



The
JERE BEASLEY REPORT

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I. CAPITOL OBSERVATIONS

BEASLEY ALLEN'S 11TH ANNUAL LEGAL CONFERENCE A SUCCESS

Approximately 1,500 Alabama lawyers in private practice attended Beasley Allen's 11th annual Legal Strategies Conference & Expo at the Renaissance Montgomery Hotel & Spa at the Convention Center. As with years past, attendees could receive up to 12 full hours of free Continuing Legal Education credits certified by the Alabama State Bar. Topics included emerging areas of litigation, practice areas that are crucial to trial lawyers' success and marketing tips for lawyers in private practice.

Conference participants were treated to an inside look, start-to-finish, at a recent case our firm successfully litigated in Mobile, Alabama, which was a new approach to presenting cutting-edge trends and information in the profession. From all accounts that worked extremely well.

The conference's new approach included a special appearance by Colin Lacy, whose unique perspective as a client reinforced the important role of trial lawyers in the country's civil justice system. He explained how the accident has been the worst thing that has ever happened to him, but also the best thing, too. Colin told conference participants, "What you do makes a difference and has made a difference to me. My team [of lawyers] had my back and actually cared about me."

Colin first connected with Charlie Potts, a lawyer with the Briskman and Binion Law Firm in Mobile. This came following the accident Colin had while driving a Freightliner truck, which left him with a severed spine at the T-10 level. After attending the legal conference in previous years, Charlie decided to partner with Beasley Allen to get justice for this young man. As an active member of the trial team, Charlie's commitment to helping jurors understand what happened to Lacy and how it would affect him the rest of his life was integral to the team's success. A Mobile jury returned an \$18.79 million verdict in Colin's favor against Empire Truck Sales, LLC (Empire). Empire serviced Lacy's truck just before the accident and left a lateral control rod detached, causing a defect in the truck's brake system. Lacy spent two months in the hos-

pital and will spend the rest of his life confined to a wheelchair. Pretrial settlements were made with Freightliner and IMMI, the manufacturer of the seat belt system.

In addition to the sessions discussing trial preparation techniques, the conference also offered legal marketing tips for private practice lawyers. Best-selling author and international technology expert Jabez LeBret shared trends and tips about online legal marketing strategies. He also offered attendees the opportunity to receive a copy of his book, *Online Law Practice Strategies: How to Turn Clicks into Clients*, for free.

The following is a sample of what conference participants said:

- Bill Fuller from LaFayette, Alabama—"A powerful and inspiring event, fusing many talents on the tough paths to justice!"
- Heather Leonard from Birmingham, Alabama—"Awesome advice from Charlie Potts on *voir dire*."
- Dihanne Perez Guilbert, a private practice lawyer who just relocated to Harvest, Alabama, after practicing law in Tennessee for a number of years, said she appreciated the access to resources that aren't always easily available to small, private practice lawyers.

More than 20 of the nation's top legal service providers, along with this year's platinum sponsors, Jackson Thornton Valuation and Litigation Consulting Group and Freedom Reporting, Inc., filled out the Expo area. Other sponsors included Baker Realtime Reporting, Berney Office Solutions, Forge Consulting, Garreston Resolution Group, Martindale-Hubbell, and Verscend. Representatives from other legal and community groups, including the Alabama State Bar and the Alabama Association for Justice, were also on hand to share information with conference participants about how their organizations assist Alabama lawyers.

As a part of the program, I discussed the important role trial lawyers play in protecting folks and improving society. Additional special guest speakers over the two days included Alabama Attorney General Steve Marshall; Retirement Systems of Alabama CEO Dr. David Bronner; Alabama Association for Justice President Frank Woodson (a lawyer in our firm); the legendary Morris Dees; the Alabama State Bar's Executive Director Phillip McCallum; Alabama State Bar President Augusta S. Dowd; ASB General Counsel Doug McElvy; and Alabama Lawyer Assistance Program Director Rob Thornhill. A high-

light of the conference was Mike Kolen, a former star linebacker at Auburn and later with the Miami Dolphins, who spoke at the annual prayer breakfast. There was a record turnout at the breakfast.

"It's important for lawyers to stay up-to-date on evolving trends and technology that can help us advocate more successfully for our clients," said Beasley Allen lawyer Gibson Vance. "Beasley Allen is pleased to provide a venue and resources for our colleagues throughout the state. And, while it's risky to introduce a change after more than decade of hosting this type of event, the feedback about the new approach was overall positive and encouraging."

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II. AUTOMOBILE NEWS OF NOTE

BEASLEY ALLEN LAWSUIT SAYS CHRYSLER VEHICLE POSES POST-CRASH FIRE RISK

Our law firm has filed a lawsuit in the State Court of Gwinnett County, Georgia, on behalf of the family of a woman who was killed after her car burst into flames as the result of a crash. The car's manufacturer, Chrysler Group LLC, was well aware that the placement of the fuel tank behind the rear axle in Mary "Erica" Scannavino's 1996 Jeep Cherokee was dangerous and presented a significant risk of post-crash fires. This is particularly true in rear-impact crashes like the one Ms. Scannavino experienced. An after-market trailer hitch attached to her vehicle by the auto-maker was defective in design and contributed to the deadly effects of the crash by puncturing through the fuel tank.

Ms. Scannavino was killed on July 29 at the age of 32 when her car was struck from behind by another vehicle. She would have survived the impact, but the impact caused the fuel tank of the Jeep Cherokee to fail because of its location. The fuel tank is located in the crush zone behind the vehicle's rear axle. Penetration of the fuel tank resulted in the spillage of a large amount of gasoline that immediately ignited. As the vehicle was struck from the rear, the trailer hitch also crushed into the gas tank and punctured it, exacerbating the problem. Ms. Scannavino's vehicle was engulfed in flames within seconds, trapping her in the vehicle despite efforts by others on the scene to free her.

Other Chrysler vehicles, including the Jeep Grand Cherokee and the Jeep Liberty, were recalled for the exact same defect that contributed to Ms. Scannavino's death, but unlike owners of those vehicles, she did not receive the benefit of being warned about the danger of her vehicle.

For decades Chrysler has known the dangers associated with placing a fuel tank in that location and was well aware that certain trailer hitches posed a problem to vehicles with fuel tanks in that location. The combination of these two designs created a most dangerous vehicle. Far too many people have already died as a result.

Our goal is to hold Chrysler and Horizon Global Corporation and Horizon Global Americas Inc., the designers and manufacturers of the trailer hitch, accountable for

the design defects that contributed to Ms. Scannavino's death. The claim is based on negligence and failure to warn. The driver of the second car is also a Defendant in the lawsuit.

Greg Allen, Chris, Glover and this writer are handling the case. If you need more information on post-crash fuel-fed fires, contact Chris Glover in our firm's Atlanta office at 800-898-2034 or email Chris.Glover@beasleyallen.com.

GM SETTLES CALIFORNIA COUNTY RECALL CASE FOR \$13.9 MILLION

General Motors Co. has agreed to a \$13.9 million settlement with Orange County, California. This came after prosecutors accused the Detroit automaker of intentionally concealing serious safety defects, including those involving faulty ignition switches tied to nearly 400 deaths and injuries.

An Orange County superior court judge has approved the settlement for the violations of unfair competition and false advertising laws for some vehicles recalled in 2014, including the ignition switch recall. Previously, GM had agreed to the separate \$120 million settlement with 49 states and the District of Columbia over faulty ignition switches and its auto safety practices.

Orange County District Attorney Tony Rackauckas said in a statement that GM failed to disclose defects in power steering, airbag and braking systems. As has been widely reported, GM had previously paid about \$2.5 billion in penalties and settlements over the faulty ignition switches that cause engines to stall and prevent airbags from deploying in crashes. The defect has been linked to 124 deaths and 275 injuries, and prompted a recall that began in February 2014 of 2.6 million vehicles.

GM still faces more than 100 lawsuits in connection with the ignition switch recall, including economic loss and personal injury claims. The only remaining governmental lawsuit is the one filed by the state of Arizona.

In 2015, GM paid \$900 million to settle a U.S. Justice Department (DOJ) criminal investigation and agreed to three years of oversight by an independent monitor after being charged with wire fraud. No individuals were charged, but Chief Executive Mary Barra fired 15 people, including eight executives, over the issue. The ignition switch probe prompted an industry-wide jump in recalls in 2014 to an all-time high and cast a spotlight on GM's safety

record as Barra testified before the U.S. Congress.

As I have previously mentioned, Lance Cooper from Georgia discovered the ignition switch defect. Without his excellent work, I don't believe all that followed in fines and settlements relating to the defect and cover-up by GM would have ever happened.

Source: Reuters

TOYOTA HAS REACHED SETTLEMENTS IN 496 CASES IN ACCELERATION MDL

Toyota has agreed to settlements in 496 lawsuits over deaths and injuries arising from the unintended-acceleration defect in some of its vehicles. The lawyers told a California federal court that the intensive settlement process is "continuing to make good progress" as they work to resolve personal injury, wrongful death and property damage claims pending in the multi-district litigation (MDL) and coordinated state proceedings. The 496 agreements—either settlements or agreements to settle—mark 158 more than the 338 settlements disclosed in a July 2015 status report.

Of the total number, 175 are personal injury cases in the MDL and 87 are personal injury cases in the Joint Council Coordination Proceeding (JCCP) in the Superior Court of Los Angeles County. Of the remaining 12 cases pending in the MDL, all have asked to go through the settlement process, and of the 22 that are still pending in the JCCP, only four have not yet asked to get involved in the process. Four cases in the MDL and one in the JCCP have gone through the entire process and have not resulted in an agreement. Four other cases—two each in the MDL and JCCP—initially didn't reach a settlement, but returned to the settlement process and were resolved. Toyota also has reached agreements to resolve 234 claims outside of the MDL and JCCP proceedings.

Most of the progress was made outside the MDL and JCCP proceedings. The July 2015 status report listed 146 resolved MDL cases, 60 resolved JCCP cases and 132 cases resolved outside those proceedings. The latest status report last month showed that since then, 29 MDL cases, 27 JCCP cases and 102 outside cases had been resolved in the two years since. The total number of cases in the MDL and JCCP has also grown since 2015, from 171 to 187 and 87 to 109, respectively. The total value of the settlements won't be known until all the cases are resolved, as each settlement is being negotiated individually. Toyota recalled millions of cars and trucks

in 2009 and 2010 after reports of unintended acceleration in several vehicles.

U.S. District Judge James V. Selna has paused all cases involved in the process, requiring them to seek certification from the litigation's special master to show they complied with all of the process' requirements before returning to a trial court. In another part of the litigation, Toyota agreed to pay an estimated \$1.1 billion to settle claims that the alleged acceleration defect hurt its vehicles' value. That settlement, which included a proposed class of about 23 million customers, won final approval in July 2013.

The Plaintiffs are represented by Elizabeth J. Cabraser of Lief Cabraser Heimann & Bernstein LLP; Mark P. Robinson Jr. and Donald H. Slavik of Robinson Calcagnie Robinson Shapiro Davis Inc.; and Dee Miles of Beasley Allen Crow Methvin Portis & Miles PC. Toyota is represented by John P. Hooper of King & Spalding LLP. The case is *In re: Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices and Products Liability Litigation*, (Case number 08:10-ml-02151) in the U.S. District Court for the Central District of California.

Source: Law360.com

FINAL APPROVAL GRANTED FOR \$741 MILLION IN TAKATA MDL SETTLEMENTS

A Florida federal judge has now granted final approval for \$741 million in settlements reached by Toyota, BMW, Subaru and Mazda to resolve consumer class actions over dangerously defective Takata Corp. air bags. U.S. District Court Judge Federico A. Moreno issued the orders, along with dismissals of the classes' economic loss claims against the four automakers, one week after holding a final fairness hearing in Miami.

Objections were rejected in a separate order by Judge Moreno. Peter Prieto of Podhurst Orseck PA, lead class counsel, had this to say:

We are pleased that the Toyota, BMW, Mazda and Subaru settlements received final approval because it means that our class members are closer to receiving the remaining benefits and compensation under the settlement agreements. These settlements will not only compensate our class members for their economic losses but will save lives. We will continue to vigorously prosecute the cases against the remaining defendants to ensure

that our class members receive the recovery they deserve.

As previously reported, agreement on the settlements was announced in May with payments under the settlement being split up as follows:

- Toyota Motor Corp. will pay \$278.5 million;
- BMW of North America LLC will pay \$131 million;
- Subaru of America Inc. will pay \$68.26 million and
- Mazda North American Operations to pay \$75.8 million.

Class counsel said at the fairness hearing that in addition to the \$553.6 million in payments, the value of the settlements had been revised upward to \$741,287,307, when adding an expert's valuation of the extended warranties of 10 years or 150,000 miles on the replacement inflators that class members will also receive as part of the deal.

Judge Moreno said in his orders that he was not making a finding on the exact value of the settlements, but that even if calculated only on the \$553.6 million figure, the attorneys' fee request was reasonable at 30 percent of that amount. The court designated several class representatives for the various settlements and also appointed Prieto as lead settlement class counsel and David Boies of Boies Schiller & Flexner LLP, Todd A. Smith of Power Rogers and Smith LLP, Roland Tellis of Baron & Budd PC, James E. Cecchi of Carella Byrne Cecchi Olstein Brody & Agnello PC, and Elizabeth J. Cabraser of Lief Cabraser Heimann & Bernstein LLP as settlement class counsel.

In arguing for approval, class counsel also told the court that 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 multi-district litigations (MDLs), and far below the more than 400 in Volkswagen AG's recent settlement related to its diesel emissions scandal. The four automakers were the first to exit the sprawling multidistrict litigation 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 liabilities led the company to file for Chapter 11 protection in Delaware bankruptcy court in June. The cheap but volatile ammonium nitrate that inflates the bags can misfire, especially in high humidity, 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. Honda and Nissan have since also reached settlement agreements in the case, for \$605 million and \$98 million, respectively. Ford, the lone remaining Defendant in the MDL, moved for dismissal this month.

The class Plaintiffs are represented by Podhurst Orseck PA, Baron & Budd PC, Colson Hicks Eidson, Power Rogers & Smith LLP, Boies Schiller Flexner LLP, Lief Cabraser Heimann & Bernstein LLP, and Beasley Allen Crow Methvin Portis & Miles, among others. 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

VOLKSWAGEN TO PAY \$69 MILLION TO NEW JERSEY OVER DIESEL EMISSIONS SCANDAL

The Volkswagen Group of America will pay New Jersey \$69 million to settle claims that it sold diesel vehicles that cheated environmental standards. The state says this settlement represents more cash per vehicle than any other state settlement in the scandal to date. The agreement will put an end to the stand-alone complaint, filed in February 2016, accusing the automaker of violating the Clean Air Act and defrauding consumers.

This is one of the last major outstanding diesel legal issues the German automaker faced in the United States. VW has previously agreed to spend more than \$750 million to resolve various state environmental and consumer claims. In total, VW has agreed to spend up to \$25 billion in the United States to address claims from owners, environmental regulators, states and dealers and offered to buy back about 500,000 polluting U.S. vehicles.

In March, VW agreed to pay \$157 million to settle environmental claims from 10 other U.S. states. In 2016, the German automaker reached a \$603 million consumer fraud settlement with 44 U.S. states, also excluding New Jersey. The settlement with 10 U.S. states required Volkswagen to offer at least three new electric vehicles in those states by 2020, including two SUVs. VW agreed in December 2016 to offer the vehicles in California in the same time frame.

In April, Volkswagen, which admitted to circumventing the emissions control system in U.S. diesel vehicles for vehicles sold since 2009, was sentenced to three years probation after pleading guilty to three felony counts and paid \$4.3 billion in federal penalties. Last month, U.S. and California regulators approved a fix for about 38,000 VW 3.0-liter vehicles with potential excess emissions.

Source: Law360.com

NHTSA FOLLOWS UP ON VW RECALL FOR ALLEGED AIR BAG DEFECT

The National Highway Traffic Safety Administration (NHTSA) has opened an investigation into a recall involving an alleged defect affecting eight Volkswagen vehicle models that could cause the front driver air bag to fail to deploy during a crash. The agency notified Volkswagen Group of America Inc. on Nov. 15 by letter. NHTSA's Office of Defects Investigation is looking into a 2015 recall involving alleged steering column control module failures affecting an estimated 415,825 vehicles. The investigation is known as a "recall query." According to NHTSA, such investigations are intended to determine whether the scope of the recall should be expanded or if the repair is adequate. The vehicles at issue are 2010-2014 model year CCs and Passats, 2010-2013 Eos, 2011-2014 Golfs, GTIs, Jettas and Tiguan, and 2012-2014 Jetta Sportswagens.

NHTSA asked Volkswagen to respond to the letter with all requested documents about those vehicles by Jan. 16. If the automaker doesn't comply, it could be fined \$21,000 per violation up to a maximum of \$105 million. The reports have said the alleged failures occur during normal driving conditions and that upon failure the air bag warning light on the dashboard lights up and the performance of the front driver air bag is compromised, possibly to the point where it might not deploy during a crash, NHTSA said.

NHTSA said it received 90 reports of the alleged issue. The control module failure has sometimes been preceded by a noise from the steering column, NHTSA said, adding that other steering wheel controls, such as the horn and cruise control, may also stop working.

In its 2015 recall notice, NHTSA said that in affected vehicles, debris may get into the area that contains the air bag clock spring, a spiral-wound, flat cable that keeps the air bag powered while the steering wheel is being turned. The presence of debris may tear the cable and result in a loss of electrical power to the

air bag. Volkswagen told Law360 that it is cooperating with NHTSA.

Earlier this year, Audi (a member of the Volkswagen Group) recalled more than 600,000 vehicles in the U.S. due to an air bag problem that could hurt or kill passengers with shrapnel, and coolant pumps that could catch fire. According to forms filed with NHTSA in January, 234,000 Audi Q5 crossover SUVs built for model years 2011-2017 needed to be recalled to replace or protect side curtain air bag canisters that could be dampened by liquid leaking from the vehicles' sunroof drainage systems. The liquid could corrode the canisters, causing them to explode upon air bag deployment, sending shrapnel into the passenger area, Audi said. The automaker also said that 340,000 vehicles of multiple model types had coolant pumps that could clog or catch fire.

Source: Law360.com

III. DRUG MANUFACTURERS FRAUD LITIGATION

GROWING LAWSUIT ACCUSES GENERIC DRUGMAKERS OF PRICE FIXING

A lawsuit filed by 45 U.S. states and the District of Columbia against several generic drug makers and certain executives accusing them of conspiring to fix drug prices has been widened to include several more drugmakers and is expected to grow even further as investigations continue. Connecticut Attorney General and case leader George Jepsen stated:

It is our belief that price-fixing is systematic, it is pervasive, and that a culture of collusion exists in the industry.

The lawsuit now targets 18 manufacturers of generic drugs and two executives. The price-fixing schemes alleged in the suit involve 15 commonly prescribed drugs. According to the complaint, the drugmakers and executives divided the market share amongst themselves and forged agreements designating each Defendant company a certain share of the market for a particular drug. Some companies even agreed to price increases in advance.

The price-fixing has been drastic enough to warrant legal action. In some cases, the artificial price hikes have been

so steep that they are draining not only public health care programs but are hurting consumers financially.

Mylan Inc., one of the drugmakers named in the complaint, fell under harsh criticism last year amid reports of price-gouging that raised the price of life-saving EpiPen injections, used to treat severe allergic reactions, from \$94 for a pair in 2007 to \$608 per pair in 2016. Industry analysts estimate it costs Mylan about \$10 to make each EpiPen.

According to U.S. Senator Amy Klobuchar (D-Minn.), who has been pushing for action on escalating drug prices, the price of the common generic doxycycline hyclate went from \$20 for 500 tablets to \$1,849 for the same amount between October 2013 and May 2014. That is totally unacceptable and cannot be tolerated.

The states filed their complaint in December, naming as Defendants Mylan, Emcure's subsidiary Heritage Pharmaceuticals, Aurobindo Pharma USA Inc, Citron Pharma LLC, Mayne Pharma USA Inc., and Teva Pharmaceuticals USA Inc. Reuters reports that the new complaint adds Novartis AG's unit Sandoz, Sun Pharmaceutical Industries Ltd, Endo International PLC's unit Par Pharmaceutical, Dr. Reddy's Laboratories, Apotex Corp, Glenmark Generics Ltd, Lannett Company Inc, Alkem Laboratories Ltd's unit Ascend Laboratories, and Cadila Healthcare Ltd's unit Zydus Pharmaceuticals Inc.

Attorney General Jepsen said that investigations of price fixing continue "and that claims would likely be brought against more companies, and possibly executives, in the future," according to Reuters. The U.S. Department of Justice is also leading a parallel criminal investigation of the price-fixing allegations.

Source: Reuters

IV. PURELY POLITICAL NEWS & VIEWS

THE NATIONAL SCENE

I have never before seen such a chaotic situation like we are now experiencing in our nation's capital. The division between the two political parties in Congress is as bad as it has ever been. The White House seems to be like "a puppy lost in the high weeds." The American people are fed up with Washington and the lack of production. The politicians had better wake up,

and if they don't there will be lots of new faces in our nation's capital.

THE ALABAMA SENATE RACE

With about two weeks left in the general election for the voters in Alabama to decide who will fill the "Sessions Seat" in the U.S. Senate. Based on all of the polls the race will be very close and that makes voter turnout critically important for both the Republican and Democratic nominees. I had hoped the race would be more civil, but I was badly mistaken. It has developed into a knockdown, drag-out affair. While a voter turnout of 20-25 percent is being predicted, I have a feeling the actual turnout will be a little higher.

V. THE CORPORATE WORLD

DEUTSCHE BANK TO PAY \$220 MILLION TO STATES IN LIBOR-RIGGING SETTLEMENT

Deutsche Bank AG will pay \$220 million to several dozen states to resolve allegations that the German company manipulated benchmark interest rates including the U.S. dollar London Interbank Offered Rate (Libor) in the largest Libor-related settlement with state attorneys general to date. The settlement involves 44 states and the District of Columbia. An investigation led by the attorneys general of New York and California into the manipulation of Libor and other interest rates led to the settlement. It is the second in relation to alleged Libor manipulation by state attorneys general. Barclays Bank PLC and Barclays Capital Inc. agreed in August 2016 to pay \$100 million to 43 states and the District of Columbia.

Deutsche Bank was one of 16 banks on a panel that made Libor submissions that reflected interest rates in the interbank market, but the investigation found that Deutsche Bank traders attempted to influence the Libor rate submissions. Other banks allegedly had been manipulating their submissions as well, and, as a result, the investigation concluded that the company knew the Libor rate was inaccurate, a fact not disclosed to government, not-for-profit and other entities when they entered into swaps and other contracts with Deutsche Bank.

According to the settlement agreement, the manipulation ran from 2005 through

the height of the financial crisis, up to 2010. Traders would make requests to Deutsche Bank's Libor submitters to alter the rate with the intent of benefiting trading positions. Deutsche Bank also communicated with other banks about Libor manipulation and even received requests from external sources like brokers to alter their submissions. None of these facts were disclosed to the public, government entities or other parties.

The settlement fund that will be distributed totals \$213,350,000, with the remainder being used to cover expenses from the investigation, among other purposes. Entities that had Libor-related swaps and other investment contracts with Deutsche Bank will be notified if they are eligible to receive compensation from the settlement fund. The settlement stipulates that the attorneys general from states that are not part of the agreement have 60 days to join the others by signing an election agreement. The states not named in Wednesday's settlement are Hawaii, Kentucky, Mississippi, South Dakota, Texas and Vermont.

Deutsche Bank has already paid \$2.5 billion and entered into a deferred prosecution agreement to settle claims with U.S. and U.K. regulators that its traders helped rig Libor and other rates. Deutsche Bank made the settlement in 2015 with the U.S. Department of Justice, the New York State Department of Financial Services, the U.S. Commodity Futures Trading Commission and the U.K. Financial Conduct Authority.

Source: Law360.com

VI. AN UPDATE ON THE OPIOID LITIGATION

CRISIS UPDATE: DRUG COMPANIES' MARKETING SCHEMES CREATE HEALTH CONCERNS FOR MILLIONS OF AMERICANS

In 1996, Purdue Pharma launched OxyContin claiming one dose could relieve pain for 12 hours, more than twice as long as generic pain medications. From 1996 to 2000, the drug OxyContin grew in sales from roughly \$48 million to the staggering amount of almost \$1.1 billion. How did this market grow so rapidly? The answer is simple—marketing. In 2001 for example, OxyContin's manufacturer, Purdue

Pharma, spent nearly \$200 million on advertising alone.

The marketing strategy employed by Opioid manufacturers is unfortunately all too familiar in the United States. Drug manufacturers purchase information on doctor's prescribing habits to create physician profiles showing how often their drug is prescribed. The drug company then sends its sales representatives to flood the doctor's office with marketing material. According to published data, Purdue paid approximately \$40 million in bonuses to its sales representatives during this time. It also increased its sales force and even offered patients coupons so that opioid drugs were free or significantly discounted.

Perhaps most egregious is that Oxycontin's sales were not driven by advancements in either the science or medicine of pain relief. Multiple studies indicated that OxyContin's twice-a-day, 12-hour dosage was no more effective than other pain-relieving drugs on the market. According to published reports, including an investigative report in the *Los Angeles Times*, the supposed 12-hour dose wears off hours early in many people resulting in symptoms of withdrawal and an intense craving for another dose of the drug.

According to some of the reports, OxyContin became one of the United States' most abused drugs by 2004. In 2012, Ohio alone dispensed 793 million doses of opioids, enough for every man, woman, and child in the state to have 68 pills each. Twenty percent of Ohioans received an opioid prescription in 2016. Not surprisingly, Ohio leads the nation in opioid overdose deaths. The problem far exceeds Ohio according to government reports finding that more than 7 million Americans have abused opioids with more than 190,000 overdose deaths since 1999. The statistics are staggering!

The following is a list of manufacturers and drugs involved in this epidemic. Allergan PLC sells Kadian, Norco and several generics owned by Teva Pharmaceutical Industries Ltd.; Cephalon Inc. sells Actiq and Fentora; Purdue Pharma sells OxyContin, MS Contin, Dilaudid, Butrans, Hysingla and Targiniq; Endo Health Solutions sells Percocet, Percodan, Opana and Zydone; and Janssen sells Duragesic and Nucynta. Lawyers in our firm are actively investigating claims involving opioids. If you or anyone you know have suffered an opioid related injury, please contact Melissa Prickett at Melissa.Prickett@BeasleyAllen.com, Roger Smith at [Roger](mailto:Roger@BeasleyAllen.com).

Smith@BeasleyAllen.com, or Liz Eiland at Liz.Eiland@beasleyallen.com.

Sources: *The Atlantic*, *Los Angeles Times*, Am J Public Health

MORE STATES AND LOCAL GOVERNMENTS SUE OPIOID COMPANIES

A Judicial Panel on Multidistrict Litigation (JPML) hearing was just held in St. Louis to determine if a multidistrict litigation (MDL) is necessary for state and local government claims, and if so, where it will be. I predict that an MDL will be created, and we will wait and see what court it is assigned to. We are actively reviewing multiple claims for local governments and at least one state over the opioid crisis.

A new study reveals the sad toll that the opioid abuse has taken on our country. According to the nonprofit organization Altarum, opioid overdose deaths reached 53,054 in 2016, placing it in the top 10 leading causes of death in the United States. The study also estimates the cost of abuse exceeded \$95 billion last year. These costs are comprised of the following:

- \$43.2 billion impact from loss of life;
- \$12.4 billion in loss of productivity;
- \$12.2 billion in direct health care costs battling overdoses and \$9.2 billion in indirect health care costs;
- \$7.8 in criminal justice expenses;
- \$6.1 billion in child and family assistance;
- \$4.4 for education and prevention.

These staggering statistics have forced state and local officials to take action. Since the last issue of the *Report* was published, several states and counties have sued opioid manufacturers and distributors for fueling this national epidemic.

The states of Alaska and New Jersey each sued Purdue Pharma, LP, for pushing off-label usage and misrepresenting the risks of opioid addiction. They each assert violations of their state deceptive trade practices act, state false claims acts, and public nuisance. Both states seek injunctive relief, civil penalties, and restitution under their respective state laws.

Local governments have taken a slightly different approach by suing both manufacturers and distributors who failed to report suspicious orders. Fulton County, which includes Atlanta, sued more than two dozen manufacturers, distributors and doctors it alleges fueled the epidemic

that killed hundreds of people. Cuyahoga County, which includes Cleveland, filed suit against similar Defendants and accused them of acting as a criminal enterprise to increase opioid sales.

The lawyers in our firm who are handling this litigation are the same ones who handled our BP state and local government claims. The momentum regarding these cases continue to grow and we expect to see many more of these lawsuits filed towards the end of this year and into the next, as the crisis continues to unfold. If you need more information on the opioid litigation as it relates to government claims, contact either Rhon Jones (Rhon.Jones@beasleyallen.com) or Gibson Vance (Gibson.Vance@beasleyallen.com) at 800-898-2034 or by email.

Source: Altarum.org

VII. WHISTLEBLOWER LITIGATION

U.S. SUPREME COURT CASE SHINES LIGHT ON FIGHT AGAINST CORPORATE COMPLIANCE PROGRAMS

Whistleblowers are vital to exposing bad behavior within the walls of corporate America. Yet, regulations that offer whistleblower protections may be significantly limited during the U.S. Supreme Court's (SCOTUS) current term. An example of this is the case *Digital Realty v. Somers*, which seeks to sidestep anti-retaliation measures enacted by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank).

Digital Realty, a global provider of data centers, has asked the Court to overturn a lower court decision that found in favor of the company's former Vice President Paul Somers. Somers was fired after reporting alleged violations of securities law to senior management. Digital Realty argues that Somers should not have been afforded Dodd-Frank protections because he reported the potential wrongdoing internally and not directly to the U.S. Securities and Exchange Commission (SEC).

Dodd-Frank was enacted in response to the Great Recession "to provide many new and stricter regulations of the financial industry," the American Bar Association explains. It also included a set of anti-retaliation provisions to better protect whistleblowers in the areas of consumer protection and commodities. The protections were added as an extension of

Section 21F of the Securities Exchange Act of 1934.

Prior to the publication of the final Dodd-Frank Act, the U.S. Chamber of Commerce (Chamber) contended that the proposed protections encouraged employees to sidestep a company's internal compliance program and report directly to the SEC. In an effort to appease the Chamber, federal regulators included provisions addressing this concern. The provisions, including financial incentives, encouraged or required employees to report misbehavior through established internal compliance programs before reporting the conduct to the SEC.

However, after Dodd-Frank was enacted, the Chamber and some of the country's largest corporations made an about-face relating to the policy and began "waging war against their own compliance programs," according to Law360. Courts often ruled in favor of companies that retaliated against employees who reported wrongdoing internally. Yet, the lower court and the Ninth Circuit agreed with Somers that employees who report misconduct through internal corporate channels should benefit from Dodd-Frank anti-retaliatory protections.

Should SCOTUS agree with Digital Realty, the consequences could reach beyond whistleblowers. If employees no longer feel they can safely report misconduct internally, "corporate compliance programs will be dead," Law360 reports. Some legal analysts believe considerable damage has already occurred and battle lines drawn—companies vs. their own corporate compliance programs.

Source: Bloomberg

AMERISOURCE AGREES TO PAY \$625 MILLION IN FCA SUIT OVER REPACKED DRUGS

Pharmaceutical giant AmerisourceBergen Corp. has agreed to a \$625 million settlement to resolve the government's False Claims Act (FCA) investigation into the drug wholesaler's practice of repackaging and selling injectable drugs, without regard to product purity. The agreement to settle was made in principal and is on top of \$260 million in fines and forfeitures that Amerisource agreed to pay to resolve a criminal suit. The proposed settlement still needs to be approved by the federal court. As it's proposed, the settlement is one of the more sizable FCA settlements in recent history.

The settlement comes two months after Amerisource's now-defunct Alabama subsidiary, Medical Initiatives Inc., pled guilty to a single count of introducing mis-

branded drugs into interstate commerce. In that case, Medical Initiatives admitted to opening sterile vials of oncology drugs, pooling the medicine and then transferring the drugs into single-dose prefilled syringes. According to court documents, the syringes were often shipped out without a valid prescription, sometimes in doses far exceeding plausible or safe usage for an individual, and occasionally to dead people. Overall, Medical Initiatives produced 9 million prefilled syringes with various drugs, including Johnson & Johnson's popular anemia drug Procrit. But it only sought sterility testing by an outside laboratory on three occasions. When the test results came back positive for bacteria, Medical Initiatives did not notify regulators, issue recalls or seek out the source of contamination, according to court documents.

Amerisource also admitted that it never registered Medical Initiatives with the U.S. Food and Drug Administration (FDA), as it's required to do by federal law. Amerisource voluntarily closed Medical Initiatives in 2014. In September, Amerisource agreed to pay a \$208 million criminal fine and criminal forfeiture of \$52 million to resolve that suit. Amerisource had revealed in an earnings report that it had set aside \$575 million to resolve potential FCA claims brought by the U.S. attorney's office in Brooklyn and the main division of the U.S. Department of Justice. But that amount was \$50 million short of the \$625 million settlement that it reached with the government. Amerisource, which specializes in drug distribution, is one of the largest U.S. companies in terms of revenue, reporting a fiscal 2017 income of \$153 billion.

Source: Law360.com

\$75 MILLION MARKS THE LARGEST SETTLEMENT AMOUNT EVER RECORDED UNDER THE FCA FROM A HOSPICE SERVICE PROVIDER

Chemed Corporation and several subsidiaries, including Vitas—the largest for-profit hospice chain in the United States—have agreed to pay \$75 million to settle False Claims Act (FCA) allegations. Chemed Corporation was accused of submitting claims to Medicare for treatment of patients who were not terminally ill. Moreover, the government alleged that the Defendants were rewarding bonuses to their employees based on the number of patients receiving hospice care. These bonuses were given regardless if the patient was actually terminally ill or would have benefited from curative care.

Hospice care is reserved for those who are terminally ill and decline curative treatment. The treatment focuses on relieving the patient from pain and suffering instead of curing the illness itself. In order to qualify for hospice care, the patient must have life expectancy of six months or less if the illness runs its normal course. Medicare helps provide hospice care to those who need it most; however, when corporations submit and reward claims to Medicare for hospice care—for patients who are not terminally ill—not only are the patients encouraged to forgo curative treatment, but the corporation is stealing monies from the tax pool. As the tax pool is depleted, funds are not readily available for those who are actually in need of hospice care. Concerning this case, Chad A. Readler, Acting Assistant Attorney General of the Justice Department's Civil Division, stated:

Today's resolution represents the largest amount ever recovered under the False Claims Act from a provider of hospice services. Medicare's hospice benefit provides critical services to some of the most vulnerable Medicare patients, and the Department will continue to ensure that this valuable benefit is used to assist those who need it, and not as an opportunity to line the pockets of those who seek to abuse it.

This settlement resolves three lawsuits filed by whistleblowers under the *qui tam* provision of the FCA. The *qui tam* provision provides an avenue for ordinary citizens with knowledge of fraud to sue on behalf of the United States. As an incentive to do the right thing and blow the whistle on fraud, the FCA not only grants the whistleblower protection against retaliation, but also permits the whistleblower to share 15 to 30 percent of the government's recovery.

Are you aware of fraud being committed against the federal government, or a state government? If so, the FCA can protect and reward you for doing the right thing by reporting the fraud. If you have any questions about whether you qualify as a whistleblower, contact one of the lawyers on our firm's Whistleblower Litigation Team for a free and confidential evaluation of your claim. You may also contact Beasley Allen for a free copy of Lance Gould's book, "Whistleblowers: A Brief History and a Guide to Getting Started."

Source: U.S. Department of Justice

APPLYING THE FALSE CLAIMS ACT TO CUSTOMS & TRADE FRAUD

To guard against unfairly priced and government-subsidized imports from foreign countries, the United States uses antidumping and countervailing (AD/CV) duties. Countervailing duties occurs when foreign governments subsidize manufacturers that export goods to the United States through tax breaks and government financing. These heavily subsidized industries are then able to sell the goods at prices below the cost of production in the United States, prices that domestic manufacturers cannot compete with. To combat this, the U.S. government will impose an AD/CV duty upon importation on goods found to be unfairly priced. These duties essentially balance out the subsidies that the foreign companies receive and account for the cost of production, potentially exceeding 300 percent of the value of the goods.

However, the U.S. government has had difficulty collecting on these AD/CV duties due to foreign companies going to great lengths to evade them. As of 2015, the U.S. government has lost \$2.3 billion in uncollected AD/CV duties. Further, these foreign exporters use several methods to avoid paying the duty that potentially violate the False Claims Act (FCA).

One of the most common methods is the misclassification of imports. A party violates the FCA when they fraudulently misrepresent the nature or physical characteristics of imported goods in order to pay a lower duty than is owed. This violation typically involves a misrepresentation on the imported shipment's bill of lading, which is the document that identifies the goods to Customs and Border Protection (CBP) and allows Customs to determine the duties owed. For example, an AD/CV duty might apply different rates to certain components of imported goods. Foreign companies mislabel these components in order to avoid paying the duty.

"Country of origin" fraud is another way companies violate the FCA by evading duties. Certain AD/CV duties only apply to goods from certain countries. "Country of origin" fraud occurs when smugglers fraudulently claim that imported goods are from a different country than they actually are because goods from the claimed country are taxed at a lower duty rate. This usually involves shipping prod-

ucts to a third country and manipulating the statement of origin, invoice, or bill of lading to state that the goods originated in that third country. Many southeast Asian countries such as Malaysia, Thailand, Indonesia, Philippines, India, Vietnam and Taiwan have been identified as major third country shipping fraud hubs.

The third way companies violate the FCA in attempting to avoid AD/CV duties is by undervaluing the goods they import. Most duties are calculated on an “Ad valorem” basis, meaning that the amount of the tariff owed is a percentage of the value of the goods imported. Smugglers can manipulate the calculation to pay a lesser duty than actually owed by falsely claiming that the goods are worth less than they actually are. Some companies do this by simply understating the weight of the goods. Others engage in “double invoicing,” where companies only report a portion of the price of the goods to Customs, and then pay the remainder of the price to suppliers once the goods have been imported.

The Trump Administration says it is attempting to crack down on customs and trade fraud. On March 31 of this year, President Trump issued two executive orders directing the Attorney General to “ensure that Federal prosecutors accord a high priority to prosecuting significant offenses related to violations of trade laws,” and directing the Secretary of Homeland Security, through the Commissioner of Customs and Border Protection, to “develop and implement a strategy and plan for combating violations of United States trade and customs laws.”

Specifically, the Executive Order directs the Secretary of Homeland Security to develop a system that would require certain importers to post bond as security for any potential duties before allowing them to import to the United States. As its plan is implemented, this Executive Order could lead to increased criminal prosecution and *qui tam* actions involving anti-dumping and countervailing duties.

Sources: froshinbarger.com, customslaw.blogspot.com and www.whitehouse.gov

DEPARTMENT OF JUSTICE MAY BE DISMISSING QUI TAM CASES

The Department of Justice (DOJ) recently and unexpectedly announced it will move to dismiss cases brought under

the False Claims Act (FCA) if the DOJ deems the case to be “unmeritorious.” The Director of the Civil Fraud Section of the DOJ, Michael Granston, announced the decision recently during a speech at the Health Care Enforcement Compliance Institute in Washington, D.C. Director Granston did not specify how the DOJ would determine whether a case lacks merit or what the DOJ would consider in making such a determination.

The False Claims Act allows whistleblowers (relators) to bring a *qui tam* lawsuit “in the name of the Government.” If their *qui tam* case is successful, the relator may claim an award varying 15-30 percent. Because the action is brought in the name of the Government, the Government can decide to intervene in the action to assume the primary role in litigating the case or not to intervene. Where the Government decides not to intervene, the relator can litigate the case without the Government.

The decision to intervene depends on various factors other than just the merits of the relator’s claims, such as conducting a cost-benefit analysis to determine whether the litigation costs are worth the benefit the Government obtains from the action.

The False Claims Act provides the Government with the authority to move to dismiss actions brought pursuant to the False Claims Act. Although the Government has always possessed this authority, the DOJ has sparingly moved to dismiss *qui tam* actions and, in the vast majority of cases, allows relators to proceed with their cases without filing a motion to dismiss.

The DOJ’s recent announcement raises various concerns and questions, because Director Granston did not clarify whether the decision to intervene and the decision to dismiss are intertwined. In other words, it is unclear whether or not the DOJ will move to dismiss each time it declines to intervene in a *qui tam* case. The DOJ moving to dismiss each time it declines to intervene in a case would have a significant negative impact on the ability to prosecute fraud against the government and taxpayers. As we have consistently reported, many relators in past cases have recouped huge sums of money on behalf of the Government under the False Claims Act without the Government intervening to prosecute the case.

However, if the DOJ does not move to dismiss each time it declines to intervene, relators could argue the Government’s decision not to file a motion to dismiss signifies that the case is meritorious, but the Government declined to intervene for

other reasons. Such an argument could benefit relators where the Government declines to intervene, because recent Third and Fourth Circuit Court of Appeals cases give weight to the government’s decision to intervene in determining whether false certifications were material to the government’s decision to pay the claims. In other words, those courts deem the Government declining to intervene suggests the false certifications were not material to payment and vice versa.

In cases where the DOJ does not move to dismiss even though they decline to intervene, it would appear that the DOJ deems a Relator’s case meritorious. Therefore, the false certifications would be said to be material to payment because the relator’s allegations about materiality were in fact meritorious. Ultimately, the impact of the DOJ’s announcement and whether the government will move to dismiss *qui tam* claims more often than it has in the past (which was rare) remains to be seen.

Lawyers at Beasley Allen continue to vigorously investigate fraud against both the federal and state governments and encourages anyone who knows of fraudulent activities to step forward. Potential whistleblowers have the right to not be retaliated against for doing the right thing and reporting the fraud they have witnessed. Anyone considering doing the right thing and blowing the whistle is strongly urged to seek legal advice before doing so. Lawyers at Beasley Allen are very familiar with the federal False Claims Act and its state counterparts and can guide whistleblowers through the process. If you need more information about the recent DOJ action, contact Andrew Brashier or Paul Evans, lawyers in our firm, at 800-898-2034 or by email at Andrew.Brashier@beasleyallen.com or Paul.Evans@beasleyallen.com.

Sources: 31 U.S.C. § 3730, www.natlawreview.com

BEASLEY ALLEN WHISTLEBLOWER LITIGATION TEAM

Are you aware of fraud being committed against the federal government, or a state government? If so, you may be protected and rewarded for doing the right thing by reporting the fraud. 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 our firm’s website. You may email one of the lawyers on our firm’s Whistleblower Litigation Team: Archie Grubb, Larry Golston, Lance Gould,

Andrew Brashier or Paul Evans at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com, Larry.Golston@beasleyallen.com, Lance.Gould@beasleyallen.com, Andrew.Brashier@beasleyallen.com or Paul.Evans@beasleyallen.com.

Sources: Bloomberg Technology, American Bar Association and Law360.com

VIII. PERSONAL INJURY & PRODUCT LIABILITY SECTION UPDATE

PERSONAL INJURY & PRODUCT LIABILITY SECTION YEAR-END HIGHLIGHTS

Over the years, our firm's Personal Injury & Products Liability Section has been blessed with great cases. But more importantly, our lawyers have had the privilege of representing great clients. This year was no exception. At the end of the year, we will highlight a few of our successes, including jury verdicts, settlements and appellate victories, as we look forward to 2018.

Jury Verdicts

Lawyers in the Section started the year off by securing a \$16.8 million verdict for the family of Larry Albritton, a man killed when he lost control of the log truck he was driving, and the load of logs shifted, breaching the truck's cab and killing him. The jury found that the cab guard was defective in design and the manufacturer acted with reckless disregard for the safety of others. Because of this trial, the manufacturer has begun warning of the design defect. It is our hope that this will spur change industry wide. LaBarron Boone, Ben Baker, and this writer, along with Tyrone Means of Means Gillis Law, represented the family. The case is *Jacqueline Wright et al v Volvo Trucks North America, Inc., et al*, (45-CV-2013-9000091.00) in the Circuit Court of Lowndes County, Alabama.

Truck drivers face many hazards on the road every day, from weather to unexpected traffic and unpredictable other drivers. One thing they should be able to count on is that the vehicle they are driving is designed so that they have a reasonable expectation of being safe in the event of a crash. In this instance, the man-

ufacturer failed the driver, and it cost him his life.

Our firm has handled many cab guard cases over the past few years and all have either resulted in jury or verdict settlements. Cab guards are sold to serve as protection against load-shifting on large trucks that pull flat beds, trailers and log trailers. They are advertised as being highly effective to prevent shifting cargo from contacting the cab of the trucks. In this case, the cab guard failed miserably. Because of our firm's representation in these cab guard cases, two of the cab guard manufacturers now say, "do not use cab guards on log trucks."

In March of this year, LaBarron Boone, Chris Glover and Stephanie Monplaisir, along with Thomas Cuffie of The Cuffie Law Firm, represented the family of a man killed when their recreational vehicle (RV) was involved in a crash. The wreck occurred in Georgia when an 11-year-old tire detreaded causing serious injury to a group of Alabama fans traveling in a RV to the 2012 national championship game (Alabama v. LSU). Numerous Defendants were sued in this case. All settled before trial but one—Southland. Defendant Southland serviced, maintained, inspected and/or made repairs to the RV on, at least, seven occasions, but never informed the owners that they were riding on old tires. The trial lasted for two and a half weeks. The jury awarded \$2.6 million, assigning a portion of the fault to Southland.

Recently, a jury in the Circuit Court of Montgomery County, Alabama, awarded Plaintiff Leon Battle \$1.9 million for retaliatory discharge and for an amputation injury he suffered on the job—he was fired for hiring a lawyer. Mr. Battle was represented by Larry Golston, Kendall Dunson, Warner Hornsby, and Leon Hampton, Jr., along with Montgomery lawyer Tamika Miller.

In April of 2014, Mr. Battle was employed as a maintenance worker at Koch Foods, a chicken processing plant. The day following the incident, Mr. Battle returned to work to complete Workers Compensation documents and was warned not to hire an attorney if he wanted to keep his job. Given the extent of his injuries, Mr. Battle chose to hire our firm to investigate his injury. Mr. Battle 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. A Beasley Allen investigator 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 of Koch Foods dis-

covering that Mr. Battle hired Beasley Allen to represent him.

Suit was filed alleging claims based on wrongful discharge and failing to repair and/or bypassing a safety device. The jury 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 retaliating against an injured worker for pursuing his constitutional right to hire counsel to assist him in pursuing his claims against culpable Defendants. Punitive damages were justified because the Defendants were directly responsible for his injuries, threatened him with job loss, followed through on the threat and then had the worker's compensation carrier cut off his medical benefits.

Significant Settlements:

In September, Greg Allen, our firm's senior Products Liability lawyer, settled a horrific case against a major school bus manufacturer for a large amount. Our firm represents the mother of a 5-year-old child who was tragically killed when the rear wheels of his school bus, weighing more than 20,000 pounds, ran over and crushed his head. Greg Allen was the lead lawyer in the case. There is a blind spot in front of this and other buses that are the kind used by most school districts in the country.

The bus was manufactured in 2002. Bus manufacturers have known since the late 1980s that student detection systems (sensor systems) were available to eliminate the blind spot on the front of buses. Yet, no bus manufacturer had undertaken to install them in 2002. Even today, very few school buses are equipped with a sensor system. There is limited use of this safety device in a couple of states. New Jersey recently enacted Abigail's Law, which now mandates sensor systems on all new school buses sold in that state.

Graham Esdale, another lawyer in the Section, recently settled a case against Ford Motor Company involving a 1997 F-150 where the vehicle left the road and rolled over into a wheat field. During the rollover, the door unlatched and once it opened, the seatbelt detached at the buckle and the driver was ejected and killed. The door unlatched itself as opposed to being overpowered or breaking. The spring force in the outside handle was not sufficient to overcome inertial forces generated in a rollover or when a vehicle is struck from the side. Ford learned of the weak spring force in the

handle and performed a silent recall where it re-torqued the springs in the supply chain with a special tool it made for this purpose. In addition, Ford used a method it had never used before to certify that the spring torque complied with NHTSA requirements. Despite recognizing the door opening hazard and discussing the need to recall the vehicles, Ford decided the cost was too much and let trucks stay on the road.

Earlier this year, Ben Locklar, a lawyer in the Section, settled a significant nursing home case on behalf of a Selma family against Warren Manor Health & Rehab. The case was significant for many reasons, not the least of which because the nursing home filed three petitions for *writ of mandamus* to the Supreme Court of Alabama, seeking to compel our clients to arbitrate their claims. On each occasion, the Alabama Supreme Court denied the nursing home's requests to force our clients to arbitration. The Gordon family contended that their father, Jimmy Lee Gordon, died because of negligent nursing care at the nursing home. Mr. Gordon had a feeding tube implanted. Feeding formula leaked outside of the tube into the abdominal cavity, leading to Mr. Gordon becoming septic. The sepsis was the cause of his death. After the case was set for trial, following the multiple delays caused by the nursing home, the parties reached a settlement with the nursing home.

Finally, Kendall Dunson was able to bring closure to victims and their families of the collapse of a landing in a large apartment complex. The case involved an apartment complex consisting of 35 separate units. Six persons were injured in the collapse of a second story landing at the apartment complex. We filed suit on behalf of the six victims against the corporate owner of the complex and the management company that operated the complex. Two of the individuals who were injured in the collapse had settled their claims prior to the trial for confidential amounts. We proceeded to trial on behalf of the other four. After a month-long trial, the jury returned a \$24,750,000 verdict in the case. We proved a very strong case of extreme wrongdoing on the part of both Defendants over an extended period. The Defendants appealed the case after the verdict. We successfully settled the case while on appeal and brought needed closure to our clients.

Appellate Victories:

In July of this year, the Alabama Supreme Court upheld a jury verdict totaling \$6.9 million received by Sydney

McLemore and John and Barbara Hurst in a case against Mazda Motor Corporation. Ben Baker, a lawyer in our firm, represented Ms. McLemore in the case in the case at trial and on appeal. You might recall that Ms. McLemore was burned over 15 percent of her body when the 2008 Mazda 3 sedan she was driving was involved in a crash and caught fire. Jefferson County lawyers Bruce Petway, Janet Olsen, and A.W. Bolt represented Mr. and Mrs. Hurst. Their daughter, Natalie Hurst, was killed in the fire when she was trapped in the burning vehicle.

The Mazda vehicle was defectively designed with the fuel tank placed adjacent to a hard metal muffler with a sharp edge and no proper shield. As a result, the muffler ruptured the fuel tank, causing a fuel-fed fire. Mazda should have been aware that this design would lead to the likelihood of a post-collision fuel-fed fire because the placement of the muffler next to the fuel tank violated industry design standards. The occupants of this car would have escaped with minor injuries had a proper design and placement of the muffler been done by Mazda.

The appellate victory was significant in two ways: (1) it was the first opportunity for the Court to interpret Alabama's new Rule 702(b) which applies a Daubert standard to "scientific" experts. The Court held that our mechanical engineering expert who testified about the defective design of the fuel system was not "scientific" evidence but based upon technical knowledge and experience and therefore Rule 702(b) did not apply to him. Equally important is (2) the Court clarified and reiterated that contributory negligence in causing the accident is not a defense to an AEMLD claim based upon the vehicle's lack of crashworthiness. "As this Court has explained regarding so-called 'crashworthiness' claims, such claims do not turn on the issue of accident causation but, instead, 'focus on the alleged defect as being the proximate cause of the injury or damage.'"

Another significant appellate victory came in September 2017, when 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, its 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 (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 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.¹

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.

We look forward to 2018 as we continue to help folks in need of help. In this regard, we continue to pursue all types of cases through our Personal Injury and Products Liability Section where Plaintiffs have suffered serious personal injury or death. Some of the cases we are currently involved in include:

Auto Defects

Often overlooked are product liability cases that arise from a single vehicle accident. As our lawyers in the firm's Product Section know, a product liability claim

¹ Wilkes and Russell v. PCI Gaming Authority d/b/a Wind Creek Casino and Hotel, Wetumpka (Op# 115132, date 10/3/17)

focuses on whether a product is defective. There are many different kinds of product liability claims that are out there on a recurring basis. In automobile cases, the defective product could be the entire vehicle, or it could be a component part such as the seat belt, roofs, airbags or the fuel system. Unfortunately, the average motorist has no idea how unprotected he or she will be in a crash as a driver or passenger in a defective vehicle. Our lawyers are trained to recognize defect claims in motor vehicle accident cases and that's essential to representing clients in that field. Any vehicle accident, including the single car accident, involving serious injury or death, including paralysis, loss of limb or brain damage, should be carefully analyzed for potential product liability claims.

Heavy Trucking Accidents

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

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

Tire Defects

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

One serious problem with tires is that they wear down on the inside as they age, but they look brand new on the outside. Despite the dangers of tire aging, the National Highway Traffic Safety Administration (NHTSA) has still refused to establish a tire aging standard. A tire aging standard would make it easier for consumers to determine the tire's age. Right now, the only way to determine the age of a tire is to decipher the cryptic code on the tire's sidewall. Also, a tire aging standard would make it mandatory for tire centers to take tires out of service at a specified date, regardless of what the tire looks like on the outside.

We are also seeing a huge influx of defectively designed tires from China. We recently filed a case in North Carolina where a Chinese brand tire failed causing a wreck and a life-long truck driver to suffer serious injuries. As more and more of the products we buy, including tires, are being made in China and other foreign countries, the "importers" role is becoming more critical. In too many instances, "importers" are not taking the appropriate steps to assure that foreign tire makers' tires are safe, despite NHTSA standards requiring them to do so.

Under Federal law, "importers" must take steps to assure that the tires they import are free of defects. Good manufacturing processes require "importers" to conduct on-site inspection(s) of foreign tire makers' facilities to assure that adequate testing, manufacturing, quality control and other measures are in place. Further, "importers," once they import tires into this country, should perform random sampling, testing and inspection of foreign tires before they distribute and/or sell the tires to consumers in this country.

In one recent case, we learned that while a company was importing more than 400,000 tires a month, it was doing nothing to ensure that the Chinese tires it imported, sold and profited from were safe. The importer never inspected the manufacturing plant, never observed any

tire testing and never checked to see if the Chinese manufacturer employed any quality control measures for its tires and plants. Further, the importer never performed one post-"import" inspection, test and/or took any other step relative to one single tire it sold despite the Federal requirements to do so. This conduct is particularly troubling when you consider how important tires are to our safety. Companies that import tires, or any product for that matter, should be held accountable when they do nothing to insure these products are safe for American consumers. If you have questions regarding a potential tire case, contact Cole Portis or Ben Baker at 800-898-2034 or email Cole.Portis@beasleyallen.com or Ben.Baker@beasleyallen.com.

18-Wheeler Fuel-Fed Fires

A recent study conducted by the Society of Automotive Engineers (SAE) estimated 2,500 fatalities in heavy truck fires over the past 20 years. Nearly all heavy trucks on the road today have side saddle fuel tanks. This design places the tanks outside of the protection of the vehicle's frame rails. Most are exposed in the truest sense of the word, in that you can see the shiny aluminum drums just under the truck's doors.

Many truck manufacturers use the fuel tank as a step up for drivers to enter the cab. While some manufacturers place flimsy plastic or fiberglass sheeting over the tanks, they are still exposed in that there is no protection from side impacts. The covers are for aesthetics and aerodynamics and serve no function as a crash barrier. The average tractor trailer truck has two 100-gallon fuel tanks, one on each side of the cab. Side impact collisions, roll-overs, and sideswipe accidents commonly rupture or shear the tanks off the truck, spilling fuel. Once the tank ruptures, it only takes an ignition source to set the blaze. A study conducted by the *International Journal of Vehicle Design* found that accidents involving large trucks are accompanied by fire in one in 20 accidents.

In 1989, the National Highway Traffic Safety Administration (NHTSA) published a study titled, "Heavy Truck Fuel System Safety Study." In the study, NHTSA found that 16 percent of truck driver fatalities were caused by post-collision fuel-fed fires. Imagine the public outcry if nearly one in five passenger vehicle deaths were caused by fire. As a part of the study, NHTSA performed a Failure Modes Effect

Analysis and recommended corrective actions to the heavy truck industry.

NHTSA recommended reducing the susceptibility of fuel tanks to failure by impact from highway structures and other vehicles, providing protective barriers between fuel tanks and components, increasing the puncture resistance of fuel tanks, and or using bladders inside the tanks. According to NHTSA, the objective of these changes would be either to place the fuel system components in locations where they would not be likely to sustain an impact, or to design them to maintain integrity under anticipated impact conditions. These recommendations have largely gone unheeded in nearly 30 years since they were proposed.

Heavy truck manufacturers are resistant to moving fuel tank placement. The fuel tanks needed are large and manufacturers argue that it is too difficult and unfeasible to place the tanks within the vehicle frame rails. Because truck manufacturers are reluctant to completely redesign the fuel tank placement, at the very least manufacturers should incorporate one or more of NHTSA's 1989 recommendations. Corrective actions such as designing barriers around the fuel tank could be made. However, robust barriers around the fuel tanks would add weight to the vehicles and cut into the transporter's bottom line.

Another alternative to a complete redesign of fuel tank placement is to reduce the likely sources of ignition in the event of a collision. In most cases, heavy truck manufacturers place the battery box within inches of the fuel tank or have battery cables running over or on the fuel tanks. In the event of a crash, such close proximity of the battery to the fuel tank increases the likelihood that when a fuel spill occurs there will also be an ignition source in the battery compartment. The major three elements needed to create a fire are air, fuel and an ignition source. Clearly, if you remove one of these elements, the likelihood of a post-collision fuel-fed fire is substantially reduced.

An alternative design to help reduce the likelihood of a post-collision fuel-fed fire in a heavy truck is to move the battery box between the frame rails along with all associated cables attached to the battery box. This location will substantially reduce the opportunity for damage to occur to the battery box or its associated cables and thereby reducing the likelihood of an ignition source that could spark a post-collision fuel-fed fire in a heavy truck. Moving the battery boxes to a position inside the frame rails is not a new or novel approach but is one that is rarely followed by heavy truck manufac-

turers. However, Freightliner Corporation has included this alternative design in trucks at least as early as 1996.

Heavy truck manufacturers commonly claim that due to the lower flash point of diesel versus gasoline, there is no need to redesign heavy truck fuel systems. While diesel is less flammable than gasoline, this argument is nonsensical. Essentially the claim is that an accelerant used to power a 40-ton truck is not flammable enough to cause harm if leaked. Diesel fuel would serve no purpose in a truck if it was not highly combustible. Until vehicles are powered by something other than an internal combustion engine, any argument as to fuel flammability should be dropped.

As so often happens, the manufacturers refuse to take it upon themselves and correct the defect. It will likely take public awareness, outcry and civil verdicts and settlements to get the attention of the manufacturers. Sadly, untold lives will be lost until corrective actions are taken. If you have any questions, contact Chris Glover or Evan Allen, lawyers in our firm's Personal Injury & Products Liability Section, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com or Evan.Allen@beasleyallen.com.

Cab Guards

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

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

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

Industrial Accidents and Workplace Defects

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

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

Aviation Accidents

Soaring through the sky at hundreds of miles an hour, thousands of feet above the ground in an airplane or helicopter leaves little room for error. One small mechanical problem, misjudgment or faulty response in the air can spell disaster for air passengers and even unsuspecting

people on the ground. This is why it's crucial for the aviation industry, including manufacturers, pilots, mechanics and air traffic controllers, to adhere to the highest possible standards at all times.

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

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

The other case involves the crash of a light aircraft off the coast of Georgia. Two inexperienced pilots were attending flight school in North Carolina and were assigned to fly an aircraft to Jacksonville, Florida, to the flight school maintenance facility. Unfortunately, the aircraft was dispatched with inoperable equipment. Specifically, the pilots were sent up in an aircraft that had faulty vacuum pumps—one was completely inoperable and the other failed in flight. The vacuum pumps provide the pilots' horizon and orientation information while in flight. Without such information, pilots lose spatial awareness and become disoriented. Due to the inoperable and faulty equipment, the plane crashed, killing both student pilots.

Non-Auto Product Defects

The Section also handles cases involving defective products, including smoke detectors, flammable clothing, industrial equipment, and heaters just to name a few. Most of the time, family members do not suspect that a defective product is the

cause of a death or injury, and manufacturers readily blame the victim's actions. Our firm has discovered that defective products are increasingly a major cause of unexpected deaths and injuries. LaBarron Boone, a lawyer in the Section, has successfully handled several of these types of cases and has been leading a campaign to make smoke detectors safer and more effective. Contact LaBarron if you have any questions about a potential case at 800-898-2034 or by email at LaBarron.Boone@beasleyallen.com.

Premises Liability Litigation

Premises Liability Cases can involve claims arising out of falls caused by a foreign substance on the premises, falls caused by a part of the premises, as well as injuries caused by falling items. Specifically, in a case involving a foreign substance on a floor, a Plaintiff must establish that the foreign substance caused the fall and that the Defendant premises owner had notice or should have had notice of the substance at the time of the accident. The law is different when injuries are caused by part of the premises that is in a dangerous condition, such as part of a doorway, curb, or stairs, or where the injury is caused by a display created by a store employee. In situations where the injury is caused by part of the premises or a display that was set up by the store, proof of notice is not a prerequisite, but the Plaintiff must still prove the injury was caused by a defective or dangerous condition. Injuries caused by falling objects most often involve items falling from displays that are either part of the premises, or were set up by the store. If the falling object is the result of a display set up by the store or some part of the premises falling, then the customer does not have to prove notice. Mike Crow in our Section has extensive experience in handling premises liability cases. If you need any guidance or have any questions, contact Mike at 800-898-2034 or by email at Mike.Crow@beasleyallen.com.

The E-cigarette Litigation

E-cigarette usage continues to rise and there is a common perception that e-cigarettes are healthy and safe. Based on what we currently know, it is true that vaping is less harmful than smoking regular tobacco cigarettes. However, e-cigarettes are still relatively new, and we have much to learn about their long-term effects.

What we do know is that e-cigarette usage has been increasing among teens in the past five years, and the flavoring is a huge appeal to teens, with a 2016 study

finding that some adolescents perceive the fruit flavored e-cigarettes to be less harmful than those that are tobacco-flavored. The problem is that most e-cigarette flavors contain nicotine just like traditional cigarettes. That is a concern because nicotine is addictive and can harm brain development in children and young adults up to the age of 20.

Moreover, e-cigarette vapor can be toxic because it is impossible to know what chemicals are contained in e-cigarettes since they are not currently regulated. A recent study performed by UNC School of Medicine found that e-cigarettes trigger the same immune responses that normal cigarettes do and in some instances they can trigger unique immune responses.

Finally, as we have noted in previous reports, e-cigarettes can cause serious injuries when their batteries explode or catch fire causing severe burns. Also, according to the Centers for Disease Control and Prevention (CDC), people have been poisoned by ingesting or absorbing the concentrated e-cigarette liquid.

If you want to discuss a case that falls within any of these areas mentioned above, contact Sloan Downes, Section Coordinator, at 800-898-2034 or by email at Sloan.Downes@beasleyallen.com. She will put you in touch with the appropriate lawyer.

IX. MASS TORTS UPDATE

2017 YEAR IN REVIEW IN OUR MASS TORTS SECTION

Beasley Allen lawyers continued to lead the way in 2017 in mass tort litigation involving pharmaceuticals and medical devices. During the year, three Beasley Allen lawyers were appointed to provide leadership in newly formed multidistrict litigations (MDLs).

- Danielle Mason was appointed to the Plaintiffs' Steering Committee (PSC) for the Invokana multidistrict litigation, which currently has more than 700 cases pending in New Jersey federal court. The PSC manages discovery for all of the cases consolidated in the MDL.
- Navan Ward, Jr. was one of seven lawyers appointed to the Plaintiffs' Executive Committee (PEC) for the Proton-Pump Inhibitor MDL. The PEC is a

smaller group within the PSC that provides leadership for the MDL.

- Last, but certainly not least, Leigh O'Dell was selected to serve as co-lead counsel for the talcum powder MDL pending in New Jersey federal court. Associate Jennifer Emmel is also providing additional leadership in the talc MDL, serving on the Science Committee.

Outside of the courtroom, Frank Woodson began his term as President of the Alabama Association for Justice (AAJ) in June. AAJ works to eliminate restrictions on the civil justice system, so that every person can have their day in court and enjoy equal access to justice.

The following are some of the significant happenings this year in the Section.

Our mass torts lawyers logged lots of miles in 2017, working on several jury trials throughout the year. Ted Meadows and the Beasley Allen talc litigation team continue to lead the way in the talcum powder litigation in Missouri state court. May brought a verdict of just over \$110 million against Johnson & Johnson and Imerys for Beasley Allen client Lois Slemp. Ted and the team also assisted with the Ecchevarria trial in California. That jury awarded \$417 million to Eva Echeverria—the largest talcum powder verdict to date. The talc team is also working hard to handle legal challenges that arise after the verdict. After the Missouri Court of Appeals reversed and vacated last year's verdict for Alabama client Jacqueline Fox's family based on a recent U.S. Supreme Court ruling, the team is appealing that decision to the Missouri Supreme Court.

Matt Teague continues to serve on the PSC for the Testosterone Replacement Therapy MDL, which has more than 6,000 cases consolidated in the U.S. District Court for the Northern District of Illinois. Matt and Jessica Taylor worked with firms from across the country to try a case on behalf of Beasley Allen client Jeffrey Konrad, who suffered a heart attack after using AndroGel. A mistrial occurred in June when lead counsel suffered from heart problems. The case had to start again and the jury awarded \$140,000 in compensatory damages and \$140 million in punitive damages in the October retrial.

Andy Birchfield, as co-lead counsel for the Xarelto MDL, along with

Joseph VanZandt, led the way in three Xarelto bellwether trials in 2017. While all three trials resulted in Defense verdicts, Andy, Joseph, Soo Seok, and the rest of the Xarelto PSC are working to hold Defendants Bayer HealthCare Pharmaceuticals and Janssen Pharmaceuticals accountable for their failure to warn of the unique risks of Xarelto. The first two Plaintiffs, Joseph Boudreaux and Joseph Orr, are in the process of appealing several key rulings to the Fifth Circuit Court of Appeals. The third Plaintiff, Dora Mingo, filed a motion for a new trial in the trial court after Bayer's leading scientists released a new study showing that prothrombin time (PT), a standard lab test, may be used to assess Xarelto's anticoagulant activity—findings that directly contradict the testimony of Bayer's witnesses at trial.

It looks like 2018 will be another busy year for the Mass Torts Section. Two Xarelto trials are scheduled to begin in January in the consolidated Pennsylvania state court litigation. Beasley Allen also has three transvaginal mesh trials in cases scheduled for January, March and May against manufacturer Mentor.

\$110 MILLION TALC VERDICT UPHeld IN MISSOURI

The \$110 million jury award to a Virginia woman who claimed that decades of daily use of Johnson & Johnson's talcum powder products caused her ovarian cancer has been upheld.

After a review of post-trial evidence, Judge Rex M. Burlison of the 22nd Judicial Circuit Court has ruled that proper jurisdiction can be established in the state based on the significant role played by Union, Missouri-based PharmaTech in the processing, labeling, packaging and distribution of Johnson's Baby Powder and Shower to Shower products. The May 2017 verdict was called into question following the U.S. Supreme Court's *Bristol Myers Squibb* ruling, which established new, stringent jurisdictional standards for lawsuits filed by out-of-state Plaintiffs.

"Upon review of the record and the standard as enunciated in *Bristol Myers*, the Court finds that Plaintiffs have sufficiently established that specific personal jurisdiction exists..." wrote Judge Burlison in a 12-page opinion issued on Nov. 29.

During the trial, the Plaintiff, Lois Slemp, alleged that more than four decades of using talc-containing feminine

hygiene products, including Johnson's Baby Powder and Shower to Shower, led to the development of her cancer. Initially diagnosed in 2012, Ms. Slemp endured surgery and seven months of chemotherapy to combat the disease. Due to her physical condition she was only able to testify through an audio recording of her deposition.

After almost four weeks of testimony the jury awarded \$5.4 million in compensatory damages and \$105 million in punitive damages against Johnson & Johnson and co-Defendant Imerys Talc America, which mines and supplies the talc used in J&J's products.

This ruling confirms that even the limited evidence we've uncovered regarding PharmaTech is sufficient to meet the high standard set by the Supreme Court, and should allow us to affirm the earlier verdicts and move forward with additional trials in Missouri.

In 2016, three St. Louis trials brought by other women suffering from ovarian cancer led to jury verdicts of \$70 million, \$72 million and \$55 million against J&J and Imerys. If you look at the record in each trial to date, the Defendants have been very careful to hide the presence and role of PharmaTech. Now that jurisdiction has been confirmed by the court, future trials will be able to more clearly show the steps J&J has taken to deceive the public and medical community of the dangers of talcum powder use for feminine hygiene.

During the original trial, our lawyers called a number of prominent scientists and researchers who testified that more than 20 well-executed studies show a link between ovarian cancer and genital applications of talcum powder. The jury was also shown a trail of internal documents as evidence that J&J has known about those dangers for decades but has attempted to suppress and dismiss the findings. This was a most important and highly significant ruling. It will have a tremendous effect on the litigation in Missouri. Ted Meadows from our firm and Allen Smith from Mississippi are co-lead counsel in these cases.

NEW YORK MAN AWARDED \$1 MILLION IN RISPERDAL GYNecomASTIA LAWSUIT

Shaquil Byrd, a 24-year-old New York man, has won his lawsuit against Johnson & Johnson's Janssen Pharmaceuticals. The gynecomastia claim in the case involved the drug Risperdal. The jury awarded \$1 million in damages. The Plaintiff grew disfiguring breasts after taking Risperdal.

Byrd was prescribed Risperdal when he was 9 years old to treat a mood disorder. He developed breast tissue within months of beginning the drug and the breasts began lactating by the time he was 10. Like many Plaintiffs experiencing gynecomastia, the Plaintiff suffered physically and emotionally. He was teased, bullied and even physically assaulted by his peers because of his abnormal breasts.

According to the National Law Review, the number of Risperdal lawsuits against Johnson & Johnson and Janssen nearly tripled in just six months this year. The number increased from approximately 2,000 in January to more than 5,500 by the end of June.

As we have previously reported, some Plaintiffs developed breasts as large as DD and many times the breasts may even lactate. Invasive surgical procedures are often required to remove the breast tissue. For example, Byrd had to endure surgery to remove his unsightly breasts.

The Food and Drug Administration (FDA) approved Risperdal in 1993 to treat adult schizophrenia. Although the FDA did not approve the drug for use in children and adolescents until 2006, Janssen aggressively marketed the drug for a number of off-label pediatric uses before such approval. It should be noted that Janssen paid \$2.2 billion to the U.S. Department of Justice in 2013 to settle claims of deceptive marketing practices.

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

Sources: Righting Injustice and *National Law Review*

FIRST TRIAL IN XARELTO PENNSYLVANIA STATE COURT LITIGATION UNDERWAY WITH MORE TO FOLLOW

The first trial in the Pennsylvania state court litigation against the makers of Xarelto, Bayer and Johnson & Johnson's Janssen Pharmaceuticals, started on Nov. 6 and the case should be very close to a verdict. Plaintiff Lynn Hartman claims that Xarelto caused her to suffer internal gastrointestinal bleeding while she was taking Xarelto for atrial fibrillation. As a result of the bleed, Ms. Hartman spent several days in the hospital and was forced to undergo multiple blood transfusions. Plaintiff alleges that the makers of Xarelto failed to warn doctors and patients that the risk of bleeding on Xarelto doubles if Xarelto is used in conjunction with aspirin.

Plaintiff claims further that Bayer and Janssen failed to inform doctors that Xarelto's clinical trials showed that patients in the U.S. had a 50 percent increased risk of bleeding in Xarelto's primary clinical trial. Ms. Hartman claims that if the Defendants would have told her and her doctors the whole truth about Xarelto's risks, she would not have taken Xarelto and her bleed would not have occurred. Ms. Hartman's trial is expected to conclude by early December.

Ms. Hartman's trial is the first of about 2,000 cases pending in the Philadelphia Court of Common Pleas against the makers of Xarelto. Two additional trials are scheduled to start in Philadelphia in January 2018, and several additional trials are expected next year. In addition to the Philadelphia Xarelto litigation, the Xarelto multidistrict litigation (MDL) under Judge Eldon Fallon in the Eastern District of Louisiana is ongoing as well, with approximately 20,000 pending cases. Beasley Allen lawyers continue to be actively involved in both the Pennsylvania state court litigation and the MDL.

NUMBER OF INVOKANA MDL LAWSUITS GROWS

In less than a year, the number of lawsuits consolidated under the Invokana Multidistrict Litigation (MDL) has grown from 55 to 865. The claims are against Invokana's manufacturer, Johnson & Johnson's Janssen Pharmaceuticals, alleging the drugmaker failed to properly test Invokana and warn of the risks and consequences of using the drug.

As we have previously reported, the Food and Drug Administration (FDA) approved Invokana in 2013 as the first in a new class of Type 2 diabetes drugs called SGLT2 inhibitors. The following year the agency approved Invokamet, a combination of Invokana and metformin. Within two years of being on the market, however, there were more than 100 reports of acute kidney injury in patients taking the drug. The reports led the FDA to order a stronger kidney warning to accompany several SGLT2 inhibitors, including Invokana and Invokamet.

Among the adverse side effects Invokana has been linked to is diabetic ketoacidosis (DKA). DKA is kidney damage caused by a type of acidosis that develops when insulin levels are too low or during prolonged fasting. Beasley Allen has previously explained that it can lead to difficulty breathing, nausea, vomiting, abdominal pain, confusion and unusual fatigue or sleepiness. Beasley Allen also notes that the FDA has warned about

other adverse effects, including serious urinary tract infections (UTIs), which can lead to a serious blood infection called urosepsis or kidney infection called pyelonephritis.

Earlier this year, results from an FDA-mandated clinical trial showed Invokana also doubled the risk of leg and foot amputations compared with outcomes of patients taking a placebo. The dangers were even present in patients who did not exhibit risk factors for amputation. The findings led some doctors to stop prescribing Invokana. As evidence of the drug's adverse side effects mounts, it is not surprising that the numbers of lawsuits are also climbing.

Lawyers in Beasley Allen's Mass Torts Section are investigating claims on behalf of individuals and families with claims they were injured by Invokana and Invokamet, specifically cases involving DKA, acute kidney injury, and amputations. If you would like more information, contact Danielle Ward Mason, a lawyer in the Section. She can be reached at 800-898-2034 or by email at Danielle.Mason@beasleyallen.com.

Source: U.S. District Court for the District of New Jersey

X. EMPLOYMENT AND FLSA LITIGATION

JPMORGAN TO PAY \$16.7 MILLION IN WORKER OVERTIME SETTLEMENT

JPMorgan Chase & Co. has agreed to pay a group of assistant branch managers \$16.7 million to end lawsuits that accuse the company of misclassifying them as overtime-exempt employees. The proposed settlement agreement was filed on Nov. 4 in a New York federal court. One class, which brings claims under the Fair Labor Standards Act (FLSA), and three putative classes, which claim violations of New York, Connecticut and Illinois laws respectively, will receive on average more than \$3,000 per member to cover unpaid overtime dating back to 2012, under the settlement. It's a good settlement for the roughly 5,400 employees, the proposed settlement states, because JPMorgan Chase says that these assistant branch managers rarely, if ever, work overtime. The proposed settlement agreement states:

Chase has argued that there are at least nine bank holidays per year and ABMs do not work more than 40 hours per week in those weeks. Chase has argued that ABMs also take time off for vacation, illnesses, and personal matters and do not work overtime hours in those weeks.

Even when they do work five days in a week, JPMorgan Chase claimed that branches are rarely open for more than 40 hours a week, and that total is offset by breaks and lunches. The FLSA class filed its lawsuit in March 2014 and was certified in September 2016. The putative classes filed a lawsuit in April 2015 after attempting to negotiate directly with the bank, according to the agreement.

After the FLSA suit was certified, the court consolidated the two cases. The workers are represented by Gregg I. Shavitz of Shavitz Law Group PA and Karl J. Stoecker of the Law Offices of Karl J. Stoecker. The cases are *Taylor et al. v. JPMorgan Chase & Co. et al.*, (case number 14-cv-01718), and *Varghese v. JPMorgan Chase & Co. et al.*, (case number 1:15-cv-03023), in the U.S. District Court for the Southern District of New York.

Source: Law360.com

XI. PREMISES LIABILITY UPDATE

PHENIX CITY MAN AWARDED \$7.5 MILLION IN CASE AGAINST WALMART

A Phenix City man was awarded \$7.5 million after he fell at a local Walmart store. A Russell County jury ruled in favor of Henry Walker in his case against Walmart Stores Inc. Walker was visiting the Phenix City Walmart in June 2015. The customer reached for a watermelon in a container, but tripped and his foot got stuck in a wooden pallet on the floor. He fell and suffered several injuries, including a broken hip.

The watermelon container was on top of the pallet, which wasn't visible when Walker had to reach inside for a melon. Walker did not step on the wood, but his foot slid in a side opening on the pallet. When he tried to turn towards his buggy, his foot got stuck and he fell. Jurors viewed security footage from the Walmart store and saw several other people have

their feet caught in the side opening of the pallet.

Walker sued Walmart, alleging both negligence and a wantonness claims. The jury found for Walker on each claim. Walmart had a duty to exercise reasonable care, to maintain and keep its premises in a reasonable safe condition, and to warn the public of unsafe and hazardous conditions. The store should have known the hidden pallet was likely to cause an injury, which would support a wantonness claim.

The jury verdict states Walker will be awarded \$2.5 million in compensatory damages and \$5 million in punitive damages, totaling \$7.5 million. Before the fall, Walker played basketball three days a week with several of his friends. Now, the Army veteran has to use a walker. This verdict should encourage the retailer to use pallet guards, like other grocers in the area.

Walmart says it will appeal. The Plaintiff was represented by these lawyers from Columbus, Georgia: Shaun P. O'Hara, Austin Gower, and David C. Rayfield.

Source: AL.com

XII. WORKPLACE HAZARDS

\$85 MILLION JURY AWARD IN TRUCK DRIVERS CASE

Robert Montagano, now 53, was working as a truck driver on July 1, 2014, transporting several bundles of carbon steel tubing on his trailer bed. The steel bundles were loaded into two rows, with five full bundles and one partial bundle of carbon steel tubing on the bottom row. After arriving at the delivery location, while the crane operator attempted to unload the top row of steel bundles, the bundle loaded on top of the partial bundle rolled out of place and fell on Montagano, crushing his legs. The falling carbon steel tubes fractured his tibia and fibula, and also lacerated his right popliteal artery. Doctors initially amputated his right leg above the knee due to the crush injuries and blood loss. Later they had to amputate Montagano's left leg above the knee after he developed a fungal infection.

The bundles of carbon steel tubing were not loaded properly onto his trailer bed. The Defendants, Metal-Matic Inc., Leading Edge Group Inc., and Leading Edge Hydraulics Inc. were liable for the Plaintiff's injuries. Following a three-week trial,

the Cook County jury awarded Montagano \$85,929,717 in damages. The award included compensation for disfigurement, loss of normal life, pain and suffering, emotional distress, necessary medical care, and lost earnings benefits.

According to Jury Verdict Reporter data, this is the single largest verdict secured in a lawsuit involving double leg amputations in Illinois. The previous high, a \$39.2 million award, was set in 1985. The Plaintiff was represented by Power Rogers & Smith L.L.P., a law firm located in Chicago, Illinois.

Source: Jury Verdict Reporter

FAMILY OF MAN KILLED BY ROCK CRUSHER SETTLES DEATH CLAIM FOR \$6.5 MILLION

The owners of a Susquehanna County rock quarry and a machine manufacturer have agreed to pay \$6.5 million to the mother of a man killed after he fell into a giant rock crusher. B.S. Quarries Inc. and two of its associated companies were Defendants in the case. The family would have been able to show that the company pressured employees to ignore safety rules so it could increase profits. The lawsuit was filed in federal court in 2013 on behalf of Pauline Bailey of Binghamton, New York, the mother of 22-year-old Wesley Sherwood, who was killed in December 2011 when he fell head first into a rock-crushing machine at B.S. Quarries.

The incident happened as Sherwood was trying to clear rocks that had jammed in the crusher, which was running. The federal Mine Safety and Health Administration determined the quarry was at fault for failing to ensure Sherwood and other employees were trained on how to safely clear rock jams. The case was scheduled for trial, but a settlement was reached with B.S. Quarries and its associated companies, Damascus 535 Quarry & Stone Products and TNT Services Corp., all of Montrose, and Lippmann Milwaukee Inc. of Cudahy, Wisconsin, which manufactured the rock crusher. The quarry Defendants will pay \$4 million and Lippmann \$2.5 million.

A former quarry worker was expected to testify that employees were pressured not to shut equipment down when a jam occurred because it slowed production, which cost the company money. Workers who complained were told "you have to do it if you want your job," according to one of the family's lawyers. While settlements in civil cases are often kept confidential, Mrs. Bailey would not agree to

keep this settlement secret. She had this to say:

It's important to me that the message gets out that they did wrong. We pursued it and got justice so, hopefully, this doesn't happen to anyone else.

Mrs. Bailey is to be commended for her courage and determination to help others. The family was represented by Michael Pisanchyn, a lawyer located in Scranton, Pennsylvania.

XIII. TRANSPORTATION

HIGHWAY CRASHES LEAD NATIONAL INCREASE IN AUTO DEATHS

New data released last month by the National Transportation Safety Board (NTSB) showed that more people died in accidents last year than in 2015. The vast majority of the incidents occurred on highways. In all, 39,339 people died in transportation accidents in 2016, up 2,030 from 2015. While 95 percent of those deaths occurred in auto accidents on the highway, marine and railroad deaths also saw slight increases, according to the transportation board. NTSB Chairman Robert Sumwalt said:

Unfortunately, we continue to see increases in transportation fatalities. We can do more, we must do more, to eliminate the completely preventable accidents that claim so many lives each year.

The statistics reveal that roadway deaths increased from 35,485 in 2015 to 37,461 last year, including an increase in passenger vehicle fatalities, which increased by almost 700 during the same period. Railroad deaths also increased from 708 to 733 and marine deaths, mostly attributed to recreational boating incidents, from 688 to 730. The only statistic to decrease was aviation deaths, which decreased from 416 to 412. Almost all were general aviation accidents as opposed to air taxi deaths, which decreased from 27 to 19. Civil aviation accidents dropped, with the rate of fatal accidents—less than 1 per 100,000 flight hours—the lowest it has been in 50 years, the transportation board said.

The increase in fatal accidents continues a trend. From 2014 to 2015, highway deaths increased by roughly 2,300. During

that same period, overall transportation deaths went from 34,558 to 36,918. The board, which was created in 1967 to investigate transportation deaths and civil aviation accidents, released the statistics in advance of the Thanksgiving holiday weekend, which is usually one of the busiest travel weekends of the year.

Sources: NTSB News Release and Law360.com

JURY AWARDS \$45 MILLION TO FAMILY OF DRIVER KILLED IN I-75 CRASH

A jury recently returned a \$45 million verdict against Ranger Construction Industries Inc., a Florida highway contractor, for failing to provide its construction vehicles with a safe way of exiting construction sites on Interstate 75. Jurors found this failure caused a three-vehicle crash that left two people dead.

The Fort Lauderdale jury found Ranger and Juan C. Calero, the truck driver involved in the May 2015 crash, responsible for the death of Raymond Astaphan, a 29-year-old medical student, who was killed on impact. The 17-year-old driver of another vehicle was also killed in the crash. The jury awarded the Astaphan family \$20 million in compensatory damages and \$25 million in punitive damages against the company. The jurors assessed \$5,000 in punitive damages against Calero. Double B Lines Inc., Calero's employer, was found to be partially responsible for the damages award.

The jurors also found that Ranger had violated the terms of its \$85 million contract with the Florida Department of Transportation to build a segment of an express lane project on I-75 in Broward County, where the highway is eight lanes and has a speed limit of 70 miles per hour. The contract required Ranger to provide construction vehicles with a safe means of exiting median construction sites on the highway. On the night of the crash, Ranger loaded a flatbed tractor trailer with a full load of concrete barrier wall and told Calero to drive one mile south for unloading.

The Plaintiff alleged that the only safe way off of the median construction site at that time was with a lane closure, supervision, lighting and the help of the Florida Highway Patrol. But the driver, Calero, was left alone to enter traffic. He attempted to make a U-turn, crossing all four southbound lanes of traffic. As he was doing this, Raymond Astaphan's Mitsubishi hit the tractor-trailer, shearing off his roof and killing him instantly and injuring his passenger. The crash caused a chain reaction. Seventeen-year-old Liza

Angulo was killed instantly when she struck the back of the flatbed truck, causing concrete barriers to fall on her car.

The Astaphan family is represented by Stuart N. Ratzan, Stuart J. Weissman and Evan Gilead of Ratzan Law Group PA. The case is *Astaphan v. Ranger Construction Industries Inc. et al.*, (case number CACE15012992) in the Seventeenth Judicial Circuit Court of the State of Florida.

Source: Law360.com

BRITISH PANEL RULES UBER DRIVERS ARE EMPLOYEES, NOT CONTRACTORS

American ride-hailing service Uber received another blow in its important British market because of a ruling in an employment hearing. The tribunal ruled that the company's drivers are entitled to basic protections such as minimum wage and vacation pay. The tribunal ruled Uber drivers should be classed as employees rather than self-employed contractors. In the United States, Uber drivers are contractors, not employees, a classification that has angered some labor activists. The decision in England could have implications for workers in the so-called gig economy, where people work with little job security and few employment rights.

This ruling comes as the San Francisco-headquartered firm is battling to keep its London operating license. Regulator Transport for London has threatened to cancel Uber's license in the British capital over its dissatisfaction with the company's background checks on drivers and the way it shares information with authorities about criminal offenses.

Uber said it would appeal the tribunal's decision. Tom Elvidge, the firm's acting general manager in Britain, said in a statement that taxi and private hire drivers in Britain had been self-employed for decades, "long before our app existed." He said Uber drivers value the "freedom to choose if, when and where they drive." The move could affect as many as 40,000 Uber drivers in Britain, the company's largest market in Europe, where about 3.5 million people use the service.

What Uber does to check the backgrounds of its drivers was thrust into the spotlight after Sayfullo Saipov, the 29-year-old suspect in October's New York truck attack, was revealed to have driven more than 1,400 trips for Uber in the past six months. To check whether drivers can serve as contract workers for the tech start-up, Uber says it requires all applicants to provide their full name, date of birth, social security number, driver's license number, a copy of his or her driv-

er's license, vehicle registration, vehicle insurance, and a valid bank account. Saipov's background raised no alarm bells. Uber's license to operate in London won't be renewed because its practices endanger public safety and security.

Source: Law360.com

XIV. AN UPDATE ON ENVIRONMENTAL AND TOXIC TORTS LITIGATION

REPORT FINDS POLLUTION IS NUMBER ONE GLOBAL KILLER

A report published in medical journal *The Lancet* in October revealed pollution is the largest environmental cause of disease and premature death, and it disproportionately affects the poor and vulnerable. The study conducted by the Lancet Commission on Pollution and Health involved more than 40 researchers from the United Nations, the European Union and the United States. The study blames pollution for an estimated 9 million premature deaths.

Air pollution was ranked the biggest killer, linked to afflictions such as heart disease, stroke, lung cancer and other illnesses. This includes both outdoor air pollution from sources such as traffic and industry, blamed for 4.5 million deaths each year; and indoor pollution, particularly from wood and dung stoves, blamed for 2.9 million deaths.

Water pollution and workplace pollution were the additional forms of pollution linked to disease and premature injury. Water pollution includes sewage contamination, and accounts for 1.8 million deaths from causes such as intestinal parasites and gastrointestinal diseases. Workplace pollution includes exposure to carcinogens and other toxins including second-hand smoke, coal and chemicals.

The study also noted that pollution disproportionately kills the poor and vulnerable. This is supported by research done by Human Rights Watch, which indicates marginalized populations such as ethnic minorities, the urban poor, children, older people, and people with disabilities are largely unable to hold governments accountable for poor living conditions, or industries for violating their right to a healthful environment.

This applies on a large scale. The Commission found nearly 92 percent of pollution-related deaths occur in low-income and middle-income countries. India had the most pollution-related deaths at 2.5 million, or 24.5 percent of all deaths in the country; followed by China at 1.8 million or 19.5 percent and Pakistan at 311,000 deaths for 21.9 percent.

While the report states that these numbers can be reduced if pollution can be eliminated, researchers noted it will take making pollution prevention a "high priority nationally and internationally," including increasing funding and international technical support to control and establish systems to monitor pollution.

Sources: *Montgomery Advertiser*, Human Rights Watch

SCIENTISTS URGE RETRACTION OF JOURNAL ARTICLE SURREPTITIOUSLY WRITTEN BY MONSANTO

After the International Agency for Research on Cancer (IARC) made the decision to designate glyphosate, the active ingredient in Monsanto's Roundup weed killer, as a "probable human carcinogen," Monsanto quickly began looking for ways to discredit the agency's decision. It's now clear that Monsanto has been working behind the scenes to surreptitiously write academic papers purporting to call into question the IARC's carcinogen designation.

Recently released documents call into question a 2016 paper that was submitted to the scientific journal *Critical Reviews in Toxicology*. Contrary to the journal's unambiguous conflict-of-interest disclosure statement, Monsanto directly paid at least two of the scientists who authored the paper, and at least one Monsanto employee substantially edited and reviewed the article prior to publication. As a result, readers and reviewers of the cancer studies were led to believe that the paper was independently submitted and published, and that Monsanto had no influence on the content of the article.

Reaction to Monsanto's deception was quick. Scientists from the Center for Biological Diversity, the Center for Food Safety, Pesticide Action Network North America, and the Center for Environmental Health have submitted an open letter to the journal calling for the retraction of the article. As those scientists note, "[T]he false, inaccurate, and misleading statements...served an obvious and critical purpose. In light of the high-profile controversy over the carcinogenicity of glyphosate, driven in large part by Mon-

santo, the company understood that the scientific community would have legitimate doubts as to the independence of a Monsanto-funded review effort. Assuaging these doubts was critical to the success of Monsanto's mission to discredit IARC's determination. This was accomplished in the summary review ... by misrepresentation and omission."

Evidence of the hazardous effects of glyphosate continues to mount, and there is now an investigation by the Inspector General for the U.S. Environmental Protection Agency (EPA) into whether or not an EPA official engaged in collusion with Monsanto regarding the EPA's safety assessment of glyphosate. Multiple internal emails from Monsanto have indicated the company's willingness to ghostwrite scientific articles in its favor while attributing the content to academics, thereby thwarting independent efforts to evaluate the chemical's safety.

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.Cofer@beasleyallen.com.

Source: beyondpesticides.org

ROUNDUP'S GLYPHOSATE LICENSE EXTENSION FAILS TO PASS IN EUROPE

As the contention surrounding Monsanto's Roundup weed killer mounts, the European Union continues to struggle over whether to extend the license for glyphosate, the herbicide's main ingredient, as its potential health risks for humans gain traction. We reported that the European Commission (EC) was set to vote on extending glyphosate's usage license before it expired this month, potentially affecting any decisions made in the United States on the matter as well. An EC vote on Nov. 9 failed to grant the license extension. Only half of the 28 member-states backed the proposal. A European Union appeal committee will now be forced to take up the issue again at the end of the month.

The United Kingdom voted to back the license extension while nine countries, including France and Italy, voted against it and five countries, including Germany, abstained from the vote. Glyphosate has been linked to the development non-Hodgkin's lymphoma (NHL), particularly in those who work in the agricultural industry. Lawsuits revealed 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 unsealed documents caught the attention of European officials on the verge of the renewal. California has already been cleared to require a warning on Roundup products, relying on information from the International Agency for Research on Cancer (IARC). The IRAC labels glyphosate as “probably carcinogenic.”

In its evaluation, the IARC notes the Environmental Protection Agency classified it as “possibly carcinogenic to humans” in 1985 based on the presence of tumors found in mice and only changed its stance after a “re-evaluation” of those results. The agency concluded:

There is sufficient evidence of carcinogenicity in experimental animals. Glyphosate also caused DNA and chromosomal damage in human cells.

All the while, Monsanto is still touting Roundup as safe, potentially endangering lives around the globe to protect their profit margin. The EPA is also expected to make its determination on glyphosate by the end of this year.

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. He can be reached at 800-898-2034 or John.Tomlinson@beasleyallen.com.

Sources: BBC and International Agency for Research on Cancer

NEW JERSEY LOWERS PFC EXPOSURE LIMIT

New Jersey’s Department of Environmental Protection (DEP) lowered its exposure limits for two harmful perfluorinated chemicals (PFCs) to the lowest levels in the nation. The DEP accepted the New Jersey Drinking Water Quality Institute’s recommended Maximum Contaminant Levels (MCLs) of 14 parts per trillion for perfluorooctanoic acid (PFOA) and 13 parts per trillion for perfluorononanoic acid (PFNA). It is the first state in the country to set binding regulations requiring the statewide testing of public drinking water systems for these chemicals.

PFCs are used in a wide variety of consumer products and industrial applications, including the manufacture of nonstick cookware and food packaging. They are also used to make upholstered

furniture, carpets and clothing resistant to stains, soil and water. They persist in the environment and, over the years, have accumulated in the bloodstream of virtually every American.

PFCs are not regulated by the federal government under the Safe Water Drinking Act. Instead, they were tested under the Environmental Protection Agency’s (EPA) Third Unregulated Contaminant Monitoring Rule between 2013 and 2015. In May 2016, the EPA set a lifetime health advisory of 70 ppt for combined levels of PFOA and another PFC perfluorooctane sulfonate (PFOS). This decision came after studies linked exposure to a number of health problems, including cancer in adults and developmental effects in fetuses and breastfed infants.

Some states have stricter standards than the EPA’s 70 ppt advisory. Before it was lowered, New Jersey’s standard was 40 ppt for PFOA. Vermont’s PFOA limit is 20 ppt, and Minnesota set limits of 35 ppt for PFOA and 27 ppt for PFOS. Because of these limits, many water systems have filed lawsuits against the military, chemical manufacturers, and other manufacturers that use PFCs on their products.

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 at Beasley Allen 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 Jersey Department of Environmental Protection

OUR FIRM IS REPRESENTING WORKERS HARMED BY ON-THE-JOB EXPOSURE TO SPRAY FOAM INSULATION

Spray polyurethane foam (SPF) is widely used in the construction industry as a spray-on insulation material and air sealant. However, exposure to SPF’s key ingredient, isocyanates, can cause serious health problems for people working with

or around the product. Spray application of SPF generates isocyanate vapors and aerosols that can migrate throughout the building if it is not isolated and properly ventilated. According to the United States Environmental Protection Agency (EPA), exposures during a typical SPF spray application will exceed Occupational Safety and Health Administration (OSHA) occupational inhalation exposure limits for the highly toxic isocyanate chemicals.

Both breathing and skin exposure to isocyanate chemicals can lead to the worker becoming sensitized to it and suffering serious health effects, including occupational asthma, chemical sensitization, liver damage, and other respiratory and breathing problems. In fact, the National Institute for Occupational Safety and Health (NIOSH) has found that isocyanates are a leading chemical cause of work-related asthma. Once sensitized, a worker is forever at risk of suffering severe asthma attacks or other dangerous lung effects if they are ever again exposed to even low levels of isocyanates. Death from severe reactions in some sensitized persons has been reported.

Lawyers in our firm currently represent clients who suffer from occupational asthma, chemical sensitization, and other illnesses resulting from on-the-job exposure to isocyanates during the spray application of SPF. In one case, pending in Rhode Island, our client developed occupational asthma from exposure he experienced while working as a spray applicator of SPF. He has also become sensitized and can no longer be exposed to the isocyanate-containing SPF. As a result, our client has been permanently injured and incurred medical expenses, lost wages, and other damages. This case is scheduled for trial in the first half of 2018.

In another case, we represent the former owner of a company that installed spray foam insulation in a lawsuit against the company who manufactured and sold the SPF and the manufacturer of the isocyanate chemical component of the SPF. Our client became chemically sensitized to isocyanate and developed occupational asthma due to his workplace exposure to SPF. Because of his injuries, our client lost his business and suffered a substantial impairment to his income potential because he could no longer be near SPF without risk of catastrophic injury or death. The case, pending in Delaware, is currently in the early stages of discovery and a trial date has yet to be set. Our co-counsel in both of these cases is Dawn Smith of the Smith Clinesmith law firm in Dallas, Texas.

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

EPA LIMITS REACH OF TOXIC CHEMICAL EVALUATIONS

Earlier this year, the Centers for Disease Control and Prevention (CDC) reported more than 45,000 people have died in the United States alone from malignant mesothelioma from 1999 to 2015. Even more alarming was the fact young people continued to be exposed despite increased regulations limiting how and where asbestos can be used.

In the report, the CDC concluded the continued exposure of people 55 and older "might result from occupational exposure to asbestos fibers during maintenance activities, demolition and remediation of existing asbestos in structures, installations, and buildings if controls are insufficient to protect workers."

Despite evidence that existing asbestos is continuing to create health problems for Americans, the Environmental Protection Agency (EPA) is renegeing on promises to evaluate some of the most dangerous chemicals used by the public, including millions of tons of asbestos found in consumer products, buildings, vehicles, etc. The Associated Press reports:

Instead of following President Barack Obama's proposal to look at chemicals already in widespread use that result in some of the most common exposures, the new administration wants to limit the review to products still being manufactured and entering the marketplace. For asbestos, that means gauging the risks from just a few hundred tons of the material imported annually while excluding almost all of the estimated 8.9 million tons of asbestos-containing products that the U.S. Geological Survey said entered the marketplace between 1970 and 2016.

Contrary to popular belief, asbestos is still legal in the United States. The EPA website contains a list of products con-

taining asbestos that are not banned: pipeline wrap, clothing, brake blocks, gaskets, cement pipe and roof coatings. While the review would include those asbestos products that are still being manufactured, it would not include any information on asbestos-containing products that are no longer made but are still in use.

By not including any preexisting materials in new handling or disposal rules, the hope of a complete asbestos ban, as is currently underway in Canada, is almost nonexistent, and people will continue to die from completely preventable asbestos-related diseases, including lung cancer and mesothelioma.

Originally, the EPA touted the evaluation as the delivery on "a promise to better protect public health and the environment," but unfortunately this backtracking has left that promise empty. The chemical industry has shown it continues to place profit over people's health, and the government continues to fail to truly protect its citizens from asbestos exposure.

For more information about asbestos-related diseases such as mesothelioma, and how they may be linked to product liability claims, contact Rhon Jones, head of our firm's Toxic Torts Section, or Chris Boutwell at 800-898-2034 or Rhon.Jones@beasleyallen.com or Chris.Boutwell@beasleyallen.com.

Source: Associated Press

IARC REVIEWS NEW EVIDENCE REGARDING THE CARCINOGENICITY OF BENZENE

A working group comprising 27 scientists met last month at the International Agency for Research on Cancer (IARC) to review new epidemiological and mechanistic evidence related to the carcinogenicity of benzene. 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

The group's review focuses on epidemiological studies in which occupational or environmental exposure to benzene was specifically identified, including several large occupational cohort studies. The group also examined the potential to characterize quantitative relationships for

cancer risk. During the meeting, the working group confirmed the carcinogenicity of benzene based on "sufficient evidence in humans, sufficient evidence in experimental animals, and strong mechanistic evidence" that it causes acute non-lymphocytic leukemia, including acute myeloid leukemia. Other types of cancer are also positively associated with exposure to benzene.

Since 1979, IARC has classified benzene as a Group 1 carcinogen, the agency's designation for agents that carry sufficient evidence of carcinogenicity in humans. IARC notes that the use of benzene is now restricted in many countries, but it continues to be produced in high volumes for use as a chemical intermediate.

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

Source: AIHA

BP CLAIMS PROCESSING UPDATE

The Deepwater Horizon Economic & Property Damages Settlement Program (Settlement Program) opened in June 2012 is winding down. According to the public statistics, more than 390,000 claims were filed in the Settlement Program and more than \$11 billion has been paid to claimants. When the last BP claim is processed, the eligible claimants will move on to the Halliburton and Transocean Settlements.

The Halliburton and Transocean Settlement Program will distribute \$1,239,750,000 according to the Claims Administrator's Distribution Model, which was approved by Judge Carl Barbier on Feb. 15, 2017. This model will pay a majority of these funds (72.8 percent) to "New Class" claimants, which includes owners whose property was physically oiled, local governments, entities who opted out of the BP settlement, and those who submitted certain BP claims (coastal wetlands, fishermen, subsistence, and property claims).

The remaining funds will go to "Old Class" members, which include hundreds of thousands of businesses and individuals who previously filed claims and were compensated under the BP settlement. Most payments will be distributed *pro rata* and will be based on what was received in the BP settlement. If you need additional information on this matter, contact Will Sutton, a lawyer in our firm's Toxic Torts Section, at 800-898-2034 or by

email at William.Sutton@beasley-allen.com.

Source: www.deepwaterhorizoneconomicsettlement.com

XV. UPDATE ON NURSING HOME LITIGATION

MORE NURSING HOMES HORROR STORIES

The absence of a national database that collects and compiles data about elder abuse, and the lack of standardized data reporting and collection across states only intensifies the difficulty of assessing the full extent of abuse and neglect in America's nursing homes. Coupled with the underreporting of such events, as we have previously discussed, many nursing home residents are forced to suffer in silence. Research and anecdotal evidence should serve as a wake-up call to the country's aging population, their caregivers and especially nursing home regulators and owners.

The Centers for Disease Control and Prevention (CDC) says that infections are a major cause of hospitalization and death for residents in Long Term Care Facilities (LTCFs). It explains that 1 million to 3 million infections occur in LTCFs every year and cause as many as 380,000 deaths annually.

The Journal of Gerontology & Geriatric Research (JGGR) reported 90 percent of facilities are understaffed and cannot provide adequate care to the residents. Infection control professionals warn that the problem has become even more serious because one out of four nursing home residents is colonized with drug-resistant bacteria, such as *E. coli.*, according to Science Daily. A study released in May by the American Journal of Infection Control discovered the significant presence of drug-resistant bacteria in nursing homes and warned that it "demonstrates the need for heightened infection control prevention and control measures in nursing homes."

The JGGR also says that one out of three U.S. nursing homes is cited every year "for causing serious bodily injury or death to a resident." In February, a federal jury awarded the families of three deceased nursing home patients \$5.2 million in compensatory and punitive damages after finding Blue Ridge Health Care Center,

Care Virginia Management LLC and Care One LLC responsible for the deaths, Righting Injustice reported. The wrongful death lawsuit claimed that patients were able to remove ventilator or tracheotomy tubes repeatedly without medical staff intervention. The alarms on the tubes that were to alert medical staff of removal "were either turned off automatically or manually by staff." Additionally, patients suffered multiple falls and developed numerous infections because of sub-standard care.

Alabama Attorney General Steve Marshall has indicted three former Cherokee County nursing home employees, charging them each with one count of second degree elder abuse/neglect, Righting Injustice reported. An 84-year-old woman confined to a bed suffered from approximately 100 ant bites when she was left unattended for hours at the Cherokee Health and Rehab nursing facility in Centre.

Although the employees recorded that they entered the woman's room to check on her several times, surveillance video revealed that none of the nurses checked on her for 11 hours. The nursing home reported the incident and an investigation revealed the intentional neglect likely contributed directly to the resident's injuries.

The dire results from the lack of comprehensive national reporting and monitoring are best demonstrated through the woefully inadequate sexual abuse data in nursing homes. There is no national, uniform system for tracking sex abuse allegations. Further, all forms of abuse are lumped together and sexual abuse is not categorized separately. The lack of data, especially detailed data, makes it difficult to prevent and respond to the abuse when it occurs.

Federal funding and other business incentives entice nursing home owners to conceal abuse. Residents' aging and health issues often reduce their credibility as witnesses. Botched investigations including mishandled or destroyed evidence and "half-hearted investigations by facilities and regulators" also leave residents defenseless against sexual predators masquerading as caretakers.

In its review of state and federal data, CNN found that "more than 1,000 nursing homes have been cited for mishandling suspected cases of sex abuse." It also found that "nearly 100 of these facilities have been cited multiple times during the same period."

Another unsettling and growing concern for residents and their loved ones regarding sexual abuse is the misuse of cell phones and other tech devices as well

as social media. Righting Injustice reported that a survey by the public interest group ProPublica identified 65 cases of nursing home and assisted living facility employees posting unauthorized photos and videos of residents on social media since 2012.

The Centers for Medicare and Medicaid Services is working with state health departments to ensure all nursing homes have policies that protect residents from such violations. Yet, the issue remains unregulated, and while forced arbitration clauses remain on the bargaining table for the nursing home industry, residents and their family members and caregivers have little recourse to hold bad employees and facilities accountable.

If you need more information on Nursing Home Litigation, contact Chris Boutwell, a lawyer in the firm's Toxic Torts Section, at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com. Chris is the lead lawyer on our firm's Nursing Home Litigation Team.

Sources: Nursing Home Abuse Center, Department of Health and Human Services Office of Inspector General, Center for Disease Control and Prevention, Journal of Gerontology & Geriatric Research, Righting Injustice, Miami Herald and CNN

XVI. AN UPDATE ON CLASS ACTION LITIGATION

CONSUMERS GET INITIAL APPROVAL ON \$300 MILLION VITA-MIX BLENDER SETTLEMENT

An Ohio federal judge has given preliminary approval to a \$300 million class action settlement that would end consumers' claims that Vita-Mix Corp. blenders contained a defective seal that left flecks of a Teflon-like substance in their food and beverages. If the settlement receives final approval it would give consumers who purchased a Vita-Mix household blender made between Jan. 1, 2007, and Oct. 1, 2016, a replacement blade with a different seal or a \$70 gift card toward the purchase of a new Vita-Mix blender or container. Consumers who purchased a blender on or after Sept. 15, 2015, but before Aug. 9, 2016, or before April 7, 2017, in the case of a commercial blender from the XL product line, can also receive a replacement blade with the new seal. The settlement, "conservatively" estimated at \$300 million, affects some 6 million blenders and a

similar number of consumers, according to court documents.

U.S. District Judge Susan J. Dlott gave the settlement initial approval, finding in an order that the settlement was fair and reasonable and satisfied all other relevant considerations. Judge Dlott wrote:

Based upon information provided: the class is ascertainable; it numbers in the millions, satisfying numerosity; there are common questions of law and fact, including whether the seal at issue was defective, satisfying commonality; the proposed class representatives' claims are typical, in that they are members of the class and allege they have been damaged by the same conduct as other members of the class.

The settlement, which will be subject to a March 2018 fairness hearing, establishes a nationwide settlement class lead by consumers Vicki A. Linneman and Obadiah N. Ritchey. It also designates as class counsel lawyers from Markovits Stock & DeMarco LLC, Goldenberg Schneider LPA and Finney Law Firm LLC.

Consumers first sued the popular blender manufacturer in November 2015, contending that a defective seal resulted tiny shards of a chemical called polytetrafluoroethylene, a Teflon-like substance, peeling off and ending up in whatever food or drink was being mixed. Consumers say they discovered the tiny flakes, which are almost invisible to the naked eye, when they poured the contents into a white bowl. Vita-Mix's high-end blenders retail for \$400 to \$700, according to the suit.

Consumers claimed the company continued to sell blenders it knew breached its warranty terms in order to increase sales. The company claimed that the flakes were food-grade, that it was in the process of developing a new seal when complaints arose, and that it swapped defective containers for ones with new seals, meaning consumers had not been injured. The suit prompted the companies' insurers, who contended that Vita-Mix should have known consumers would sue, to fight against coverage.

If approved, the settlement would also require Vita-Mix distributors to help spread the word about the settlement, which will be published online and in popular cooking and household publications. In a motion clarifying the settlement arrangements, Vita-Mix noted that the valuation of the settlement, which does not establish a common fund, could be con-

tested in connection with consumers' fee application at a later time.

Consumers are represented by W.B. Markovits, Paul M. De Marco, Christopher D. Stock, Andrew R. Biller and Terence R. Coates of Markovits Stock DeMarco LLC; Christopher P. Finney and Justin Walker of Finney Law Firm LLC; and Jeffrey S. Goldenberg of Goldenberg Schneider LPA. The case is *Linneman et al. v. Vita-Mix Corp. et al.*, (case number 1:15-cv-00748) in U.S. District Court for the Southern District of Ohio.

Source: Law360.com

JPMORGAN AGREES TO A \$75 MILLION SETTLEMENT OVER FUND PERFORMANCE

A class of investors who sued JPMorgan Chase & Co. over the performance of several stable value funds that held mortgage-backed securities during the financial crisis told a federal judge in Manhattan last month that they have reached a \$75 million settlement with the bank. The investors, who were recognized as a class earlier this year, laid out the details of the settlement reached with the help of a mediator and they urged the court to tentatively approve the settlement.

Lawyers for the Plaintiffs said the settlement gives investors, many of whom are near retirement, a percentage of the value of the estimated underperformance of their funds without the risk of coming up empty-handed or facing appeals that would delay their relief. The lawyers wrote in their request:

Instead of the additional time it would take to resolve this action and the considerable risk that the result could be adverse, under the settlement, \$75,000,000 will be deposited in an interest-bearing account, which will benefit the class if the settlement is finally approved. In sum, a settlement at this stage avoids further motion practice raising various issues around causation and proof of damages.

Under the terms of the settlement, class members—who suffered between \$410 million and \$555 million in total damages, according to their expert witness—will be paid based on the amount between the actual performance of their investments and the Barclays Intermediate Aggregate Index, a benchmark index. The suit, filed in April 2012, accuses the finance giant of breaching its fiduciary duty under the Employee Retirement Income Security Act by heavily investing its stable value funds,

which are supposed to protect against market volatility. Those funds were allegedly invested in JPM's risky Intermediate Bond Fund and the Intermediate Public Bond Fund, which held mortgage-backed bonds, in 2009 and 2010.

Since the class and two subclasses of investors were recognized earlier this year, lawyers for the investors say they have continued to work hard to win relief for their clients, with a total of 800,000 pages of discovery produced and 40 fact witnesses and five experts being deposed over the course of the case. They told the court that the recovery represented good value for the class and was negotiated with the help of experienced Employee Retirement Income Security Act (ERISA) mediator Hunter Hughes.

The class is represented by Michael Mulder and Elena Liveris of the Law Offices of Michael Mulder; Todd Schneider, Garrett W. Wotkins and Jason Kim of Schneider Wallace Cottrell Konecky Wotkins LLP; Kevin Madonna of Kennedy & Madonna LLP; Joseph Peiffer and Daniel J. Carr of Peiffer Rosca Wolf Abdullah Carr & Kane APLC; and Peter J. Mougey and Laura Dunning of Levin Papantonio Thomas Mitchell Rafferty & Proctor PA. The case is *In re J.P. Morgan Stable Value Fund ERISA Litigation*, (case number 1:12-cv-02548) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

BANK OF AMERICA AGREES TO \$66.6 MILLION SETTLEMENT TO END SUIT OVER OVERDRAFT FEES

Bank of America has agreed to pay \$66.6 million to end a putative class action claiming it violated usury laws by charging account holders an additional \$35 fee for failing to replenish their overdrawn accounts within five days. Under the settlement, the bank also agreed to stop hitting customers with additional \$35 charges—on top of the initial \$35 that it charges accounts with insufficient funds—for five years, saving class members approximately \$1.2 billion over that period. The motion for preliminary settlement approval was filed last month.

The customers' lawyers argued that the deal is fair and offers substantial value for customers, considering the risks associated with litigating claims in the case, which they say are "untested and novel." The motion read:

Plaintiffs and class counsel are confident in the strength of their case, but are also pragmatic in their

awareness of the various defenses available to the bank, and the risks inherent to litigation of this magnitude—which challenges engrained banking industry practice.

If approved, the deal would resolve a putative class action lead Plaintiff Joanne Farrell filed in February 2016 that alleges the bank's follow-up \$35 charge, as a percentage of an account holder's negative balance, exceeds the interest rate permitted by the National Banking Act. Farrell claimed the bank's extra \$35 fee was "egregiously high, usurious and illegal," and she sought to represent all Bank of America checking or money market account holders who incurred one or more extended charges within the last two years.

In April 2016, the bank sought to get the suit dismissed, arguing that the charges don't constitute interest on an extension of credit and instead are merely authorized deposit account service charges, or flat fees. But in December, U.S. Judge M. James Lorenz veered from three other district court rulings on the issue, finding that the extended fees are connected to an extension of credit—in this case, advancing funds to cover an overdrawn account—that creates a framework for which an extended charge can be considered interest on that extension of credit.

Bank of America appealed Judge Lorenz's decision to the Ninth Circuit, but in October, the parties notified the court they had reached a settlement. The deal is a nonreversionary opt-out settlement, under which the bank has agreed to automatically pay out \$37.5 million to customers charged the fees, without class members having to submit claims. The bank also agreed to set aside \$29.1 million to cover charges assessed against customers whose accounts have been closed, and it agreed to update account reports sent to credit bureaus. The parties estimate there are more than 5 million potential class members.

The settlement is said to save Bank of America account holders more than a billion dollars in overdraft charges and it provides meaningful payments to customers who incurred fees. While the settlement ensures Bank of America customers won't have to endure "abusive and extremely high interest charges," millions of account holders at other banks across the country are still subject to them.

Farrell is represented by Bryan Gowdy of Creed & Gowdy PA, Jeffrey Kaliel of Tycko & Zavareei LLP, Jeff Ostrow of Kopelowitz Ostrow Ferguson Weiselberg Gilbert, John J. Uustal, Cristina Maria

Pierson and John R. Hargrove of Kelley Uustal PC, and Walter W. Noss of Scott & Scott LLP.

The case is *Joanne Farrell v. Bank of America NA*, (case number 3:16-cv-00492) in the U.S. District Court for the Southern District of California.

Source: Law360.com

Pfizer Reaches \$94 Million Settlement Over Celebrex Claims

Pfizer and a class of direct purchasers who allege the drugmaker used fraudulent patents to delay generic competition for its anti-inflammatory drug Celebrex have agreed to a \$94 million settlement. U.S. District Judge Arenda L. Wright Allen certified a class of 32 direct purchasers in August who claim Pfizer Inc. cost Celebrex buyers hundreds of millions by abusing the courts and the U.S. Patent and Trademark Office (USPTO) to extend its exclusive window to sell the drug. The parties filed a joint motion for preliminary approval of the settlement on Nov. 22. They told the court the agreement came after discovery in the case had already resulted in the production of 800,000 documents, 28 depositions of party witnesses and reports from 20 separate experts, in addition to discovery obtained from outside parties.

According to the July 2014 suit, the issue dates to 2008, when the Federal Circuit invalidated U.S. Patent No. 5,760,068, finding it not distinct enough from two other Celebrex patents also owned by Pfizer. The decision was said to have pushed up the expiration of Pfizer's patent exclusivity on the drug from December 2015 to May 2014. In order to extend that exclusivity period, the company asked the USPTO to reissue the patent, claiming that its earlier applications had contained "unintentional" errors "needing" correction. The suit alleged that Pfizer provided "false information, deflection arguments and voluminous irrelevant materials."

The request was granted by the USPTO in 2013 under U.S. Patent No. RE44,048. The Celebrex purchasers allege the reissued patent was then asserted to initiate lawsuits against competing drugmakers working toward approval for generic forms of the drug. Even though a Virginia federal court invalidated the reissued patent in March 2014, Pfizer settled with the generic-drug makers before a final judgment was issued.

Through the settlements, the competitors agreed not to sell their Celebrex generics until December 2014, six months

after Pfizer's exclusivity period would have expired. The direct purchasers have argued that Pfizer's alleged anti-competitive scheme violated federal antitrust laws by delaying generic competition for Celebrex, and claimed they are entitled to the difference between the price they paid for Celebrex and the price they would have paid for a generic equivalent.

A proposed class of health benefit plans, suing as indirect purchasers of Celebrex, had their claims dismissed in February and are appealing to the Fourth Circuit Court of Appeals.

The direct purchasers are represented by lawyers from Glasser & Glasser PLC, Hagens Berman Sobol Shapiro LLP, Radice Law Firm PC, Berger & Montague PC, Faruqi & Faruqi LLP, Taus Cebulash & Landau LLP, and Nussbaum Law Group PC. The case is *In re Celebrex (Celecoxib) Antitrust Litigation*, (case number 2:14-cv-00361) in the U.S. District Court for the Eastern District of Virginia.

Source: Law360.com

Akorn Reaches \$24 Million Settlement To End Investors' Accounting Suit

Specialty drugmaker Akorn Inc. has reached a \$24 million settlement that will resolve a proposed investor class action alleging that the company's failure to fix widespread accounting problems and weak internal controls led it to report inflated revenue figures to the market. A group of five Akorn individual investors on Nov. 20 asked U.S. District Judge Gary Feinerman to grant preliminary approval to the settlement, which would see the suit's claims dropped in exchange for a \$24 million cash payment to a proposed settlement class consisting of investors who purchased Akorn common stock between May 6, 2014, and April 24, 2015.

Investors began filing suit against Akorn in March 2015, shortly after the company announced that it would be late in filing its 2014 annual report because of "unforeseen delays in collecting and compiling" certain financial information from its Hi-Tech Pharmacal Co. Inc. and VersaPharm Inc. subsidiaries. Both subsidiaries were acquired by Akorn in transactions that were completed during 2014 at an aggregate value of nearly \$1.1 billion. Akorn also said in its March 2015 announcement that it hadn't finished reviewing its internal financial reporting controls, but believed that "material weaknesses" existed as of the end of 2014.

Those disclosures, which were followed by an 8 percent drop in Akorn's share price the following day, allegedly began to

reveal the truth about Akorn's inaccurate financial results and weak internal controls. Akorn wound up having to restate a number of its financial results from 2014 after identifying certain accounting errors, ultimately reporting adjustments that erased nearly \$47 million in revenue and \$27 million in net income from its books for 2014.

Investors have alleged that those restatements stemmed from the failure of the company and its management to fix flawed internal financial controls that had been identified during preceding annual audits. Those problems were compounded further by the Hi-Tech and VersaPharm acquisitions, which left Akorn struggling to integrate the new subsidiaries into its centralized accounting system.

Judge Feinerman consolidated the case in August 2015, appointing the Akorn investor group as lead Plaintiff and approving the group's selection of Glancy Prongay & Murray LLP and Pomerantz LLP as co-lead counsel. The investor group was in the middle of seeking class certification from the court when a settlement in principle was reached in October.

The investor group is represented by Lionel Z. Glancy, Robert V. Prongay, Joshua L. Crowell and Alexa Mullarky of Glancy Prongay & Murray LLP, Patrick V. Dahlstrom and Louis C. Ludwig of Pomerantz LLP, and John S. Monical, Peter E. Cooper and Mitchell B. Goldberg of Lawrence Kamin Saunders & Uhlenhop LLC. The case is *In re: Akorn Inc. Securities Litigation* (case number 1:15-cv-01944) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

RETIREMENT PLANS SEEK APPROVAL FOR \$25 MILLION MERRILL OVERCHARGE SETTLEMENT

Retirement plans that have accused financial giant Merrill Lynch of overcharging them in violation of the Employee Retirement Income Security Act (ERISA) have asked a Florida federal judge to grant final approval to a \$25 million settlement. The suit was filed in 2015 on behalf of two Miami-area retirement plans that claimed Merrill's \$79 million refund to thousands of small business retirement customers was insufficient. The settlement not only makes Plaintiffs whole, but it claws back part of what they viewed as improper profits made by the Bank of America Corp. subsidiary. A fairness hearing is scheduled for Dec. 13.

The Plaintiffs are represented by Jason Kellogg, Lawrence A. Kellogg and Victoria J. Wilson of Levine Kellogg Lehman

Schneider & Grossman LLP and Frank R. Rodriguez and Paulino A. Nunez Jr. of Rodriguez Tramont & Nunez PA. The case is *Fernandez v. Merrill Lynch Pierce Fenner & Smith Inc.*, (case number 15-cv-22782) in U.S. District Court for the Southern District of Florida.

Source: Law360.com

XVII. THE CONSUMER CORNER

STUDY REVEALS DOCTORS WHO RECEIVE GIFTS FROM INDUSTRY PRESCRIBE MORE BRANDED DRUGS

A recently released study posits that health care providers who receive gifts from pharmaceutical companies are more likely to prescribe branded drugs. Medicare D prescribers who received gifts from pharmaceutical companies prescribed 7.8 percent more branded drugs than prescribers who had not received a gift, according to an analysis of data from Washington D.C.'s AccessRx program and 2013 Medicare claims. Thirty-nine percent of prescribers analyzed received gifts in 2013.

It's most significant that the size of the gift was associated with more costly prescriptions. Those who received large gifts (defined as more than \$500 annually) averaged \$189 per prescription, while those who received smaller gifts (less than \$500) averaged \$114 per prescription. Gifts were defined as cash, meals, or ownership interests. The study was published in *PLOS ONE*. Researchers from Georgetown University Medical Center said their analysis "confirms and expands on previous work showing that industry gifts are associated with more expensive prescriptions and more branded prescriptions." They added, "Industry gifts influence prescribing behavior, may have adverse public health implications, and should be banned."

The research adds to a growing body of evidence that industry gifts may influence prescription habits. A study presented at the 2017 American Society of Clinical Oncology meeting found that oncologists are similarly influenced by gifts. Researchers at the University of North Carolina found that physicians who received a payment (for meals, travel, or lodging) or speaking or consulting fees were more likely to prescribe cancer drugs marketed

by the company that underwrote the payments.

Another 2016 study, which examined 2013 Open Payments data, came to a similar conclusion for Medicare Part D Prescribers. The research, published in *JAMA Internal Medicine*, found that receipt of meals costing more than \$20 was associated with higher prescribing rates for promoted brand name drugs. Researchers cautioned at the time that their findings represented a link between meals and prescribing those companies' drugs, rather than a cause-and-effect relationship.

SUIT FILED AGAINST WALGREENS OVER DEATH OF A CHILD

An Illinois woman has filed suit against Walgreens in a New York state court, claiming store personnel gave her incorrect instructions for handling the anti-rejection drugs prescribed to her 3-year-old son after his heart transplant, resulting in his death. In the suit—a re-filing of a suit originally filed in state court in August 2011—the Plaintiff Tatiana Lowe says Walgreens employees insisted on the incorrect instructions even after she said they contradicted previous instructions she had been given for the drug, and that, as a result, the drugs did not have their proper effect and her son, Albert Dobbins III, went into heart failure and died.

It's alleged in the suit that prior to Feb. 19, 2011, Ms. Lowe had a prescription for anti-rejection drug tacrolimus filled at a Chicago Walgreens for her son, who had undergone a heart transplant. The Plaintiff contends she and her mother, who was also caring for Albert, were told by both Walgreens employees and by the label the employees placed on the medication that tacrolimus was to be kept refrigerated. The complaint states:

At said time, Walgreens knew or should have known that tacrolimus must be mixed with the proper ingredients and stored at room temperature in order to provide the anticipated efficacy and beneficial anti-rejection effects to organ transplant patients such as Albert Dobbins.

The Plaintiff says that she questioned the directions and informed the Walgreens' staff that previous tacrolimus prescriptions had come with warnings not to refrigerate it, but that the staff "carelessly and negligently rebuked and misled" her. She also alleged the prescription had sub-

stituted ingredients, including generic tacrolimus, “in deviation from the Defendant’s own recipe and current medical literature.”

The Plaintiff says that she followed the directions given by the Walgreens employees, but that because of the refrigeration, the drug had “sub-therapeutic and unreasonably dangerous effects,” resulting in heart failure. The child died in the hospital on Feb. 20.

Ms. Lowe is represented by James H. Lawler III of Shea Law Group and Francis P. Morrissey of Burke Wise Morrissey & Kaveny. The case is *Tatiana Lowe v. Walgreens Co.*, (case number 2017-L-010998) in the Circuit Court of Cook County, Law Division.

Source: Law360.com

REPEAL OF CFPB’S ARBITRATION RULE FUELS ARBITRATION FIGHT

American consumers have been under constant and relentless attack in Washington recently. A prime example involves the Consumer Financial Protection Bureau (CFPB). In October the Bureau witnessed the defeat of its rule restoring consumers’ rights to hold financial institutions accountable for wrongdoing. The win for the rule’s opponents means banks can use arbitration clauses that force consumers to sign away their constitutional right to a jury trial and removes the option of class-action lawsuits. However, according to Law360 it doesn’t mean the CFPB is left without authority to review arbitration clauses, nor does it signal that the fight against forced arbitration is over.

Mandatory arbitration clauses are typically included in the fine print and buried deep within credit card and checking account agreements. Consumers sign away their rights so that they can receive service, often not realizing the gravity of the agreement’s effect. I don’t believe many consumers even think there is an arbitration clause in their contracts. A CFPB study published in May 2016 showed how exempting banks and other financial institutions from the normal legal system has had far-reaching and extremely harmful consequences for consumers. The study, spanning 400 class-action lawsuits and several years, provides documented proof that predatory lending, deceptive schemes, and blatant fraud have trapped millions of consumers in insurmountable debt, forced them into bankruptcy, having their homes foreclosed on, and their cars repossessed.

The CFPB retains important regulatory authority that allows the agency to review

individual arbitration clauses. This oversight ensures consumers can easily initiate the arbitration process and that they are not compelled to pay costly fees to use the process. The agency can also review disclosure statements that must accompany forced arbitration in consumer agreements. Disclosure statements that are unfair, deceptive or part of a larger abusive practice will be subject to the agency’s enforcement actions.

Although the rule was defeated—by the slimmest of margins—the bipartisan support to keep it in place demonstrates lawmakers’ desire to maintain consumer protections that were necessitated by the 2008 financial crisis. The vote, which sparked outrage from consumers and consumer rights groups, also reignited federal legislative efforts to restore and expand consumer protections.

Senator Al Franken (D-Minnesota) has introduced the Arbitration Fairness Act, which takes “a much broader swipe at arbitration clauses,” Law360 explains. The bill invalidates, with few exceptions, any arbitration agreement “if it requires arbitration of an employment, consumer, anti-trust, or civil rights dispute.” It has been introduced previously, but may benefit from the momentum of consumer push-back against the financial industry’s unrelenting efforts to evade accountability.

Still, without the option of class-action lawsuits consumers must either take on giant, powerful financial institutions alone or give up on justice completely. Individual claims are far less effective at exposing unlawful corporate actions and getting financial institutions to change their business model. In a *New York Times* commentary, CFPB head Richard Cordray explained that “When a bank charges illegal fees to millions of customers and then blocks them from suing together, a result is not millions of individual claims, but zero. So, the bank gets to pocket millions in ill-gotten gains.”

Consumer advocacy organizations like the National Consumer Law Center and the American Association for Justice (AAJ) vow to leverage the momentum from the latest battle to push for broader consumer protections and defend traditional legal recourses for seeking justice. Navan Ward, a lawyer in our firm, who is Treasurer of the AAJ, says:

Elected leaders endorsed the financial industry’s sidestepping 7th Amendment rights of the average American, giving the industry’s bad actors a get-out-of-jail free card. I am proud to be a part of an organization like the AAJ, which remains

committed to fighting the gluttony of such corporate overreach. I’m equally proud of our firm’s work helping consumers preserve their constitutional rights and challenge those who attempt to stack the civil justice system in favor of powerful corporate interests.

In addition to his leadership as an officer of AAJ, Navan is responsible, along with Chris Glover, for opening our Atlanta office. Navan handles Pharmaceutical Drug/Medical Device and Product Liability claims. You may contact Navan by calling 800-898-2034 or you can email him directly at Navan.Ward@beasleyallen.com.

Sources: Law360.com and U.S. Senator Al Franken

BEWARE OF TIMESHARES

Lots of folks own what are commonly referred to as “timeshares.” Owning a timeshare may sound like a great idea at first. The industry promises an affordable ability to vacation across the world and guarantees the availability of a luxurious room. However, the timeshare industry is largely built on obfuscation, high-pressure sales tactics, empty promises, and a lifetime of debt.

A timeshare is, theoretically, a divided interest in real estate entitling the owner to the use and enjoyment of the timeshare facility for a portion of the year. As the industry has evolved, it has switched to a point-based system. The consumer is still technically buying an underlying interest in real property, but what they’re really purchasing is “points” which are used to schedule reservations at timeshare facilities—and it always seems like you need more points. Every time you stay at a timeshare, you are forced to attend an “owner’s meeting” designed to do just that—sell you more points.

What they don’t tell you is that what you are really purchasing is an annual fee for services that you are stuck with—forever. By structuring timeshares as an asset purchase instead of simply renting the room, the purchaser is on the hook for not only the purchase price (typically financed through a mortgage) but a lifetime of maintenance fees. To top it off, there is virtually no functional resale market for timeshares; many owners are happy to sell at a nominal fee to avoid the maintenance fees.

Recently a California jury awarded a former sales representative of Wyndham Vacation Ownership \$20 million dollars after she was fired for reporting deceptive

sales tactics. The primary market for timeshare sales are existing timeshare owners. Many timeshare owners are duped into purchasing more points, at an exorbitant price, the lawsuit alleged. They are told they need to purchase more points in order to participate in timeshare programs or made verbal promises not contained in the written contract and pressured into signing without having the opportunity to read the documents. If you would like to discuss this subject, contact Jeff Price, a lawyer in our firm, at 800-898-2034 or by email at Jeff.Price@beasleyallen.com.

Sources: SFGate.com and *New York Times*

INITIAL APPROVAL GRANTED FOR \$600,000 TCPA SETTLEMENT

An Illinois federal judge has approved a \$600,000 settlement to end a class action accusing a health care debt collector of placing more than 1 million autodialed and prerecorded calls without express consent, saying she “feels comfortable” that the deal’s proposed terms meet preliminary approval requirements. M3 Financial Solutions will establish a settlement fund in that amount for the 19,385 class members whose cellphone numbers weren’t listed on patient or guarantor account files but still received autodialed or prerecorded calls, or both, between May 2011 and May 2016, according to the parties’ unopposed motion for preliminary approval.

The debt collector also agreed to block its autodialing and prerecorded phone systems from calling cellphones, the motion states, and it will stop calling any number whose owner revokes consent “by any reasonable means.” The motion said:

While plaintiff is confident of a favorable determination on the merits, she has determined that the settlement provides significant benefits to, and is in the best interests of, the settlement class.

Settling class members will receive cash payment according to the number of approved claims they file, and the settlement places no maximum on the number of claims one class member can file or the amount of money one person can recover, according to the motion. Any remaining settlement money will be donated to the Chicago Bar Association and earmarked for consumer protection purposes relating to debt collection and phone calls.

The 2016 complaint brought by Elaine Mason alleged M3 violated the Telephone Consumer Protection Act (TCPA) in

placing numerous unsolicited cellphone calls to phones of nondebtors seeking contact with or payment from a debtor. The incoming calls were largely prerecorded, placed through an automatic telephone dialing system and came without express prior consent in violation of the TCPA. Mason and the class are represented by Jeffrey Salas of Salas Wang LLC and Kas Gallucci of Law Offices of Ronald A. Marron APLC. The case is *Elaine Mason et al. v. M3 Financial Services Inc.* (case number 1:15-cv-04194) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

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 November. 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.

BMW WILL RECALL 1 MILLION VEHICLES OVER FIRE RISK

BMW is issuing two recalls beginning on Dec. 18 that will affect about 1 million vehicles at risk of catching fire even when not in use. The larger recall involves 740,561 vehicles equipped with a valve heater that could short-circuit and melt, increasing the risk of a fire. The other recall covers 672,775 vehicles that pose a fire risk because certain wiring and electrical connectors could overheat. Certain models are included in both recalls, bringing the total close to 1 million affected vehicles, according to a BMW spokesman Hector Arellano-Belloc.

BMW decided to issue the larger recall on Oct. 25 after meeting with NHTSA earlier that month. It affects vehicles manufactured between 2007 and 2011, including 128i models, 3-Series, 5-Series and X3, X5 and Z4 models. BMW became aware of incidents involving heat-related damage to the engine in 2009, many of which were “localized and self-extinguishing,” but couldn’t determine a cause, BMW said in a recall notice.

Subsequent parts analyses conducted between 2011 and 2012 “signaled” that the

valve heater could wear down over time, according to BMW. Analyses also indicated that the issue is most likely to occur in vehicles between two and eight years old. “The PCV Blow by Heater incorporates a heating element that is designed to prevent the PCV from freezing in cold ambient temperatures,” Arellano-Belloc said. He stated: “Irregularities in the manufacturing process could lead to corrosion and in extremely rare cases may lead to a thermal event.”

Dealers will replace the valve heater. The smaller recall, which BMW decided to issue on Oct. 18, impacts 3-Series models made between 2006 and 2011, and is tied to incidents first reported in 2007 and 2008. Analyses indicated a wiring issue with an electronic component of the vehicles’ heating and air conditioning systems. The automaker implemented an improvement to the blower-regulator in May 2011, but injuries were nonetheless reported in 2015 from three incidents that involved two 2006 BMW 3 Series sedans and one 2008 BMW 3 Series sedan, according to BMW. Dealers will inspect the blower-regulator wiring harness and install a new part.

HONDA RECALLS 800,000 ODYSSEY MINI-VANS OVER SECOND ROW SEAT CONCERNS

Honda says more than three-quarters of a million Odyssey mini-vans made over six years have defective second row seats. The Japanese auto giant has initiated a voluntary recall of about 800,000 of the vehicles, which were made from 2011 through 2017. This year, Honda unveiled its next generation Odyssey, made in Lincoln, Alabama. Honda says the second row seats in the mini-van may tip forward if not properly latched after seats are adjusted from side-to-side, or when reinstalling a removed seat. The seat may tip forward during moderate to heavy braking, Honda says, increasing the risk of injury. This issue will not occur if a seat is properly latched. Honda says it has received 46 reports of minor injuries related to this issue.

Currently, the company is mapping out plans to give free repairs for owners, and mailed notifications to owners are set to begin late next month. Until then, owners can get instructions online on how to latch the seats. Owners can determine if their vehicles are included in the recall by going to www.recalls.honda.com or by calling 888-234-2138.

ARCTIC CAT RECREATIONAL OFF-HIGHWAY VEHICLES RECALLED BY TEXTRON SPECIALIZED VEHICLES DUE TO FIRE HAZARD

Arctic Cat Inc., of Thief River Falls, Minnesota, a subsidiary of Textron Specialized Vehicles, of Augusta, Georgia, has recalled about 14,100 Arctic Cat recreational off-highway vehicles (ROVs). Heat from the exhaust can melt the plastic panels behind the operator and passenger seat, posing a fire hazard. This recall involves all model year 2014 through 2017 Wildcat Trail and 2015 through 2017 Wildcat Sport models of Arctic Cat ROVs. The recalled vehicles were sold in multiple colors, have four wheels and side-by-side seating for two people. "Wildcat Trail" or "Wildcat Sport" is printed on each side of the vehicle. The company has received 444 reports of the plastic panels melting, with five resulting in fires. No injuries have been reported.

The ROVs were sold at Arctic Cat dealers nationwide from December 2013 through August 2017 for between \$10,500 and \$19,500. Consumers should immediately stop using the recalled ROVs and contact Arctic Cat to schedule a free repair. Arctic Cat is contacting all known purchasers directly. If you need assistance locating an authorized dealer to conduct this repair, contact Arctic Cat at 800-279-6851 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.arctic-cat.com and click on Product Recall for more information.

BUSH HOG RECALLS RIDING LAWN MOWERS DUE TO LACERATION HAZARD

About 500 Bush Hog HDE riding lawn mowers have been recalled by Bush Hog Inc., of Selma, Alabama. The mower blade can separate from the spindle, posing a laceration hazard to the operator or bystanders. This recall involves Bush Hog Zero Turn Radius (ZTR) HDE riding lawn mowers sold in black with gray wheels and gray rollover protection structures (ROPs). HDE is printed on the left side of the unit beneath the seat. The mowers were manufactured on or before Aug. 4, 2017. The manufacturing date is located on a plate on the right rear frame, underneath the fender. The 15-digit serial number includes the manufacture date in digits 9-11. Recalled mowers have a date code that represents the number of days since the beginning of the calendar year of 001 through 216 (January 1 through August 4). Mowers with a yellow bolt fastening the blade to the spindle have already been repaired. The company has received two reports of blade disengage-

ment during product demonstrations. No injuries have been reported.

The lawn mowers were sold at Bush Hog dealers nationwide from February 2017 to September 2017 for between \$6,200 and \$7,200. Consumers should immediately stop using the recalled lawn mowers and contact a Bush Hog dealer to arrange for a free repair. Contact Bush Hog toll-free at 877-873-0145 from 7:30 a.m. to 4:30 p.m. CT Monday through Friday, or online at www.bushhog.com and click "Safety Recall" for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Bush-Hog-Recalls-Riding-Lawn-Mowers-Due-to-Laceration-Hazard>

NORCO BICYCLES RECALLS CHILDREN'S BICYCLES

About 1,050 children's bicycles with Samox cranksets have been recalled by Norco Bicycles of Canada. The cranks can bend or break during use, posing a fall hazard. This recall involves 2015, 2016 and 2017 model year Norco children's bicycles with Samox SAC30-111NA square taper bicycle cranks in 140mm and 152mm lengths. The crank model number AC30 is located on the inside of both crank arms, and the crank length is stamped at the end of each crank arm. Included in this recall are 20- and 24-inch wheeled bicycles with the following model names: Storm 2.1, Storm 4.1, Charger 2.1, Charger 4.1, Fluid HT 2.3, Fluid HT 4.3, Fluid FS 2.2, and Fluid FS 4.2. The model name is located on the top tube of the bicycle. The company has received four reports of the cranks bending or breaking. No injuries have been reported.

The bikes were sold at Norco Bicycles dealers nationwide from May 2016 through September 2017 for between \$400 and \$1,700. Consumers should immediately stop using the recalled bicycles and contact an authorized Norco Bicycles dealer for free installation of a new crankset. Contact Norco at 800-663-8916 between 8:30 a.m. and 5 p.m. PT Monday through Friday, or visit the company's website at www.norco.com and click on "Safety Notices/Recalls" for more information. Consumers can also contact their local Norco Bicycles dealers to request installation of a new crankset. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Norco-Bicycles-Recalls-Childrens-Bicycles>

SMART BALANCE WHEEL SELF-BALANCING SCOOTERS/HOVERBOARDS RECALLED BY SALVAGE WORLD

About 700 self-balancing scooters/hoverboards have been recalled by Salvage World, of Hattiesburg, Mississippi. The lithium-ion battery packs in the self-balancing scooters/hoverboards can overheat, posing a risk of smoking, catching fire and/or exploding. This recall involves Smart Balance Wheel self-balancing scooters, commonly referred to as hoverboards. Hoverboards have two wheels at either end of a platform and are powered by lithium-ion battery packs. The hoverboard were sold in black, white, red, or blue. The company has received one report of a battery pack catching fire and/or exploding in Mississippi in 2017 resulting in property damage. No injuries have been reported.

The boards were sold at Salvage World stores in Hattiesburg, Mississippi from August 2016 through March 2017 for about \$150. Consumers should immediately stop using these recalled scooters/hoverboards and contact Salvage World for instructions on returning their hoverboard for a store credit. Contact Salvage World toll-free at 888-726-9603 from 10 a.m. 6 p.m. CT Monday through Friday or online at www.salvageworldllc.com and click on Recall Notice for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Smart-Balance-Wheel-Self-Balancing-ScootersHoverboards-Recalled-by-Salvage-World-Due-to-Explosion-and-Fire-Hazards>

DRONE NERDS RECALLS SELF-BALANCING SCOOTERS/HOVERBOARDS

About 700 self-balancing scooters/hoverboards have been recalled by Drone Nerds Inc., of Aventura, Florida. The lithium-ion battery packs in the self-balancing scooters/hoverboards can overheat, posing a risk of the products smoking, catching fire and/or exploding. This recall involves certain Drone Nerds self-balancing scooters, commonly referred to as hoverboards. The hoverboards have two wheels at either end of a platform and are powered by lithium-ion battery packs. They were sold in a variety of colors.

They were sold at Drone Nerds store in Aventura, Florida and online at www.dronenerds.com from November 2015 through March 2016 for about \$300. Consumers should immediately stop using the recalled hoverboards and contact Drone Nerds to return the unit to receive a full refund or store credit toll-free at 888-785-

7543 from 10 a.m. to 4 p.m. ET Monday through Friday, email at hbrecall@gmail.com or online at www.dronereds.com and click on "Recall Notice" for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Drone-Nerds-Recalls-SelfBalancing-ScootersHoverboards-Due-to-Fire-and-Explosion-Hazards>

GO WHEELS SELF-BALANCING SCOOTERS/HOVERBOARDS RECALLED

About 1,800 self-balancing scooters/hoverboards have been recalled by Four Star Imports, of Memphis, Tennessee. The lithium-ion battery packs in the self-balancing scooters/hoverboards can overheat, posing a risk of the products smoking, catching fire and/or exploding. This recall involves all Go Wheels self-balancing scooters, commonly referred to as hoverboards. The hoverboards have two wheels at either end of a platform and are powered by lithium-ion battery packs. "Go Wheel" is printed in a circle on the middle of the unit where the sides connect. The "Go Wheel" identification will illuminate when the hoverboard is powered on. They were sold in black, white, red, blue, gold and pink. Four Star Imports has received one report of a self-balancing scooter/hoverboard overheating. There have been no reports of injuries or property damage.

The hoverboard were sold at Village Mart store in Memphis, Tennessee from October 2015 to March 2016 for about \$200. Consumers should immediately stop using the recalled self-balancing scooters/hoverboards and contact Four Star Imports to return their unit to receive a free UL2272-certified replacement unit. Contact Four Star Imports at 800-780-5231 from 9 a.m. to 6 p.m. CT or online at www.villagemart.com and click on Recall Notice. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Go-Wheels-SelfBalancing-ScootersHoverboards-Recalled-by-Four-Star-Imports-Due-to-Fire-and-Explosion-Hazards-Sold-Exclusively-at-Village-Mart>

IHOVER SPEED SELF-BALANCING SCOOTERS/HOVERBOARDS RECALLED BY SIMPLIFIED WIRELESS

About 900 self-balancing scooters/hoverboards have been recalled by Simplified Wireless, of Element, New York. The lithium-ion battery packs in the self-balancing scooters/hoverboards can overheat, posing a risk of the products smoking,

catching fire and/or exploding. This recall involves all iHoverspeed self-balancing scooters, commonly referred to as hoverboards. The hoverboards have two wheels at either end of a platform and are powered by lithium-ion battery packs. The hoverboards were sold in black, blue, red and white and have "iHoverspeed" printed on the front.

The boards were sold at Amazon.com, iHoverspeed.com and other online retailers from November 2015 to December 2015 for between \$290 and \$330. Consumers should immediately stop using the recalled self-balancing scooters/hoverboards and contact Simplified Wireless to return their unit to receive a free UL2272-certified replacement unit. Contact Simplified Wireless toll-free at 833-220-1212 from 11 a.m. to 5 p.m. ET Monday through Friday or email at simplifiedrecall@gmail.com. Pictures available here: <https://www.cpsc.gov/Recalls/2018/iHoverspeed-SelfBalancing-ScootersHoverboards-Recalled-by-Simplified-Wireless-Due-to-Fire-Hazard>

ILIVE SELF-BALANCING SCOOTERS/HOVERBOARDS RECALLED BY DIGITAL PRODUCTS DUE TO FIRE HAZARD

About 8,700 self-balancing scooters/hoverboards have been recalled Digital Products International Inc., of St. Louis, Missouri. The lithium-ion battery packs in the self-balancing scooters/hoverboards can overheat, posing a risk of the hoverboards smoking, catching fire and/or exploding. This recall involves iLive self-balancing scooters, commonly referred to as hoverboards, with model numbers GSB56BC, GSB56RC, GSB65BUC, GSB56WC and GSB56GDC. The model number is printed on the bottom of the unit. The hoverboards have two wheels, one at either end of a platform, and are powered by lithium-ion battery packs. "iLive" is printed in the center of the hoverboard's top surface as well as underneath the top deck, facing the ground. The hoverboards were sold in black, red, white, blue and gold. Some units were sold with a black carrying case. The company has received one report of the battery pack overheating and smoking. No injuries or property damage have been reported.

The board were sold at Ace Hardware and hh gregg stores nationwide, Heartland America catalogs and online at AceHardware.com and hhgregg.com from April 2016 through March 2017 for between \$170 and \$200.

TECH DRIFT RECALLS SELF-BALANCING SCOOTERS/HOVERBOARDS DUE TO FIRE AND EXPLOSION HAZARDS

About 100 self-balancing scooters/hoverboards have been recalled by Tech Drift, of Los Angeles, California. The lithium-ion battery packs in the self-balancing scooters/hoverboards can overheat, posing a risk of the hoverboards smoking, catching fire and/or exploding. This recall involves Tech Drift self-balancing scooters, commonly referred to as hoverboards. Hoverboards have two wheels at either end of a platform and are powered by lithium-ion battery packs. The hoverboards were sold in black and white.

They were sold online at www.techdrift.com and www.amazon.com from December 2015 through April 2016 for between \$400 and \$500. Consumers should immediately stop using these recalled scooters/hoverboards and contact Tech Drift for instructions on returning their hoverboard for a free UL2272-certified replacement unit. Contact Tech Drift at 800-491-0264 from 9 a.m. to 5 p.m. PT Monday through Friday or email techdrift-myk@gmail.com for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Tech-Drift-Recalls-Self-Balancing-ScootersHoverboards-Due-to-Fire-and-Explosion-Hazards>

SONIC SMART WHEELS SELF-BALANCING SCOOTERS/HOVERBOARDS RECALLED BY DOLLAR MANIA DUE TO EXPLOSION AND FIRE HAZARDS

About 1,000 self-balancing scooters/hoverboards have been recalled by Dollar Mania, of Bossier City, Louisiana. The lithium-ion battery packs in the self-balancing scooters/hoverboards can overheat, posing a risk of the hoverboards smoking, catching fire and/or exploding. This recall involves Sonic Smart Wheels self-balancing scooters, commonly referred to as hoverboards, with model number S-01 or SBW666SL printed on the bottom of the unit. The hoverboards have two wheels at either end of a platform and are powered by lithium-ion batteries. The hoverboards were sold in black, blue, green, red, white and yellow and have an "S" printed in the center of the wheel caps. The company has received one report of a self-balancing scooter/hoverboard catching fire in Louisiana in 2017 resulting in approximately \$40,000 of property damage to a consumer's home. No injuries have been reported.

They were sold at Dollar Mania stores in Bossier City and Shreveport, Louisiana from August 2015 through December 2016 for about \$200. Consumers should imme-

diately stop using these recalled scooters/hoverboards and contact Tech Drift for instructions on returning their hoverboard for a free UL2272-certified replacement unit. Consumer Contact: Dollar Mania toll-free at 844-333-4457 from 8 a.m. to 6 p.m. CT Monday through Friday or online on the Dollar Mania Facebook page for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Sonic-Smart-Wheels-Self-Balancing-ScootersHoverboards-Recalled-by-Dollar-Mania-Due-to-Explosion-and-Fire-Hazards>

FISHER-PRICE RECALLS INFANT MOTION SEATS DUE TO FIRE HAZARD

Fisher-Price, of East Aurora, New York, has recalled its Soothing Motions Seats. The motor housing can overheat, posing a fire hazard. This recall involves Fisher-Price Soothing Motions Seats with model numbers CMR35, CMR36, CMR37, and DYH22 and Smart Connect Soothing Motions Seats with model number CMR39. The seat bounces, sways, or bounces and sways together. The seat also vibrates, plays 10 songs and nature sounds, and has an overhead mobile. The model number is located on the underside of the motor housing. Fisher-Price has received 36 reports of the product overheating, including one report of a fire contained within the motor housing. No injuries have been reported.

The seats were sold at BuybuyBaby, Target, Toys R Us, Walmart and other stores nationwide and online at Amazon.com and other websites from November 2015 through October 2017 for about \$160 for the Soothing Motions Seat and \$175 for the Smart Connect Soothing Motions Seat. Consumers should immediately stop using the recalled Soothing Motions Seats and contact Fisher-Price for a full refund at 800-432-5437 from 9 a.m. to 6 p.m. ET Monday through Friday, or online at www.service.mattel.com and click on Recalls & Safety Alerts for more information.

PRECISION SHOOTING RECALLS ARCHERY CROSSBOWS DUE TO INJURY HAZARD

Precision Shooting Equipment Inc., of Tucson, Arizona, has recalled about 17,000 Crossbows. The crossbows can fire or discharge unexpectedly, posing an injury hazard to the user and to bystanders. This recall involves all FANG XT, FANG LT and THRIVE archery crossbows with serial numbers 2404285-2514039. Both the Fang XT and Fang LT have a 19 inch wide axle-

to-axle bow with a black foot stirrup attached to the front. The Thrive's bow is 18 inches wide axle-to-axle and has a folding black foot stirrup attached to the front. The Fang XT measurement is about 33 inches from end to end. The Fang LT measures 32 inches and the Thrive measures 32 to 35 inches. The models have split limbs made of fiberglass. Cam pulleys are mounted between the upper and lower halves of both limbs. They have an integrated barrel, pistol grip, and stock made of composite material. The crossbows come with a scope, under-mounted quiver, string stops, a cocking rope, and rail lube. The PSE logo and model names are on an emblem mounted above the trigger housing on the left and right sides of the crossbows. They are also printed onto the front of each limb. The serial number is on the bottom of the trigger grip. The model number can be found on the product hang tag and on the box. The Fang XT and LT come in Mossy Oak Country & Skullworks 2 camo and muddy girl colors. The Thrive comes in Mossy Oak Country. PSE has received six reports of the crossbow firing unexpectedly. No injuries have been reported.

The crossbows were sold at Bass Pro Shops, Cabela's, Kinsey's Archery and other archery and hunting sporting goods stores nationwide and online at PSE-archery.com from October 2016 through August 2017 for between \$300 and \$500. Consumers should immediately stop using the recalled crossbows and return them to Precision Shooting for a free repair. Contact PSE at 800-477-7789 from 7 a.m. to 3:30 p.m. Monday through Friday, or online at www.pse-archery.com. Click on Product Support for more information. The Return Authorization Form can be used to submit a request for repair.

IKEA REANNOUNCES RECALL OF MALM AND OTHER MODELS OF CHESTS AND DRESSERS DUE TO SERIOUS TIP-OVER HAZARD

IKEA Supply AG, of Switzerland, has recalled about 17.3 million children's and adult chests and dressers. The recalled chests and dressers are unstable if they are not properly anchored to the wall, posing serious tip-over and entrapment hazards that can result in injuries or death to children. This recall involves MALM and other IKEA chests and dressers that do not comply with the requirements of the U.S. voluntary industry standard (ASTM F2057-14). The recalled children's and adult chests and dressers include the MALM 3-drawer, 4-drawer, 5-drawer and three 6-drawer models and other non-MALM

models. The recalled children's chests and dressers are taller than 23.5 inches; recalled adult chests and dressers are taller than 29.5 inches. The MALM chests and dressers are constructed of particle-board or fiberboard and are white, birch (veneer), medium brown, black-brown, white stained oak (veneer), oak (veneer), pink, turquoise, grey, grey-turquoise, lilac, green, brown stained ash (veneer), and black. A 5-digit supplier number, 4-digit date stamp, IKEA logo, country of origin and "MALM" are printed on the underside of the top panel or inside the side panel.

IKEA has received 186 reports of tip-over incidents involving the MALM chests and dressers, including 91 reports of injuries to children. In addition, IKEA has received 113 reports of tip-overs with other recalled IKEA chests and dressers, including 53 reports of injuries to children. There have been eight reports of child tip-over related deaths with the recalled chests and dressers.

- The most recent reported death in May 2017 involved a 2-year-old boy in Buena Park, California after he became trapped beneath an unanchored MALM 3-drawer chest that tipped over.

Previously reported deaths with MALM dressers or chests include:

- February 2016: A 22-month-old boy from Apple Valley, Minnesota died after an unanchored MALM 6-drawer chest fell on top of him.
- June 2014: A 23-month-old boy from Snohomish, Washington died after he became trapped beneath an unanchored MALM 3-drawer chest that tipped over.
- February 2014: A 2-year-old boy from West Chester, Pennsylvania died after an unanchored MALM 6-drawer chest tipped over fatally pinning him against his bed.
- September 2011: A 2-year-old boy from Woodbridge, Virginia died after an unanchored MALM 3-drawer chest tipped over and trapped him between the dresser drawers.

Previously reported deaths with other model IKEA chests and dressers include:

- July 1989: A 20-month-old girl from Mt. Vernon, Virginia died after an unanchored GUTE 4-drawer chest tipped over and pinned her against the footboard of a youth bed.

- March 2002: A 2½-year-old boy from Cranford, New Jersey died after an unanchored RAKKE 5-drawer chest tipped over and fatally pinned him to the floor.
- October 2007, a 3-year-old girl from Chula Vista, California died after a KURS 3-drawer chest tipped over and fatally pinned her to the floor. It is unknown whether the dresser was anchored or not.

The dressers were sold at IKEA stores nationwide and online at www.IKEA.com from January 2002 through June 2016 for between \$70 and \$200. Other chests and dressers subject to this recall were sold between approximately 1985 and June 2016. Consumers should immediately stop using any recalled chest or dresser that is not properly anchored to the wall and place it in an area that children cannot access. Contact IKEA for a choice between two options: refund or a free wall-anchoring kit. IKEA will pick up the recalled dressers free of charge or provide a one-time, free in-home wall-anchoring service for consumers upon request. Consumers can obtain assistance from IKEA through its website at www.IKEA-USA.com or http://www.ikea.com/ms/en_US/ikea-chest-and-dresser-recall/index.html. Consumers with chests and dressers manufactured prior to January 2002 are eligible for a partial store credit. Contact IKEA toll-free at 866-856-4532 anytime, or online at www.IKEA-USA.com or http://www.ikea.com/ms/en_US/ikea-chest-and-dresser-recall/index.html for more information and to participate in the recall. Pictures available here: <https://www.cpsc.gov/Recalls/2018/IKEA-Reannounces-Recall-of-MALM-and-Other-Models-of-Chests-and-Dressers-Due-to-Serious-Tip-over-Hazard>

OMEGA PACIFIC RECALLS CARABINERS DUE TO RISK OF INJURY OR DEATH

About 1,900 Carabiners have been recalled by Omega Pacific Inc., of Airway Heights, Washington. The carabiner can break while in use, posing a risk of injury or death to the user. This recall involves six models of Omega Pacific G-FIRST series aluminum carabiners. They are typically used to allow ropes and harnesses to be linked together. “Omega-17 UL Classified USA” is printed on the front and “Meets NFPA 1983 17ED MBS kN 40 G” statement is located on the back side. The 2-digit lot code “OD” is embedded on the bottom side of the carabiner spine. They

were sold individually in silver, black and red colors.

The carabiners were sold at Arizona Hiking Shack, Atlantic Diving Supply, Austin Canoe & Kayak, Columbus Supply, Dvbe Supply, Evac Systems, General Factory/WD Supply, Lafco Outillage, The Rescue Source, Witmer Associates (Firestone) stores nationwide and online at omega.com from February 2017 through October 2017 for between \$31 and \$51.

PLYCEM RECALLS ALLURA DECKING DUE TO FALL AND INJURY HAZARDS

About 37,500 Allura decking has been recalled by Plycem Construsistemas, of Costa Rica, S.A. The recalled decking can deteriorate and crack, causing the deck surfacing to break. Consumers can fall through broken decking and suffer serious injuries. The recall involves Allura™ fiber cement decking and fascia. The recalled decking was sold in 12-foot lengths and is 6 inches wide and one inch thick, and came in two styles: a hidden fastener application and a direct screw application. The recalled Allura™ fiber cement fascia, which was for vertical applications only, was sold in 12-foot lengths, is 8- and 12-inches wide and 7/16 inches thick. The decking and fascia were sold in a natural wood color with a wood grain texture. There are no labels or other identifying marks on the decking materials. Plycem has received three reports of the recalled decking cracking, resulting in one report of a leg injury to an adult male whose leg went through the cracked decking.

The decking was sold at Kelseyville Lumber and Trademark Exteriors as stock items and at Home Depot as a special order item from February 2014 through June 2017 for between \$25 to \$30 per board for the decking and about \$25 to \$40 per board for the fascia. Consumers should immediately stop using decks with the recalled decking materials and contact Plycem to schedule a free repair. Plycem is contacting all known purchasers directly. Contact Plycem toll-free at 844-452-6787 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.allurausa.com and click on Decking Recalls to complete an online registration form and for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Plycem-Recalls-Allura-Decking-Due-to-Fall-and-Injury-Hazards>

WHOLESALE FIREWORKS RECALLS FIREWORKS DUE TO VIOLATION OF FEDERAL STANDARDS

About 1,700 packs of Fireworks have been recalled by Wholesale Fireworks Inc., of Laramie, Wyoming. The recalled fireworks are overloaded with pyrotechnics intended to produce an audible effect, violating the federal regulatory standards for this product. Overloaded fireworks can result in a greater than expected explosion, posing burn and explosion hazards to consumers. This recall involves Toxic artillery rockets, Boom Box aerial shells and Detonator firecrackers.

The fireworks were sold at Wholesale Fireworks stores in Wyoming from June 2017 through August 2017 for between \$13 and \$90. Consumers should immediately stop using the recalled fireworks and contact Wholesale Fireworks for a full refund. Contact Wholesale Fireworks toll-free at 855-534-3473 from 9 a.m. to 5 p.m. MT any day, or email wholesalefireworks@scheyenne@yahoo.com. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Wholesale-Fireworks-Recalls-Fireworks-Due-to-Violation-of-Federal-Standards-Explosion-and-Burn-Hazards>

KIDDE RECALLS FIRE EXTINGUISHERS WITH PLASTIC HANDLES DUE TO FAILURE TO DISCHARGE AND NOZZLE DETACHMENT

Walter Kidde Portable Equipment Company Inc., of Mebane, North Carolina, has recalled about 37.8 million Kidde fire extinguishers with plastic handles. The fire extinguishers can become clogged or require excessive force to discharge and can fail to activate during a fire emergency. In addition, the nozzle can detach with enough force to pose an impact hazard. This recall involves two styles of Kidde fire extinguishers: plastic handle fire extinguishers and push-button Indicator fire extinguishers. The recall involves 134 models of Kidde fire extinguishers manufactured between Jan. 1, 1973 and Aug. 15, 2017, including models that were previously recalled in March 2009 and February 2015. The extinguishers were sold in red, white and silver, and are either ABC- or BC-rated. The model number is printed on the fire extinguisher label. For units produced in 2007 and beyond, the date of manufacture is a 10-digit date code printed on the side of the cylinder, near the bottom. Digits five through nine represent the day and year of manufacture in DDDYY format. Date codes for recalled models manufactured from Jan. 2, 2012 through Aug. 15, 2017 are 00212 through

22717. For units produced before 2007, a date code is not printed on the fire extinguisher.

The recall also involves eight models of Kidde Pindicator fire extinguishers manufactured between Aug. 11, 1995 and Sept. 22, 2017. The no-gauge push-button extinguishers were sold in red and white, and with a red or black nozzle. These models were sold primarily for kitchen and personal watercraft applications.

The firm is aware of a 2014 death involving a car fire following a crash. Emergency responders could not get the recalled Kidde fire extinguishers to work. There have been approximately 391 reports of failed or limited activation or nozzle detachment, including the fatality, approximately 16 injuries, including smoke inhalation and minor burns, and approximately 91 reports of property damage.

The extinguishers were sold at Menards, Montgomery Ward, Sears, The Home Depot, Walmart and other department, home and hardware stores nationwide, and online at Amazon.com, ShopKidde.com and other online retailers for between \$12 and \$50 and for about \$200 for model XL 5MR. These fire extinguishers were also sold with commercial trucks, recreational vehicles, personal watercraft and boats.

Consumers should immediately contact Kidde to request a free replacement fire extinguisher and for instructions on returning the recalled unit, as it may not work properly in a fire emergency. Contact Kidde toll-free at 855-271-0773 from 8:30 a.m. to 5 p.m. ET Monday through Friday, 9 a.m. to 3 p.m. ET Saturday and Sunday, or online at www.kidde.com and click on "Product Safety Recall" for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Kidde-Recalls-Fire-Extinguishers-with-Plastic%20Handles-Due-to-Failure-to-Discharge-and-Nozzle-Detachment-One-Death-Reported>

DONDOLO RECALLS CHILDREN'S SLEEPWEAR DUE TO VIOLATION OF FEDERAL FLAMMABILITY STANDARD

Dondolo, of Carrollton, Texas, has recalled about 3,100 children's nightgowns and two-piece pajama sets. The children's nightgowns and two-piece pajama sets fail to meet the federal flammability standards for children's sleepwear, posing a risk of burn injuries to children. This recall involves children's 100 percent cotton woven, nightgowns and two-piece, long-sleeve top and pant

pajama sets. The nightgown has a Peter Pan collar with a red and white gingham pattern trim. The nightgown has six plastic buttons located on the back of the garment. The two-piece pajama set is traditionally styled with five plastic buttons on the center-front of the top with two pockets placed near the waist of the top. The pajama sets were sold in striped light blue, striped navy, striped red, striped pink, and lavender. The garments were sold in sizes 12 months, 18 months, 24 months, 2T, 3T, 4T, 5, 6, 7, 8, 9, and 10 years.

The clothing was sold at children's boutique stores nationwide and online at www.dondolo.com from November 2014 through October 2017 for between \$15 and \$50. Consumers should immediately take the recalled nightgowns and two-piece pajama sets away from children and contact Dondolo for a gift card for the full purchase price for use toward any product at www.dondolo.com. Dondolo at 800-659-5370 from 9 a.m. to 5 p.m. CT, Monday through Friday, email at recall@dondolo.com or online at www.dondolo.com and click on "Product Safety" for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Dondolo-Recalls-Childrens-Sleepwear>

LITTLE MASS CHILDREN'S SLEEPWEAR RECALLED BY MASS CREATION DUE TO VIOLATION OF FEDERAL FLAMMABILITY STANDARD

About 2,300 children's nightgowns and pajama sets have been recalled by Little Mass, a Mass Creation, Inc. subsidiary, of Los Angeles, California. The children's nightgowns and pajama sets fail to meet flammability standards for children's sleepwear, posing a risk of burn injuries to children. This recall involves children's nightgowns and two-piece pajama sets. The sleepwear was sold in a variety of styles in sizes 7 through 14. Little Mass and style number T927S, T933, T935, T935S, T949, T952S or T953 are printed on a sewn-in side seam label.

The clothing was sold at Nordstrom and children's boutiques nationwide and online at www.littlemass.com from July 2016 through October 2017 for between \$27 and \$42. Consumers should immediately take the recalled sleepwear away from children and contact Little Mass for a full refund. Contact Little Mass at 800-977-9086 from 9 a.m. to 5 p.m. PT Monday through Friday, email at infolittlemass@gmail.com or teamlittlemass@gmail.com and online at www.littlemass.com and click on "Product Recall" at the bottom of

the page for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Little-Mass-Childrens-Sleepwear-Recalled-by-Mass-Creation>

PLAN TOYS RECALLS BABY GYMS DUE TO STRANGULATION HAZARD

PlanToys Inc., of Union City, California, has recalled about 500 Baby Gyms. Babies can strangle on the side rope crossbars on the baby gyms. This recall involves PlanToys baby gyms that are set on the floor for babies. Babies lay under the gym to play with the hanging mobiles. The wooden gyms are tan and have four legs with four different color balls in the middle that are connected by two ropes on the sides. There are two space-themed mobiles hanging from the top bar. The manufacturing date code TH 080116 through TH 082916 is printed on the top corner joint connecting ball.

The gyms were sold at specialty toy and baby product stores nationwide and online at Diapers.com, Target.com and other websites from September 2016 through May 2017 for about \$50. Consumers should immediately stop using the baby gyms and contact PlanToys for a free replacement baby gym. Contact PlanToys toll-free at 866-517-7526 from 9 a.m. to 2 p.m. PT Monday through Friday, email at Michael@plantoysinc.com or online at www.plantoysusa.com and click on Safety at the bottom of the page for more information.

JW CRAWFORD RECALLS CHILDREN'S RAIN PONCHOS DUE TO STRANGULATION HAZARD

JW Crawford Inc., of Monroe, New York, has recalled about 1,300 kid's rain ponchos. A drawstring in the poncho's hood poses a strangulation hazard to children. Drawstrings can become entangled or caught on playground slides, hand rails, school bus doors or other moving objects, posing a significant strangulation and/or entanglement hazard to children. This recall involves kids' waterproof hooded rain ponchos sold in clear, red and blue. The lightweight ponchos were sold in packs of 6 and 12. A white nylon drawstring is attached at the neck of the 40 inches tall by 60 inches wide ponchos. "One size fits all" and "Made in China" are printed on the front of the packaging.

The ponchos were sold online at Amazon.com and Wealers.com from May 2016 through July 2016 for about \$12 for a 6 pack and \$17 for a 12 pack. Consumers

should immediately take the recalled ponchos away from children and remove the drawstring to eliminate the hazard or return the poncho to the firm for a full refund. Contact JW Crawford toll-free at 844-222-2812 between 9 a.m. and 5 p.m. Monday through Friday ET or email anytime at recall.jwcrawford@gmail.com or online on the product distributor's website at www.wealers.com and click on the Recall tab located at the top of the page for more information

OSHKOSH RECALLS BABY B'GOSH QUILTED JACKET DUE TO CHOKING HAZARD

OshKosh B'gosh Inc., Atlanta, Georgia, has recalled about 38,000 Baby B'gosh quilted jackets. The snaps can detach, posing a choking hazard. This recall involves OshKosh Baby B'gosh quilted jackets in pink and gray. The style number can be found on the front of the care tag sewn on the inside of the product, and the UPC number can be found on the back of the same care tag. The style number and UPC number can also be found on the price tag. Only jackets with the following style numbers and UPC codes are included in the recall: Color, Style Numbers, Size, UPC Codes can be found here: <https://www.cpsc.gov/Recalls/2018/OshKosh-Recalls-Baby-Bgosh-Quilted-Jacket-Due-to-Choking-Hazard>. OshKosh received three reports of a snap detaching, including one report of a child putting a detached snap in her mouth.

The jackets were sold at OshKosh, Toys R Us, Bon-Ton, Kohl's, Stage, and Fred Meyer stores and at Military Exchanges nationwide and online at www.oshkosh.com between August 2017 and September 2017 for between \$35 and \$40. Consumers should immediately take the recalled jackets away from children and return them to any OshKosh or Carter's store or contact OshKosh for a full refund in the form of a \$34 gift card (for an infant size) or \$36 gift card (for a toddler size). Contact OshKosh at 800-692-4674 from 9 a.m. to 5:30 p.m. ET Monday through Friday, or online at www.oshkosh.com and click on Product Recalls at the bottom of the page for more information. Photos here: <https://www.cpsc.gov/Recalls/2018/OshKosh-Recalls-Baby-Bgosh-Quilted-Jacket-Due-to-Choking-Hazard>

WOOLINO RECALLS CHILDREN'S PAJAMAS DUE TO VIOLATION OF FEDERAL FLAMMABILITY STANDARD

Jojo Group LLC, of Rocky River, Ohio, has recalled about 4,100 Children's pajamas. The children's pajama sets fail to meet flammability standards for children's sleepwear, posing a risk of burn injuries to children. This recall involves children's 100 percent merino wool one-piece, long-sleeve, footed pajamas. They have a blue, gray, lilac or lilac gray horizontal stripe print and a zipper that extends from the center of the neckline down to the left ankle. The sleepwear was sold in sizes 6-12 months, 12-18 months, 18-24 months and 2T. Woolino and the size are printed on the back of the neckline.

The pajamas were sold at Clothes Pony and Caro Bambino stores nationwide and online at Amazon.com, Zulily.com and Woolino.com from May 2015 through November 2017 for between \$50 and \$60. Consumers should immediately take the recalled sleepwear away from children and contact Woolino for a full refund. Contact Woolino toll-free at 844-882-8080 from 9 a.m. to 5 p.m. ET Monday through Friday, email at contact@woolino.com or online at www.woolino.com and click on "Product Recall" at the bottom of the page for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Woolino-Recalls-Childrens-Pajamas-Due-to-Violation-of-Federal-Flammability-Standard>

Once again there have been a fairly 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. Since we only found two auto recalls, I would like to know if any auto recalls of significance were missed. If you need more information on any of the recalls listed above, visit our firm's web site at www.BeasleyAllen.com or on our blog at www.RightingInjustice.com. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated, 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

EMPLOYEE SPOTLIGHTS

MIKE CROW

When Mike Crow joined Beasley Allen Law Firm in 1987, the firm had just eight lawyers. Mike now works in the firm's Personal Injury and Products Liability Section with more than eight lawyers as colleagues in the section. Mike says: "We have been blessed to have tremendous growth."

Mike mainly handles car and truck litigation, premise liability cases and brain injury cases for our firm. Mike has been successful in litigating against the "Big Box Stores," such as Wal-Mart, Home Depot and others. As a result, Mike has a wealth of knowledge of their practices and procedures.

Mike is a current member of the Montgomery County Bar Association's Grievance Committee, which he has served on for the past 15 years. In 2009, he was appointed to serve on the Alabama State Bar's Disciplinary Commission. In addition, Mike is a member of the American Association for Justice's Interstate Trucking Litigation Group. Mike has been regularly selected for inclusion on the Best Lawyers in America list since 2011. He is also regularly included on the prestigious Super Lawyers list.

After graduating from Auburn University at Montgomery with a B.S. in 1978 and a M.S. in 1980, Mike attended Faulkner University's Thomas Goode Jones School of Law, earning his Juris Doctor in 1986. Mike said he had no aspirations of being a lawyer growing up as no one in his family had even graduated from college. It wasn't until his senior year at AUM when he was selected to serve on a Montgomery County Grand Jury that doors began to open. While on that jury, Mike met the Assistant District Attorney, who helped him get an internship with the District Attorney's office. This eventually turned into a job and that convinced Mike to pursue a law degree. While in law school, he clerked for Beasley Allen and then eventually joined us full time. Mike says:

The thing about this job is that each file you handle has a different face and different problem, so you never get stuck in a rut. You have to be a good listener to figure out a way to solve that client's problem.

Mike is married to the former Marla Taylor from Hope Hull, Alabama, and they have two children. They attend Century Church in Pike Road. Mike is an avid waterfowl hunter. He also is active in Retriever Field Trials, where he judges events across the country and campaigns two of his own Labrador retrievers. Mike is president of the Montgomery Retriever Club.

Mike is a very good lawyer who cares about his clients and he is dedicated to seeing that they receive justice. We are blessed to have Mike with us.

AIGNER SHANEA KOLOM

Aigner Shanea Kolom, a lawyer in our Mass Torts Section, joined Beasley Allen in August 2015. She is currently working on cases involving blood thinner Xarelto, which has been linked to serious bleeding events including gastrointestinal bleeds, brain hemorrhages, bleeding deaths and other bleeding side effects.

Prior to joining our firm, Aigner worked as a law clerk for two Circuit Court Judges in Montgomery, Charles Price, Presiding Judge (now retired) and J.R. Gaines. Aigner also worked as an intern for Judge Charles Watkins, Chief Judge Middle District 11th Circuit Court of Appeals. She also served as a legal intern and law clerk for Legal Services of Alabama.

Aigner says she always wanted to become a lawyer since she was a young girl. Adopted at a young age, she recalls the integral role of a lawyer in the adoption process. Aigner knew at that time there was something special about that career path. She says every lawyer she met from that point on helped her recognize the positive difference they could make in the lives of others. Aigner now takes immense joy in achieving successful results for her clients. She understands first-hand the importance of lawyers in our world and believes Beasley Allen not only nurtures its lawyers, but the communities and people it serves. Aigner is a dedicated lawyer who works hard for her clients. We are most fortunate to have her with us.

RYAN KRAL

Ryan Kral, an Associate in our firm's Toxic Torts Section, joined Beasley Allen in October of 2011. His practice has primarily focused on the BP Oil Spill litigation, representing businesses, commercial fishermen and individuals who suffered injuries resulting from exposure to oil and dispersants. He is also now investigating cases for individuals who have suffered severe lung injuries either on the job or in other capacities.

A native of Birmingham, Ryan graduated from Birmingham-Southern College in 2008 with a major in political science. He later obtained his Juris Doctor degree from the University of Alabama School of Law in 2011. While attending law school, he kept himself busy by working for the Civil Law Clinic where he represented clients in various civil litigation matters. Ryan also served as a judicial intern for Jefferson County Civil Circuit Judge Michael Graffeo.

Ryan's passion for practicing law is derived from his enjoyment of problem-solving. He says analyzing a complex legal issue that requires him to "think outside the box" presents a tough, yet welcome challenge. His favorite aspect of the legal field is meeting clients and earning their trust. Ryan finds that getting to know his clients can be a humbling and motivating practice. He believes that Beasley Allen has been able to utilize and strengthen his passions, combining the resources of a large firm with the feel of a small firm. This has fostered a strong sense of community within the firm and serves as a testament to its superb leadership. Ryan is another dedicated lawyer who works hard for his clients. We are most fortunate to have him with us.

DYLAN THOMAS MARTIN

Dylan Martin, a Clerical Assistant in the Consumer Fraud Section, began his tenure with the firm in November of 2015 during his sophomore year at Huntingdon College. His responsibilities vary from day-to-day depending on the needs of the Section, but he is currently involved in reviewing Actos documents.

A native of Montgomery, Dylan has lived in the city his whole life and is happy to call it home. He only had one sibling, Makenzie Rae Martin, who sadly passed away in October of 2016. While it has been an extremely difficult time for both Dylan and his family, he is thankful to have the love and support of his friends, loved ones and coworkers at Beasley Allen who have helped him find comfort and peace.

Dylan graduated from Montgomery Catholic High School in 2014 and is scheduled to graduate from Huntingdon College in May of next year. He has been very involved in the Sigma Phi Epsilon fraternity, having appealed its closure and won. Dylan served as both the President and Vice President of the fraternity's Membership Development. He is a Huntingdon College Ambassador, a SGA Senator for Political Science, on the Judicial Board Associate Justice and a member of the

Order of Omega and Gamma Sigma Alpha Greek Honor Societies.

When he has free time, Dylan loves to play intramural sports with his fraternity brothers. He also enjoys anything to do with food, such as trying new things and restaurants, and learning about different cultures.

Dylan has done a very good job for us and we are pleased with his work. We wish him the very best in his future endeavors.

LESLIE MICHELLE SHAMBLIN

Michelle Shamblin works as a Legal Assistant with LaBarron Boone in our firm's Personal Injury & Products Liability Section. Some of her day-to-day responsibilities include drafting documents for LaBarron, communicating with clients and experts, as well as assisting LaBarron during his trials. Considering how most of the clients she helps have suffered great losses, the litigation process can become very complex and Michelle says it is extremely important that she works to ensure that this process is as easy as possible for them. Before joining Beasley Allen in 2015, Michelle worked on many different types of litigation, ranging from bankruptcy to asbestos.

Michelle says she has been blessed with 30 years of marriage to her husband Richard. The couple moved from West Virginia to Alabama a little more than two years ago so they could be closer to their grandchildren. Michelle's son, Jacob, and his wife live in Alabama and they have three children. Her other son, Aaron, and his wife currently reside in Alaska with two children, but plan on moving to Alabama in the near future.

Michelle says she considers being a mother to her two sons as her greatest accomplishment. She has a Master's degree in Social Work and a Master's degree in Legal Studies with both being from West Virginia University. Michelle also has a Certificate of Achievement in Executive Leadership Strategies from Notre Dame's Mendoza College of Business, and is currently in her third year of law school at the Birmingham School of Law. Her hobbies include cooking, fishing and spending as much time with her grandchildren as possible. Michelle is a very good employee, who is dedicated to her work and to her clients. We are most fortunate to have her with us.

XX. SPECIAL RECOGNITIONS

HOPE INTERNATIONAL HONORS FRED GRAY WITH LIFETIME ACHIEVEMENT AWARD

HOPE International recently presented famed Civil Rights lawyer Fred Gray with its Lifetime Service Award. The award recognizes the Montgomery native's outstanding achievements including his groundbreaking and ongoing work to obtain, preserve and promote civil rights; his devotion to God; and his commitment to serving others. HOPE, which supports humanitarian relief and development efforts worldwide, has previously honored Nelson Mandela, Jimmy Carter, and Mother Teresa with this award. Fred is in good company and is most deserving of this high honor.

As a young lawyer in Alabama, Fred helped pioneer the path to civil rights by filing lawsuits throughout the South on behalf of clients including Claudette Colvin and Rosa Parks, both arrested for refusing to give up their seats on Montgomery buses. He also filed a lawsuit after the Bloody Sunday march in Selma, Alabama, that forced officials to allow a subsequent march from Selma to Montgomery. The march drew nationwide attention to the issue of civil rights and greatly influenced the passage of the Voting Rights Act of 1965.

"Mr. Fred is the trifecta: he's a civil rights hero, he's a very Godly man, and he's devoted his entire life to helping others," HOPE CEO Robert Carrillo said.

The award was presented in Tuskegee, Alabama, where Fred is actively working on behalf of the Tuskegee History Center in an effort to expand its hours and outreach. The Center is currently only open at certain times of the year, but Fred hopes his award will garner wider support to turn it into a full-time project.

The Center was established in 1997 as the Tuskegee Human and Civil Rights Multicultural Center. Its original mission was to serve as a permanent memorial to the victims and survivors of the Tuskegee Syphilis Study, who Fred also represented in his legal career. The Center has since expanded to include educational programs, workshops, and museum exhibits. In 2002 the Center was designated the official visitor center of the city of Tuskegee and encompasses a broader view of the different cultural groups that shaped the region.

Upon receiving the Lifetime Service Award, Fred accepted it on behalf of all the people who trusted him with their cases, and in hopes that future generations will continue to learn about the history of Civil Rights and what they too can do to make a difference. He had this to say about the award:

I'm appreciative of this award because it comes at a time when many of the gains that we've made in the area of civil and human rights are being threatened. Therefore, as we look toward the future, let's each of us rededicate ourselves to the task of completing the work that began with the end of slavery, continued through Reconstruction and the civil rights movement, up until today. Don't wait for somebody to tell you 'Here's a problem, let's go and solve it.' Let us continue our work so all of God's children, regardless of race, creed, religion, or condition of servitude will be truly free.

Fred Gray has worked hard over the years to achieve justice for all citizens in our country. He has been highly successful. I consider Fred to be a very good friend and I am proud of his many outstanding accomplishments. This man is truly a great American in every sense of the word.

HOPE partners with existing Christ-centered ministries worldwide to create a network of microfinance institutions and savings and credit associations with a goal of alleviating poverty. It provides discipleship opportunities, training, a safe place to save, and small loans for underserved communities and individuals. The organization works throughout Africa, Asia, Eastern Europe and Latin America. For more information, visit hopeinternational.org. For more information about the Tuskegee History Center, visit tuskegeecenter.org.

Sources: *Montgomery Advertiser*, WSFA-TV 12

BEASLEY ALLEN LAWYER KENDALL DUNSON INDUCTED INTO ABOTA

Beasley Allen lawyer Kendall Dunson was inducted into the American Board of Trial Advocates (ABOTA) at the Alabama Chapter's annual meeting on Nov. 16. Kendall practices in our Personal Injury & Products Liability section. Membership into the American Board of Trial Advocates is by invitation only, following a rigorous nomination and voting process.

There are approximately 7,300 members of ABOTA in the United States; only 122 lawyers in Alabama are members. Kendall said:

I'm honored to be selected for inclusion in ABOTA. In my work as a lawyer, I am most proud of my ability to help people, especially those people who have been injured through the fault of product manufacturers. A catastrophic injury can dramatically change a person and their family's lives. It's rewarding when my work can help make a real difference in someone's recovery, and influence change for safety so that others don't have to suffer.

For the third consecutive year, ABOTA's annual event honored one of the state's most respected judges. This year's banquet recognized Judge Robert H. Smith of Mobile, who serves the 13th Judicial Circuit. Prior to his appointment to the bench in 2006, Judge Smith was in private practice for 37 years. His practice, focused primarily on Admiralty and Maritime Suits, included a wide range of trial experience including appellate courts. Since assuming the bench, Judge Smith has distinguished himself as one of the finest judges in the Alabama court system.

ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. ABOTA works to uphold the jury system for educating the American public about the history and value of the right to a trial by jury. To be considered for admission into the Alabama Chapter, one must have tried to conclusion a minimum of 10 civil jury trials, be nominated by an existing member whose practice typically is on the opposing side of the nominee, and be approved by 75 percent of those members voting on membership. Criteria evaluated includes exceptional jury trial skills, civility, professionalism and integrity.

Kendall grew up in LaGrange, Georgia, and graduated with honors from LaGrange High School in 1989, after serving his senior class as president. He earned a degree in Corporate Finance from the University of Georgia under full scholarship. Among a host of UGA honors, one of his most treasured honors was being elected president of the Zeta Iota chapter of Kappa Alpha Psi Fraternity.

Kendall says he was inspired to law from two sources. One was a legal television series popular in the 1980s called "L.A. Law," which initially piqued his interest in the legal field. As he began to

explore the field, Kendall says he realized the importance of the court system to the Civil Rights movement. Landmark cases decided by the Courts in that fight were a major inspiration to his pursuing a legal career. A recipient of the Calloway Scholarship, Kendall is a graduate of the University of Alabama School of Law and is licensed to practice in both Alabama and Georgia.

Kendall has served as the president of both the Alabama Lawyers Association and the Capital City Bar Association. He recently completed a term as a Board member for the National Bar Association. Kendall served on the Board of the Montgomery County Bar Association until he was elected to the Executive Committee. Kendall is also past president of the Montgomery County Bar Association and has the distinct honor of being its first African-American President.

Kendall is a member of the Alabama State Bar and serves on the Diversity Committee and the Client Security Fund committees, positions appointed by the State Bar President. He served on the Alabama Curriculum Committee for the Board of Examiners, where he is authoring the new Tort Section and videotaped the presentation to be viewed by all taking the Alabama Bar Exam.

Kendall was selected as Beasley Allen's Litigator of the Year in 2013, and again in 2015. In 2014, Kendall was recognized as our firm's Personal Injury & Products Liability Section Lawyer of the Year. He also has been selected for inclusion on the Best Lawyers in America list since 2016.

Most recently, Kendall has been involved in several multimillion dollar lawsuits, including a \$24.75 million verdict in a premises liability case; a \$18.79 million verdict in a commercial truck product liability case; a \$5.75 million verdict in a maritime lawsuit; and a \$4.7 million verdict in a seat belt failure case. He and his Beasley Allen law partner Mike Andrews also recently secured an \$8 million jury verdict on behalf of a woman who was seriously injured when her Volkswagen suddenly accelerated out of her control and crashed.

Kendall was a member of the trial team that handled a wrongful death case against a corporate Defendant resulting in the largest jury verdict ever in Selma, Alabama. That suit influenced the corporate Defendant to outfit its entire fleet of trucks with audible backup alarms. He also handled the suit over a bus collision case in Huntsville, Alabama, that caused the death of four students and numerous injuries. The suit resulted in the cancellation of the contract between the county

and the Defendant, which had the duty to safely transport students to school in Madison County.

Other Alabama lawyers inducted into ABOTA this year are: Alan Alexander of the Helmsing Leach law firm, Mobile; Will Axon of the Starnes, Davis, Florie law firm, Birmingham; Bob Cooper of the Stockham, Cooper and Potts law firm, Birmingham; Jeff Rickard of the Marsh, Rickard & Bryan law firm, Birmingham; Gaynor St. John of the St. John & St. John law firm, Cullman; Allen Sydnor of the Huie, Fernambucq & Stewart law firm, Birmingham; and Michael Upchurch of the Frazer, Greene, Upchurch and Baker law firm, Mobile.

Mike Ermert of the Hare, Wynn, Newell & Newton law firm in Birmingham, is President and George Knox, Jr., of the Lanier Ford law firm in Huntsville, is President-Elect of the Alabama Chapter of ABOTA.

BEASLEY ALLEN LAWYER ELECTED TO INTERNATIONAL SOCIETY OF BARRISTERS

David Dearing, a lawyer in our firm's Mass Torts Section, has been selected as a member of the International Society of Barristers. Society membership is extended by invitation only to those "of exceptional talent whose qualities including integrity, honor and collegiality embody the spirit of the true professional," according to its website. Selection is based on an extensive screening process that includes comments from judges before whom nominees have appeared and other lawyers who know them well. The International Society of Barristers supports the ideals of trial by jury, the adversary system and a free and independent judiciary.

David joined Beasley Allen in April 2012. He has more than 25 years of experience as a trial lawyer. Currently, David is primarily working on talcum powder cases linked to the development of ovarian cancer. He was a member of all five talcum powder trial teams that won verdicts in 2016 and 2017 against Johnson & Johnson and Imerys Talc America, totaling more than \$700 million.

An AV Preeminent Rated attorney, the highest possible rating in both legal ability and ethical standards, David received Beasley Allen's 2016 Mass Torts Lawyer of the Year Award. David is a member of the Alabama State Bar; the Montgomery County Bar Association; the Montgomery County Association for Justice; The Florida Bar Association; Florida Justice Association; American Inns of Court—Chester

Bedell Inn of Court and E. Robert Williams Inn of Court, where he holds the position of Emeritus, Master of the Bench; The Million Dollar Advocates Forum; The Christian Legal Society; and the United States District Court, Middle District of Alabama and Middle District of Florida.

XXI. FAVORITE BIBLE VERSES

Cole Portis, who heads up our firm's Personal Injury & Products Liability Section, furnished a verse for this issue. He had this to say:

I stand in awe of God's grace. He is a God who sent His son, Jesus, to die for me, a sinner. I can imagine someone sacrificing something precious to them for someone who is righteous and good, but to send Jesus to die for someone like me is beyond my comprehension. But, He didn't just save me, He adopted me and made me His child. He is a Father to whom I cry, "Abba, Father!" He listens to me, cares for me, sanctifies me and one day will glorify me. Amazingly, through the adoption process He also confirms to me that I am one of His heirs. The One who owns everything calls me a fellow heir with Christ. All of this is undeserved. I am grateful that He is my Father.

There is therefore now no condemnation to those who are in Christ Jesus, who do not walk according to the flesh, but according to the Spirit. For the law of the Spirit of life in Christ Jesus has made me free from the law of sin and death. For what the law could not do in that it was weak through the flesh, God did by sending His own Son in the likeness of sinful flesh, on account of sin: He condemned sin in the flesh, that the righteous requirement of the law might be fulfilled in us who do not walk according to the flesh but according to the Spirit. The Spirit Himself bears witness with our spirit that we are children of God, and if children, then heirs—heirs of God and joint heirs with Christ, if indeed we suffer with Him, that we may also be glorified together.

Romans 8:1-4; 16-17

Kristi Smith, a legal assistant in our firm's Mass Torts Section, sent in the following verses.

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

If God is for us, who then can be against us? Romans 8:31

Kristi says that these 2 verses makes it easier "to live out Joshua 1:9- Have I not commanded you? Be strong and courageous. Do not be afraid or discouraged for the Lord your God will be with you wherever you go."

Melissa Prickett, a lawyer who serves as our Section Head Administrator in the Toxic Torts Section, supplied the following verses. These are certainly timely for the weeks leading up to Christmas.

I bring you good tidings of great joy, which shall be to all people. For unto you is born this day in the city of David a Saviour, which is Christ the Lord. Luke 2:10-11

She will bear a son, and you call his name Jesus for he will save his people from their sin. Matthew 1:21

And suddenly there was with the angel a multitude of the heavenly host praising God and saying Glory to God in the highest, and on earth peace, goodwill towards men. Luke 2:13-14

For to us a child is born, to us a son is given; and the government shall be upon his shoulder, and his name shall be called Wonderful Counselor, Mighty God, Everlasting Father, Prince of Peace. Isaiah 9:6.

I have come into the world as light so that no one who believes in me need remain in the dark. John 12:46

XXII. MYTHBUSTER SERIES

MYTH: PRODUCT LIABILITY LAW IS A BURDEN ON BUSINESS

Product liability laws provide both a process for victims to seek compensation

as well as serving as a deterrence for companies manufacturing defective products. Some complain that the costs of these product liability laws costs hurt competition, deter innovation and is as a tax on business. However, our country's "common law" works to provide justice and also plays a significant regulatory role if government agencies fail or are unable to discover the defect. The best way to show how the system works is by taking a look at two cases involving Ford Motor Company.

The Ford Motor Company manufactured automobiles with a defectively designed transmission between 1970 and 1979. This defect produced an "illusory park" position, giving the operator the impression that the car was secured when it was not. Vibration or slamming of a car door could cause the automobile to move in reverse. About 90 injuries were reported as a result of this defect. Did Ford correct the defect voluntarily? No.

Not until Ford lost two verdicts did the automaker deal with this hazard. In 1976, a woman put her 1973 Lincoln in the park position and left the vehicle to load groceries. The car suddenly moved backward, knocking the Plaintiff down and running over her legs. A jury verdict for the Plaintiff in 1979 was upheld on appeal. See *Ford Motor Co. v. Bartholomew*, 297 S.E.2d 675 (Va. 1982).

In the second case, a driver who walked to the rear of her car while it was in the park position was killed when the automobile reversed unexpectedly. In 1979, a jury found the transmission design was defective and that Ford had failed to properly warn consumers of the problem. The jury awarded compensatory damages and assessed \$4 million in punitive damages. A few months after these verdicts, Ford eliminated the "illusory park" position hazard. See *Ford Motor Co. v. Nowak*, 638 S.W.2d 582 (Tex. App. 1982).

An automobile manufacturer designs vehicles to comply with National Highway Traffic Safety Administration (NHTSA) regulations. But without the common law, many defects would not be uncovered and corrected. And the victims would not be compensated. Modern examples of the common law working to protect consumers like the Volkswagen cheat device scandal and the GM Ignition switch cases prove that government regulation while setting minimum standards does not catch all the defects and the courtroom remains the best regulatory system we have. Our founding fathers had the foresight to make 7th amendment a part of our Constitution. That, along with the continuous develop-

ment of our common law, have served our citizens well.

Defective products are a burden on business after the fact. Product liability laws lead to better products and compensate victims who were injured or killed by poorly designed products.

Source: Georgia Association for Justice

XXIII. CLOSING OBSERVATIONS

BEASLEY ALLEN'S MIKE ANDREWS PUBLISHES AVIATION BOOK

Mike Andrews, a lawyer in our Firm's Personal Injury & Product Liability Section, has a natural proclivity for and understanding of mechanical engineering concepts. His deep-seated aversion to seeing anyone being exploited, coupled with a strong desire to problem solve, fuels his passion as an advocate. This powerful combination—skillset and passion—drives his work on complex product liability cases, especially aviation cases. The veteran litigator recently penned a book, *Aviation Litigation & Accident Investigation*, based on years of investigating, researching and litigating aviation cases.

An aircraft involves complex systems. These systems must work together in the right order each of the hundreds, thousands, or more times they are initiated. There is a much smaller margin of error in aviation cases than in simpler products and even compared to cases involving automobiles. Mike walks readers through the complexities of aviation crash investigation and litigation. He provides basic instruction on preserving evidence, insight into legal issues associated with aviation cases and provides anecdotal instances of military and civilian crashes to help lawyers that do not handle aviation cases in the regular course of practicing law.

"The book's purpose is not to be exhaustive, or a checklist, it is merely an overview to the practitioner of the more glaring and important issues to be aware of early in the litigation," Mike said.

The complexity of an aviation case extends beyond the product. Identifying experts that can effectively testify before a judge or jury requires lawyers to acquire a basic, yet thorough understanding of aeronautics including aerodynamics forces, stability and control. Lawyers must under-

stand concepts such as lift, drag, and longitudinal modes so that they can communicate to the court important information about the aircraft's rate of climb, Dutch roll, climb angle and take off, among other key information.

Additionally, Mike explains that there is a pretty steep learning curve regarding aviation industry regulations. The Federal Aviation Administration (FAA) is the federal agency charged with providing "safe and efficient use of national airspace." The FAA has established rules to govern aviation in the U.S., which are included in Titles 14 and 49 of the Code of Federal Regulation and govern nearly every aspect of aviation—from the commercial to the general segments of the industry. Understanding rules such as statutes of repose, which can act to bar a lawsuit altogether, and the exceptions to those statutes is critical to keeping alive a client's effort to obtain justice.

Moreover, many cases, especially those involving military aircraft, usually include an added layer of complex defenses that can impact an entire case. For example, one of Mike's earliest cases was a lawsuit on behalf of the widow of a crew chief on a V-22 Osprey, a case Beasley Allen has previously described. The Osprey was on a routine training mission when it experienced hardware and software failures simultaneously. Either failure alone would have been challenging enough to investigate and litigate, but together the failures presented one of the most complicated and perplexing product liabilities cases.

The complexity was further heightened when the aircraft's manufacturers Boeing and Bell asserted the government contractor defense—a defense that would have allowed the manufacturers to escape accountability by avoiding state tort law claims. The defense was upheld by the U.S. Supreme Court in *Boyle v. United Technologies*, as explained by Bloomberg BNA, and presents a significant hurdle for Plaintiffs. And, when handling government contractor cases, lawyers are also held to heightened duties of disclosure, governed in part by the State Secrets Protection Act.

Despite the complexities and significant hurdles, Mike and other Beasley Allen lawyers in the Section working on the case successfully settled the case for the widow, Karen Runnels, and the couple's daughter for an undisclosed amount in December 2005. Over the years following the Runnels' case, other clients have approached our firm with aviation cases and Mike has naturally gravitated to handling them.

Currently, Mike has six active aviation cases nationwide, including a case involving another V-22 Osprey, which crashed off the coast of Hawaii in May 2015, as discussed previously in the Report.

Lance Cpl. Matthew Determan, who was 21 years old, was one of two U.S. Marines killed when their V-22 Osprey crashed at Bellows Air Force Base in Waimanalo (Oahu) Hawaii as it was landing during a training flight. The V-22 Osprey is designed to operate as both an airplane and a helicopter; however, the tilt-rotor technology that is part of the Osprey's design is a compromise that does not work. The tragically flawed design has claimed 37 service members' lives as a result of multiple issues since the U.S. Department of Defense began testing it in 1991. The aircraft's tragic history has earned it the moniker, "The Widow-maker." Despite the military's revisions to the aircraft to increase its safety, which included addressing problems with the aircraft's hydraulic lines and aircraft operational software, the unsafe and poorly designed aircraft continues to take lives and remains operational.

Another tragic case Mike is currently handling involves the crash of a PIPER PA-44-180 aircraft piloted by two student pilots. Co-pilot Adam Christopher Griffis and the pilot were sent up in an aircraft that had faulty and inoperable equipment. They were also flying in conditions that neither of the students were adequately trained to handle at the time of the crash. A mechanical failure led to the fatal crash in a swamp near Brunswick, Georgia, in March 2014.

Mike says what has had the most profound effect of him as a result of his law practice is seeing firsthand the loss experienced by children. "Losing a parent or sibling leaves an indelible mark on a child and while it can be lessened over time, it never goes away."

In reflecting on how our firm has shaped his law practice, Mike says that he appreciates the resources, knowledge and experience the firm has provided over the years. However, he is thankful most of all for the culture of integrity, doing the right thing and putting clients' needs first, which fits naturally with his own values.

Mike's book can be accessed online at <http://www.mikeandrews-law.com/book/>. If you need additional information about this subject, contact Mike at 800-898-2034 or Mike.Andrews@beasleyallen.com.

Sources: Aviation Litigation & Accident Investigation, Federal Aviation Administration, Beasley Allen, Bloomberg BNA, *Jere Beasley Report* (September 2015)

FLORIDA STATE FRATERNITIES AND SORORITIES ARE 'SUSPENDED INDEFINITELY' AFTER DEATH OF PLEDGE

It was reported last month that Florida State University is banning all Greek life on campus following the death of a 20-year old pledge. FSU President John Thrasher described the ban as an "indefinite interim suspension" effective immediately. President Thrasher stated:

For this suspension to end, there will need to be a new normal for Greek life at the university. There must be a new culture, and our students must be full participants in creating it. (Student groups) must work with us and demonstrate they fully understand the serious obligation they have to exercise responsible conduct.

FSU has more than 50 Greek organizations on campus. Under the ban, they will not be able to meet without participation from school officials. Fraternity and sorority members will be allowed to live in their respective chapter houses; however, all new member events, organized tailgates, socials, philanthropy and intramural sports are prohibited. This move comes after 20-year-old Andrew Coffey, a pledge at Pi Kappa Phi fraternity, was found unresponsive after attending a house party about a mile from campus. Coffey, a Florida native, was given medical treatment, but died on the scene.

The fraternity was suspended by its national organization pending the conclusion of the investigation. Thrasher also banned alcohol at all 700 non-Greek student groups on campus.

Reportedly there are some folks who believe FSU overreacted. However, I believe the school's prompt action was absolutely necessary and that it will turn out to be a good move. Hopefully it will encourage other schools to take similar action. I believe all universities, as well as the fraternities, should outlaw hazing altogether, and especially when the hazing involves alcohol. This has been a serious issue on college campuses for years and its one that has been largely ignored. It's high time for those in charge of universities throughout the country to get actively involved. The national organizations of the fraternities also have a duty in that regard. We can no longer tolerate the type activity that took place at FSU at other colleges and universities.

Sources: CBS News and The Tallahassee Democrat

OUR MONTHLY REMINDERS

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

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

The mass killings in Texas on Sunday, Nov. 6, by a person using a military style assault rifle—a weapon designed to kill human beings, not animals—should serve as a serious wake-up call for the American people. The senseless killing of 26 innocent victims is heartbreaking. All Americans must pray for all of the families affected by this tragic incident. It was not surprising that an assault rifle was once again used to kill a large number of people. Sadly, that has become all too common. We must find a way to bring these mass killings to an end. No longer can we allow the U.S. Constitution to be used in a manner that cannot be justified.

We have let the National Rifle Association call the shots on the issue of gun control in Congress for years and as a result nothing has been done to control the sale of guns in our country. As stated above, these mass killings have become all too common. There have been a number of mass murders by persons using assault rifles, which can easily be bought from gun stores, gun shows and online with virtually no restrictions. During the past year there have been three deadly episodes and yet nothing has been done in Congress to address the obvious problem.

These senseless and tragic killings have to stop. The time has come for both politi-

cal parties to say enough is enough and join together to take action. We badly need reasonable gun control and we must demand that Congress do their job. While the 2nd Amendment has a useful purpose, clearly there are limits on that use. The Constitution does not stand in the way of background checks and a prohibition of the sale of an assault rifle to an individual. I am convinced that an overwhelming number of U.S. citizens agree with that position. If so, why doesn't Congress act?

How many more mass shootings in churches, schools, malls, clubs and other public places will it take to get the attention of Congress? Unfortunately, the NRA controls Congress on this important issue. Personally, I am tired of hearing that President Obama is going to come to my house and take away my guns. Obama is no longer president and the current occupant of the White House must lead the charge for reasonable gun control. This is more than a mental health issue—it is a gun control issue—and it's one that demands action. Every time we have a mass shooting, all we get is "talk" from politicians. We should demand immediate action and not be satisfied until we have reasonable gun control laws in place. It has finally gotten to the point that enough is really enough.

We must continue to pray for the families of the victims in Texas and for a community that has been devastated by a young man with hate in his heart and an assault rifle in his hands. We must also pray that President Trump and Congress will do the right thing on the gun control issue. My prayer today is for the American people to wake up and demand that the mass murders in our country must stop.

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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.



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