DOJ’s antitrust investigation into price-fixing and bid-rigging in the auto parts industry, a probe that was launched in 2011 in conjunction with Japanese and European authorities. In June 2016, a Michigan federal judge approved a $225 million settlement for claims against Hitachi Automotive Systems Ltd. and eight other companies. In September 2016, four more companies reached settlements totaling $44 million.

The MDL is In re: Automotive Parts Antitrust Litigation (case number 2:13-md-02311) in the U.S. District Court for the Eastern District of Michigan.

Source: Law360.com

Mitsuba Will Pay $23 Million To Settle Auto Parts Antitrust Suits

Mitsuba Corp. and its U.S. unit have agreed to pay $22.8 million to settle claims that they took part in a massive conspiracy to fix prices of a variety of auto parts. A motion seeking preliminary approval of a proposed settlement was filed last month in a Michigan federal court. According to the settlement, Mitsuba will settle claims brought by proposed classes of auto dealers and others who indirectly bought windshield wiper systems, radiators, starters, automotive lamps, electric powered steering assemblies, fan motors, fuel injection systems, power window motors and windshield washer systems.

The claims against Mitsuba are part of the multidistrict litigation (MDL) in the Michigan federal court over an alleged antitrust conspiracy involving a large number of auto part manufacturers.

The claims are specifically part of nine lawsuits within the MDL, each addressing a different type of part. The windshield wiper system class would receive the largest portion of the settlement funds, at $10.4 million, followed by power windows at $6.1 million, $3 million for starters, $1.2 million each for radiators and fan motors, $489,000 for windshield washers, $435,000 for fuel injectors, $76,000 for automotive lamps and $53,000 for powered steering.

The U.S. Department of Justice (DOJ) has investigated similar antitrust claims and Mitsuba previously pled guilty to allegations that it took part in a conspiracy to suppress and eliminate competition between at least January 2000 and February 2010. The company agreed to cooperate with the DOJ’s investigation and pay a $135 million criminal fine. Other manufacturers have settled out of the MDL, including Toyo Tire & Rubber Co. Ltd., which agreed to pay $11.4 million to resolve claims pertaining to the antitrust conspiracy.


Source: Law360.com

X.

EMPLOYMENT AND FLSA LITIGATION

St. Joseph’s Nurses Get Initial Approval For $42 Million ERISA Settlement

Nurses with New Jersey’s St. Joseph’s Healthcare System have received preliminary court approval for a $42 million settlement of claims that the system underfunded their pension plan—a deal that was reached after the U.S. Supreme Court said church-affiliated entities are exempt from the Employee Retirement Income Security Act (ERISA). U.S. District Judge John Michael Vasquez gave his initial approval to the settlement, which the nurses say would reduce the plan’s underfunding by half. The judge scheduled a final fairness hearing for March 2018.

St. Joseph’s nurses proposed the settlement in August after a Supreme Court ruling extended ERISA’s exemption for religious entities to include church affiliates, negating one of the nurses’ primary arguments in the case. The nurses told the court in a motion in favor of the settlement that St. Joseph’s has already put an amount slightly over the settlement amount into the plan, and that under the settlement, the hospital system will also ensure that all benefits are paid out for at least the next seven years.

The nurses’ brief states that the proposed settlement “provides certain and immediate relief to the class, removing the inherent uncertainty of litigation and improving the retirement security of all plan participants.” This lawsuit is the consolidation of two proposed class actions filed in May 2016. The suit on behalf of Donna Garbaccio, who worked at St. Joseph’s Hospital and Medical Center in Paterson, New Jersey, from 1978 until 1998 claimed that the pension plan was underfunded by more than $180 million.

The second lawsuit was filed on behalf of Mary Lynne Barker, who worked for the medical center from 1968 to 2003; Anne Marie Dalio, who worked there from 1984 to 1994; and Dorothy Flar, who worked there from 1990 to 1995. Their lawsuit alleged that the plan was underfunded by more than $210 million.

The named Plaintiffs contended that St. Joseph’s unlawfully denied ERISA protections to participants and beneficiaries of the pension plan by incorrectly claiming
that its plan is exempt under ERISA because it qualifies as a church plan. One of
the Plaintiffs’ central arguments has been that a church plan must be estab-
lished by a church to qualify for the exemption. But in a June 5 opinion, the
U.S. Supreme Court extended ERISA's reli-
gious exemption provision to benefit
plans maintained by church affiliates,
regardless of whether an actual church
established the plan.

The case is Garbaccio v. St. Joseph’s
Hospital and Medical Center and sub-
sidiaries et al., (case number 2:16-cv-
02740) in the U.S. District Court for the
District of New Jersey.

Source: Law360.com

XI.
WORKPLACE
HAZARDS

IMPORTANT JURY VERDICT IN BATTLE V. KOCH
FOODS CASE IN MONTGOMERY

Recently, a courageous judge in Jeffer-
son County declared Alabama's Workers’
Compensation Act unconstitutional. Most
would agree the ruling is significant
because the inadequacies in the pro-
tections provided to injured workers versus the protections provided to employers. Though the
Alabama Workers Compensation Statute
is deficient in many areas, it does offer
certain protections that are crucial to the
well-being of injured workers:

• Retaliation against injured workers pur-
suing their legal rights under the
Statute is prohibited, and

• individual co-employees may be held
responsible for failure to repair or the
bypassing of a safety device.

Both of these issues were in play in a
recent jury trial verdict in Montgomery
County in the case styled Leond Battle v.
Koch Foods. The verdict in this case,
which was handled by our firm, is most
significant.

In April of 2014, Mr. Battle was
employed as a maintenance worker at
Koch Foods, a chicken processing plant.
He was tasked with repairing a chicken
cage moving machine on the day of the
incident. The machine was surrounded
by perimeter fencing and the access gate
was interlocked, meaning opening the
gate would kill all power to the machine
and as long as the gate was open, the
machine could not activate. Koch Foods
had a lock out/tag out policy that called
for maintenance workers to lock out
certain machines when doing mainte-
nance. Koch Foods had exceptions to its
lock out/tag out policy that allowed main-
tenance workers to forgo locking out
machinery if they relied on the safety
gate. Any time the machines were down,
Koch Foods was not making money. Tes-
timony from current and former employ-
ees revealed that the exception was
implemented to save downtime.

On the occasion in question, Mr. Battle
entered the gate and left it open to
perform a simple adjustment. The oper-
ator moved the controls causing the equip-
ment to activate. Mr. Battle lost portions
of four fingers on his left hand. While
leaving the gate, Mr. Battle noticed a metal pole
between the interlock sensors. The day
following the incident, Mr. Battle
returned to work to complete Workers
Compensation documents and was warned
not to hire a lawyer if he wanted to
keep his job.

Given the extent of his injuries, Mr.
Battle chose to hire our firm to investi-
gate his potential claim. He returned to
work seven days after he sustained his
injury and reported to work at his normal
time of 5 a.m. He worked on light duty
for seven-and-a-half hours before he was
terminated. Marc McHenry, an investiga-
tor at Beasley Allen, contacted the
company to set up an inspection of the
machine at 11:07 a.m. that morning. Mr.
Battle was terminated within the hour
after Koch Foods discovered that the
employee had hired our firm to represent
him. According to Koch Foods, the
employee was terminated for violating
the company’s lock out/tag out policy.
That was a bogus claim.

Suit was filed alleging claims based on
wrongful discharge and failing to repair
and/or bypassing a safety device. The
case was tried before a jury, which
returned a verdict for Mr. Battle and
against Koch Foods and its plant manager
for $1.9 million, including more than a
million dollars in punitive damages.

The verdict was significant because it
held an employer responsible for retaliat-
ing against an injured worker for pursing
his constitutional right to hire legal
counsel to assist him in pursing his
claims against culpable Defendants.

Punitive damages were justified
because the Defendants were directly
responsible for Mr. Battle’s injuries and
they threatened him with job loss, follow-
through on their threat. Additionally,
the Defendants then had the worker’s
compensation carrier cut off his medical
benefits. The Defendants thought they
could intimidate Mr. Battle, but they were
wrong. Hopefully, Koch Foods and other
similarly situated employers will think
twice about retaliating against injured
employees.

Regardless of what happens to Ala-
abama’s Workers’ Compensation Statute,
the provision prohibiting retaliation
should remain in place for employees like
Mr. Battle and an employer like Koch
Foods. Larry Golston, Kendall Dunson,
and Leon Hampton handled this case for
Mr. Battle. Montgomery lawyer Tamika
Miller sent the case to us. She is handling
the worker’s compensation case, which
has been set for a separate bench trial
before Circuit Court Judge Greg Griffin.

OSHA ANNOUNCES TOP 10 MOST FREQUENT
WORKPLACE SAFETY VIOLATIONS IN 2017

Although employers have a responsibil-
ity to provide a safe working environ-
ment for their employees, very often an
investigation into work deaths and
serious injuries reveals safety violations
that put workers at risk.

According to the Secretary of Labor,
Hilda Solis, every year nearly 4 million
people suffer a workplace injury, from
which some may never recover. In the
U.S., an average of 13 people die on the
job every day. Workplace injuries and
deaths make up a large part of litigation
handled by personal injury attorneys.

At a recent meeting of the National
Safety Council’s Annual Congress &
Expo, federal safety officials announced
the top 10 occupational safety standards
most often violated by employers in fiscal
year 2017.

Patrick Kapust, the Deputy Director of
Enforcement Programs for the Occupa-
tional Safety and Health Administration
(OSHA), showed at the meeting that
2017’s preliminary list of top 10 violations
closely resembles last year’s, with the top
five most-frequent violations remain-
ing the same.

Violations of the general requirements
required of employers to protect their
workers from being seriously injured or
killed by falling have occupied the No. 1
position on the list since 2011—the
seventh year in a row. Violations of
federal fall protection rules come in the
top spot by a wide margin, too, with
nearly 1,900 more citations than the second spot on the list, hazard communications.

Hazard communication rules govern how employers must communicate information about chemicals and other harmful substances on labels and data sheets so that employees are aware of the risks and take the proper precautions. Kapust said:

One thing I’ve said before in the past on this is, this list doesn’t change too much from year to year. These things are readily fixable. I encourage folks to use this list and look at your own workplace.

The following are OSHA’s full top-10 list of the most frequently cited violations:
1. Fall Protection—General Requirements: 6,072 violations
2. Hazard Communication: 4,176
3. Scaffolding: 3,288
4. Respiratory Protection: 3,097
5. Lockout/Tagout: 2,877
6. Ladders: 2,241
7. Powered Industrial Trucks: 2,162
8. Machine Guarding: 1,933
9. Fall Protection—Training Requirements: 1,525
10. Electrical—Wiring Methods: 1,405

National Safety Council President and CEO Deborah A.P. Hersman had this to say about the matter:

The OSHA Top 10 is more than just a list, it is a blueprint for keeping workers safe. When we all work together to address hazards, we can do the best job possible to ensure employees go home safely each day.

Since workers’ compensation benefits are limited in most every state, it is extremely important to evaluate these claims to determine if a third-party claim exists. What may initially appear to be a workers’ compensation claim may actually turn out to be a case involving a dangerous product or piece of equipment. If a product causes a serious on-the-job injury or death, a third-party claim can sometimes be filed against the designer, manufacturer, seller and/or the assembler of the machinery.

For more information about potential products liability third-party claims related to workplace injuries and deaths, contact Kendall Dunson, a lawyer in our firm’s Personal Injury & Products Liability Section, at 800-898-2034 or Kendall.Dunson@beasleyallen.com. Kendall has successfully handled a large number of workplace-related cases.

Sources: National Safety Council and OSHA

XII. TRANSPORTATION

NORTH TEXAS COUPLE AWARDED $42 MILLION IN LAWSUIT INVOLVING ‘BAD VEHICLE REPAIRS’

A North Texas couple has been awarded more than $40 million in a lawsuit over what was described as “shoddy repair work” that came to light after a near-fatel car crash that occurred on Dec. 21, 2013. Some observers believe that the four-year legal battle could also lead to changes in the collision repair industry. Matthew Seebachan and his wife Marcia were injured in the crash, but survived after being pulled from their burning car.

The couple found out after the crash that the used 2010 Honda Fit, recently purchased, had previously received substantial repairs. The repair work was not included in a car history report the couple asked for before buying the car. The repairs had been done at the request of the previous owner who took the car to John Eagle Collision Center in Dallas for the work.

The Seebachans filed a lawsuit accusing the body shop of performing defective, negligent and untested repairs. The roof of the car had been replaced with a new roof. However, workers at John Eagle used a glue-like adhesive instead of welding the roof down, as is recommended by Honda. The Plaintiffs contended that “shoddy work” led to the fire and the couple being trapped inside of the car.

A Dallas County jury awarded the Plaintiffs $42 million in damages. Mr. and Mrs. Seebachans want their court victory to send a message to companies in the repair business. Mrs. Seebachans had this to say:

Integrity matters. You don’t get to make decisions in the best interest of your company and prevent customers from making an informed decision about the safety of themselves and their family.

Congressman Sues Defense Department Over V-22 Osprey Documents

Congressman Walter Jones (R-North Carolina) has been on a mission to clear the names of two U.S. Marine Corps (USMC) pilots for more than a decade after they were killed when the MV-22 Osprey they were test flying crashed. In October, Rep. Jones filed a lawsuit demanding the U.S. Department of Defense (DOD) hand over all documents regarding the deadly crash that occurred April 8, 2000. The lawsuit followed numerous attempts over the years by the Congressman, including a Freedom of Information Act request in June, to obtain the documents.

In April 2000, Lt. Col. John Brow and Maj. Brooks Gruber were piloting the Osprey on one of its last test flights before testing of the aircraft was expected to wrap up later that year. During that same test flight, Lt. Col. Jim Schafer was co-piloting another Osprey and was trailing the one piloted by Brow and Gruber. He watched in horror as the Osprey “lost lift, flipped and plummeted to the ground” as the Marine Corps Times reported. The fiery crash that followed killed Brow, Gruber and 17 other U.S. Marines aboard. The Arizona Daily Star explained that in a press release issued
three months later following the legal investigation, the USMC placed blame on the pilots claiming their “drive to accomplish that mission appears to have been the fatal factor.”

Immediately, the pilots’ widows, Trish Brow and Connie Gruber, began working to clear their husbands’ names and restore their honor. Rep. Jones joined the fight in 2002, probing DOD officials and speaking publicly, which included giving several impassioned speeches from the floor of the U.S. House of Representatives. His persistent requests of the DOD to reexamine the crash paid off and nearly 16 years after the crash DOD Deputy Secretary Robert Work publicly announced that the pilots had been incorrectly blamed for the crash after Work reopened and reviewed the evidence.

While Rep. Jones and the pilots’ families are pleased that honor has been restored to the military aviation pioneers’ names, they still want answers about the dangerous aircraft. These are answers the military so far has refused to give them. The lawsuit specifically names the DOD’s Office of Inspector General, the Navy and the USMC and comes on the heels of several recent, high-profile crashes and incidents involving the Osprey, as we have discussed in previous issues of the Report.

The V-22 Osprey is the tilt-rotor aircraft, which takes off like a helicopter and by tilting its rotors 90 degrees, it can fly like an airplane. It is manufactured by Bell Helicopter and Boeing at plants in Texas. The aircraft, also called “The Widowermaker,” has survived decades of design defects, mechanical problems and criticism. Even in its infancy during the George H. W. Bush administration, then-Secretary of Defense Dick Cheney, despite his staunchest efforts, could not end the program, the Texas Observer reported in an editorial analysis of the Osprey, called Texas’ Deadly $16 Billion Boondoggle.

As Sec. Schafer explained about the April 2000 crash, there were many unknowns about the aircraft and although it should not have been on the fatal test flight, there was immense pressure on everyone involved in developing the revolutionary aircraft. He explained that up until the night of the crash, “there had been so many mechanical flaws that the Marines never even had that many up and running at one time.” Despite the fact that the team of test pilots included some of the USMC’s best, one of the unknowns is what investigators ultimately determined caused one of the deadliest test flights in U.S. military history. That unknown is called “vortex ring state.”

The Osprey’s design increases its risk of experiencing the phenomenon—the aircraft loses altitude too quickly and often results in crash landings. The aircraft’s air filtration system has also been problematic. It is especially prone to malfunctioning in dusty environments including many areas of the Middle East and Persian Gulf where U.S. military forces have been deployed since 2007 when the Osprey became operational.

Just days before Rep. Jones filed the FOIA lawsuit, Righting Injustice reported that another V-22 Osprey crashed in the fourth non-combat related crash since December—two of the crashes were fatal. A 2015 Osprey crash off the coast of Hawaii claimed our clients’ son’s life, Michael J. Determan. Unfortunately, this poorly designed and dangerous aircraft remains operational, putting potentially more lives at risk.

If you need additional information about this subject, contact Mike Andrews, a lawyer in our firm’s Personal Injury & Products Liability Section at 800-898-2034 or Mike.Andrews@beasley-allen.com. Mike handles aviation litigation, including several cases involving the Osprey.

Sources: Military Times, Marine Corps Times, Arizona Daily Star

FAMILIES OF MED-EVAC HELICOPTER CRASH AWARDED $21.7 MILLION

A Kentucky jury has awarded $21.7 million to the families of three people who were killed in June 2013 when the Bell Helicopter used for medical evacuations they were in crashed in an elementary school parking lot. The plaintiffs contended that the Bell Helicopter and its parent company Textron were aware of defects in its Bell 206L-1 helicopters, but chose not to address the problem. The crash occurred about 750 feet from the helipad it was supposed to land on, killing the pilot and the three passengers.

The Plaintiffs claimed that there was a critical defect in the helicopter’s main rotor blade that caused the tail broom and roof to break off, causing the pilot to lose control of the aircraft. Witnesses on the ground said the Bell helicopter had been flying abnormally low and was spinning in the moments before it crashed.

Bell Helicopter executives have admitted knowledge of this defect for more than two decades. The Federal Aviation Administration (FAA) is being urged to investigate the Texas-based company, which is owned by Textron of Providence, Rhode Island. A complaint will be filed with the FAA relating to Bell Helicopter.

The jurors found Bell Helicopter made the aircraft’s component “in a defective condition, unreasonably dangerous to the user,” and that the alleged defect contributed significantly to the deadly crash.

The National Transportation Safety Board (NTSB) investigated the crash, but did not determine a definitive cause, saying the Bell Helicopter probably crashed because the pilot became disoriented and lost control of the aircraft in foggy nighttime conditions. Bell Helicopter said it would appeal the jury’s decision, adding that the investigators found no design or manufacturing defects with the helicopter or its parts.

Sources: Insurance Journal and Associated Press

SLEEP APNEA TESTING AIDS TO IMPROVE TRUCK DRIVER SAFETY

A 2016 Harvard study found truck drivers with obstructive sleep apnea (OSA) that failed to adhere to treatment were five times more likely to be involved in a preventable crash. Combine that with Federal Motor Carrier Safety Administration (FMCSA) statistics stating 28 percent of commercial truck drivers suffer from mild to severe sleep apnea, and it should be clear that the trucking industry has an issue. That’s more than a quarter of truck drivers on the road suffering from a serious, potentially life-threatening condition that impacts job performance.

This issue doesn’t just affect commercial truck drivers. In light of deadly commuter train crashes linked to sleep apnea, the FMCSA and the Federal Railroad Administration issued a pre-rule notice in March 2016 seeking “data and information concerning the prevalence of moderate-to-severe obstructive sleep apnea among individuals occupying safety sensitive positions in rail and highway transportation” to determine the need for “regulatory action to ensure consistency in addressing the safety issue presented by transportation workers with safety sensitive duties who are at risk for OSA.”

The proposal was nixed by the Trump administration in August, but bills were
introduced in both the House and Senate at the end of September to advance sleep apnea testing rules. These new bills could force the Department of Transportation (DOT) to require sleep-apnea testing and treatment for truck drivers and railroad engineers.

'Whether on the roads or the rails, the safety of the traveling public must be our highest transportation priority,' Sen. Bob Menendez, ranking member of the Senate's mass transit subcommittee and a co-sponsor of the Senate bill, said in a press release:

This legislation would address that failure and implement this commonsense public safety policy to protect riders, save lives and make our rails and roadways safer.

Sleep apnea is a disorder that causes brief breathing interruptions during sleep. The pauses can last upwards of 10 seconds and occur up to 400 times a night. It can severely impact restfulness, and therefore alertness and performance. The FMCSA states on its website:

While FMCSA regulations do not specifically address sleep apnea, they do prescribe that a person with a medical history or clinical diagnosis of any condition likely to interfere with their ability to drive safely cannot be medically qualified to operate a commercial motor vehicle (CMV) in interstate commerce. However, once successfully treated, a driver may regain their 'medically-qualified-to-drive' status.

An estimated 85 percent of those suffering from sleep apnea do not receive a diagnosis, however, and this calls into question how likely it is a truck driver with OSA would actually receive the care he or she needs to be truly able to perform the job safely. Even if the drivers are receiving treatment and that does help prevent fatigue-related accidents, it does not guarantee OSA will not negatively impact drivers on the job.

As with any policy or administration change, the safety of the public should take priority. If more than a quarter of truck drivers suffer from a disease that makes the roads we all share more dangerous, the issue must be addressed.

For more information about regulation surrounding truck accident litigation, contact Chris Glover, a lawyer in our Atlanta office. Chris, who handles personal injury and death claims, recently wrote a book on truck accident litigation, An Introduction to Truck Accident Claims: A Guide to Getting Started. This book is available to lawyers at no cost. To request a copy or download a digital copy, visit www.ChrisGlover-law.com/book. You may also contact Chris by calling the firm at 800-898-2034 or by emailing him directly at Chris.Glover@beasleyallen.com.

Sources: FMCSA, U.S. Sen. Cory Booker's office and National Institutes of Health

XIII.
OPIOID CONCERNS

MORE STATES SUE OPIOID MANUFACTURERS

Louisiana and Washington are the latest states to sue opioid manufacturers for the ongoing national epidemic. According to the U.S. Centers for Disease Control and Prevention (CDC), opioids were involved in more than 33,000 deaths in 2015. Both lawsuits are similar to those filed by the other states, which focus on the manufacturers' alleged fraudulent marketing rather than distributors' failure to report suspicious orders. The following is a brief summary of these cases.

Louisiana's Department of Health sued several opioid manufacturers for false marketing, resulting in a skyrocketing addiction and overdose rate in the state. The state asserts claims under a variety of state medical laws, fraud, negligent misrepresentation, and unjust enrichment and is seeking compensation for the amounts it paid for excessive opioid prescriptions, treatment costs incurred as a result of these prescriptions, other damages, and injunctive relief.

Washington sued only OxyContin maker Purdue Pharma for embarking on a deceptive marketing campaign convincing doctors and the public that their drugs are effective for treating chronic pain and have a low risk of addiction. The state asserts claims for violations of the state consumer protection act, public nuisance, and negligence and is seeking civil penalties, injunctive relief, damages sustained by the state, and disgorgement of profits.

As more states and local governments sue opioid distributors and manufacturers, law enforcement officials are also ramping up their investigation into these companies. A coalition of 41 state attorneys general subpoenaed five major opioid manufacturers and three distributors seeking information about how these companies marketed and sold prescription opioids.

The investigation now includes manufacturers Perdue Pharma, Allergan, Janssen Pharmaceuticals, Teva Pharmaceutical Industries, and Endo International and distributors Cardinal Health, McKesson, and AmerisourceBergen. According to the Drug Channels Institute, the three distributors generated more than $400 billion in revenue last year and manage about 90 percent of the country's national drug distribution.

Our firm is actively involved in the opioid litigation. If you need additional information relating to this litigation, contact Rhon Jones, head of our Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com. Rhon and his section are handling this litigation for the firm.

Sources: Reuters, CNN and nola.com

XIV.
TOXIC EXPOSURE CONCERNS

EXXON TO PAY $300 MILLION TO RESOLVE U.S. POLLUTION CASES

Exxon Mobil Corp. has agreed to pay more than $300 million to resolve air pollution violations tied to eight chemical plants in Texas and Louisiana. In a separate action, Denver-based PDC Energy Inc. agreed to pay $22.2 million after storage tanks were found to be leaking smog-forming compounds.

The Exxon case involved thousands of tons of toxic air pollutants such as benzene that streamed from 26 industrial flares at five Texas facilities and three in Louisiana, according to a Justice Department statement. The violations stretched as far back as 2005. Under the settlement, Exxon will spend $300 million in new anti-pollution and monitoring gear, pay a $2.5 million fine and spend $1 million to plant trees around its Baytown, Texas, plant.
In June, the federal government filed a civil lawsuit alleging that PDC repeatedly violated the Clean Air Act and Colorado air pollution rules by allowing volatile organic compounds to escape from more than 80 groupings, or batteries, of condensate storage tanks near Denver. The EPA alleged that PDC failed to adequately design, operate and maintain control systems on those tanks, resulting in the leaks and contributing to a smog problem in the area, where ozone levels exceed federal limits. The case was brought at the request of the EPA and Colorado authorities, following state inspections from 2013 through 2015. PDC owns and operates hundreds of oil and gas production facilities in Colorado's Denver-Julesburg Basin.

**Awareness Days Highlight Risk Of Environmental, Occupational Lung Disease**

Two recent awareness days shared a common message: "What's in the air we breathe matters." Sept. 25 marked the first Mesothelioma Awareness Day, and Sept. 26 marked the 13th annual World Lung Day. Both days aimed to bring awareness to environmental and occupational lung diseases. Unfortunately, our lungs carry a heavy burden when it comes to toxic exposure—often carrying the brunt of the issues it causes. A release from the Forum of International Respiratory Societies (FIRS) stated:

"World Lung Day is a rallying point for advocacy related to respiratory health and air quality. Lung disease is the only major chronic disease group that does not yet have a World Day. World Days can be important reminders of things we take for granted—we cannot live without breathing, and air quality is critical to our health and well-being."

Mesothelioma Awareness Day carried a similar message but related it specifically to the risks surrounding asbestos exposure. Asbestos fibers were once used in a variety of construction and manufacturing processes before its carcinogenic properties were well known, leading to both occupational exposure and the secondhand exposure of family members who interacted with clothing and other materials from contaminated job sites. The Mesothelioma Applied Research Foundation stated:

"Given the long latency of mesothelioma, for thousands of Americans, the damage has already been done—the asbestos has been inhaled. Now it is our responsibility to invest in prevention research, and to make sure that if they develop mesothelioma, life-saving treatments and a cure are waiting for them."

While asbestos exposure is closely linked to mesothelioma development, it can also cause scar tissue on the lungs and lung cancer. World Lung Day highlighted some of those other lung-related diseases associated with environmental and occupational exposures: chronic obstructive pulmonary disease (COPD), asthma, pneumonia and tuberculosis.

The FIRS estimates occupational lung diseases affect more than 50 million people worldwide “and workers continue to breathe in sickening mineral dusts, bioaerosols and fumes.” That's not including occupational exposures due to benzene and other toxins that cause Acute Myeloid Leukemia, other types of cancers and other health issues not related to the lungs.

Each person affected by any occupational disease could have been spared; remove the toxins, and the risk is removed for millions around the world. Lawyers in our firm's Toxic Torts Section are investigating cases of occupational lung disease related to a number of chemical exposures, as well as mesothelioma and asbestos exposure. For more information, contact Rhon Jones, who heads up our firm's Toxic Torts Section, at 800-898-2034 or Rhon.Jones@beasleyallen.com. Sources: MyMeso, Mesothelioma Applied Research Foundation, Forum of International Respiratory Societies (FIRS), CHEST: American College of Physicians

**New York Appoints Council To Address PFC Contamination**

New York Governor Andrew M. Cuomo has appointed 12 members to the Drinking Water Quality Council, which will address various emerging water contamination issues and consult with outside experts to complement the expertise of council members.

The Council’s first task will be to establish an enforceable Maximum Contaminant Level (MCL) for three priority contaminants found in the state: perfluorooctanoic acid (PFOA), perfluorooctane-sulfonic acid (PFOS), and 1,4-dioxane. None of these chemicals are regulated by the federal government, so the Council will seek to establish an MCL, which is a drinking water standard set forth in the state sanitary code that water systems must achieve to be in compliance with applicable regulations.

Many impacted water systems, however, are not waiting on the government to address the problem. Instead, they have 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 (AFF) to combat fuel fires.

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 our firm’s Toxic Torts Section are investigating other PFC contamination cases. If you have any questions about this subject, contact Rhon Jones, Rick Stratton, or Ryan Kral, lawyers in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com, or Ryan.Kral@beasleyallen.com.

**Source:** New York Governor’s Office

**Petrochemical Workers’ Benzene Exposure Risk Likely Higher After Hurricane Harvey**

As Hurricane Harvey tore through Texas in August, the focus was on the more immediate effects. Now that the waters have subsided and clean-up and rebuilding efforts are underway, the longer-term effects have taken center stage.

Among the effects is the heightened risk petroleum industry workers face of being exposed to the carcinogen benzene. The occupation is already at a high risk of exposure, which is a cause for cancers of the blood including Acute Myeloid Leukemia, Myelodysplastic Syndrome, lymphomas and aplastic anemia, as Beasley Allen had explained.
More than a dozen petrochemical plants reported “damaged storage tanks, ruptured containment systems and malfunctioning pressure relief valves” because of the natural disaster, according to the Houston Chronicle. The full impact of the damage may not be completely realized for months.

In the meantime, experts are concerned that recent budget cuts to the Occupational Safety and Health Administration’s (OSHA) budget slashed the number of inspectors. This effectively reduces the available resources necessary to inspect companies for worker safety violations. OSHA is a section of the U.S. Department of Labor, which officially halted workplace inspections in Harvey-affected areas with no indication of when the inspections will resume.

Experts are also concerned that normal procedures will be lax during the “emergency situation.” Those procedures include measures designed to help reduce workers’ benzene exposure.

Benzene is a sweet-smelling toxic chemical, and exposure occurs when the toxin is inhaled or absorbed through the skin or eyes. Petroleum refining and extraction workers are at an increased risk of exposure because the chemical is a byproduct of the oil-refining processes, the National Center for Biotechnology Information explains.

Prolonged exposure to benzene can cause Myelodysplastic Syndrome (MDS), which is a group of bone marrow disorders that can progress to Acute Myeloid Leukemia (AML). A person may experience AML symptoms gradually and, initially, they may not connect the symptoms to AML, but blood tests may reveal a reduced red cell count, sometimes with a reduced white cell count and/or reduced platelet counts. These tests, along with bone marrow tests, are used to diagnose AML.

If you would like more information about benzene exposure and benzene-related cancers such as AML, you can contact John Tomlinson, a lawyer in our Toxic Torts Section. He can be reached at 800-898-2034 or by email John.Tomlinson@beasleyallen.com. You can also find more information at www.benzene-exposure.com.

**Valero’s Houston Plant Underestimated Benzene Leak Caused By Hurricane Harvey**

In a hurricane-related matter, Valero Energy Partners’ Houston refinery suffered a hurricane-related spill on Aug. 27 when the roof of a light crude storage tank became damaged during the storm. Valero initially reported that it had lost seven pounds of benzene to the atmosphere as a result of the spill. However, the company has subsequently reported that it “significantly underestimated the amount of [volatile organic chemicals] and benzene released in its original report to the State of Texas Environmental Electronic Reporting System.”

Environmental advocates have criticized Valero’s initial underestimates, arguing that in the interest of public safety the plants are supposed to report the highest potential amounts of emissions during unusual events and then adjust figures lower as more information comes in. Underreporting emissions places the public at risk, and indeed, 20 residents from a nearby neighborhood called a city hotline to report gas odors between Aug. 25 and 31.

These calls prompted the city to take air quality readings, and while a test on Aug. 31 did not find anything unusual, a measurement on Sept. 2 showed high levels of benzene, which increased to 325 parts per billion by Sept. 4.

According to the Agency for Toxic Substances and Disease Registry, concentrations of nearly twice that over a mere 15-minute period can cause acute health effects such as dizziness and headaches. Though ambient benzene levels in the atmosphere vary based on the wind, it’s unclear what levels of exposure residents faced.

Other plants also had significant benzene emissions during this period. According to the environmental group Environment Texas, companies had estimated in initial reports that there were 5.9 million pounds of emissions because of the storm, the bulk of these emissions being due to shutdown and startup operations. This included upwards of 55,000 pounds of benzene and 212,000 pounds of the carcinogen 1,3-butadiene.

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

**New Complaints Filed in Louisiana State Court Alleging Benzene Exposure**

At least eight new benzene-related complaints have been filed in recent months in Louisiana state court with the Plaintiffs asserting that they developed illnesses from exposure to benzene, including multiple myeloma and non-Hodgkin’s lymphoma. The suits were filed in the Louisiana Civil District Court for the Parish of Orleans. I will give a brief summary of each case.

In a lawsuit filed on Aug. 4, 2017, Kenneth Glenn Evans, who performed maritime work for the Defendants on a number of vessels on navigable waters, alleged that he came into contact with benzene-containing products during his work. As a result of this exposure, he developed acute lymphocytic leukemia. His complaint specifically states that “Plaintiff was exposed to fuel and other benzene-containing products purchased at the Port of Orleans in Orleans Parish.” The complaint further asserts that “these products, in combination with other benzene-containing products, caused his ALL.”

In another lawsuit filed on Aug. 6, 2017, Plaintiffs Bernie and Ruth Russell contended that Bernie Russell’s work as an iron bender and welder caused him to come into contact with diesel and other benzene-containing products while he fueled 18-wheeler trucks that transported steel. Bernie Russell “would regularly come into contact with benzene through gasoline, and other benzene-containing products when cleaning parts, tools, steel, and his hands with gasoline. The Russells further allege that as a result of this exposure, Bernie Russell developed Multiple Myeloma.

In an Aug. 19, 2017, complaint, Plaintiffs Charles and Juanita Bartlett alleged that Charles Bartlett “frequently used a product called Liquid Wrench, a solvent and penetrator made by Radiator Specialty, on his bike and on its sprockets and while working on cars and buses from 1946-1978.” Charles Bartlett “was employed as a mechanic and used Liquid Wrench” in his work at Styrod and Greyhound in Orleans Parish. During all these times, Mr. Bartlett...
 Glyphosate has been linked to the development non-Hodgkin’s lymphoma (NHL). Court cases alleging the connection unsealed documents showing collusion between Monsanto and Environmental Protection Agency (EPA) officials to kill a review of the ingredient and evidence the company ghost-wrote research on the weed killer’s safety that was later attributed to academics.

The more than 45 lawsuits consolidated as part of multidistrict litigation (MDL) in the United States District Court for the Northern District of California came after California won its own suit against Monsanto to list glyphosate as a human carcinogen and force it to place a warning label on the product.

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Five more benzene-related lawsuits have also been filed in recent weeks: Bellanger (non-Hodgkin’s lymphoma), Adams (non-Hodgkin’s lymphoma), Tipado (multiple myeloma), Wilson (multiple myeloma), and Kilcrease (Acute Myeloid Leukemia).

As we have previously stated, benzene is a clear, highly flammable liquid with a sweet, gassy smell. It occurs naturally in petroleum, and it is used as an organic solvent to make a variety of other chemicals and various plastics. It is also used in the manufacturing of some types of rubbers, varnishes, lacquers, lubricants, dyes, detergents, drugs and pesticides. Because benzene comes from petroleum, benzene is often found in oil-based paints, various degreasers, thinners, solvents, and fuels—including diesel, gasoline and kerosene.

Persons working closely with benzene or benzene-containing products can be put at serious risk because their exposure can occur at much higher levels and for longer periods of time. The medical literature indicates that benzene causes multiple myeloma, acute myeloid leukemia (AML), myelodysplastic syndrome (MDS) and other forms of leukemia and lymphoma.

John Tomlinson, a lawyer in our firm’s Toxic Torts Section, has filed and is currently investigating other Benzene exposure cases. If you need more information on this matter, contact John at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com.

Source: Harris Martin Publishing

**European and American Officials to Decide The Fate Of Roundup Chemical Glyphosate**

Monsanto’s cash cow herbicide Roundup is now making waves both in the United States and in Europe. Documents brought to light in American court cases have European officials investigating the truth of Monsanto’s safety claims. This further entangles the company in its misdeeds ahead of government decisions on the safety of glyphosate, the weed killer’s main ingredient.

The EPA is expected to make its determination of glyphosate as a carcinogen by the end of the year as well. The NRDC states on its website that European restrictions on Monsanto “would have a potentially profound effect upon glyphosate-related policies here in the U.S., where EPA appears to still be taking its cues from Monsanto.”

As we have stated, John Tomlinson, a lawyer, in our Toxic Torts Section is actively investigating cases where landscapers, farmers, groundskeepers or commercial gardeners used commercial grade Roundup and developed non-Hodgkin’s lymphoma. John can be reached at 800-898-2034 or John.Tomlinson@beasleyallen.com.

Source: The Guardian and NRDC

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Sources: The Guardian and NRDC

**Nursing Home Arbitration Rule Leaves Victims In Limbo**

I am firmly convinced that a clause requiring mandatory forced arbitration has no place in a nursing home resident’s admission contract with the facility. A study commissioned by the American Health Care Association, the largest trade association for the country’s nursing home industry, showed that when nursing home disputes are settled through arbitration, they are 35 percent lower than when residents take their claims before a judge or jury, according to the Des Moines Register. It is no wonder the industry is fighting to roll back a rule announced last year by the Centers for Medicare and Medicaid Services (CMS) that would have prohibited federally funded nursing homes from demanding residents and their families sign arbitration admission agreements, relinquishing their Constitutional right to go to court when abuses occur.

As part of the admitting process, nursing homes often exploit a resident or their caregiver at a time when the need for care is critical and urgent. Forced arbitration agreements are included as part of an extensive contract. Most consumers will not realize the arbitration clause even exists or, if they do, won’t know what it is asking them to give up. Others, faced with stress due to emotional turmoil as well as limited time and alternatives, yield to the pressure of signing away their rights.

The CMS rule, as we have discussed in a prior issue of the Report, was part of a 713-page document that revamped nursing home care standards, rules and regulations. The changes are to be implemented in three phases and the first phase, which included implementing the ban on arbitration clauses, began last November.
The nursing home industry has been fighting the rule since its inception including filing a federal lawsuit a month before the rule was to take effect. The American Health Care Association and other groups "filed a lawsuit challenging the federal government’s authority to tell the industry it can’t block people from [doing the same thing]."

Earlier this summer, Judge Michael P. Mills, in the Northern District of Mississippi, temporarily blocked the CMS rule, holding that it could not be enforced until further evidence was taken. CMS defended the rule saying that arbitration agreements in nursing homes were clearly unfair to residents and their family members.

However, the change in administrations in Washington was accompanied by an about-face from CMS. The agency withdrew the rule, acting in favor of nursing homes as opposed to being concerned for the health and safety of residents. It proposed a much weaker alternative rule that once again allows nursing homes to make admittance contingent upon signing an arbitration agreement.

The nursing home industry argues that arbitration is more effective for all parties involved in a dispute. But that is not so, according to a New York Times commentary by Richard Cordray, who heads the Consumer Financial Protection Bureau (CFPB).

The CFPB is a government agency created after the 2008 financial crises to protect consumers. The agency has studied mandatory arbitration and recently created a rule blocking companies from denying consumers the option to go to court when they are treated unfairly. The research indicates “that group lawsuits help consumers recover money they otherwise would forfeit” while protecting other consumers “by halting and deterring harmful behavior.”

Following CMS’ reversal on the rule, 31 U.S. Senators sent a letter to CMS Administrator Seema Verma voicing their opposition to CMS’ rollback of the rule. Other lawmakers like Senator Charles Grassley (R-Iowa) believe “[t]he nursing home industry should do a better job of following the law,” but has refused to join the efforts to protect nursing home residents’ safety and Constitutional rights.

CMS allowed the public to weigh in on the rule, according to AARP, and more than 1,000 comments were filed. CMS has not indicated when it will issue a final rule, though. In the meantime, the rule remains in limbo with the deck stacked against some of the most vulnerable consumers in the country.

Sources: Des Moines Register, National Public Radio, The LA Times, Consumer Financial Protection Bureau

MEDICATION ERRORS THREATEN NURSING HOME RESIDENTS’ SAFETY

Medication errors in nursing homes constitute a major problem. In 2016, a licensed practical nurse (LPN) who worked at a nursing home located in Alabama pleaded guilty to reckless abuse of a protected person, a class C felony. The LPN mistakenly administered a large dose of narcotic pain medication to a female nursing home resident. The resident was supposed to receive cough medicine. Rather than immediately notifying the nursing home administration and medical staff of her mistake, the LPN falsified the resident’s treatment records to cover-up the medication error. The resident suffered an overdose of the narcotic and nearly died. Fortunately, the resident’s dire condition was discovered by a nurse on a later shift who rushed the resident to the hospital; thus, saving her life. This shocking story is an extreme example of a common problem in nursing homes today. Medication errors are a type of preventable nursing home negligence that occurs with alarming frequency. In fact, medication errors are among the most common health-threatening mistakes that affect nursing home resident care. One study estimated that 800,000 medication errors occur each year in nursing homes and other long-term care facilities. The National Coordinating Council for Medication Error Reporting and Prevention defines medication errors as “any preventable event that may cause or lead to inappropriate medication use or patient harm while the medication is in the control of a healthcare professional.”

A U.S. Department of Health and Human Services, Office of Inspector General study found that 37 percent of harmful events suffered by nursing home residents receiving Medicare benefits were caused by medication errors. Other studies have determined that 40 percent of nursing home medication errors are preventable. Residents taking medications in several drug categories—including antipsychotic agents, anticoagulants, diuretics, and antiepileptic medications—were found to be at special risk for preventable adverse drug events.

The most common type of medication error is dose omission, or failing to give necessary medication to a resident. One study indicates that dose omission accounts for approximately 44 percent of all medication errors. Other types of medication errors include overdose, undertose, wrong strength of medication, wrong medication given, and failure of nursing home staff to monitor the resident after giving medication.

Medication errors are most often caused by human influences—human error, faulty documentation, and poor communication. Human error combined with chronic understaffing, lack of proper medication training, and lack of supervision create an environment fostering an unnecessary abundance of nursing home medication errors. For years, nursing home corporations have known of many uncontroversial studies demonstrating that a higher ratio of licensed nurses to residents is an effective way to reduce harm to residents caused by medication errors. Unfortunately, some nursing homes ignore these studies and choose not to provide adequate nurses and staff to properly safeguard their residents.

BEASLEY ALLEN HAS MADE PROTECTING NURSING HOME VICTIMS A PRIORITY

Lawyers in our firm are fighting very hard to protect the safety of nursing home residents across the country. Our lawyers represent the actual victims or the families of those residents who have suffered death or serious injury because of nursing home abuse and neglect. Chris Boutwell is our lead lawyer for the firm’s Nursing Home Litigation Team. 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 at Chris.Boutwell@beasleyallen.com or by phone at 800-898-2034.
An Update On Class Action Litigation

$295 Million Settlement In Stericycle MDL Gets Initial Approval

An Illinois federal judge has granted preliminary approval to a $295 million settlement between Stericycle Inc. and a nationwide class of customers allegedly hit with hidden and arbitrary price increases. The settlement agreement secures at least $900 for each settling class member and ensures the medical waste disposal company will start capping future price increases at 6 percent for existing customers and 8 percent for future customers within 60 days of the initial approval. The company also agreed to incorporate more transparent pricing and to submit to three years of compliance oversight by a retired federal judge. In granting the initial okay, U.S. District Judge Milton I. Shadur found the settlement provides ample opportunity for any objections and addresses every relevant consideration.

The multidistrict litigation (MDL) was consolidated and assigned to Judge Shadur in 2013. The case began when Lyndon Veterinary Clinic PLLC of New York initially filed suit against the waste company in 2013. The case’s allegations and defined class pertain to the company’s “small-quantity” customers, which accounted for more than half of the company’s revenue in early 2016. Each class-member customer signed a contract outlining a fixed fee for the collection and disposal of medical, pharmaceutical or hazardous waste. The Plaintiffs alleged the company freely increased rates sometimes as much as 18 percent in one year, violating contract terms that require increases be tied to operational changes or waste-law compliance. Judge Shadur certified the class in February over Stericycle’s objection that each customer’s contract contained significantly different terms, finding those differences to be either inconsequential or outliers that would otherwise disqualify the customer from class membership.

Excluded from the class are three other class-action suits Judge Shadur sent back to Tennessee, reversing an earlier MDL panel decision that initially consolidated them with the Illinois action. Those cases—one brought by a group of state dentists, the second by a group of physicians and the last a group of veterinarians—were all filed in July 2016 and claim nearly $9 million in total damages. Also excluded are Stericycle customers who settled a qui tam action for $28.5 million in 2016 that alleged the company illegally overcharged government entities.

The case is In re: Stericycle Inc. Steri-Safe Contract Litigation (case number 1:13-cv-05795 and MDL number 2455) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

P&G Agrees To Pay Up To $30 Million To End Probiotic False Ad Suit

Procter & Gamble has agreed to pay up to $30 million to settle a long-running class action lawsuit claiming the company falsely advertised its probiotic supplement Align as “clinically proven” to promote digestive health. The proposed settlement comes after seven years of litigation and months of negotiations with a mediator, involving Align buyers. The Plaintiffs urged U.S. District Judge Timothy S. Black to preliminarily approve the settlement.

Under the terms of the agreement, The Procter & Gamble Co. will pay up to $15 million in cash refunds to people who bought Align, provide $5 million to $10 million worth of other benefits, and pay about $5 million for fees and expenses, including $4.5 million in attorneys' fees. Procter & Gamble has also agreed not to make the “clinically proven” claim in the future without new, reliable supporting clinical data or a change in Align’s formula.

The proposed settlement class is made up of anyone who bought Align in the U.S. or its territories for personal use between March 1, 2009, and June 6, 2016. The buyers told Judge Black that the proposal provides substantial benefits to those people. Each class representative could receive up to $2,500.

Each class member could receive up to $49.26 in cash refunds, including $31.76 for two purchases of Align between March 1, 2009, and Oct. 31, 2009—the time period in which Procter & Gamble specifically advertised Align’s benefits as clinically proven. For purchases made after that date, class members can get one refund of $17.50, the buyers said, noting that the prices are half of the average retail price of Align during each time period.

The refunds can be claimed via a claim form that requires class members to provide contact information and identify their purchase by checking one of three boxes next to images of Align packaging. According to the settlement agreement, no proof of purchase is required.

The up to $10 million in other benefits include intellectual property, research and education grants, and/or product donations to research or education institutions working to improve digestive health. These will benefit the class by helping people with irritable bowel syndrome or who regularly seek help for their digestive health, the buyers said.

If the cash claims are less than $10 million, the company will provide additional grants so that the total payment of both types of relief reaches $15 million. If the claims exceed $15 million, the company will contribute grants so that payments of both total a maximum of $25 million, the buyers said. The initial suit was filed in September 2010 in California federal court, but Procter & Gamble had the suit transferred to Ohio. The buyers have claimed that the company didn’t deliver on its claims that Align would help build and maintain a healthy digestive system, restore natural digestive balance, and protect against digestive problems, citing individual studies, Procter & Gamble’s own studies and analyses of clinical studies.

In June 2014, the Ohio federal court certified five single-state classes. Procter & Gamble appealed the decision to the Sixth Circuit, which affirmed the lower court’s ruling. The company then petitioned the U.S. Supreme Court, but the petition was denied.


Source: Law360.com

New York Federal Judge Approves $28.5 Million Settlement To End Cnova Shareholder Action

A New York federal judge has given preliminary approval to a $28.5 million settlement resolving claims by Cnova shareholders that company executives and directors tanked the e-commerce company’s value by hiding inventory issues and overstating net sales. U.S. District Judge Laura Taylor Swain signed the
proposed agreement, filed in September, which provides a payout to those who purchased ordinary shares of Cnova between Nov. 19, 2014, and Feb. 23, 2016. Class members will recover an estimated $1.13 per share, according to the agreement.

William Stevenson, the named Plaintiff, alleged in a January 2016 complaint that the Netherlands-based company’s improper accounting practices artificially inflated Cnova’s value before inventory issues came to light in December 2015 and sent the stock dropping nearly 20 percent. In April 2016, the case was consolidated with two others, and investors Michael Schwabe and Jaideep Khanna were named lead Plaintiffs. Cnova, a subsidiary of Groupe Casino that mainly sells home appliances and furniture online, raised €146.6 million in its initial public offering in November 2014 and traded at €7 per share. But in December 2015, the company issued a statement saying it was examining inventory issues in its Brazil distribution centers, according to the original complaint.

A month later, the company announced that it had overstated its net sales by €30 million ($32.6 million). Cnova also said it would write off about 10 percent of its inventory, valued at €30 million to €35 million, due to damage or return, and that it had €20 million in outstanding accounts payable. Cnova says it believed that employee misconduct was to blame for the inventory discrepancies. After Cnova’s statement, shares in the company closed at $2.42, down 18 percent from the close of the previous trading day.

In February 2016, after the initial complaint was filed, Cnova put out a release announcing that its 2014 annual report could not be trusted. The amended complaint said:

As a result of the numerous material misstatements in the registration statement, members of the class suffered damages in excess of approximately $120 million as Cnova shares declined from $7 to $2.28, or $4.62 per share during the class period, an approximately 67 percent decline from the IPO price.

The case is In Re: Cnova NV Securities Litigation, (case number 1:16-cv-00444) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

TOYO TO PAY $11.4 MILLION SETTLEMENT TO END AUTO PARTS PRICE-FIXING SUIT

Toyo Tire & Rubber Co. Ltd. will pay $11.4 million to settle automobile dealers’ claims in multidistrict litigation (MDL) alleging Toyo colluded with automotive manufacturers, marketers and sellers to fix prices for certain rubber parts. Lawyers for the auto dealers and Japanese tire and rubber products company Toyo have filed a motion seeking preliminary approval from the court on the $11.4 million settlement.

The settlement would cover the dealers’ antitrust claims related to anti-vibration rubber parts, which are installed in cars’ suspension systems and engine mounts to reduce engine and road vibration, and to automotive constant-velocity joint boot products, which are used to cover the constant-velocity joints of an automobile to protect them from contaminants.

The proposed settlement classes involve all auto dealers in the U.S. from March 1, 1996, through Sept. 14, 2017, that purchased at least one new automobile containing automotive anti-vibrational rubber parts, or that indirectly purchased one or more anti-vibrational rubber parts as replacement parts. The settlement agreement also involves all dealers in the U.S. from Jan. 1, 2006, through Sept. 14, 2017, that purchased at least one new automobile containing automotive constant-velocity joint boot products or that indirectly purchased one or more automotive constant-velocity joint boot products as replacement parts.

As with some of the other settlements reached in the MDL, Toyo’s sales will remain in the case for calculating the treble damages claim against any non-settling Defendants, and shall be part of any joint and several liability claims against future Defendants. The U.S. Department of Justice (DOJ) has been investigating conspiracies in the market for automotive parts since as early as February 2010. The FBI is conducting a federal antitrust investigation into price fixing, bid rigging and other anticompetitive conduct in the automotive parts industry.

As a result of the DOJ investigation, Toyo had agreed to plead guilty and pay a $120 million criminal fine for conspiring to suppress and eliminate competition by allocating sales of, to rigging bids for, and to fixing prices of automotive parts sold to Toyota Motor Corp., Nissan Motor Corp., Fuji Heavy Industries Ltd., and certain of their subsidiaries, affiliates, and suppliers in the U.S. and elsewhere, from as early as March 1996 through at least May 2012. Toyo also agreed to cooperate with the DOJ in its investigation into antitrust violations involving its automotive parts. The instant $11.4 million agreement would cover the auto dealers’ claims against Toyo Tire & Rubber Co. Ltd., Toyo Tire North America Manufacturing Inc., Toyo Tire North America OE Sales LLC, and Toyo Automotive Parts (USA) Inc.

The cases are In re: Anti-Vibrational Rubber Parts, (case number 2:13-cv-00802), and In re: Automotive Constant Velocity Joint Boot Products, (case number 2:14-cv-02902), while the MDL is In re: Automotive Parts Antitrust Litigation, (case number 2:12-md-02311), all in the U.S. District Court for the Eastern District of Michigan.

Source: Law360.com

SPECTRUM LICENSE HOLDER TO PAY $9.4 MILLION TO END INVESTOR SUIT

Straight Path Communications has agreed to pay $9.45 million to settle a lawsuit with shareholders who accused the telecommunications asset holder of improperly acquiring and overstating the value of spectrum licenses, which caused the company’s stock price to drop when the truth was brought to light. Straight Path and shareholder class leader Charles Frischer have asked a New Jersey federal judge for preliminary approval of the settlement, which was negotiated back in March after the company settled for $100 million a Federal Communications Commission (FCC) investigation over claims that the company lied about its buildout of wireless infrastructure while applying for spectrum licenses.

The $9.45 million will be deposited into a settlement fund in two installments, and it will cover administration and litigation costs and attorney’s fees before distribution to the shareholder class, which includes anyone who owned Straight Path common stock between Aug. 1, 2013, and July 22, 2016, according to the preliminary approval motion.

The shareholder suit was initially filed in November 2015 by Darlan Zacharia, who accused Straight Path, CEO Davidi Jonas and CFO Jonathan Rand of distorting the value of the company’s 39-giga-hertz (GHz) spectrum holdings and failing to disclose that the spectrum licenses were improperly obtained. The lawsuit was filed following a pair of
reports in late 2015, one of which questioned the commercial viability of Straight Path’s spectrum holdings, while the other disclosed that the company’s 39 GHz licenses were renewed only after the company made fraudulent representations to the FCC.

The company’s shares fell significantly after each of the reports. The FCC soon launched an investigation into whether the company—when applying for 1,000 spectrum licenses in the 39 GHz band—submitted false claims that it had constructed systems for wireless coverage that in reality were never built. Straight Path this past January agreed to pay a $100 million civil fine and return 20 percent of its 5G licenses to the agency to end the investigation. The civil penalty can be reduced to $15 million if the company agrees to sell off its remaining licenses and send 20 percent of the proceeds to the U.S. Treasury, according to the January consent decree. In May, Straight Path announced an acquisition by Verizon Communications Inc. that was valued at $3.1 billion.

The case is Zacharia v. Straight Path Communications Inc. et al., (case number 2:15-cv-08051), in the U.S. District Court for the District of New Jersey. Source: Law360.com

Lumber Liquidators Reaches $36 Million Settlement In Laminate MDL

Lumber Liquidators Inc. has reached a $36 million settlement with two classes of consumers in Virginia federal court multidistrict litigation (MDL) over its allegedly defective and hazardous laminate flooring. One class had alleged that the durability of the wood was not up to snuff, despite marketing statements to the contrary. The other class claimed that the wood contained levels of formaldehyde beyond the standard allowed. Under the agreement, Lumber Liquidators will pay out $22 million in cash and another $14 million in store credit. The company’s CEO, Dennis Knowles, told Law360 in an email:

The memorandum of understanding executed with the classes represents another important milestone. Over the past two and a half years, our new leadership team at Lumber Liquidators has been committed to significant internal and external measures to ensure the products we offer are safe, compliant and of the highest quality for all of our customers. These included the removal of the relevant product back in 2015.

The proposed agreement will have to be approved by the court. Anyone who bought Chinese-manufactured laminate flooring sold by the company between January 2009 and May 2015 will be eligible for cash or vouchers. The multidistrict litigation over the company’s Chinese-manufactured flooring was consolidated in June 2015. You will recall that in March 2015 CBS’ “60 Minutes” reported that the company’s Chinese-manufactured laminate flooring contained levels of formaldehyde beyond the standard allowed by the California Air Resources Board (CARB). Two years before that, the board told the company that some of its products had failed emissions testing, including some of the products eventually resold to the consumers in the litigation.

Lumber Liquidators retained another laboratory that confirmed at least some of its products’ emissions exceeded CARB standards. But despite that, the company didn’t change its website. It was reported that on the same day that CARB notified Lumber Liquidators of further CARB test results indicating impermissible formaldehyde levels (May 7, 2015), Lumber Liquidators suspended all sales of its products.

The case is Leticia Ruiz v. Lumber Liquidators Holdings Inc. et al., (case number 1:15-cv-02745) in the U.S. District Court for the Eastern District of Virginia. Source: Law360.com

XVII. THE CONSUMER CORNER

AMAZING NEW TECHNOLOGY THAT COULD REVOLUTIONIZE HOW CONSUMERS MONITOR THE TIRE WEAR ON THEIR CARS

Over the years, our firm has sought to educate consumers on the importance of monitoring the condition of their tires, including detecting and understanding tire wear. Many safety experts will tell you that the tires on your vehicle are the most important safety component on the vehicle. Tires help drivers maneuver safely and avoid accidents. However, when tires fail, the consequences can be drastic. Each year there are nearly 11,000 tire-related crashes in the U.S. Thousands of people are seriously injured and several hundred people die each year from those crashes. Due to the dangers posed by failing tires, our lawyers have recommended that tires be inspected at every opportunity; once a week isn’t too often.

Now there is some amazing new technology on the horizon that offers hope to consumers of making the process of monitoring their tires much easier and more reliable. Electrical engineers at Duke University have invented an inexpensive printed sensor that can monitor the tread of car tires in real time, warning drivers when the rubber meeting the road has grown dangerously thin. If adopted, the device will increase safety, improve vehicle performance and reduce fuel consumption. The group hopes that the tire wear sensor will be the first of many that could disrupt the $2 billion tire and wheel control sensor market.

In collaboration with Fetch Automotive Design Group, the Duke researchers have demonstrated a design using metallic carbon nanotubes (tiny cylinders of carbon atoms just one-billionth of a meter in diameter) that can track millimeter-scale changes in tread depth with 99 percent accuracy. With two patents pending, the researchers are in the process of establishing industry collaborations to bring the technology to a tire near you. “With all of the technology and sensors that are in today’s cars, it’s kind of crazy to think that there’s almost no data being gathered from the only part of the vehicle that is actually touching the road,” said Aaron Franklin, associate professor of electrical and computer engineering at Duke. “Our tire tread sensor is the perfect marriage between high-end technology and a simple solution.”

In a paper published June 9 in IEEE Sensors Journal, Franklin and his colleagues flesh out their sensor design. The technology relies on the well-understood mechanics of how electric fields interact with metallic conductors. The core of the sensor is formed by placing two small, electrically conductive electrodes very close to each other. By applying an oscillating electrical voltage to one and grounding the other, an electric field forms between the electrodes. While most of this electric field passes directly between the two electrodes, some of the field arcs between them. When a material is placed on top of the electrodes, it inter-
fomes with this so-called “fringing field.” By measuring this interference through the electrical response of the grounded electrode, it is possible to determine the thickness of the material covering the sensor.

While there is a limit to how thick a material this setup can detect, it is more than enough to encompass the several millimeters of tread found in today’s tires. With evidence of sub-millimeter resolution, the technology could easily tell drivers when it’s time to buy a new set of tires or give information about uneven and often dangerous tire wear by connecting many sensors in a grid to cover the width of the tire. Tests also proved that the metal mesh embedded within tires does not disrupt the operation of the new sensors. Franklin said:

*When we pitch this idea to industry experts, they say to each other, ‘Why haven’t we tried that before?’ It seems so obvious once you see it, but that’s the way it is with most good inventions.*

While the sensor could be made from a variety of materials and methods, the paper explains how the researchers optimized performance by exploring different variables from sensor size and structure to substrate and ink materials. The best results were obtained by printing electrodes made of metallic carbon nanotubes on a flexible polyimide film. Besides providing the best results, the metallic carbon nanotubes are durable enough to survive the harsh environment inside a tire.

The sensors can be printed on most anything using an aerosol jet printer—even on the inside of the tires themselves. While it is not yet certain that direct printing will be the best manufacturing approach, whatever approach is ultimately used, Franklin said the sensors should cost far less than a penny apiece once they’re being made in quantity.

Franklin’s group also wants to explore other automotive applications for the printed sensors, such as keeping tabs on the thickness of brake pads or the air pressure within tires. This is consistent with a key trend in the automotive sector toward using embedded nanosensors. But the technology isn’t limited to cars. “This setup could be used with just about anything that isn’t metallic or too thick,” said Franklin. “Right now we’re focusing on tires, but really anything you’d rather not have to cut apart to determine its thickness could be monitored by this technology in real time.”

However, until this technology hits the market, we still recommend the following tire safety tips to help assure your tires are safe.

**Buy the right tire for your needs.** To begin, understand that the safest tires might not always be the most fuel-efficient or the longest-lasting—and that specialty tires out of their element can be dangerous. For instance, the soft, summer-performance tires that arrive on some top-performance models are ill-suited for cold, wet roads. Likewise, using special winter tires year-round is going to cost you some safety (and a lot of tread wear) if you try to use them in hot weather. Buying your tires from an experienced professional is your best bet. However, learning how tires are rated and labeled can help you in selecting a tire that is appropriate and safe for your vehicle.

**Register your tires.** This one’s extremely important, and too often skipped or overlooked. The recall system for tires has garnered a lot of attention and deserved criticism over the past several years. The recall system is extremely ineffective in alerting consumers that their tires are being recalled for safety issues. The NHTSA issues about 20 tire recalls per year, and if you register your tires’ details (to receive e-mail recall notifications), you are far less likely to miss a crucial safety issue.

**Tire pressure.** Check your tire pressure often, at least once a month and before each long trip. The best time to check your tire’s pressure is when the tire is “cold,” at least three hours after driving. You can find the proper pressure for your vehicle’s tires in the owner’s manual or on the vehicle’s placard located on the driver’s door-jamb for the car. Do not determine the proper air pressure for your tire from the sidewall of the tire. And, when in doubt, ask a professional. A recent national survey revealed that 55 percent of consumers did not know the correct tire pressure recommendation or where to find it.

**Tires don’t just wear; they age.** We have written about the dangers of aged tires on numerous occasions. Most tires age to a point at which you can have “safe” tread left yet, the tire is no longer safe. A tire might look brand-new and might not have ever been used, but research and testing show that when tires reach six years, those tires can break down from the inside, de-treading upon use and causing fatal accidents. Don’t wait for a blowout or tread separation before you decide to replace the tires on that older vehicle that you only take out once in a while. And yes, spares age, too.

**Take Care of Your Spare.** Your vehicle’s spare tire is like insurance. Something you forget about until it is needed. However, you need to check your spare tire to assure that it is properly inflated and ready to go when needed. Perhaps the most important thing to check is your spare tire’s age. It is very common to operate a vehicle that is five or six years old. If the spare is original equipment, then it is expired, dangerous to operate and should be removed from your vehicle.

**Study your tread.** While damaged or improperly inflated tires that go too long unchecked can lead to suspension, steering, or driveline issues, the opposite can be the case, too, and serious safety issues with your own vehicle can show their first signs through your tires. Most states require your tire tread depth be at least 2/32. Beyond the standard treadwear checks, like “the penny test,” look for fraying, scalloping, cupping, or any kind of uneven wear and take it as a life-saving warning sign. Signs of tread “issues” can be a good indicator that your tire needs to be replaced.

**New tires on the rear.** For whatever reason, sometimes we replace only two tires at a time. It is important to understand that when you purchase only two tires, they should be placed on the rear-axle for safety reasons. Your tire service center should know to do this, as tire manufacturers’ have recommended this practice for over a decade. However, there are several service centers that ignore this basic safety procedure that you need to be familiar with and demand.

Ben Baker, a lawyer in our firm’s Personal Injury & Products Liability Section, handles tire litigation for the firm. If you need more information relating to tire liti-
**Equifax Data Breach Update**

Last month, we summarized the latest information available on the Equifax data breach, which potentially impacted as many as 143 million consumers throughout the United States, nearly 700,000 consumers in Britain, and 8,000 Canadian consumers. Hackers obtained sensitive information, such as birth dates, addresses, driver's license numbers, and Social Security numbers from millions of consumers, and credit card numbers for approximately 209,000 U.S. consumers who had purchased credit monitoring services from Equifax. Further information has since been discovered, which potentially increases Equifax’s liability.

Initially, Equifax announced that it discovered the breach on July 29, and it began in May. However, a confidential memo to Equifax from the company investigating the breach details when the hackers gained access to Equifax’s systems indicates that intruders used a system vulnerability that was discovered in March 2017 to gain access to the Equifax systems in March—not May. Furthermore, MSCI, which provides a number of indices for tracking and predicting the behavior of the stock market, concluded as early as last summer that Equifax was no longer a company on which investors could reasonably rely to keep data safe. In November of 2016, Equifax was removed altogether from MSCI’s ESG Leader's index over concerns about data security.

While the theft of data took place sometime between May and July, the hackers were moving about in Equifax’s systems undetected as early as March 2017 due to Equifax’s lack of data security. This allowed the hackers to create back doors on secret web pages in order to log in from anywhere, even after the breached IDs were discovered and stopped working.

The issue was in the Apache Struts framework—code used to develop and run Java-based apps for web servers. Multiple companies, including banks and other credit reporting agencies, rely on a version of Apache Struts to work. This vulnerability was discovered in early March. Means of exploiting this vulnerability were reliable and readily available, and Apache issued a patch by March 9, 2017.

The Department of Homeland Security’s Computer Emergency Readiness Team even sent Equifax a notice of the need to patch a vulnerability in the company’s software public-facing network. Yet by the time the big breach began two months later in mid-May, Equifax had apparently still not updated, since its systems were still vulnerable to that flaw. Even though the March access did not lead to the theft of personal data, this early access may have consisted of information-gathering missions to find out which areas of the system were vulnerable to attacks.

The March access also could have been an effort on the part of the hackers to cast a wide net and find websites that had not yet been patched after the vulnerability was discovered. Former CEO Richard Smith told a U.S. congressional committee that Equifax failed to fix the problem due to “both human error and technology failures.” Smith has since resigned, and Equifax’s chief information officer and chief security officer have retired.

Equifax faced further issues in October, when it was discovered that a third-party vendor Equifax uses to collect website performance data was running malicious content on an Equifax website. The vendor’s code created pop-up ads that could trick visitors into installing fraudulent Adobe Flash updates and infect computers with malware during the time it was running on the site. Nonetheless, an Equifax spokeswoman states, “Equifax can confirm that its systems were not compromised and that the reported issue did not affect our consumer online dispute portal.”

The affected website has since been taken offline, and the vendor’s code removed from the web page.

Given the scope of the litigation, it is no surprise that dozens of private class action lawsuits have already been filed against Equifax on behalf of consumers and shareholders. Multiple state and local governments have filed enforcement actions as well. Additionally, the Federal Trade Commission (FTC) has confirmed that it has opened an investigation into the circumstances of the Equifax breach. Criminal investigations are also being conducted by the U.S. Department of Justice (DOJ) and the FBI.

The person or group behind the attack still has not been identified, but we now know that their methods and tools do not match any other group known to be hacking sites for personal gain. It is still not clear what the hackers plan to do with the data. There are multiple steps you can take to protect your information if you are concerned about the breach. You can check Equifax’s website to see if you have been affected by the data breach at www.equifaxsecurity2017.com.

Regardless of whether you were exposed, you can enroll for a year of free credit monitoring, but be sure to also personally monitor your accounts for any unusual activity. You can also contact the nationwide credit reporting agencies to review your credit reports. You are entitled to a free copy of your reports every 12 months.

Also consider contacting the credit reporting agencies to place a credit freeze on your reports, which makes it more difficult for someone to open a new account in your name, or consider setting a fraud alert, which requires lenders to take additional steps to verify your identity before opening a new account or increasing a credit limit.

Lawyers at Beasley Allen are involved in litigation on behalf of consumers affected by the Equifax breach. For more information about the Equifax data breach litigation, contact Dee Miles, head of the firm’s Consumer Fraud & Commercial Litigation Section, Archie Grubb, Andrew Brasheir, or Leslie Pescia, lawyers in the Section. You can reach them at 800-898-2034 or by email at Dee.Miles@beasleyallen.com, Archie.Grubb@beasleyallen.com, Andrew.Brasheir@beasleyallen.com or LesliePescia@beasleyallen.com.

Sources: CNN, Consumerist, Reuters, Consumer Reports

**Smoke Alarms Save Lives, But The Type Of Alarm Matters**

 Cooler weather is finally with us and this is the time of year when most home fires occur. The National Fire Protection Association (NFPA) reminds us to be prepared in the case of a fire. The group’s annual Fire Prevention Week, Oct. 8-14, focused on steps consumers nationwide can take to prevent fires, and to stay safe if one occurs. Installing a residential fire alarm is a key step to preparing for a potential fire. However, as we have previously reported, not all alarms are equal, and some of them do not always offer the best protection.
There are two types of alarms, ionization and photoelectric alarms, and there is a huge difference in the two. As we have previously reported, ionization alarms better detect flaming fires, while photoelectric alarms detect smoldering fires more quickly. Because housing materials are now created with materials that produce fewer ions when they are burned, it is difficult for the alarms to detect the smaller amounts of ions. Additionally, alarms are typically placed up high, and ion particles are usually too large and heavy to rise high enough to be detected. The best and more effective approach is to use both types of alarms, are recommended by the NFPA. The ions that escape detection by an ionization alarm, because they are too cool and heavy, can be detected by a photoelectric alarm. Photoelectric alarms detect smoke instead of ions. So, when smoke scatters a light beam in the detector, the alarm sounds.

Still, some alarms combine elements from both devices. However, two other fire safety organizations—the International Association for Fire Fighters and the World Fire Safety Foundation—recommend the use of photoelectric fire alarms, rather than the ionization fire alarms or combination fire alarms. Manufacturers of ionization fire alarms have misled the public with marketing schemes that imply the alarms will keep them safe. Reportedly, about 90 percent of American homes use ionization alarms. The public must be made aware that these alarms do not actually detect smoke, and are known to not function effectively during a smoldering fire—a common form of fire.

Ionization alarms are identifiable by the small amount of radioactive material on the outside, or possibly on the inside, of the detector. Consumers can view more fire prevention and smoke alarm tips on the NFPA's website at nfpa.org. For more information on fire and smoke alarms, you can contact LaBarron Boone, a lawyer in our firm's Personal Injury & Product Liability Section, at 800-898-2034 or by email at LaBarron.Boone@BeasleyAllen.com. LaBarron has handled a number of house fire cases and is extremely knowledgeable in this area. He will be glad to talk with you.

Source: National Fire Protection Association

**BLIND CORDS CAN POSE STRANGULATION RISK TO YOUNG CHILDREN**

It is very important to know that our homes can be filled with hidden dangers for young children. Seemingly innocuous home staples such as television sets, bedding and even window cord blinds can prove quite dangerous for little ones. How are blind cords dangerous? Curious children can accidentally become entangled in them, potentially leading to strangulation. According to research by the Consumer Product Safety Commission (CPSC), an estimated 184 infants and young children were strangled by window cords between 1996 and 2012. About one child dies per month due to a window cord accident in the United States.

October was designated as Window Covering Safety Month in hopes of raising awareness of the safety hazards. Each year the Window Covering Safety Council (WCSC) and the CPSC partner to remind parents and caregivers that cordless window coverings are the best option for homes with infants and young children. The tragic results of using other types of blinds often make headlines. In December 2016, CNN reported the strangulation death of 3-year-old Elsie Mahe after she accidently wrapped a window blind cord around her neck. She was hospitalized for a week in a coma before finally succumbing to her injuries. Kim Dulic, public relations officer for the CPSC, said in a statement at the time:

> Unconsciousness can happen within 15 seconds and death within two to three minutes. CPSC is aware of incidents that have occurred while others, including parents, were in the same room.

Elsie was one of four American children who died in a six-week period around the holidays last year due to window blind cord accidents.

Although the risks of corded blinds are well documented, no government regulations ban their manufacturing. However, some retailers, including Ikea and Target, according to The Washington Post, only sell cordless blinds. Lowe’s, Home Depot and Walmart have pledged to remove corded blinds from their inventory by next year, the news source reports. Pull cords, looped bead chains, nylon cords, the inner cords of Roman shades and lifting loops of roll-up shades all could potentially pose a safety risk. To help prevent blind cord strangulation, the WCSC recommends:

- Keep cribs, beds, furniture and toys away from windows;
- Make sure tasseled cords are as short as possible;
- Anchor continuous-loop cords to the wall or floor; and
- Check that all cord stops are properly installed and adjusted to limit movement.

Since cordless blinds are the best options to prevent tragic accidents, retrofit instructions and free kits are available on the WCSC website.

**Sources:** Righting Injustice, WCSC, CPSC, CNN, and The Washington Post

**XVIII. 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 October. 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.

**DAIMLER RECALLS MORE THAN 1 MILLION VEHICLES FOR AIR BAGS**

Daimler AG is recalling more than a million Mercedes-Benz vehicles around the world due to a potential issue with air bags deploying accidentally. This includes nearly 500,000 vehicles in the U.S. The recall is not related to the Takata air bag issue, but is instead linked to faulty wiring in the steering column that can cause static electricity to build up and set off a driver’s side front air bag unintentionally, according to reports. In addition to the 495,000 affected cars in the U.S., the recall covers 400,000 vehicles in Great Britain, 76,000 in Canada and several hundred thousand in Germany. At press time there wasn’t a full tally of the affected cars available.

The automaker has also said that there have been a few instances where drivers were bruised or suffered minor abrasions, according to reports. No fatalities
linked to the air bags have been reported. The recall includes certain 2012-2018 A, B, C and E-Class models and CLA, GLA and GLC vehicles. The fix for the affected cars reportedly includes replacing a clock spring in the steering column. This spring, if broken, combined with wiring components that aren’t sufficiently grounded, could cause an electrostatic discharge that could deploy the air bag, according to reports. If the clock spring is broken, the driver air bag warning light will show, as well as a red air bag warning light, according to reports.

**Ford To Recall 1.34 Million Trucks In North America For Door Latch Fix**

Ford Motor Co. is recalling 1.34 million 2015-17 Ford F-150 and 2017 Ford Super Duty trucks in North America to add water shields to side door latches at a cost of $267 million. The automaker said the safety recall is due to a frozen door latch or a bent or kinked actuation cable in the affected vehicles that may result in a door not opening or closing.

A Ford spokeswoman, Elizabeth Weigandt, said customers would be notified but she did not have a timetable for when parts will be available. Dealers will install water shields over the door latches and inspect and repair door latch cables if needed. Ford has now recalled more than 5 million vehicles for varying door latch-related issues since 2016, but the company said the issue in the new recall is different from prior ones. The company in November 2016 sent a bulletin to dealers that warned some 2015-2017 Ford F-150 trucks could have inoperative latches during freezing temperatures. The bulletin told dealers to install a rain shield to address the problem. The company initially alerted dealers in 2015 about the issue.

The company said it was not aware of any accidents or injuries associated with the issue but said because of the fault, the door may appear closed, increasing the risk of the door opening while driving. Ford has previously disclosed plans to spend $935 million on other recalls announced since August 2016. In March, Ford said it would spend $295 million to recall 211,000 vehicles in North America to replace potentially faulty side door latches and 230,000 vehicles for underhood fire risks. Ford previously recalled nearly 4 million vehicles for door latch issues in six separate recalls since 2014, including 2.4 million vehicles recalled in August 2016. In September 2016, Ford said it was taking a $640 million charge for its expanded side-door latch recalls.

**Half-Million Child Car Seats Recalled For Safety Risk**

Child safety seat maker Diono is recalling just over 500,000 children’s car seats because they might not fully protect children in a car accident, according to documents posted by the U.S. National Highway Traffic Safety Administration (NHTSA). The recall covers about 519,000 convertible child restraint and boosters made by the Sumner, Washington-based company between November 2013 and September 2017, according to the NHTSA recall report. Children weighing more than 65 pounds using a lap belt and no top tether could be at a higher risk of chest injury in an accident, according to the report. “Radian child restraints have a long history of excellent performance in the field with no reported injuries or deaths associated with these use modes,” the NHTSA report said. “Diono believes relatively few occupants will be harnessed over 65 pounds.” The problem was discovered by company testing during the summer and while the exact cause of the defect is unknown, it’s most likely due to a factory move with the subsequent new plastic injection molds, according to the NHTSA report. The recall covers the Radian R100, Radian R120, Radian RXT, Olympia, Pacifica and Rainier convertible and booster model car seats. “We are committed to improving safety for babies and young children traveling in cars,” Diono said in a safety notice on its website. “As a result of our rigorous quality control, and ongoing product testing, we have established that if our convertible child safety seat is installed forward-facing in vehicles with a lap-belt (type 1) only without top tether, it crosses into a technical non-compliance.”

Affected customers will be given a free kit with updated instruction manuals, an “energy absorbing pad” for use in harness mode and a new chest clip starting Nov. 22, according to the recall notice. The company has stopped production of the affected car seats and will resume production with NHTSA’s approval, according to the notice. Future production will include an updated instruction manual and labels, a new seat pad, and a new chest clip, according to NHTSA. Diono said that it’s received no reports of injuries from customers. The company has also set up a hotline for customers to call at 855-463-4666.

**Polaris Recalls ACE 325 Recreational Off-Highway Vehicles Due To Fire And Burn Hazards**

Polaris Industries Inc., of Medina, Minnesota, has recalled about 6,300 Polaris ACE 325 recreational off-highway vehicles (ROVs). The exhaust header pipe can crack and release hot exhaust gases into the engine compartment, posing fire and burn hazards. This recall involves all model year 2014 through 2016 Polaris ACE 325 recreational off-highway vehicles (ROVs). The recalled ROVs have a single seat and were sold in white, green and red. For model year 2014 and 2015 ATVs, “Polaris” is printed on the front grill and “Ace” is printed on the rear panel. For model year 2016 ATVs, “Polaris” is printed on the front grill and “Polaris Ace” is printed on the rear panel.

Polaris has received six reports of cracked exhaust pipes, including two reports of seat damage due to melting. No fires or injuries have been reported. Polaris dealers nationwide from December 2014 through July 2017 for about $7,500. Consumers should immediately stop using the recalled ROVs and contact Polaris to schedule a free repair. Polaris is contacting all known purchasers directly. Contact Polaris at 800-765-2747 from 7 a.m. to 7 p.m. CT Monday through Friday or online at www.polaris.com and click on “Off Road Safety Recalls” for more information. In addition, check your vehicle identification number (VIN) on the Product Safety Recalls page to see if your vehicle is included in any recalls. Pictures available here: https://www.cpsc.gov/Recalls/2018/Polaris-Recalls-ACE-325-Recreational-Off-Highway-Vehicles

**Outlet Converters Recalled By Ningbo Litesun Electric With Home Depot Due To Shock And Fire Hazards**

About 42,000 Outlet converters have been recalled by Home Depot Product Authority LLC, of Atlanta, Georgia. The outlet converters’ front outlet prongs are not configured correctly, resulting in reverse polarity when plugs are inserted, posing shock and fire hazards. This recall involves commercial electric 15-amp triplex outlet converters, also known as
BH HOME APPLIANCES EXPANDS RECALL OF DISHWASHERS DUE TO FIRE HAZARD

BSH Home Appliances Corporation, of Irvine, California, has recalled about 408,000 Bosch, Gaggenau, Jenn-Air and Thermador brand dishwashers. The dishwasher power cord can overheat and catch fire. This recall expansion involves Bosch, Gaggenau, Jenn-Air and Thermador brand dishwashers sold in stainless steel, black, white and custom panel. The model and serial numbers are printed inside the dishwasher either on the top of the dishwasher inner door panel or on the side of the dishwasher panel. BSH Home Appliances has received five reports of the power cords overheating and causing fires resulting in property damage. No injuries have been reported.

The dishwasher were sold at appliance and specialty retailers, department stores, authorized builder distributors, and home improvement stores nationwide and online from January 2013 through May 2015 for between $850 and $2,600. Consumers should immediately stop using the recalled dishwashers and contact BSH Home Appliances for a free inspection and repair. Contact BSH Home Appliances toll-free at 888-965-5813 from 8 a.m. to 8 p.m. ET any day or online at the brand websites listed below for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/BSH-Home-Appliances-Expands-Recall-of-Dishwashers

COST PLUS WORLD MARKET RECALLS GIRONA OUTDOOR DINING CHAIRS DUE TO FALL HAZARD

Cost Plus Management Services Inc., of Alameda, California, has recalled about 2,600 Girona outdoor dining chairs. The seat base can separate from the chair back causing the chair to collapse, posing a fall hazard to consumers. This recall involves Girona outdoor wooden dining chairs with four legs, and a back and seat made of flat woven weather-resistant wicker straps. The chair is sold in two colors: white (SKU/UPC 536034/0000002536034) and grey (SKU/UPC 536033/0000002536033). The SKU and UPC can be found on the UPC ticket attached to the underside of the chair seat. The company has received three reports of separation of the tenon joint located between the chair's back and seat, and two reports of in-store display chairs collapsing while being used by customers. These two customers reported receiving minor cuts and bruises.

The chairs were sold exclusively at Cost Plus World Market and World Market stores nationwide and online at www.worldmarket.com from January 2017 through August 2017 for about $35. Consumers should immediately stop using the recalled pouf ottoman, place it out of reach of children and return it to any Target store for a full refund. Contact Target at 800-440-0680 from 7 a.m. to 8 p.m. CT or online at www.target.com and click on “Recalls” at the bottom of the page, then “Furniture” for more information, or the “Product Recalls” tab on www.Facebook.com/Target. Pictures available here: https://www.cpsc.gov/Recalls/2018/Target-Recalls-Leather-Pouf-Ottoman

HERMAN MILLER RECALLS FIBERGLASS ROCKING CHAIRS DUE TO FALL HAZARD

Herman Miller, Inc., Zeeland, Michigan, has recalled about 1,600 Eames fiberglass rockers. The rocker's base can separate from the seat, posing a fall hazard. This recall involves Herman Miller's Eames-branded molded fiberglass armchair rockers with model numbers beginning with RFAR. The rockers were sold in multiple shell colors and frame finishes, and with or without upholstery. The upholstered rockers measure about 25.25 by 25.5 by 27 inches and the non-upholstered about 25 by 25.5 by 27 inches. Recalled rockers were manufactured from May 1, 2013 through Sept. 8, 2017. The manufacture date in MM/DD/YYYY format and the model number are printed on a label located on the underside of the seat. The Herman Miller, the Eames Office and the Eames signature logos are molded into the underside of the seat. Herman Miller has received nine reports of consumers falling, including...
six resulting in injuries that included bumps and cuts.

The rockers were sold at Herman Miller, Design Within Reach and Herman Miller’s authorized retailers and dealers nationwide and online at http://store.hermanmiller.com and www.dwr.com from May 2013 through September 2017 for about $650 (non-upholstered) and $890 (upholstered). Consumers should immediately stop using the recalled rockers and contact Herman Miller to return the product free of cost for a full refund. Contact Herman Miller online at www.hermanmiller.com and click on Recall Information at the bottom of the page, email at recall_info@hermanmiller.com or toll-free at 866-866-3124 from 9 a.m. to 5 p.m. ET Monday through Friday for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Herman-Miller-Recalls-Fiberglass-Rocking-Chairs

Macy’s Recalls Martha Stewart Whiteware Cake Knife and Server Sets Due to Laceration Hazard

Macy’s Merchandising Group, Inc., of New York, has recalled about 18,900 Martha Stewart Collection® Whiteware cake knife and server sets. The handles on the knife and server can break during use, posing a laceration hazard. This recall involves Macy’s Martha Stewart Collection® Whiteware cake knife and server set. The set includes a knife and a cake server. Each is about 11 inches long. Both the knife and cake server have a white, textured ceramic handle. “Martha Stewart Collection” is embossed on the metal where the blades meet the handles. UPC 608356963330 and Product ID PRCDCKSRVR are printed on the product packaging. Macy’s has received four reports of the handles on the knife and server breaking, resulting in lacerations, including cuts requiring stitches.

The sets were sold at Macy’s stores nationwide and online, and at Military Exchanges between January 2014 and July 2017 for about $25 at Macy’s and $15 at Military Exchanges. Consumers should immediately stop using the recalled cake knife and server sets and contact Macy’s for a full refund. Consumers who purchased the product from a Macy’s store should return the product to a Macy’s store for a refund of the purchase price. Consumers who purchased the product from www.macy’s.com should return the product to macys.com or a Macy’s store for a refund of the purchase price. Consumers who purchased the product from a Military Exchange should return the product to a Military Exchange for a refund of the purchase price. Contact Macy’s toll-free at 888-257-5949 from 10 a.m. to 10 p.m. ET seven days a week or online at www.macy’s.com and click on Product Recalls at the bottom of the page for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Herman-Miller-Recalls-Fiberglass-Rocking-Chairs

Toys “R” Us Recalls Infant Wiggle Balls Due To Choking Hazard

Toys “R” Us Inc., of Wayne, New Jersey, has recalled about 29,700 Bruin infant wiggle ball toys. The wiggle ball’s rubber knobs and plastic back can detach, posing a choking hazard to infants. This recall involves Bruin Infant Wiggle Ball toys also called a giggle ball. The blue ball has textured bumps for gripping and has orange, green and yellow rubber knobs around the ball. The ball wiggles, vibrates and plays three different musical tunes. It has an on/off switch and requires 3 AA batteries to operate. The recalled wiggle balls have model number 5F6342E and Toys “R” Us printed on the product. The company has received six reports of rubber knobs breaking off, including four reports of pieces of the product found in children’s mouths.

The toys were sold at Babies “R” Us and Toys “R” Us stores nationwide from June 2016 through January 2017 for about $13. Consumers should immediately stop using the recalled balls, take them away from babies and return them to Babies “R” Us or Toys “R” Us for a full refund. Contact Toys “R” Us at 800-869-7787 from 9 a.m. to 5 p.m. ET Monday through Friday, or online at www.toysrus.com and click on Product Recalls for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Toys-R-Us-Recalls-Infant-Wiggle-Balls

Playtex Recalls Children’s Plates And Bowls Due To Choking Hazard

Playtex Products, LLC., of Shelton, Connecticut. The clear plastic layer over the graphics can peel or bubble from the surface of the plates and bowls, posing a choking hazard to young children. This recall involves Playtex plates and bowls for children. The plates have various printed designs including cars, construction scenes, giraffes, princesses, superheroes and more. The white polypropylene plates and bowls also have a colored rim on top and a non-slip bottom. Playtex is written on the bottom of the plates and bowls. The plates and bowls were sold separately and together as sets. A Mealtime set is comprised of a plate, a bowl, two utensils and a cup. Playtex has received 372 reports of the clear plastic layer over the graphics bubbling or peeling. The company has received 11 reports of pieces of the detached clear plastic found in children’s mouths, including four reports of choking on a piece of the clear plastic layer.

The plates and bowls were sold at Babies”R”Us, Target, Walmart, and other stores nationwide and online at Amazon.com from October 2009 through August 2017 for about $2.50 for a single plate or bowl and $15 for a Mealtime set. Consumers should immediately stop using the recalled plates and bowls and take them away from young children. Consumers should contact Playtex for a full refund. Contact Playtex toll-free at 888-220-2075 from 8 a.m. to 6 p.m. ET Monday through Friday or online at www.playtexproducts.com and click on “Recall” for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Playtex-Recalls-Childrens-Plates-and-Bowls

Kids Preferred Recalls Wind-Up Musical Toys Due To Choking Hazard

Kids Preferred LLC., of East Windsor, New Jersey, has recalled about 587,000 wind-up musical toys in the United States. There are also about 1,000 that were sold in Canada. The metal post and/or handle of the wind-up mechanism can detach, posing a choking hazard to young children. This recall involves Carter’s®, Child of Mine®, Guess How Much I Love You® and Just One You® brands of wind-up musical plush toys. The toys have a metal wind-up mechanism that can be turned to play music. They were sold in variety of animal characters and colors. The model number and batch code are printed on the smallest white sewn-in label behind the care label. The company has received six reports of parts from the wind-up handle detaching from the toy. No injuries have been reported.

The toys were sold at Carter’s, Target, Walmart and other stores nationwide and
online from January 2016 through August 2017 for between $11 and $20. Consumers should immediately stop using the recalled toys, take them away from young children and contact Kids Preferred for a free replacement toy. Contact Kids Preferred toll-free at 888-968-9268 from 8:30 a.m. to 5 p.m. ET Monday through Friday, email at recall@kidspreferred.com or online at www.kidspreferred.com and click on “Product Safety” for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Kids-Preferred-Recalls-Wind-Up-Musical-Toys

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

We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

XIX.
FIRM ACTIVITIES

Beasley Allen Employee Spotlights

Evan Allen
Evan Allen joined the firm full-time in 2012 after working for the firm for many years as a mail clerk, then a runner and even later as a law clerk for two summers while attending Jones School of Law.

Evan, who is in our Personal Injury & Products Liability Section, had not originally intended to become a lawyer. Since his father was a lawyer, Evan had it figured out from a young age that the demands of being a lawyer were strenuous. However, as he got older, Evan learned how rewarding it could be and naturally gravitated toward it as his career.

Evan says one of his favorite aspects of practicing law is counseling clients through difficult times. It is not unusual for a client to be going through a great deal of pain during the legal process and providing counsel to suffering clients is one of an attorney's primary duties. Evan also enjoys the competitive side of the legal field, finding this profession to be one of the few where there is a clear winner and loser. He finds succeeding for his clients, particularly those who are incapable of standing up for themselves, to be very rewarding.

Evan believes Beasley Allen is unique in that it stands by its guiding principles every day. The firm's motto of "helping those who need it most" sets a strong standard for our lawyers to follow. Evan has found that putting God first, his family second and work third allows him to work that much harder for his clients. He says the young lawyers at the firm, such as himself, have been blessed to work for a firm where the reputation of hard-working lawyers with high moral character proceeds them.

Evan is a very good lawyer who works very hard for his clients and he is dedicated to seeing that they receive justice. We are blessed to have Evan with us.

Leslie Pescia
Leslie Pescia, a lawyer in our Consumer Fraud & Commercial Litigation Section, began her work at Beasley Allen in May of 2012 as a law clerk. Now a lawyer in the same section she started in, Leslie handles litigation ranging from antitrust issues and whistleblower claims to various class actions, including the BP Oil Spill litigation.

Her primary motivation to become an attorney was to make a difference in the lives of those facing serious legal challenges. She enjoys how no day is exactly the same as the one before it, allowing her to explore new fields and be a better asset to her clients. While the variety day-to-day keeps her on her toes, it also makes for an exciting career.

Beasley Allen stood out to Leslie as a young law student because everyone she worked for seemed to truly care about everything they were doing for their clients. She also saw first-hand how the firm went out its way to develop the skills she would need to be an effective lawyer.

Being a lawyer can be an extremely stressful career. Leslie says she has found the firm to be truly caring toward her as not only a lawyer, but as a person—something she says has made all the difference to her.

Leslie is a very good, dedicated lawyer who works very hard to see that her clients receive justice. We are blessed to have Leslie with the firm.

Lisa Smith
Lisa Smith, a Staff Assistant in our Mass Torts Section, began at Beasley Allen as a temporary worker in April of 2013. Since then, Lisa became a full-time employee. She has helped us with a number of different litigations, including talcum powder, Xarelto and transvaginal mesh cases. Some of her duties include sending and receiving client paperwork, as well as assisting with any special projects in her section.

Since starting with Beasley Allen, Lisa's family size has tripled! Not only did she get married in 2015, but she welcomed her first child in December of 2016. This year she says has been filled with laughter, smiles and many firsts for her new family, so she considers them to be her greatest accomplishment in life.

Lisa enjoys watching football in the fall and being outside in the summer. She always enjoys spending time with her family, keeping up with her young son and also trying to squeeze a book in when she has the time to read.

Lisa is a good, hard-working employee. We are fortunate to have her with us.

Dixie Carter
Dixie Carter works as a Legal Secretary in our firm's Mass Torts Section. After starting as a temporary worker in the Toxic Torts section almost three years ago, Dixie was first involved with the BP oil spill litigation before transferring to assist in Mass Torts. She is now primarily responsible for Plaintiff fact sheets and images, which requires her to be very detail-oriented and organized with our clients' case information.

Before joining Beasley Allen, Dixie went to school to become a Cosmologist and worked as a hairdresser prior to becoming a mother. She has two daughters—Julie, who works as a Dental Hygienist; and Patricia, who is in Retail Management. She is also blessed with six grandchildren—five granddaughters and one grandson.

When Dixie isn't with her family, she enjoys home decoration, working in her yard and hiking in the woods. She and her boyfriend, who is an avid bowyer and hunter, also enjoy practicing archery together.

Dixie is a dedicated employee who does very good work. We are fortunate to have her with the firm.

Renay Robertson
Renay Robertson has been employed by Beasley Allen for a total of 18 months. However, she has been a Legal Secretary
for 38 years. After working part-time for a lawyer while attending college, ReNay decided to pursue a career in the legal field and despite spending a majority of her career working for various defense firms, she opted to make a change and she says she now loves working for Beasley Allen as a Legal Secretary in our Mass Torts Section.

ReNay’s responsibilities within our firm vary day-to-day, but she is currently handling summons and complaints on each Defendant in Xarelto cases, assisting with case opens, ordering medical records for talcum powder clients, as well as updating and recording projects in ProLaw and other ProLaw determinations as assigned. ReNay temporarily had the privilege of working with Beasley Allen lawyers Andy Birchfield and Leigh O’Dell when their secretary and friend of 20 years, Genie Pruett, became ill and went on to be with the Lord.

ReNay and her husband Rick, a recently retired assistant art director for Auburn University-Montgomery, celebrated their 34th anniversary together this year. Rick serves as the worship minister at Bell Lane Baptist Church in Clanton, Alabama, where they both sing and worship together with their church family. The couple has raised two grown sons—both of whom are graduates of Auburn University and are musicians.

Their younger son, Stephen, is an analyst at Hyundai’s Mobis facility in Montgomery and also leads worship at a church plant in downtown Montgomery—Two Cities. Their older son, Jeff, and his wife Amanda live in Huntsville, Alabama, where Jeff teaches junior high and high school at Providence Christian School. Jeff also coaches the school’s basketball team. ReNay says she and her husband have also been blessed with grandchildren—a 3-year-old grandson and a 15-month-old granddaughter, and she says that another blessing is on the way!

In her spare time, ReNay enjoys church activities, singing, playing with her grandchildren, spending time with her family and friends, watching Marvel movies and working on crossword puzzles.

ReNay is another dedicated employee who works hard and does good work. We are blessed to have ReNay with us.

A NUMBER OF NEW LAWYERS HAVE JOINED BEASLEY ALLEN

RYAN DUPLECHIN

This month we welcomed Ryan Duplechin to our Mass Torts Section. After clerking with the firm for two years, he now works full time on cases involving defective pharmaceutical drugs and medical devices. He primarily focuses on cases involving the link between talcum powder and ovarian cancer.

Ryan earned his Bachelor of Science degree from Florida State University. He graduated in only two-and-a-half years at the age of 20. While at Florida State, Ryan was selected to multiple national academic honor organizations and was a member of Kappa Alpha Order.

He received his Juris Doctor with Honors from Faulkner University’s Thomas Goode Jones School of Law. During law school, Ryan served as associate editor of the Faulkner Law Review and was elected twice as president of the Alabama Young Lawyers Student Division. He also served as senator-at-large in the Student Bar Association.

As a member of the Board of Advocates, Ryan was selected to the Capitol City National Trial Team and competed in Washington, D.C.

Ryan says he pursued law as a career because the opportunity “to learn, grow, and help good people is limitless.” He is a member of the Alabama State Bar, Alabama State Bar’s Young Lawyers Section and the Alabama Association for Justice. He is also a member of the American Association for Justice, the American Bar Association’s Mass Torts Litigation Committee and the American Inns of Court, Hugh Maddox Chapter.

Ryan was born in Birmingham, Alabama, while his father was in law school. He grew up in Niceville, Florida, and enjoys spending time with his family and friends, playing golf and visiting the beaches of the Florida panhandle.

PAUL EVANS

Paul Evans joined Beasley Allen as Of Counsel in our Consumer Fraud & Commercial Litigation Section in October. He handles class actions, antitrust issues, whistleblower claims and Medicaid fraud litigation.

Paul is a member of the Alabama State Bar, the Alabama State Bar Young Lawyers Section, the American Association for Justice and the Hugh Maddox American Inn of Court. He graduated summa cum laude with a B.S. in political science from Troy University in 2014. He then earned his J.D. from Faulkner University’s Thomas Goode Jones School of Law three years later, graduating magna cum laude.

While in law school, Paul was an editorial board member of the Faulkner Law Review, President of the Student Bar Association and a Walter J. Knabe Scholar. He also earned the Dean’s Award, five Best Paper awards and a place on the Dean’s Honor Roll each semester. In addition, he was Regional Champion of the ABA National Appellate Advocacy Competition, was Best Brief Finalist and Semi-Finalist at Faulkner’s First-Year Moot Court Competition, and was Semi-Finalist of Faulkner’s Greg Allen Mock Trial Competition. Paul also assisted with the Pro Se Litigation Assistance Program.

Paul said he wanted to become a lawyer because growing up he saw lawyers being influential leaders in the community who helped people face hardships. “Being a lawyer presents me with the ability to serve my community, to help others and to learn constantly,” he added.

Before joining Beasley Allen full time, Paul interned with Justice Tommy Bryan of the Alabama Supreme Court and clerked with the firm’s Consumer Fraud & Commercial Litigation Section. He said his time as a law clerk helped him decide our firm was the right fit. Paul says that after he joined the firm, he quickly realized that our firm’s policies “encourage lawyers and staff to work hard for clients and to prioritize our faith and family.”

A native of Montgomery, Paul attends First Baptist Church. He enjoys watching and attending Troy University and University of Alabama football games as well as spending time with his fiancée, family and friends.

LASHERYL DOTCH

LaSheryl Dotch joined Beasley Allen Law Firm as a law clerk in August 2016. She was hired this month as Of Counsel in the firm’s Mass Torts Section handling Invokana litigation. She is a member of the Alabama Lawyers Association, the Alabama State Bar Young Lawyers Section and the Alabama State Bar Women’s Section. She is also a member of the Montgomery County Bar Association.

LaSheryl received her Bachelor of Arts in Public Administration from Auburn University in 2011. Immediately following her undergraduate career, LaSheryl interned on Capitol Hill with former Representative Jo Bonner of Alabama District 1, piquing her interest in a legal career.
She ultimately decided on becoming a lawyer to “be the voice for those who are unable to speak or represent themselves.” LaSheryl received her Juris Doctor from Faulkner University’s Thomas Goode Jones School of Law in 2015. She also received her Master of Laws (LL.M.) degree in Trial Advocacy and Alternative Dispute Resolution from Jones the same year.

While in law school, LaSheryl was the 2015 recipient of the summer internship with the Alabama Lawyers Association and a BARBRI Bar Review student sales representative. She also clerked for Stone, Granade & Crosby P.C., the Alabama Attorney General’s Office in the Criminal Trials Division, Judge Calvin L. Williams, Justice Lyn Stuart of the Alabama Supreme Court, Judge Truman M. Hobbs Jr. and Judge Greg Griffin, before joining Beasley Allen’s Toxic Torts Section as a clerk while finishing her studies and sitting for the Bar.

In addition, LaSheryl served as the chapter advocacy specialist for the Ernestine S. Sapp Chapter of the National Black Law Student Association from 2014 to 2015 and as an active member of the Jones Public Interest Law Foundation each year. She has been an Alabama Notary of Public at Large since May 2014.

LaSheryl is a member of New Light Missionary Baptist Church and Delta Sigma Theta Sorority Inc. She enjoys spending time with her family and friends and eating seafood, specifically snow crab legs.

CHRIS BALDWIN

Chris Baldwin began working at the Beasley Allen Law Firm in August 2015 as a law clerk in our Consumer Fraud & Commercial Litigation Section. He currently serves as a lawyer in the same section, working on class actions, anti-trust issues and whistleblower claims.

Chris attended Auburn University, graduating with his B.A. in 2012. He earned his J.D. in 2017 from Faulkner University’s Thomas Goode Jones School of Law, where he earned five Best Paper awards and graduated cum laude. Chris was a 2015 IL Closing Argument Competition Finalist and a Florida State National Civil Mock Trial Competition Semi-Finalist. During law school, Chris served as Chairman of the Board of Advocates, President of the Christian Legal Society, a Dean’s fellow and a member of the Faulkner Law Review.

Along with earning his J.D., Chris also earned an LL.M in Dispute Resolution and an ADR Certificate. In 2017, Chris wrote an article concerning the arbitrability of qui tam cases filed under the False Claims Act published in the Faulkner Law Review: Christopher D. Baldwin, Arbitration Disarms the U.S. Government of its Greatest Weapon in the War Against Fraud: The False Claims Act, 8.2 Faulkner L. Rev. 349 (2017).

Chris says he became a lawyer after he felt God leading him toward attending law school and is now learning the “why” along the way. He says: “The more I develop as a lawyer the more I understand why God has directed me to this profession.”

Growing up in Roanoke, Alabama, Chris now lives in Montgomery, Alabama, serves as the youth pastor at the Oaks Church in Auburn, Alabama, and enjoys cycling, hiking, podcasting, drinking good coffee and writing. Chris is also a professional magician and said turning himself into a lawyer may be the “best trick” he’s ever performed.

TYNER HELMS

Tyner Helms has joined our firm serving as Of Counsel in the Consumer Fraud & Commercial Litigation Section, primarily handling litigation related to Fiat Chrysler emission cheating software and class action litigation against Voya Financial.

Tyner received his accounting degree in 2013 from Auburn University, where he was a member of Sigma Alpha Epsilon Fraternity. He participated in collegiate and charity organizations. He earned his Juris Doctor from the University of Alabama School of Law in 2017. While in law school, Tyner served as senior editor of the Civil Rights and Civil Liberties Law Review, interned at the Elder Law Legal Aid Clinic and assisted a professor in developing a journal article on the False Claims Act’s application to customs fraud.

Tyner says he became a lawyer for the challenge and the impact it has on people's daily lives. “Lawyers can be movers and shakers in society, and have the potential to change status quo through the legal process,” he said. “Lawyers are often in unique positions to help people resolve problems. They can help restore lives, and are often the only thing standing between an injustice.”

Beasley Allen was a good fit for him, Tyner said, due to the way the firm approaches its legal mission: “It is a calling and a passion, which is something I want to be a part of. I believe that is why the firm has the courage to take on important cases against major corporations, and the ability to deliver with so much on the line.”

Tyner, a member of the Alabama State Bar’s Young Lawyers Section, also clerked at Melton, Epsy & Williams; the Joe Hubbard Law Firm; and Farris, Riley & Pitt while earning his law degree. Tyner and his wife were married five months ago and live in Montgomery.

NATIONAL NIGHT OUT PROVIDES OPPORTUNITY TO TEACH TIRE SAFETY

For the third year Beasley Allen has participated in the Prattville Police Department National Night Out event held in Prattville, Alabama. Aprile Hartsfield and Elizabeth Williams from our firm passed out water and candy to the children as they explained the importance of tire safety, specifically the DOT (Department of Transportation) numbers found on tires. This number is important because it tells you when your tire was manufactured so that you can track when it should be taken off the road.

Several law enforcement agencies from around the River Region were present, along with Crime Stoppers and other area businesses. Well over 2,000 people attended this year’s event. There were activities for the children and food for the whole family. A very special thank you goes to Chief Mark Thompson and Tammy Wingard of the Prattville Police Department. They do a tremendous job coordinating this important event each year.

There is more information about tire safety available on our website at www.beasleyallen.com/news/tire-blowouts.

MIKE ANDREWS AUTHORS NEW BOOK ON AVIATION LITIGATION

Aviation litigation can be extremely complex and often involves determining the respective liability of manufacturers, maintainers, retrofitters, dispatchers, pilots and others. An aircraft is a complex piece of equipment. It involves complex systems that have to work consistently in the right order, every time.

In aviation, there is a smaller margin for error or product failure than most cases involving automobiles or other simpler products. In some circumstances, the age of the aircraft involved can limit or completely preclude an injured party from compensation. Our job is to find out
what has happened, how it happened, and why it happened—including how the product involved in the accident could have been designed differently.

To help other lawyers better understand and navigate this complex area of litigation, Mike Andrews, a lawyer in our firm’s Personal Injury & Products Liability Section, has written a new book: *Aviation Litigation & Accident Investigation.* In the book, Mike discusses the complexities of aviation crash investigation and litigation. He provides basic instruction on investigating an accident, preserving evidence, insight into legal issues associated with aviation claims, and anecdotal instances of military and civilian crashes.

Mike joined Beasley Allen Law Firm in 1998, working in the Personal Injury & Products Liability Section. The majority of his practice deals with complex product liability cases involving serious injury or death. Mike has handled several cases against manufacturers of aircraft, light and heavy trucks, automobiles, and agricultural and construction equipment, and he has received several seven- and eight-figure settlements and verdicts. Mike says he enjoys highly technical cases and has a particular passion for working on behalf of injured children along with an interest in cases involving traumatic brain injuries. Mike is a Martin-dale Hubbell AV Rated attorney. In 2015, he was selected as the Beasley Allen Lawyer of the Year for his Section because of his work in Product Liability litigation.

We hope Mike’s book will help you to know what questions to ask as you evaluate your potential aviation case, and how to get started. The book is available free to lawyers in either printed copy or downloadable digital format. To request a copy or download the book, visit mikean-drews-law.com/book.

**XX. SPECIAL RECOGNITIONS**

**Beasley Allen Honored by MABCA With Frank Plummer Memorial Arts Award**

At the 31st annual Montgomery Area Business Committee for the Arts (MCBCA) Awards event, held Nov. 2, Beasley Allen was honored to receive the Frank Plummer Memorial Arts Award. This award recognizes consistent excellence by a business in support of the arts community.

The award is named after one of the founders of the MCBCA, which was established nearly 40 years ago to bring together businesses of all sizes with artists and arts organizations in our community. The MABCA is an affiliate of the National Business Committee for the Arts, which was established in 1967 by David Rockefeller, who at the time was president of Chase Manhattan Bank.

MABCA was the very first affiliate created in the United States, in 1979, after Montgomery businessman and philanthropist Wynton M. “Red” Blount was awarded a National Business in the Arts Award. Blount returned to Montgomery and, along with Bobby Weil, Sr., and Frank Plummer, founded the local MABCA.

The MABCA is a membership organization made up of both large companies and smaller companies and start-ups. There is an annual membership fee based on the number of employees in a company. The organization works to put companies interested in supporting the arts in touch with artists or programs that need sponsorship.

Ashley Ledbetter, who has been Executive Director of MABCA since 2003, explained that the organization provides benefits for both the donors and the recipients of their support:

*Involvement in the arts promotes creativity and good community citizenship in the business community, and the arts creates millions of dollars in economic opportunity. It’s good for the community and good for the soil.*

The MABCA Awards is an annual luncheon that allows artists and arts organizations to thank businesses that have shown exceptional support. For more information, visit www.MABCA.org. Our firm considers this award to be one of the highest honors that any business could receive. We truly appreciate being selected this year.

**Beasley Allen Recognized at the River Region Ethics in Business & Public Service Awards Luncheon**

Beasley Allen was proud to be selected as one of three finalists for the River Region Ethics in Business & Public Service Award, given by the Samaritan Counseling Center. The River Region Ethics in Business & Public Service Award is a program of the Samaritan Counseling Center, Inc. in collaboration with the Schools of Business and Sciences at Auburn University Montgomery. While we didn’t win this award, we were honored to have made the final cut.

**XXI. FAVORITE BIBLE VERSES**

Willa Carpenter, our firm’s Human Resources Liaison, submitted verses for this issue. Willa does a tremendous job for our firm and is loved by all of our employees.

*Jesus said “You shall love the Lord your God with all your heart, with all your soul, and with all your mind.” This is the first commandment. And the second is like it “You shall love your neighbor as yourself.” On these two commandments hang all the Law and the Prophets.” Matthew 22:37-40*

Willa says: “how often we hear the word ‘love’ being used without fulfilling the requirements that Jesus is speaking of in these scriptures. Jesus is speaking of the kind of love that requires obedience to all of His commandments and for us to love our neighbors as much as we love ourselves. Without His love filling our hearts, this will be impossible; so Romans 5:5 gives us His word that will enable us to love this way.”

*Now hope does not disappoint, because the love of God has been poured out in our hearts by the Holy Spirit Who was given to us. Romans 5:5*

Willa says she is both challenged and encouraged by these scriptures. She says she is challenged every day “to walk in this love,” as she continues to pray and meditate on His word. Willa says she is encouraged and empowered by the Holy Spirit who has been poured out in my heart. Willa added: “I pray that many of you who may not have taken on this challenge, will ask the Holy Spirit to empower you to live this life of love—the world is in great need of God’s love.”

Angie Taylor, a legal assistant in our Mass Torts Section, furnished two verses
mitting her verses, Kesha had this to say:

For a month God woke me up every morning at 3 a.m. It took me that long to understand this was the only time my life quiet enough for me to hear my God. Once I was given this revelation I cut my ‘busy’ as much as I could and chose to start every morning out with quiet time with God. It has been one of the best decisions God has made in my life!

“Teacher, which is the greatest commandment in the Law?” Jesus replied: “Love the Lord your God with all your heart and with all your soul and with all your mind. This is the first and greatest commandment. And the second it like it: ‘Love your neighbor as yourself.’

All the Law and the Prophets hang on these two commandments.” Matthew 22:36-40

God changed my entire life with His love. God also used this scripture to teach me how to love, not just others, but myself as well. Love never ends. 1 Corinthians 13:7-8.

Be still and know that I am God. Psalm 46:10

Kesha Nowell, a staff attorney with the firm, also supplied two verses for this issue, John 8:12 and Rev. 3:20. When submitting her verses, Kesha had this to say:

On our honeymoon, my husband and I were given the opportunity to visit England and Scotland. One of the highlights on the trip was our tour of St. Paul’s Cathedral in London, which has absolutely beautiful architecture and works of art. William Holman Hunt’s Light of the World was a sight to behold. The painting in the Middlesex Chapel at St. Paul’s was the third version of the painting and was said to be the culmination of the artist’s vision. As such, when Hunt signed the painting, be dated it “1851-1900,” which included the working periods of the first and second versions. Light of the World features Jesus standing in front of door while holding a lantern and patiently knocking on the door. Words cannot adequately describe the beauty and symbolism. On the frame of the painting, the words of Revelation 3:20 are etched, reminding us that Jesus stands ready and awaits his invitation to enter our lives.

Then Jesus spoke to them again, saying, “I am the light of the world. He who follows Me shall not walk in darkness, but have the light of life.” John 8:12 (NKJV)

Be bold, I stand at the door, and knock: if any man hear my voice, and open the door, I will come in to him, and will sup with him, and be with me. Revelation 3:20 KJV

XXII. MYTHBUSTER SERIES

MYTH: FDA IS A GOVERNMENT FUNDED INDEPENDENT AGENCY

The Food and Drug Administration (FDA) has the awesome responsibility of regulating the powerful pharmaceutical industry. Most people believe that the FDA is a government agency that is fully funded by taxpayers and that it represents the gold standard in drug and medical device approval in the entire world. It’s true that the FDA is a government agency. While taxpayers still provide about one third of the FDA’s funding, the agency receives most its drug-review funding from the pharmaceutical industry through “user fees.” So, who does the FDA serve—U.S. citizens or the huge pharmaceutical companies?

Under the Prescription Drug Use Fee Act (PDUFA) of 1992, drug companies pay user fees to get drugs approved. Initially, Congress pass PDUFA to provide a budget to hire more scientists and researchers to deal with the new drug application workload because companies complained about how long it took to obtain approval of a new drug. Since 1992, reauthorizations of the act have weakened standards. For example, it allowed companies to use one trial instead of two to approve a drug in some cases.

While requiring pharmaceutical companies to help finance the agency that regulates them may not be a bad thing, it raises some serious concerns. Are pharmaceutical companies no longer private companies, but government-sponsored enterprises like Fannie Mae? Big Pharma pays the FDA that approves their drugs; they hire FDA employees and they lobby the politicians who oversee the FDA. The consumer ultimately must pay for all of that. Since that is the case, would we be better off funding the FDA with tax dollars only and making all FDA employees off limits to be employed by a pharmaceutical company or to lobby at FDA for a period of time after leaving the FDA?

I find that most folks believe the FDA tests every drug before the drugs are approved by the agency to be sold to consumers. Actually, the FDA does not test a single drug. Instead, the agency depends on the drug companies to test the drugs. We have seen lots of abuses in that system.

Is the FDA an independent agency looking out for the consumer? I have to believe there are FDA employees who hold themselves to a high standard. But we should all be concerned that the drug industry has come to rely on the FDA and politicians to feather its nest.

Sources: How Big Pharma controls the FDA. Crony Capitalism in American, Chapter 15 by Hunter Lewis and Misplaced Trust—Drugwatch by Michelle Llamas

XXIII. CLOSING OBSERVATIONS

THE INAUGURAL GIBSON VANCE DISTINGUISHED LECTURER SERIES AT TROY UNIVERSITY

I had the pleasure of being the first speaker at Troy University’s Gibson Vance Distinguished Lecturer Series last month. The series aims to provide students interested in pursuing a career in the legal profession the opportunity to hear from what was said to be some of the field’s foremost figures. With my speech, “My Lifetime in the Court Room,” My goal was to provide students with some insight into a career in the legal profession and the impact lawyers can have on the lives of individuals and communities. Hopefully, I was able to accomplish my goal.

The series, a part of the College of Arts and Sciences at Troy University, was endowed thanks to a donation from our own Gibson Vance, an alumnus of the University and currently a member of the school’s Board of Directors. “I feel fortunate to have the opportunity to give back to the University that provided me a great
education and a wonderful college experience,” Gibson told Troy Today. The lecture series is sure to be an asset to the university well into the future. “We are grateful to Gibson Vance for his vision and leadership as a Trustee and for his generosity in establishing this important lecture series,” Chancellor Dr. Jack Hawkins Jr. said in Troy Today. “These lectures will be of great benefit to our students preparing for a career in law, and Jere Beasley, truly one of the nation’s best lawyers, is the perfect lecturer to start the series.” I sincerely appreciate Dr. Hawkins remarks and it was a definite honor to be chosen as the first speaker for the series.

**OUR MONTHLY REMINDERS**

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

2 Chron 7:14

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

Edmund Burke

Woe to those who decree unrighteous decrees. Who write misfortune, Which they have prescribed. To rob the needy of justice. And to take what is right from the poor 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

XXIV. PARTING WORDS

_**ALL FIVE LIVING EX-PRESIDENTS PUT POLITICS ASIDE AND CALL FOR NATIONAL UNITY**_

The five living former Presidents of the United States put aside party politics and appeared together for the first time since 2013 at a concert held last month to raise money for victims of the devastating hurricanes in Texas, Florida, Louisiana, Puerto Rico and the U.S. Virgin Islands. Democrats Barack Obama, Bill Clinton and Jimmy Carter, along with Republicans George H.W. Bush and George W. Bush, gathered in College Station, Texas, home of Texas A&M University, in an effort to unite the country after the storms.

Texas A&M is home to the presidential library of the elder Bush. At 93, he has a form of Parkinson’s disease and appeared in a wheelchair at the event. His wife, Barbara, and George W. Bush’s wife, Laura, were in the audience. Grammy award winner Lady Gaga made a surprise appearance at the concert that also featured Alabama, the famous country music band, Rock & Roll Hall of Famer “Soul Man” Sam Moore, gospel legend Yolanda Adams and Texas musicians Lyle Lovett and Robert Earl Keen. The appeal backed by the ex-presidents has raised $31 million since it began on Sept. 7.

President Donald Trump offered a video greeting at the event that avoided his past criticism of the former presidents. He called them “some of America’s finest public servants.” President Trump stated: “This wonderful effort reminds us that we truly are one nation under God, all unified by our values and devotion to one another.”

Four of the five former presidents—Obama, George W. Bush, Carter and Clinton—made brief remarks that served to unify at a time when unify America is so badly needed. While the elder Bush did not speak, his presence was important. These five presidents appealed for national unity to help those hurt by the hurricanes. “The heart of America, without regard to race or religion or political party, is greater than our problems,” said Clinton.

While the former presidents, joined by President Trump, collectively called for unity relating to the devastation caused by the storms, it was just “plain good” to see former adversaries join together and call for national unity. Even the current president, who thus far had not been very strong on the need for unity, joined the effort. Hopefully the event, and the obvious need for unity, made a lasting impression on the president.

My prayer is that this call for unity will continue and be expanded into all of the areas of concern in the U.S. We are as badly divided in our country today as I have ever seen before. We badly need “love” to replace “hate” and “unity” to replace “division” in America. God will bless America if we will simply follow the instructions given to us by our Heavenly Father in Chronicles 7:14.

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Jere Beasley has been an advocate for victims of wrongdoing since 1962, practicing law in his hometown of Clayton, Alabama, until he was elected Lieutenant Governor of the state of Alabama in 1970, beginning his term in January 1971. 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.

On January 15, 1979, Jere established a one-lawyer firm in Montgomery, Alabama, now known as Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.. He filed his first case on behalf of the practice on January 17, 1979. It has been nearly 40 years since he began the firm with the intent of “helping those who need it most.” Beasley Allen is still located in Montgomery with an office in Atlanta, Georgia. The firm is one of the country’s leading firms involved in civil litigation on behalf of claimants, having represented hundreds of thousands of people.

Beasley Allen employs more than 250 people in Montgomery, including more than 70 attorneys.