I. CAPITOL OBSERVATIONS

STATE OF ALABAMA FILES IMPORTANT OPIOID LAWSUIT

Our law firm has joined Alabama Attorney General Steve Marshall in filing a lawsuit on behalf of the State of Alabama against opioid manufacturer Purdue Pharma, L.P., one of the largest opioid manufacturers in the country. Purdue’s marketing of these drugs has contributed to the creation of a public health and safety crisis in Alabama.

Alabama’s opioid crisis has been fueled by pharmaceutical manufacturer Purdue, which has deceptively and illegally marketed opioids in order to generate billions of dollars in sales. Purdue primarily manufactures and sells opioids, and is misrepresented the risks of these highly addictive painkillers, plainly putting profits over people. The rampant use and abuse of opioids is devastating to Alabama citizens and to the State of Alabama.

Economic damages resulting from the opioid epidemic include costs for providing medical care, therapeutic care and treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths; costs for providing counseling and rehabilitation services; costs for treating infants born with opioid-related medical conditions; public safety and law enforcement expenses; and care for children whose parents suffer from opioid-related disability or incapacitation.

Purdue manufactures, markets, and sells prescription opioid pain medications, including the brand name drugs OxyContin, MS Contin, Dilaudid/Dilaudid HP, Butrans, Hysingla ER, and Targiniq ER, as well as generic opioids. OxyContin constitutes roughly 30 percent of the entire market for analgesic drugs (painkillers). Purdue’s drugs compose a majority of the extended release market, for use with chronic non-cancer pain patients, which is the most dangerous method of use. Prescription opioids constitute the largest component of the opioid epidemic, both in quantity and damage caused.

Our firm has previously represented the State of Alabama in the Exxon, AWP and BP litigations. We have also successfully represented seven other states in civil litigation. Alabama’s settlement with BP of two billion dollars was negotiated by Rhon Jones from our firm and Corey Maze from the Attorney General’s office. We recently had a $30 million verdict in one case in Mississippi affirmed by the Mississippi Supreme Court. I will write separately on that decision in this issue in the Court Watch Section.

The Opioid lawsuit was filed in the U.S. District Court for the Middle District of Alabama Northern Division. In addition to Attorney General Marshall, the state is also represented by Corey L. Maze, Special Deputy Attorney General; Winfield J. Sinclair, Assistant Attorney General; and Michael G. Dean, Assistant Attorney General. The state is represented by Beasley Allen lawyers Rhon Jones, who is head of our firm’s Toxic Torts Section and who in this case is acting as Deputy Attorney General, Rick Stratton, Will Sutton, Ryan Kral and this writer, together with Josh Hayes, who is acting as Deputy Attorney General, and Bob Prince of Prince, Glover & Hayes law firm in Tuscaloosa.

II. MORE AUTOMOBILE NEWS OF NOTE

SUIT FILED AGAINST TOYOTA OVER PRIUS STALL DEFECT

Our firm represents a Toyota driver who has filed a proposed class action against Toyota in a California state court alleging that the automaker’s Prius hybrid cars have a defect that creates a serious risk of stalling while traveling at high speeds, potentially resulting in a crash. Jevdet Rexhepi, the Plaintiff in the lawsuit, alleged in his complaint that Prius hybrids from model years 2010 to 2016 contain a defect that causes the intelligent power module to be dangerously inclined to fail, creating a grave risk that the engine will stall during high-speed travel.

Toyota Motor Sales Inc. recalled the cars in 2014, characterizing it as a “warranty enhancement program,” to fix the problem. This was just a way of masking the true nature of the intelligent power module defect, and that Toyota didn’t actually fix the problem by replacing the part because it cost too much. Thus, for cost reasons, Toyota knowingly placed its customers at serious risk of injury and death.

The software update used by Toyota created a new and different problem that made the cars’ engines noticeably sluggish and unable to accelerate normally. As a result, Toyota’s sham recall not only allowed a serious stalling problem to continue unabated, but it diminished the performance of class vehicles to the extent that it put the driver (as well as vehicle occupants) at risk of a collision. This creates an additional safety risk because the driver is unable to adequately accelerate the engine. The Prius is marketed as an environmentally conscious and safe car. As of October 2014, Toyota had sold at least 7 million Prius hybrids, according to a press release from the automaker. Obviously, this is a very popular car.

Toyota has known about the problem, but has rejected requests from its dealers to actually fix it. For example, there is a post on the website of a Toyota dealer in

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GM argued that the Second Circuit was wrong, and said Judge Hall didn’t need to defer to the federal appeals court on a question of state law. GM also said that the state’s Supreme Court issued a ruling in the 2016 case Bifolck v. Philip Morris Inc. that made clear that the Second Circuit was wrong. However, Judge Hall ruled that she was bound to defer to the Second Circuit and said the Bifolck decision did not squarely contradict the Densberger decision. Judge Hall stated:

If the Second Circuit, based on language in Bifolck, overrules Densberger and concludes that no post-sale duty to warn exists, this court is bound to follow such a ruling, but until it does so, it is not the province of this court to disregard Second Circuit authority without clearer direction in a bolding of the Connecticut Supreme Court.

The court also rejected GM’s request to have the Connecticut Supreme Court weigh in on the question of whether the automaker was a “product seller” under the state’s product liability laws. Judge Hall noted that she acknowledged at trial that it was a question “best answered by the Connecticut Supreme Court.” But jurors found against GM on two theories of liability:

• one that held GM liable for the actions of now-bankrupt General Motors Corp., which manufactured the vehicle, and

• another that held the automaker liable as a “product seller” that breached its own duty to warn.

Even if the state’s justices ruled in GM’s favor, Judge Hall said the automaker would still be liable for negligence under the first theory, meaning it would be pointless to certify the question. Judge Hall wrote further:

The question is more appropriately resolved by the Connecticut Supreme Court in a case in which the answer would affect the outcome of the case, rather than merely serve as a clarification of the law for academic purposes, as it would here.

According to the underlying suit, the child got in the car while she was waiting for her mother to get ready to take a trip. While her mother was still in the house, the suburban car got out of park, killing Margaret O’Connor and traumatizing her brother Grant.

Bernard Pitterman, the administrator of Margaret O’Connor’s estate, and the family filed suit in Connecticut state court in June 2014. The case was removed to federal court the following month. Judge Hall rejected several of the defenses asserted by GM last year, including that the Plaintiffs had acted negligently.

The family and estate are represented by Robert B. Adelman of Adelman Hirsch & Connors LLP. The case is Bernard Pitterman et al. v. General Motors LLC (case number 3:14-cv-00967) in the U.S. District Court for the District of Connecticut.

Source: Law360.com

DEADLY TAKATA AIRBAGS REMAIN IN MILLIONS OF CARS

Airbags are supposed to serve as a last line of defense for drivers and passengers involved in an automobile wreck. However, in 2015, the U.S. Department of Transportation (DOT) initiated a recall of airbags manufactured by Takata Corp., because the airbags were determined to be unstable during an accident. What’s more, passengers were reporting sometimes bizarre, and graphic, head and chest injuries that could only be attributed to the airbags exploding and the shrapnel they spewed upon being activated.

Indeed, the world would learn that Takata ignored industry airbag manufacturing practice and used ammonium nitrate in its airbag inflators. This compound, which was used to blow up the Oklahoma City Federal Building in 1995, can destabilize over time, particularly if exposed to high temperatures and humidity. The result of this faulty concoction has proved to be devastating, as the airbag design can explode with far greater force than a traditional airbag, causing deadly shrapnel to blast toward drivers and passengers.

Takata manufactured millions of these faulty airbags and they did so for cars that are commonly used, including vehicles manufactured by Toyota, Honda, General Motors, BMW, Daimler Vans, Fiat Chrysler, Ford, Jaguar-Land Rover, Mazda, Mercedes-Benz, Mitsubishi, Nissan, Subaru and Tesla. So far, 13 deaths in the United States and hundreds of injuries have been linked to the defect.

By November 2017, roughly 34 million vehicles had been recalled as a result of Takata airbag danger. Just recently, another 3.3 million vehicles were recalled,
including roughly 465,000 Honda and Acura vehicles, as well as 600,000 Toyota and Lexus vehicles.

Honda and Acura vehicles alone constitute an astounding near 12 million vehicles recalled and the vast majority of deaths attributed to the defect. With additional recalls expected next year, the National Highway Traffic Safety Administration (NHTSA) estimates the total number of affected airbags will be around 70 million. Completion rates for all of the eight-recall priority group were no more than 65 percent complete as of the end of January, leaving millions of people at risk of deadly injuries associated with these airbags.

Takata has pled guilty to wire fraud, agreed to pay $1 billion in fines and restitution, and 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.

In May 2017, Toyota, Subaru, Mazda and BMW became the first four automakers to exit the Takata airbag multidistrict litigation (MDL) after agreeing to pay a combined $553.6 million settlement. Settlements with Honda for $605 million and with Nissan for $97.7 million were preliminarily approved Sept. 19, 2017. Parties agreed to the settlements “in order to increase recall completion rates and to avoid the cost and risk of further litigation, with the goal of enhanced customer satisfaction,” according to the official informational site for the Takata class action.

These settlements do not “involve claims for personal injury or property damage to any property other than the Subject Vehicles.” Therefore, passengers must file suit against Takata and others for personal injuries associated with the Takata airbag defects. With these deadly airbags set to remain in millions of vehicles for the foreseeable future, we can only anticipate that deaths and severe injuries associated with Takata's defect will increase over the coming years.

Our law firm has been at the forefront of the Takata airbag litigation since its inception, and our lawyers have successfully litigated catastrophic products liability cases across the country for many years. To see if your vehicle was affected by the Takata recall, visit www.autoairbagsettlement.com/en and check using your vehicle identification number (VIN). If you need more information, contact Chris Glover, a lawyer in our firm's Personal Injury & Products Liability Section, at 800-898-2034 or by email at Chris.Glover@beasleyallen.com.

Sources: NPR, Takata Settlement Website, NHTSA and Consumer Reports

GENERAL MOTORS TRIES AGAIN TO AVOID TAKATA RECALLS

For the third time in the past three years, General Motors (GM) has asked the U.S. government for permission to avoid recalls of potentially deadly Takata air bag inflators. The company disclosed its third petition to escape the recalls in a filing with securities regulators. Obviously, the financial stakes are high. If the National Highway Traffic Safety Administration (NHTSA) lets GM out of the recalls, the company could save $1 billion. However, the automaker would avoid recalling up to 6.8 million full-size pickup trucks and SUVs from the 2007 to 2011 model years. That shouldn’t happen.

At least 22 people have been killed worldwide and more than 180 injured. The problem forced the Japanese company into bankruptcy protection and touched off the largest series of automotive recalls in U.S. history. Takata has agreed to recall up to 69 million inflators in the U.S. and 100 million worldwide.

In its annual report posted by the Securities and Exchange Commission (SEC), GM said it filed recall paperwork and a petition to avoid the recalls with NHTSA on Jan. 9. In the filing, GM says the front-passenger inflators were custom-made for its trucks by Takata with bigger vents and stronger steel end caps than other inflators. No truck inflators have blown apart on roads or in extensive laboratory testing, according to GM.

GM disclosed that it has not set aside money for the recalls, if required to do them, but it estimates “possible impact” to the automaker of “approximately $1.0 billion.” The company is in discussions with regulators outside the U.S. and continues to gather evidence and share its findings, according to the filing. As part of a consent agreement with NHTSA in May of 2016, Takata agreed to recall all of its inflators that use explosive ammonium nitrate as a propellant, but don’t have a moisture-absorbing chemical in them. The recalls are being phased in through 2020, with older vehicles in southern states getting top priority. Takata has filed recall paperwork for 2016, 2017 and this year declaring the inflators defective, including those made for GM trucks.

GM filed petitions seeking to avoid the recalls in November of 2016 and in January of 2017, but, interestingly, NHTSA has yet to rule on them. Until it makes a decision, GM is not required to recall the trucks and SUVs. The agency gave GM until Aug. 31, 2017, to do research on the inflators.

As of Jan. 5, automakers had recalled 40.1 million inflators, according to NHTSA’s website. Of those, only about 53 percent had been replaced, despite the risk of injury or death. Problems with the inflators date to 2001. The GM recalls cover two of its top-selling models, the Chevrolet Silverado and GMC Sierra pickup trucks. Also included are big SUVs such as the Chevrolet Tahoe, GMC Yukon and Cadillac Escalade.

Source: USNews.com

TAKATA GETS APPROVAL FOR CHAPTER 11 PLAN

A Delaware bankruptcy judge has agreed to confirm Takata's Chapter 11 plan that centers on a $1.6 billion sale to Key Safety Systems Inc. and uses proceeds to pay victims of Takata's dangerously defective air-bag inflators. This came after all of the major creditor groups got on board. U.S. Bankruptcy Judge Brendan L. Shannon rejected the remaining objections to Takata's plan.

The plan has the Key Safety deal as an essential element and will use the proceeds of the sale to in part pay Takata's automaker customers and wrongful death and personal injury claimants through a trust akin to the way recoveries are handled in an asbestos Chapter 11 case.

PLAINTIFFS WANT TO REWORK $1 BILLION SETTLEMENT WITH GM CHAPTER 11 TRUST

A group of individuals who are alleging damages from defects in old General Motors (GM) cars have asked a New York bankruptcy court for a few more weeks to rework a $1 billion settlement a GM bankruptcy trust backed out of in January, saying the trust has new management and counsel and a settlement may now be possible. Saying the GUC Trust has changed lawyers and taken on new managers since backing out of the nearly finalized settlement agreement, lawyers for the group alleging damages from GM ignition switch defects and unitholders in the trust said the settlement can still be reached if the court pushes back the scheduled Feb. 22 conference on the status of late claims by at least two weeks. The ignition switch Plaintiffs said in a letter to the court:

Plaintiffs firmly believe that these recent developments will allow the
plaintiffs and the participating unit-holders to work toward promptly reviving the settlement agreement and avoid time-consuming, expensive and uncertain litigation.

Under the terms of the settlement at issue, the claims of defective ignition switches in GM cars would have been settled in exchange for a $15 million payment and the trust’s support for an order that would have obligated the New GM corporation, which emerged from the company’s reorganization, to issue 30 million shares of common stock to creditors. The share value of the proposed new equity would be approximately $1 billion, the claimants have said. The settlement was all but signed when the GUC Trust—the successor trust to pre-bankruptcy GM—backed out on it in January in favor of an agreement with the New GM that would require New GM to foot its legal bill for the trust’s coming fights with creditors.

The personal injury Plaintiffs and other settlement signatories who hold units of the trust contended that the settlement deal should still be enforced, but U.S. Bankruptcy Judge Martin Glenn found that despite what he called “bad faith” on the part of the trust and its lawyers, the settlement agreement explicitly was not meant to take effect unless it was signed.

However, both the ignition switch Plaintiffs and the unitholders said in their letters that since that ruling Wilmington Trust Co., the administrators of the trust, have switched law firms and added “senior leadership” to the trust management team. Both said they believe the changes will have a positive impact on the prospects of finalizing the agreement, but that they want to give the new lawyers and management time to familiarize themselves with the case. So both asked for a status conference on late claims in the case be pushed back from Feb. 22 to early March. At press time we had not been notified as to whether the date had been changed.

Source: Law360.com

GM AND BOSCH WILL FACE DODGE DRIVERS’ EMISSIONS-CHEATING CLAIMS

A Michigan federal judge has denied motions by General Motors LLC and Robert Bosch LLC to dismiss a proposed class action claiming that defeat devices similar to those used in Volkswagen’s diesel cars are installed in some GM vehicles. The judge ruled that the devices plausibly alleged a conspiracy. Bosch, in conjunction with related entity Robert Bosch GmbH, and GM moved to dismiss the lawsuit in October, arguing the drivers, led by Andrei Fenner, lacked standing to bring the suit and calling the allegations “impermissibly vague.” Their motions also said the Clean Air Act (CAA)

Sources: Financial Times, Aachen University, Huffington Post, New York Times

New details of German car manufacturers’ emissions cheating scandal just revealed an incredibly new low for three of the companies. Volkswagen, Daimler and BMW financed research that forced trapped monkeys to inhale diesel exhaust fumes while the helpless animals were watching cartoons, according to the Financial Times.

A study released by Germany’s Aachen University summarized similar experiments conducted on human volunteers, which was also funded by the three carmakers, the Huffington Post reports. The latest embarrassing and deplorable scandal was brought to light through a new Netflix documentary called “Dirty Money” that began airing last month.

The research was commissioned by the now-defunct European Research Group on Environment and Health in the Transport Sector (EUGT). The experiments involving the monkeys were conducted at the Albuquerque, New Mexico-based, Lovelace Respiratory Research Institute in 2014—only a year before the emissions cheat scandal was exposed. The human experiments were conducted at the German university in 2013 and 2014 and involved 25 people.

The research was conducted in an effort to support the industry’s pro-diesel agenda and to dispute the need for restricting diesel vehicles in urban areas in order to maintain better air quality. But the tests, in fact, “provided another example of how Volkswagen used software to conceal emissions of nitrogen oxides that were far above limits allowed by law,” the New York Times explained.

All three carmakers apologized for the cruel experiments. However, Volkswagen also defended the experiments saying the automaker received approval from the Institutional Animal Care and Use Committee in the U.S., which, as reported by the Huffington Post, is described as an independent review board created to help protect animals.

The argument was made in a filing in a Virginia court requesting a six-month delay before more than 2,000 lawsuits go to trial over the company’s role in the 2015 emissions cheating scandal, Deutsche Welle reported. The lawsuit represents the changes included in the multibillion-dollar settlement approved in a U.S. federal court in 2016. Volkswagen requested the delay because it fears the documentary’s information and publicity could prejudice the judicial process.

In September 2015, Beasley Allen joined other law firms in filing a nationwide class action lawsuit on behalf of Volkswagen owners who were deceived by the automaker’s deliberate end run around Environmental Protection Agency (EPA) pollution controls. The EPA has filed notices of violation (NOV) against VW, accusing the automaker of selling diesel vehicles equipped with software that disguises vehicles’ true nitrogen oxide (NOx) emissions, covering up violations of the Clean Air Act. The following year, a U.S. federal judge ordered Volkswagen to pay $14.7 billion, which was one of the biggest corporate settlements at the time. The automaker admitted that the vehicles emitted up to 40 times the legally allowable limit of pollutants, which was hidden by the software.

Additionally, in 2016, lawyers at Beasley Allen were involved in the class action lawsuit against Volkswagen called the “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation. Because of the software, the company was able to deceive the government and deceptively sell the cars to unassuming customers, promising the engines were better for the environment.

A settlement in this litigation, approved in May 2017, provided customers who had been cheated with substantial cash compensation in addition to buybacks, trad-\(s\), government-approved emissions modifications or compliant repairs. Volksw-\(a\)gen agreed to pay approximately $1.2 billion in combined compensation, assuming an Emissions Compliant Repair would be available in a timely manner for all Generation Two vehicles. If such repairs were not available by deadlines detailed in the settlement, Volkswagen has agreed to pay approximately $4.04 billion.

Under the related Department of Justice (DOJ) 3.0-Liter Consent Decree, Volksw-\(a\)gen will pay an additional $225 million to mitigate the environmental effects of excess NOx emissions. Settlements to owners involved in the second class action lawsuit and costs of modifying or buying back 88,500 3.0-liter V-6 TDI powered vehicles in the U.S. will end up costing Volkswagen $1.22 billion.

Sources: Financial Times, Aachen University, Huffington Post, New York Times

SHAME ON THE GERMAN CARMAKERS INVOLVED IN EMISSIONS CHEATING SCANDAL

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preempted the drivers’ state law claims and contested that the suit’s Racketeer Influenced and Corrupt Organizations (RICO) Act claims failed to allege an actionable injury.

U.S. District Judge Thomas L. Ludington said in his order that the drivers’ first alleged injury—overpaying for a “clean diesel” vehicle that actually polluted at levels dramatically higher than a reasonable consumer would expect—is sufficient for both the state law and RICO claims. The judge wrote:

Plaintiffs contend that they ‘paid a premium of nearly $9,000, as GM charged more for its Duramax engine than a comparable gas car.’ Plaintiffs thus identify a specific payment attributable directly to the vehicle component at issue which they opted to purchase on the basis of fraudulent conduct. This is cognizable out-of-pocket injury.

According to the complaint filed in May 2017, GM’s top-selling Silverado and Sierra 2500HD vehicles emit far more pollution while on the road than in emissions testing conditions, despite the automaker’s marketing of the vehicles to environmentally conscious consumers as having low emissions along with high fuel economy and towing capacity.

There are about 705,000 Silverado and Sierra diesels on the road, the complaint said, and emissions testing shows that they emit levels of nitrogen oxide far above the U.S. Environmental Protection Agency’s standards.

Since September 2015, when the EPA and the California Air Resources Board accused Volkswagen of using “defeat devices” to evade federal emissions tests for diesel vehicles, its Audi unit and automakers Fiat Chrysler America and Daimler AG have also been accused of using the devices by regulators and consumers in the U.S. and Europe.

The GM car drivers say that auto parts supplier Robert Bosch GmbH developed the electronic diesel control that enabled GM to implement the defeat devices in its cars. Judge Ludington rejected all of GM and Bosch’s attempts to dismiss the suit. Bosch had said the overpayment injury could not be fairly traced to the supplier. Judge Ludington said that the drivers clearly alleged Bosch knowingly developed the inherently deceptive defeat device. “In other words, Plaintiffs overpaid for their vehicles because Bosch worked closely with GM to install working defeat devices,” Judge Ludington wrote.

Bosch and GM had also argued that the entire complaint should be dismissed because it did not contain a “short and plain” statement of the claims, but the judge said in his order that the complaint’s length did not obscure the true nature of the allegations. The two Bosch entities had separately contended that the drivers failed to specify which claims applied to which company, but Judge Ludington said that level of detail is unnecessary to put the Bosch Defendants on notice of the claims against them.

As for the companies’ argument that the CAA preempted the drivers’ state law claims, the judge’s orders said the CAA’s language bars attempts to enforce standards on emissions—not suits like the drivers’, which sought compensation for GM’s alleged “fraudulent concealment of the actual operation of the emissions technology in its diesel vehicles from consumers.” The Defendants’ argument that the case should be stayed in favor of an Environmental Protection Agency investigation was similarly rejected, with Judge Ludington writing that the suit’s claims are not premised on proof that the GM engines involved an “illegal” defeat device or are noncompliant with EPA regulations; at its core, the suit is a consumer protection action. The judge said further:

Accordingly, the factual questions raised by plaintiffs’ suit are only tangentially within the EPA’s specialty. Because the EPA has no regulatory responsibility regarding defendants’ disclosures to consumers, there is no risk of regulatory inconsistency.

The drivers are represented by Steve W. Berman and Jessica Thompson of Hagens Berman Sobol Shapiro LLP. The case is Fenner et al v. General Motors LLC et al. (case number 2:17-cv-11661) in the U.S. District Court for the Eastern District of Michigan. Source: Law360.com

**FIAT CHRYSLER AND DRIVERS REACH SETTLEMENT IN TRANSMISSION LAWSUIT**

A proposed class of drivers has asked a New Jersey federal court to approve a settlement that would end claims that Fiat Chrysler manufactured vehicles with faulty transmissions. Under the terms of the agreement, eligible drivers could receive as much as $2,000 in cash or $4,000 in a trade-in voucher. The amount would depend on the number of complaints drivers made about their transmissions to FCA US LLC dealers. Drivers would also receive an extended warranty, the filing said. “This settlement will deliver prompt relief to class members who would otherwise wait years if litigation continued and may no longer have possession of their vehicles by the time litigation concludes,” the filing said.

Dolores and Albert Granillo and Desiree Nava filed the suit in California state court in July 2015, alleging violations of California consumer statutes and warranty laws. The drivers claimed design or manufacturing defects in certain vehicles’ nine-speed automatic transmissions caused “difficulty in shifting, noisy shifting, harsh engagement of gears, sudden acceleration and deceleration, loss of power, premature transmission wear and transmission failure.”

For the purposes of the settlement, the drivers asked the court to certify a class of people nationwide who bought or leased a Fiat Chrysler vehicle with a nine-speed ZF 9HP automatic transmission as well as subclasses of California consumers. The settlement would include model year 2014 and 2015 Jeep Cherokee, Jeep Renegade, Chrysler 200 and Promaster City vehicles, according to the filing.

Eligible drivers who made at least three transmission-related complaints will be able to receive a cash payment from the automaker or a trade-in voucher to be used toward the purchase of a new Fiat Chrysler vehicle. Additionally, pursuant to the settlement, the automaker will extend the warranty on affected vehicles either to six years or 100,000 miles from when the vehicle was delivered. The agreement names Capstone Law APC lead class counsel and the Law Office of Howard Gutman co-class counsel. The settlement was reached after multiple mediation sessions.


**III. PURELY POLITICAL NEWS & VIEWS**

**THE ALABAMA GOVERNOR’S RACE**

A number of persons have qualified to run for Governor in both the Democratic and Republican primaries. There are several good candidates among the group.
However, I believe Gov. Kay Ivey will win her party’s primary and go on to win in the general election. Thus far Gov. Ivey has done everything necessary to right the ship of state. She has a vision for Alabama that will appeal to voters, but more importantly, it will take our state to new heights economically and socially. As I have said previously Tuscaloosa Mayor Walt Maddox is somebody to watch down the road. I believe he will win the Democratic primary.

**Large Number of Open Incumbent Seats in Alabama Legislative Races**

There will be a number of new faces in the Alabama Legislature when the organizational session takes place after the Fall elections. A large number of incumbent Representatives and Senators are not seeking reelection, opening the door to an influx of new blood. When qualifying papers were filed on Feb. 9, 22 representatives and 10 senators did not run again.

This adds to the pool of already vacant seats—three in the House and one in the Senate. If any of the incumbent candidates who are running for re-election are defeated, even more freshmen could make up the new class in 2018. Among those who are vacating their seats are:

- Rep. Paul Beckman (R-Prattville)—running for Autauga County Probate Judge;
- Sen. Dick Brewbaker (R-Pike Road)—served two terms;
- Rep. John Knight (D-Montgomery)—running for State Senate district vacated by Quinton Ross, who resigned to take presidency of Alabama State University;
- Sen. Slade Blackwell (R-Mountain Brook)—entered the Republican race for Governor, and got out almost as quickly as he got in; and
- Sen. Hank Sanders (D-Selma)—has served in the Senate for nearly 35 years.

Interestingly, Sen. Sanders’ daughter, Malika Sanders-Fortier, a Selma lawyer, qualified to run for Hank’s seat as a Democrat. Based on reports, it’s possible that she will have opposition from one or more independents in the fall.

This has the potential to be the largest class of freshmen legislators since 2010, when the Republicans swept the elections, ousting a number of incumbents. It will be interesting to see how the “new blood” in the legislature works out. Source: Montgomery Advertiser

**IV. COURT WATCH**

**The Mississippi Supreme Court Affirms the State’s $30 Million Verdict Against Two Drug Manufacturers**

Lawyers at Beasley Allen have had the privilege of serving as Special Counsel to Mississippi Attorney General Jim Hood for several years on the Average Wholesale Price Litigation. On Jan. 11, 2018, with a 6-2 opinion, the Mississippi Supreme Court upheld a $30,262,052 verdict against pharmaceutical giants Watson Laboratories, Inc. and Actavis Pharma, Inc., formerly known as Watson Pharma, Inc. (collectively referred to as “Watson”), which was Mississippi’s second AWP trial verdict upheld by the State’s highest court. On appeal was Judge Thomas L. Zebert’s May 14, 2014, findings that Watson fraudulently inflated its Average Wholesale Prices of prescription drugs, causing the Mississippi Division of Medicaid to reimburse pharmacies at artificially inflated prices.

The Mississippi Supreme Court’s opinion entered in Watson Laboratories v. State of Mississippi upheld Judge Zebert’s verdict in favor of the State, awarding compensatory damages ($7,141,552), civil penalties ($5,241,000), punitive damages ($17,879,500), and post-judgment interest.

In its opinion affirming the chancery court, the Court found that Watson committed fraud by submitting prices to the state that were not what they were reported to be. The Court found the State’s evidence to be compelling that the AWPs reported were false, and Watson intended to deceive the State. The Court further held that Mississippi Medicaid had no idea that Watson’s reported AWPs were fabricated numbers and their reliance on Watson’s reporting was reasonable.

With respect to the State’s claims under the Mississippi Consumer Protection Act (CPA), the Mississippi Supreme Court concluded that Watson’s practice was clearly misleading and material, and thus Watson violated the Mississippi Act. This is the second AWP trial victory for the State of Mississippi that has been upheld by the Mississippi Supreme Court. In October of 2015, the Supreme Court upheld a $30 million award against pharmaceutical company Sandoz, holding that its reported prices were fraudulent, unfair and deceptive.

The Supreme Court’s opinion affirming the verdict against Watson is another huge victory for the State of Mississippi. The case against Watson was among dozens of similar cases brought by the State against other drug companies that also manipulated their reported AWPs causing Mississippi to pay too much for prescription drugs for Medicaid recipients. Mississippi has recovered to date more than $199 million in settlements and verdicts in the AWP litigation. Pharmaceutical companies overcharging for drugs to the State’s Medicaid program—a program designed to assist the state’s neediest citizens—is egregious conduct, and the Mississippi Supreme Court agrees.

The majority opinion in the Watson case was authored by Justice Chamberlin; he was joined by Presiding Justices Randolph and Kitchens as well as Justices Maxwell, King, and Beam. The dissent was authored by Justice Ishee; Chief Justice Waller did not participate.

Mississippi Attorney General Jim Hood authorized the filing of these lawsuits against the pharmaceutical companies. Beasley Allen lawyers Dee Miles, Clay Barnett, and Ali Hawthorne, and former Beasley Allen lawyers Roman Shaul and Chad Stewart, along with former Mississippi Governor Ronnie Musgrove, tried the case and won a tremendous victory for the people of Mississippi. The state’s highest court correctly followed the law and upheld the verdict.

**Lawsuit against Sterne Agee Can Move Forward In Alabama**

A lawsuit alleging breach of fiduciary duty, recklessness, fraud and other claims against Sterne Agee—what was once Birmingham’s largest privately owned investment firm before its sale in 2015—can now move forward. The Alabama Supreme Court ruled on Feb. 9 against a petition by the former company’s board of directors. Two of the company’s shareholders filed a derivative suit in Jefferson County Circuit Court alleging that “lavish spending and misappropriation of funds” by the Sterne Agee board, including then-CEO James Holbrook Jr., depressed the investment firm’s value and that its sale to Stifel served to cover up the improprieties.

Among the suit’s claims were that Holbrook bought luxury watches, jewelry and women’s shoes on the company dime, and
that Sterne Agee paid for a 58-foot yacht, 38-foot powerboat and condos in Florida, Utah and Colorado that were “almost used exclusively for Holbrook’s personal pleasure. It was also alleged that Holbrook’s wife was on the Sterne Agee payroll although “she has never performed any work or services for Sterne Agee.”

Before merging with St. Louis-based Stifel, Sterne Agee required its shareholders to agree to drop pending litigation against the company, including for claims of breach of fiduciary duty, in order to receive proceeds from the merger. But Salinas and Wainwright argued that the agreement was not enforceable because the improper conduct is what led to the sale.

While Jefferson County Circuit Court Judge Peyton Thetford sided with the board of directors in a January 2017 ruling, Jefferson County Circuit Court Judge Bernadette Brown Green ruled in favor of the shareholders’ motion to reverse or amend the ruling in May, citing a “manifest error of law” by Judge Thetford. Judge Green also said that the discovery phase of the case could proceed. The board appealed to the Alabama Supreme Court, requesting that the state’s highest court demand the trial court reverse Green’s ruling to reinstate the case.

In the decision, the Alabama Supreme Court said it was not necessary to take that “extraordinary step,” and disagreed with the board that appealing in the event of a judgment against them would be insufficient relief. “The petitioners have an adequate remedy by way of appeal should they suffer an adverse judgment. Accordingly, we deny the petitions,” Alabama Supreme Court Justice Tommy Bryan wrote.

Tom Baddely, with the Birmingham law firm Baddely, Mauro & Yates, who represented the shareholders, said the decision was “a long time coming.” “A terrible injustice was reversed which will give the stockholder employees a chance to obtain fairness and answers about their company and its value after the forced sale to Stifel,” he said in an email to AL.com. It will be most interesting to see what transpires as the case proceeds through the system.

Source: AL.com

$18.5 MILLION BOSTON SCIENTIFIC MESH VERDICT UPHELD

The Fourth Circuit Court of Appeals has rejected Boston Scientific Corp.’s appeal of an $18.5 million verdict in a trial over injuries caused by its Obtryx pelvic mesh devices. The panel said the company had gotten a fair trial. The panel found that the four Plaintiffs in the 2014 trial had brought sufficient evidence to prove their case. The district court’s decisions about the evidence or the jury instructions were not cause for overturning the verdict. Boston Scientific’s claim that the decision to consolidate the Plaintiffs’ claims into one case was unfair and confused the jury was also rejected. U.S. Circuit Judge J. Harvie Wilkinson III, writing the opinion for the panel, said:

The results here were not purchased at the cost of fairness to any party. In these cases, common questions of fact and law formed a substantial part of each suit, and, as we have noted, the district court bent over backwards to ensure that distinct questions of fact and law could be appropriately developed at trial and distinguished by the jury.

The decision upholds a November 2014 jury verdict. Jurors sided with Plaintiffs Jacqueline Tyree, Carol Sue Campbell, Jeanie Blankenship and Chris Rene Wilson on their claims that Boston Scientific’s Obtryx Transobturator Mid-Urethral Sling System was defectively designed and that its warnings about potential injuries arising from the devices were insufficient. The jury awarded $14.5 million in past and future compensatory damages and $4 million in punitive damages. BSC has since settled with two of the Plaintiffs.

On appeal, Boston Scientific challenged the verdict on the following grounds, contending:

• That the court’s consolidation of the four Plaintiffs’ cases allowed evidence that would have been inadmissible in some of the cases to be heard and confused the jury;
• That the court wrongly excluded evidence of the device’s Food and Drug Administration (FDA) approval while admitting what it called hearsay warnings about the materials used;
• That the Plaintiffs had failed to establish specific design flaws or safer alternatives, or provide expert testimony on the adequacy of the product directions;
• That the jury received erroneous instructions on punitive damages.

The panel said BSC had not provided proof that the consolidation resulted in inadmissible evidence reaching the jury or that the jury had difficulty separating the cases, noting the four Plaintiffs all received different awards for future damages, ranging from $3 million to $4 million. Judge Wilkinson said:

The total damages awards were of the same order of magnitude appears to reflect the very similarities between the cases that justified consolidation in the first place.

The panel found the FDA approval evidence was of “questionable relevance” and that the materials warning was not hearsay. That was because the question was whether BSC had received warnings and not if the warnings were true. The panel also found there had been discussion of specific design flaws and safer alternatives at the trial and that expert testimony on the instructions was not legally required. Judge Wilkinson wrote:

This evidence was largely introduced through the testimony of physicians, some of whom testified that there were significant risks not included in the Obtryx’s directions for use. A jury could reasonably conclude based on this evidence that the Obtryx’s instructions were inadequate.

The panel also found the jury instructions on punitive damages conformed to West Virginia law at the time of trial.

The Plaintiffs are represented by Anthony J. Majestro of Powell & Majestro PLLC and Scott A. Love of Clark Love & Hutson GP. The case is Carol Sue Campbell et. al. v. Boston Scientific Corp., (case number 16-2279) in the United States Court of Appeals for the Fourth Circuit.

Source: Law360.com

$25 MILLION TRUMP UNIVERSITY SETTLEMENT UPHOLD BY APPEALS COURT

The Ninth Circuit Court of Appeals has denied a former Trump University student’s challenge to a $25 million settlement over allegations that the president’s defunct real estate training program was a rip-off. The court’s panel said she was not entitled to a second chance to bow out of the class settlement. In a published, unanimous decision written by U.S. Circuit Judge Jacqueline H. Nguyen, the panel affirmed the lower courts’ dismissal of the challenge brought by Sherri Simpson, one of thousands of former Trump University students to receive a class notice in 2015 over a lawsuit that alleged the program was a fraud.

The Plaintiffs in the case say class members will receive 90 percent of what they paid to Trump University. Donald
Trump reached a $25 million settlement in November just days after he was elected president and just before a scheduled trial in San Diego. The settlement includes $21 million for several thousand former students and $4 million to settle a separate fraud case brought by New York Attorney General Eric Schneiderman.

The case is Sherri B. Simpson et al. v. Trump University LLC et al. (case number 17-55635) in the U.S. Court of Appeals for the Ninth Circuit.

Source: Law360.com

V. THE CORPORATE WORLD

BIG PHARMA PAID PATIENT GROUPS TO HELP MARKET OPIOIDS

All Americans should be shocked to learn that the five biggest opioid manufacturers have paid out more than $10 million to patient advocacy groups, professional medical societies and affiliated individuals to promote the sale of the drugs. These groups and individuals then “echoed and amplified” messages that encouraged use of those highly addictive drugs. Without any doubt, this played a major role in the opioid epidemic. The report of a Senate committee investigation, released last month, came to that conclusion.

The committee examined the financial ties between the pharmaceutical industry and outside groups from 2012 through 2017. Sen. Claire McCaskill, DMo., who launched the investigation last spring, had this to say: “I think these groups were cheerleaders too often … cheerleaders for opioids.”

Sen. McCaskill is the ranking Democrat on the Senate Homeland Security and Governmental Affairs Committee, a post she has used to investigate other drug company practices. The Senator’s staff sought information from the five largest opioid drugmakers, measured by global sales in 2015. Those companies are: Purdue Pharma, Janssen Pharmaceuticals, Mylan, Depomed and Insys Therapeutics. Purdue was by far the largest donor to outside advocacy groups, which often bill themselves as grass-roots organizations supporting patients struggling with chronic pain. Among the recipients of drug company largesse:

- the U.S. Pain Foundation
- the Academy of Integrative Pain Management.

Sen. McCaskill said some of these organizations do good work on public policy, but others are “totally dependent” on drug companies for their funding, which casts suspicion on their advocacy.

The committee’s report charges that many of the advocacy groups, buoyed by Big Pharma money, used “opioids-friendly messaging” to undercut state and federal efforts to curb opioid prescribing. For example, the report notes that the American Academy of Pain Medicine and the American Pain Society promoted opioids as “safe and effective” for treating chronic pain and “minimized” the risk of addiction. The report says the American Academy of Pain Medicine and the Center for Practical Bioethics spoke out against federal efforts to limit opioid prescribing.

The Centers for Disease Control and Prevention (CDC) issued guidance in 2016 to doctors on when to prescribe opioid pain medication in primary care settings. The CDC recommended offering non-opioid therapies for chronic pain except in cases of active cancer treatment, palliative care and end-of-life care.

Some of the groups and their funders said a public health crisis is being created by the response to the opioid epidemic because chronic pain patients have difficulty getting narcotics, which is often the only thing that can address their unrelenting pain. “There are serious moral questions on both sides,” said John Carney, executive director of the Center for Practical Bioethics in Kansas City, Missouri. The opioid epidemic is “a national crisis, but there are lives ravaged by pain, and that’s the crisis, too, and should not be ignored.” As states moved to restrict the length and frequency of opioid prescriptions, drug companies and the patient groups fought back with aggressive lobbying and heavily financed campaigns.

Because of the public uproar, Purdue’s employees will no longer visit doctors offices to pitch opioids. The company also will cut its sales force by half to 200 people. The drugmaker’s medical affairs staff will now handle questions pertaining to the drugs, according to Purdue. Sen. McCaskill called Purdue’s announcement “a major step forward,” but said the Senate report is “the tip of the iceberg” in terms of how drug company money shapes health care policy debates and legislative outcomes.

Sen. McCaskill plans to pursue legislation that would force advocacy groups to disclose their funding sources. The Senate report says the Academy of Integrative Pain Management and the American Cancer Society Cancer Action Network led an effort to protect a 2001 Tennessee law that made it difficult to discipline doctors for overprescribing opioids. Bob Twillman, the academy’s executive director, said the law was more of “an imagined impediment than a real impediment,” and his group wanted to revise it rather than repeal it.

Source: Law360.com

WILL OTHER DRUGMAKERS FOLLOW PURDUE ON OPIOID MARKETING?

Purdue Pharma’s decision to scale back its opioid marketing because of the onslaught of litigation involving the drug manufacturers will most likely force many big drugmakers to consider similar moves. This has the potential to be a seminal moment in the nation’s tragic opioid epidemic. As we mentioned above, Purdue announced on Jan. 12 that it cut its sales force in half and stopped sending opioid promoters to physician offices, “effective immediately.”

The decision came as Purdue and other opioid sellers are involved in multidistrict litigation (MDL) in an Ohio federal court. U.S. District Judge Dan Polster has stated that he wants a quick settlement that would sharply cut the number of narcotic painkillers in circulation. If anybody believes that Purdue would have made the decision unless forced to do so by the onslaught of litigation, there are some choice beach lots available in Nevada.

In any event, it’s quite obvious that Purdue has put other drug companies behind the eight ball, so to speak. Experts say that Purdue’s move puts other opioid makers in the uneasy position of weighing the financial blow in lost sales against the reputational hit and litigation risks of continuing to promote opioids. The opioid epidemic—which caused average U.S. life expectancy to drop in 2015 and 2016, according to federal researchers—is huge and has the potential to literally cripple the United States over time.

But despite concerns about appearances, other companies are only likely to curtail opioid marketing if it makes financial sense, said Michael Carome, director of Public Citizen’s health research group. “If they think that doing the same thing might help their bottom line, they would do it,” Carome said. Purdue may believe that its proactive limits on opioid promoto-
tion will help when negotiating legal settlements. Carome stated:

_to the extent they can portray themselves as being a reformed corporate wrongdoer, maybe they hope to get more favorable treatment in those negotiations._

It should be noted that Endo Pharmaceuticals Inc., another Defendant in the MDL, had announced in December 2016 that it would stop promoting opioids to doctors. Apparently other opioid manufacturers failed to get that message.

It was reported by Law360 that Purdue's decision was driven by a number of factors: bad press the company has received for marketing OxyContin, the tsunami of opioid litigation swamping the company, and pressure from Judge Polster to quickly reach a settlement. Richard Ausness, a professor at the University of Kentucky College of Law who has written about the opioid litigation, stated:

_they seem like such villains now, and if a case ever went to the jury, they’d probably [get] hammered. So if they can maybe overcome a little of that and improve their reputation with the public, I could see where they might be willing to do that._

Purdue is a privately held company. OxyContin has reportedly generated $35 billion in sales since its debut in 1995; annual sales of OxyContin peaked at $3.1 billion in 2010 and have since declined slightly, according to the Los Angeles Times. It should be noted that Purdue settled a criminal case with the U.S. Department of Justice in 2007 for $600 million over its marketing of OxyContin. The $600 million in fines and indictments haven’t slowed Purdue down and over the last 10 years it has continued its aggressive marketing of opioids.

Source: Law360.com

**MARYLAND REACHES $81 MILLION SETTLEMENT OVER MEDICAID TECHNOLOGY**

Maryland will recover $81 million from a contractor that the state says failed to rebuild the state’s Medicaid computer system. Attorney General Brian Frosh announced the settlement with Computer Sciences Corporation, which was a state contractor to the state health department. The Attorney General says this compensates the state for the damages suffered from the failure of the company to live up to its obligations. The state ended its $170 million contract with Computer Sciences Corp. in 2015 after complaining for a year about the company’s work. The state has already paid about $27 million to the company, with much of the money coming from federal funds. The attorney general’s office says the settlement resolves claims by both parties.

Source: Associated Press

**JUDGE RAKOFF REJECTS BID TO SEAL RIDERS IN $3 BILLION PETROBRAS SETTLEMENT**

U.S. District Judge Jed S. Rakoff has refused to seal three side agreements submitted to him by class counsel in the $3 billion Petrobras investor suit settlement. The judge said there is a "certain irony" to trying to keep the documents under wraps when the suit stemmed from an alleged lack of disclosure by the Brazilian oil giant. Lawyers for the investors, who have claimed that Petrobras concealed billions of dollars in bribes and kickbacks, sent the agreements to Judge Rakoff along with a letter setting out what were described as "strategic reasons" for seeking to keep the material confidential. Judge Rakoff denied the request and he let the parties know how he felt about keeping aspects of a settlement confidential. The judge wrote:

—from Sykes-Picot to Iran-Contra, secret agreements always have their apologists, but they rarely serve the public interest.

Two of the agreements provide mechanisms for some of the Defendants in the case—namely, Petrobras and its auditor, the Brazilian arm of PricewaterhouseCoopers—to terminate the settlement if opt-outs from the deal reach certain thresholds. The third agreement includes provisions dealing with attorneys’ fees awarded by the court, including such things as what happens if those fees are later reduced or reversed on appeal. Judge Rakoff was concerned that there be complete transparency regarding everything related to the stipulation of settlement. He wrote:

—there is a certain irony in counsel for plaintiffs—who have promised their claim of fraud on defendants’ alleged failure to disclose material information—seeking to keep secret three agreements that are a material part of the settlement.

Judge Rakoff added that the court "should be guided by the basic principle that all material parts of a proposed class action settlement should be available for public review and comment," as opposed to the "parties’ and their counsels’ strategic concerns."

The agreements came as "riders" to the proposed $3 billion settlement that investors presented to Judge Rakoff for preliminary approval. The settlement, which investors described in filings as "the largest securities class action settlement in a decade," includes the $2.95 billion agreement with Petrobras and adds an extra $50 million to be paid by Petrobras auditor PricewaterhouseCoopers Auditores Independentes.

This settlement, if approved, would close the door on a closely watched lawsuit that raised a number of serious questions about the limits of securities class actions. Judge Rakoff’s original decision to certify two classes of investors was partly reversed by the Second Circuit last year because it was unclear whether trades by class members were "domestic" by the standards set in the Supreme Court’s 2010 Morrison ruling.


Source: Law360.com

**VI. WHISTLEBLOWER LITIGATION**

**A VICTORY FOR TAXPAYERS IN AN ALABAMA WHISTLEBLOWER LAWSUIT**

Lawyers in our firm’s Consumer Fraud & Commercial Litigation Section tried and won a very important “whistleblower case” last month. The jury in the federal court in Birmingham, Alabama returned a multi-million-dollar verdict in favor of whistleblower Barry Taul, who uncovered and reported an illegal kickback scheme and false billing that defrauded Medicare and taxpayers. After discovering the fraud perpetrated by Nagel Enterprises and Abanks Mortuary & Crematory, Mr. Taul suffered physical abuse at the hands of his employers, as well as death threats against him and his family in an effort to intimidate him so he would not report the wrongdoing. After he eventually left his
job with that company and reported the fraud. Mr. Taul was disparaged and falsely maligned to future employers, resulting in his being wrongly terminated from other positions.

Mr. Taul was represented by Beasley Allen lawyers Larry Golston, Lance Gould and Leon Hampton. Larry had this to say:

**Mr. Taul faced personal danger to do the right thing and report it when he witnessed illegal activity that was cheating government health care programs. His employer went to great lengths to silence him, even to the point of threatening to cremate him alive! This was one of the most horrifying cases I've seen attempting to intimidate and retaliate against a whistleblower, who was just trying to do the right thing. We feel very gratified to have been able to help him bring these wrongdoers to justice.**

Mr. Taul began working for Nagel-Abanks in June 2006. The funeral home and crematorium had an arrangement with the Alabama Organ Center to collect tissues for life-saving transplants and medical research prior to the deceased being cremated. During the course of his employment, Mr. Taul uncovered a scheme whereby Defendants Nagel-Abanks and its owner Jed Nagel made illegal kickback payments to Demosthenes “Dem” Lalisan, Director of the Alabama Organ Center, and Richard Alan Hicks, Associate Director of the Alabama Organ Center, in exchange for contractual referral business from the Alabama Organ Center. He additionally discovered fraudulent charges were added to the company’s books in order to obtain unwarranted payment or Medicare reimbursement.

The scheme violated the federal False Claims Act and the Anti-Kickback Statute. It was estimated the scheme allowed Nagel-Abanks to bill up to $60,000 each month in false charges to the Alabama Organ Center, paid with government grants, Medicare and other federal and taxpayer dollars. The suit was tried in the United States District Court Northern District of Alabama Southern Division.

**WHISTLEBLOWERS HIGHLIGHT CUSTOMS FRAUD**

The Department of Justice (DOJ) announced in February that Home Furnishings Resource Group, headquartered in Hermitage, Tennessee, will pay $500,000 to resolve claims that it made false statements on customs declarations. The false statements were designed to avoid paying antidumping duties on wooden bedroom furniture imported from China. At the time of the alleged conduct in this case, wooden bedroom furniture imported from China was subject to a 216 percent antidumping duty, while non-bedroom furniture was not subject to an antidumping duty.

The settlement resolves a lawsuit filed under the whistleblower provision of the False Claims Act. As we have previously written, the act permits whistleblowers to file suit on behalf of the United States against persons or entities who falsely claim federal funds or, as in this case, who avoid paying funds owed to the government. The act allows the whistleblower, in this case one of Home Furnishing’s competitors, to receive a share of the funds recovered.

The settlement in the Home Furnishing Resource Group case follows news of other similar settlements:

- In January, the Department of Justice announced that Virginia-based Bassett Mirror Company paid $10.5 million to settle claims that it knowingly misclassified Chinese-imported furniture on official documents to avoid antidumping duties.
- In January, the U.S. Attorney’s office for the Northern District of Georgia announced a $2.3 million settlement with textile importer American Dawn, Inc., and its executives, to resolve claims that the company intentionally misclassified imported goods to pay lower tariffs.
- Pure Collection, a British fashion retailer, recently paid $900,000 to settle claims that it illegally avoided customs duties by splitting large packages being shipped into the U.S. into multiple smaller packages.

Beasley Allen lawyers continue to handle whistleblower claims related to violations of the customs laws. Persons employed in the customs industry, such as customs brokers, compliance analysts, and data entry clerks, are often in the best position to uncover such fraud. Successful whistleblowers are rewarded with a percentage of the recovery obtained on behalf of the government. For further information, call 800-898-2034 and ask for our lawyers Archie Grubb (Archie.Grubb@BeasleyAllen.com), Andrew Brasher (Andrew.Brasher@BeasleyAllen.com), Lance Gould (Lance.Gould@BeasleyAllen.com), or Larry Golston (Larry.Golston@BeasleyAllen.com).

**RULING BY U.S. SUPREME COURT IN DODD-FRANK WHISTLEBLOWER LAWSUIT**

The U.S. Supreme Court has narrowed the scope of whistleblower protection under the Dodd-Frank Act, ruling unanimously that employees must first report alleged securities violations to the U.S. Securities and Exchange Commission (SEC). The decision in *Digital Realty v. Somers* stated that simply complaining of wrongdoing within the employee’s company does not trigger the protections of the law, insulating securities firms from at least some whistleblower lawsuits. Adhering to the language of the Dodd-Frank law, Justice Ruth Bader Ginsburg, writing for the court, said, “To sue under Dodd-Frank’s anti-retaliation provision, a person must first ‘provide[e]’ … information relating to a violation of the securities laws to the commission.”

The U.S. solicitor general’s office told the justices that a narrow interpretation of whistleblower protections would fail to protect certain employees, including lawyers, who are required in some instances to first report misconduct internally. Justice Ginsburg wrote:

> Our reading shields employees in these circumstances, however, as soon as they also provide relevant information to the commission. True, such employees will remain ineligible for Dodd-Frank’s protection until they tell the SEC, but this result is consistent with Congress’ aim to encourage SEC disclosures.

Two federal appeals courts reached opposite conclusions: the Fifth Circuit said tipsters must first to go the SEC, and a divided Second Circuit found protections for those employees who first reported misconduct to company officials. The high court’s ruling overturned a Ninth Circuit decision.

At this juncture, I am not sure how this decision will affect whistleblower litigation. Our Whistleblower Litigation Team will do a more thorough analysis of this opinion. Hopefully, the decision won’t wind up hurting both employees and employers. After my reading of the opinion, however, it has the potential to hurt both and I don’t believe that is what Congress intended.
VII. CONGRESSIONAL UPDATE

SENATORS FILE BILL AIMED AT CURBING OPIOID CRISIS

A bipartisan group of U.S. senators have introduced legislation aimed at stemming the opioid crisis. The bill, Advancing Cutting-Edge Research Act, is aimed at giving the National Institutes of Health (NIH) more flexibility in funding research on new treatments for pain management and opioid addiction. Introduced by Sens. Lamar Alexander, R-Tenn.; Patty Murray, D-Wash.; Todd Young, R-Ind.; and Maggie Hassan, D-N.H., the proposed bill would give the NIH director the authority to approve research projects, allowing the agency to partner with companies to research ways to tackle the opioid epidemic. Sen. Alexander said in a statement:

[NIH Director] Dr. Francis Collins has predicted that the development of a new, non-addictive painkiller could be achieved within five years with consistent funding and more flexible authority to conduct the necessary research. This legislation builds on the 21st Century Cures Act by giving the NIH even more flexibility to conduct research to address the opioid crisis, for example by entering research contracts more quickly or partnering with innovative companies.

The bill comes after the Senate approved a $300 billion two-year budget agreement that includes $6 billion to counter the effects of the opioid epidemic.

Source: Charleston Gazette-Mail

VIII. PRODUCT LIABILITY UPDATE

GOOD YEAR’S G159 CALLED ‘THE WORST TIRE MADE IN HISTORY’

Our firm has handled a number of cases involving bad Goodyear tires. One of the tires is the G159, which has been described as “the worst tire made in history.” We have had several cases involving the G159. We wrote on that tire in the Jan. 2018 issue of the Report at page 5. Recently Ryan Felton, Transportation and Technology Reporter with Jolopkin, wrote an excellent article on the litigation history of this tire, titled “How Goodyear hid evidence of the worst Tire made in history.” It is well worth reading and discusses a number of G159 cases. One of the cases mentioned was handled by our firm. You can request a copy of the Felton article, dated Jan. 29, 2018, from Shanna Malone at Shanna.Malone@beasleyallen.com.

E-CIGARETTE DEeming RULE By FDA Targeted IN LAwSUITS

Plaintiffs representing the vaping industry simultaneously filed three federal lawsuits against the U.S. Food and Drug Administration (FDA) over the agency’s deeming rule that went into effect in August 2016. These lawsuits were filed in federal courts in Minnesota, Texas and Washington, D.C. Each lawsuit seeks injunctive and declaratory relief barring the enforcement of the rule.

The Pacific Legal Foundation represents the Plaintiffs who are contesting the rule that grants the FDA the authority to regulate electronic nicotine delivery systems (ENDS), including electronic cigarettes and e-vapor products, as tobacco products. Under the rule, all ENDS, e-cigarettes and vaping products dating back to 2007 must be approved by the agency for manufacturers and retailers to market their products as a less harmful alternative to traditional tobacco.

The Plaintiffs’ primary argument asserts that the deeming rule is unconstitutional because it violates the First Amendment. They also argue that the FDA incorrectly promulgated the rule because it was issued by an associate commissioner at the agency, instead of an agency executive, and is therefore unconstitutional under the Appointments Clause.

It will be interesting to see how the new cases fare against the badly needed regulations. If you need additional information, contact Will Sutton at 800-898-2034 or by email at William.Sutton@beasleyallen.com.

Source: Lexology

$12.5 MILLION VERDICT RETURNED AGAINST SUZUKI IN MOTORCYCLE CRASH CASE

A Georgia state court jury has returned a $12.5 million verdict against Suzuki Motor Corp. in a trial over a motorcycle accident that broke a man’s spine and permanently injured him. The jury found that a defective front brake caused the 2013 crash. The jury awarded Adrian Johns $10.5 million and $2 million to his wife, Gwen, after a four-week trial that left him with a permanent spinal injury. Johns underwent spinal stabilization surgery and has permanent pain, numbness and tingling in his left leg and arm as the result of his cervical cord injury. Those injuries caused Johns to lose his jobs in the Air Force Reserve and as a post office mail handler.

The jury did find that Johns was 49 percent at fault in the accident due to his lack of maintenance in not changing the brake fluid and brake hoses on his 2006 Suzuki GSX R-1000 motorcycle.

Source: Lexology
It was contended by Johns that Suzuki knew in 2012 there was a problem with the front brake on some of its sport bikes in the GSX-R series, but chose to delay a recall. It was during this delay that Johns had his accident in August 2013. In October 2013, Suzuki recalled about 200,000 GSX-R series motorcycles from model years 2004 to 2013 for front brake issues.

Suzuki argued the accident was caused by rider error and poor maintenance and that the recall condition was unrelated to the crash. Suzuki says it will appeal the verdict to the state court of appeals.

The Johns are represented by John Sherrod of Sherrod & Bernard PC and Randy Edwards and Paul Piland of Cochran & Edwards LLC. The case is Johns v. Suzuki et al. (case number 14SV000043) in the Douglas County State Court, Georgia.

IX. MASS TORTS UPDATE

BEASLEY ALLEN FILES OPIOID LAWSUIT ON BEHALF OF ALABAMA COUNTY

Beasley Allen has filed another of the governmental entity lawsuits against opioid manufacturers and distributors. This one was filed on behalf of an Alabama county. The complaint in this case, filed on behalf of Barbour County, Alabama, alleges the marketing of these drugs contributed to the creation of the opioid epidemic, a public health and safety crisis. Responding to the opioid crisis has required Barbour County to sustain economic damages and to continue to bear a significant financial burden.

Decisions made in the pharmaceutical companies’ board rooms regarding prescription opiates have devastated so many lives and communities. Choosing to turn a blind eye to suspicious orders was simply a way to quench their insatiable greed. Such callous disregard for human life and dignity, not to mention the enormous and needless cost to taxpayers, must be met with equally severe and deliberate consequences. Economic damages resulting from the opioid epidemic include:

- costs for providing medical care, therapeutic care and treatments for patients suffering from opioid-related addiction or disease, including overdoses and deaths;
- costs for providing counseling and rehabilitation services;
- costs for treating infants born with opioid-related medical conditions; public safety and law enforcement expenses; and
- care for children whose parents suffer from opioid-related disability or incapacitation.

Barbour County residents, like many in communities across our state and nation, have watched friends and family suffer incredible pain because of opioid addiction, and tax payers have been forced to clean up the mess caused by negligent and greedy pharmaceutical companies. We seek in this lawsuit to recover the profits drug companies obtained after knowingly marketing the highly addictive prescription drugs to unsuspecting residents in Barbour County.

Defendants include Purdue Pharma L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Teva Pharmaceutical Industries, LTD.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Johnson & Johnson; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals Inc.; Janssen Pharmaceutical Inc. n/k/a Janssen Pharmaceuticals, Inc.; Noramco, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Allergan PLC n/k/a Actavis PLS; Watson Pharmaceuticals, Inc. n/k/a Actavis, Inc.; Watson Laboratories, Inc.; Actavis, LLC; Actavis Pharm a, Inc. n/k/a Watson Pharma, Inc.; Mallinckrodt plc; Mallinckrodt LLC; McKesson Corporation; Cardinal Health, Inc.; and Amerisource-Bergen Drug Corporation.

The complaint is filed in the U.S. District Court for the Middle District of Alabama. Barbour County is represented by Beasley Allen lawyers Rhon Jones, who is head of the firm’s Toxic Torts Section, Rick Stratton, Will Sutton and Ryan Kral, along with Eufaula lawyer Walter Calton.

OPIOID CASES ON BEHALF OF INDIVIDUALS ARE BEING HANDLED BY OUR FIRM

Recently, there has been a significant amount of media attention on the litigation surrounding the national opioid epidemic. However, the attention has focused almost entirely on lawsuits filed on behalf of states, cities and municipalities. In December 2017, the Judicial Panel on Multidistrict Litigation ruled that the growing number of opioid lawsuits filed by local governments across the country blaming drug companies and distributors for contributing to the national opioid epidemic would be centralized in a multidistrict litigation (MDL) in the Northern District Court of Ohio under U.S. District Judge Aaron Polster. Since then, the MDL has grown to about 180 lawsuits, and that number is expected to grow even larger in the months to come as new Plaintiffs and Defendants are added.

Opioid manufacturers named in these lawsuits include Purdue Pharma LP, Teva Pharmaceuticals USA Inc., Johnson & Johnson, Endo Pharmaceuticals Inc., Allergan Inc., and Mallinckrodt LLC. Distributors targeted include Cardinal Health Inc., Amerisource Bergen Corp., and McKesson Corp, as well as units of CVS Health Corp., and Wal-Mart Stores Inc. State and local governments are accusing the drug makers of overstating the benefits of opioids while downplaying the risks. Distributors are blamed for failing to monitor and report suspicious drug orders to authorities. We mentioned the case filed by our firm on behalf of the state of Alabama in the Capitol Comments Section of this issue.

Even though the attention given to these lawsuits filed on behalf of states, cities and municipalities is well deserved and certainly justified, we must not forget the irreparable impact that the opioid epidemic has had on people—the individuals and families who have suffered personal injuries and deaths.

According to the Centers for Disease Control (CDC), more than 600,000 people died from drug overdoses between 2000 and 2016. Approximately 66 percent of drug overdose deaths involve an opioid. On average 115 Americans die every day from an opioid overdose. The CDC also reports that “[w]e now know that overdoses from prescription opioids are a driving factor in the 16-year increase in opioid overdose deaths.

The amount of prescription opioids sold to pharmacies, hospitals and doctors’ offices nearly quadrupled from 1999 to 2010, yet there had not been an overall change in the amount of pain that Americans reported. These numbers paint a picture completely different than the marketing message opioid manufacturers presented to physicians and health care providers—that addiction was only a concern in people with a history of substance abuse.

Beasley Allen lawyers are currently investigating individual opioid injury and death claims involving brand-name pre-
scription opioid usage. The claims include the following:

- Death due to overdose;
- Hospitalization due to overdose;
- Hospitalization due to symptoms of overdose; and
- Addiction treated with inpatient rehab litigation.

Of course, our firm is also representing government entities in the opioid litigation. For more information, contact Melissa Prickett or Roger Smith at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com or Roger-Smith@beasleyallen.com.

Sources: United States Judicial Panel on Multi-district Litigation, December 5, 2017 Transfer Order; CDC

JOHNSON & JOHNSON AND IMERYS DOCUMENTS REVEAL MORE CANCER LINKS TO TALC, ASBESTOS AND HEAVY METALS

New information highlighting the links between talc, asbestos, heavy metals and cancer continue to surface in the litigation involving ovarian cancer victims. Johnson & Johnson is being pressed for answers about the health risks of its still popular talcum powder products, including Johnson's Baby Powder and Shower To Shower. The company's denials and false statements are beginning to catch up with them.

Lawsuits filed by ovarian cancer and mesothelioma victims are revealing never-before-seen documents from Johnson & Johnson and talc supplier, Imerys. That shed light on just how prevalent asbestos and heavy metals are in the talc used in Baby Powder. The documents also show the two corporations' response to growing concerns about cancer risks. Ted Meadows, a lawyer in our firm's Mass Torts Section and co-lead counsel in the litigation, is beginning to catch up with them.

In a 2017 trial on behalf of a woman whose ovarian tissue was found to contain talc, asbestos and heavy metals, an Israeli researcher testified that J&J had hired his lab to test talc samples for asbestos contamination. When a majority of the sample batches were found to be positive for asbestos, J&J stopped funding the project. A St. Louis jury returned a $110 million verdict against J&J and Imerys in that case.

In a 1997 letter, a toxicology expert hired by J&J told the company that at least nine studies had shown a statistically significant ovarian cancer risk for women who apply talc products in their genital areas. The expert warned J&J at the time that its response to the cancer threat could cause a public opinion backlash similar to that faced by the tobacco industry when they denied cigarettes caused lung cancer.

Thanks to our courageous clients, lawyers on our Talc Litigation Team are finally getting a fuller picture of what these companies knew about the safety of their iconic talc products. We are hopeful that these companies will once and for all acknowledge the concerns they have expressed in private for more than a generation.

COSMETICS MANUFACTURERS NOW WARNING OF OVARIAN CANCER RISK

As the talcum powder litigation progresses, and enormous Plaintiff verdicts against Johnson & Johnson continue to stack up, other cosmetics manufacturers are taking note. Those companies are recognizing what Johnson & Johnson has known for decades—that perineal talcum powder use for feminine hygiene significantly increases a woman's risk of ovarian cancer. Consequently, some manufacturers are now adding ovarian cancer warnings to their body powder containers. The photograph below shows how one company changed its label to include the warning of a cancer risk.

Angel ofMine Baby Powder (Greenbrier International, Inc.), Spring Fresh Body Powder (Belcam, Inc.), and most recently Perfect Purity After Shower Deodorant Body Powder (Davion, Inc.)—all carried by national retailers like Walmart and Dollar Tree—now warn of the increased risk of ovarian cancer associated with perineal use. Other manufacturers are soon likely to follow suit. How can Johnson & Johnson continue to deny the obvious?

The U.S. Code of Federal Regulations requires a cosmetics manufacturer to place a warning on their product “whensoever necessary or appropriate to prevent a health hazard that may be associated with the product.” (21 CFR 740.1) Although this law has existed for years, the cosmetics industry is largely self-regulated. The FDA relies on cosmetics manufacturers to warn when the manufacturer deems it appropriate.

It’s truly rewarding for see industry adjusting its practices, and warning the public, as a direct result of the brave commitment of our clients to take on a giant like Johnson & Johnson. And if Johnson & Johnson’s “first responsibility” is to “mothers and fathers and all others who use (their) products and services,” as its corporate credo suggests, then there is absolutely no excuse for its failure to warn unsuspecting women using its talc products that they are at an increased risk of a very dangerous cancer. As long as Johnson & Johnson refuses to warn, Lawyers on our Talc Litigation Team will work hard to hold them accountable. If you need more information contact David Dearing at 800-898-2034 or by email at David.Dearing@beasleyallen.com.
Xareleto Multidistrict Litigation Set To Remand 1,200 Cases

Currently, there are approximately 20,000 cases filed in the Xareleto Multidistrict Litigation (MDL) in the U.S. District Court for the Eastern District of Louisiana. To date, the MDL court has held three bellwether trials, all of which took place in 2017. The next phase of the MDL litigation will include case-specific discovery for 1,200 cases followed by remand to each case’s original jurisdiction for individual trials. Judge Fallon has indicated that the 1,200 cases will consist of 400 Plaintiff-selected cases, 400 Defense-selected cases, and 400 randomly selected cases. Case selections and case-specific discovery is expected to begin during the first half of 2018.

In addition to case-specific discovery, general discovery applicable to all cases will continue in the MDL. The parallel state court litigation in Philadelphia continues to move at a fast pace. Three state court trials are currently set for March, April, and June of 2018.

Andy Birchfield, the head of Beasley Allen’s Mass Torts Section, serve as Co-Lead Plaintiff Counsel for the Xareleto MDL, and numerous lawyers from our firm continue to work in both the MDL and the Philadelphia litigation on behalf of thousands of individuals injured by Xareleto. If you need more information on this litigation, contact Joseph VanZandt or Sonny Wills, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Joseph.VanZandt@beasleyallen.com or Sonny.Wills@beasleyallen.com.

X.
WORKPLACE HAZARDS

Can My Employer Fire Me For ...?

It never ceases to amaze me how most people are unaware of their employment rights with respect to termination or other adverse employment actions. In the absence of an employment contract that specifically defines when a termination is allowed, employers are allowed to terminate employees for any reason or no reason at all as long as the termination does not violate certain federal or state statutes. This employment relationship between employer and employee is entitled “employee at-will.” The employment relationship is based on the right of the employer and the employee to terminate the relationship at any time and for almost any reason.

Like most rules, there are exceptions to the employee at-will policy. First, employers are not allowed to terminate any employee in violation of Title VII of the Civil Rights Act of 1964. This federal law prohibits employers from basing an employment decision on an employee’s race, sex, color, national origin, or religion. Most people are aware of Title VII restrictions as the case law is well developed and because it is a federal statute, it applies to every citizen and employer in the United States of America. Other exceptions to the employee at-will doctrine are not so well known.

For example, is some states employers may not terminate an employee who has sustained an on-the-job injury who is seeking to pursue his or her rights under the state’s workers’ compensation statute. Some states (like Alabama) have these anti-retaliation laws in place and some do not. When an employer decides to retaliate against an injured worker for pursuing their workers’ compensation rights, seldom does the employer tell the employee “you’re being fired for filing a comp claim.” That’s where the attorney comes in. Through discovery and investigation, a good attorney will be able to prove that the employee was terminated for retaliation even when the employer says the termination was for a legitimate reason.

There is another exception to the employee at-will doctrine that is also not well known that also deals with workplace safety. Let’s assume an employee observes unsafe working conditions that exposes employees to a hazardous working environment. What should that employee do? That employee should contact the Occupational Safety and Health Administration (OSHA) to report the condition. OSHA takes steps to maintain confidentiality.

Even if the employer discovers the reporting employee’s identity, that employee is protected by OSHA’s Whistleblower laws that prevent employment retaliation for engaging in protected activity relating to workplace safety or health. Thus, if an employee observes unsafe working conditions that are dangerous to the employee or their co-worker, the employee should speak up to protect him or herself as well as their co-workers. Silence can be deadly.

If you are an employee who feels you were terminated, demoted or caused to work in a hostile environment in violation of federal or state law, do not suffer in silence. Contact a lawyer as soon as possible for assistance. Keep in mind, these claims have different filing requirements with respect to the timing and the form of the filing to protect worker rights. It is important to contact a lawyer as soon as practicable to ensure that your rights can be properly protected and adjudicated if necessary.

If you need more information, contact Larry Golston, a lawyer in our firm’s Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Larry.Golston@beasleyallen.com. Larry handles employment-related litigation for our firm.

XI.
TRANSPORTATION

$100 Million Settlement in Medical Helicopter Crash Suit

David Repsher, a flight nurse who was severely burned over 90 percent of his body in a 2015 Colorado medical helicopter crash, has agreed to a $100 million settlement with helicopter manufacturer Airbus Helicopters and medical transporter Air Methods Corp. Airbus will pay $55 million and Air Methods will pay $45 million to settle the Colorado state court lawsuit. The Plaintiff alleged in his lawsuit that a poorly attached aftermarket seat installed by Air Methods came loose and threw him into burning fuel leaking from a fuel system Airbus had failed to update to modern crash resistance standards. Gary Robb, the lawyer who represented Repsher, said “This technology has been available since the 1960s.”

The claims by Repsher and his wife arose from the July 3, 2015, crash on takeoff of an Air Methods-operated Airbus Helicopters model AS350-B3e in Frisco, Colorado. The pilot was killed, with Repsher and another nurse injured. Repsher sustained third- and fourth-degree burns to 90 percent of his body. He was hospitalized for 13 months, required a kidney transplant and was left with permanent hearing loss and severe disfigurement of and loss of function in both his hands.

Repsher was seated in an aftermarket seat installed by Air Methods. The lawsuit claimed the seat was anchored only to the rear partition of the helicopter and not the floor. As a result, the seat tore loose on
impact and ejected Repsher into the burning fuel leaking from the helicopter.

The leak and fire on the fuel system were blamed in the suit. The helicopter, manufactured in 2013, did not have the crash-resistant fuel systems the Federal Aviation Administration (FAA) has mandated for helicopters since 1994. Because the AS350 was designed and FAA certified prior to 1994, it was not required to meet the new standards. In announcing the settlement, it was stated:

Although Airbus Helicopter had been manufacturing crash-resistant fuel systems for more than 20 years, the company did not offer customers such as Air Methods any option to retrofit their fleet’s Airbus helicopters to provide crash-resistant fuel systems.

Air Methods says it has taken “proactive steps” to improve the safety of its aircraft. The company said in a statement:

As part of our commitment, we have received the first Airbus AS350 helicopter with the new, FAA-approved crash-resistant fuel system. Additionally, we are retrofitting our entire Airbus AS350 and EC130 fleet with the updated CRFS.

Repsher is represented by Gary C. Robb and Anita Porte Robb of Robb & Robb LLC. The case is David Repsher et al. v. Air Methods Corp. et al. (case number 2015-cv-30146) in the District Court of Summit County, Colorado.

Source: Law360.com

COUNTERFEIT PARTS CONTINUE Raising Alarm For Aviation In The U.S.

As this Report has discussed previously, counterfeit parts have flooded the U.S. aviation industry, making their way on to military and civilian aircraft. Recent reports and anecdotal evidence demonstrate that the problem is more extensive than it appears on the surface. In a two-part series, we will highlight the shortfalls within the nation’s aviation industry and the federal oversight of counterfeit or suspected unapproved aircraft parts.

For example, Reuters reported, in December, that United Technologies Corp. (UTC) agreed to pay $1.06 million to resolve claims over falsely certified counterfeit parts used in U.S. Army helicopter engines. UTC indirectly owned Goodrich Corp. (Goodrich), a subcontractor for Rolls-Royce, which contracted with the Army to supply helicopter engines. During a seven-year period (2005 to 2012), Goodrich bought and shipped pump and engine control systems, including microprocessors (computer chips), from a company in China, according to Securing Industry. Jeffrey Krantz and Jeffrey Warga owned companies that acquired the parts and falsely certified their authenticity, the U.S. Department of Justice (DOJ) reported when it sentenced each of the men to their own hefty fines and three years’ probation.

The counterfeit parts were incorporated in the engines’ digital control system primarily used in OH-58 Kiowa Warrior aircraft and A/MH-6M Mission Enhanced Little Bird. In August 2011, it was an A/MH-6M Mission Enhanced Little Bird that crashed, killing Chief Warrant Officer 3 Steven B. Redd and Captain John D. Hortman, who were assigned to the 160th Special Operations Aviation Regiment at Fort Campbell, Kentucky, the Ledger-Enquirer reported. The military investigated the crash and discovered that the computer chips were indeed fake and while the counterfeit parts didn’t contribute to the crash, the potential threat to military aviation and national security did not go unnoticed by federal lawmakers.

Five months before the crash, the U.S. Senate Armed Services Committee launched its own investigation into counterfeit electronic parts that were making their way into the Department of Defense supply chain. Working with defense contractors, the committee discovered 1,800 cases of suspected counterfeit parts over a two-year period, which involved a million individual parts. Senators chastised contractors that failed to report counterfeit parts and suspect suppliers as required by law. Senator Carl Levin, D-Michigan, was the ranking committee member and explained that “[i]t is unacceptable for use” causing a defect in the P-8A Poseidon’s ice detection module.

The danger to national security was clearly illustrated by Raytheon’s failure to alert the Navy about counterfeit transistors used in the forward-looking infrared (FLIR) system of the SH-60B helicopter. The transistors were incorporated in the electromagnetic filters installed on the FLIR, which also contains a laser for targeting the SH-60B’s Hellfire missiles. The failure caused by the counterfeit part could essentially render the SH-60B and its Hellfire Missiles useless in surface warfare missions.

Watch for our second installment of this series in the Report’s April edition. If you need additional information about this subject, contact Mike Andrews, a lawyer in our firm’s Personal Injury & Products Liability Section at 800-898-2034 or Mike.Andrews@beasleyallen.com. Mike handles aviation litigation for our firm. He has
handled several cases involving military aircraft.

Sources: Reuters, Securing Industry, U.S. Department of Justice, Ledger-Enquirer, Committee on Armed Services U.S. Senate, U.S. Department of Transportation Office of Inspector General

APPEALS COURT UPHOLDS $165 MILLION VERDICT IN LAWSUIT AGAINST FEDEX

The New Mexico Court of Appeals has upheld a jury verdict in a $165 million lawsuit against FedEx filed after a deadly accident involving a contracted FedEx truck. The 2011 crash west of Las Cruces killed three people including the truck driver and left a baby severely injured. Alfredo Morga filed a personal injury and wrongful death lawsuit against FedEx over the loss of his wife, Marialy Venegas, and his daughter, Ylairam Morga. Venegas’ parents also joined the lawsuit.

A Santa Fe jury found in favor of the family and returned the verdict. FedEx filed an appeal arguing that the verdict was “tainted by passion, prejudice, partiality, sympathy, undue influence, or a mistaken measure of damages.” The Appeals Court rejected the company’s argument and upheld the verdict without any reduction.

Source: Associated Press

NEW FEDERAL MANDATE REQUIRES ELECTRONIC LOGS FOR TRUCKERS

Significant new regulations were recently implemented for commercial truck drivers on our nation’s highways. The rules mandate the use of electronic logging devices to automatically record data such as driver’s hours of service, which had historically been tracked with handwritten log books. The new rules, promulgated by the Federal Motor Carrier Safety Administration (FMCSA) on Dec. 18, 2017, were intended to standardize data reporting and improve safety on the nation’s highways.

In 1986, Congress passed the Federal Motor Carrier Safety Act. That Act took to regulate the operation of commercial motor vehicles in the United States, such as tractor-trailers and passenger buses. The Act further placed some mandates on the States to enter similar laws for large commercial vehicles that may not travel outside of the state, but which may still travel over state and federal highways. The guidelines or regulations that apply to those vehicles subject to the Act are set forth in the Federal Motor Carrier Safety Regulations (FMCSRs).

Under the Act and FMCSRs, except in limited situations, a commercial driver license (CDL) is required primarily when operating a vehicle or truck-trailer combination with a gross weight greater than 26,001 pounds. However, a vehicle is deemed a commercial motor vehicle if the vehicle is used on the interstate highways and has a gross weight greater than 10,001 pounds. Those vehicles between the 10,001 and 26,001 weight classes are the primary focal point of the concerns of horse owners.

In 2012, President Obama signed into law a bill referred to as “Moving Ahead for Progress in the 21st Century.” This new Act included a provision requiring electronic logging devices (ELDs) on commercial motor vehicles.

The rules were congressionally mandated as part of the 2012 Moving Ahead for Progress in the 21st Century Act. An ELD synchronizes with the vehicle engine to automatically record driver time for easier and more accurate tracking, managing, and sharing of records of duty status data.

The electronic logging device has been a long time in the making. Since 1938, drivers of commercial motor vehicle have been required to maintain on-duty/off-duty logs. Accuracy was always suspect; however, automated recording finally raises the prospect of verifiable records. Electronic logs capture not just hours of operation, but also location, engine use, and other data that can be valuable during litigation or other legal proceedings. Federal law requires that a driver log no more than 14 consecutive hours, including 11 hours behind the wheel, before taking a mandatory 10-hour break.

With an ELD, law enforcement can review a driver’s hours of service by viewing the ELD display screen, by a print-out from the ELD, and in the near future by retrieving data electronically from the ELD. Manufacturers must self-certify that ELDs meet the technical standards and the ELD rules, and register with the Federal Motor Carrier Safety Administration.

Motor carriers and drivers must only choose ELDs that are certified and registered with the Federal Motor Carrier Safety Administration. All carriers and drivers subject to the ELD rule must use either an ELD or an automatic on-board recording device complaint with existing regulations by Dec. 18, 2017.

The Owner-Operator Independent Drivers Association has filed an exemption request with the Federal Motor Carrier Safety Administration for certain motor carriers that are considered small transportation trucking companies that do not have unsatisfactory carrier safety rating and have a proven history of good safety performance to be exempt from the ELD requirements. For a majority of the owner-operators and independent drivers, it is a matter of economics. The owner-operators argue that they will incur a charge of approximately $600 to install the ELD device and will incur an additional $20 per month service fee. As this issue of the Report was going to printer, the Federal Motor Carrier Safety Administration had not issued a ruling on the Owner-Operator Independent Drivers Association request.

Most of the large, private trucking companies and other safety advocates believe that this mandate is good for both the trucking companies and the public and will help reduce needless deaths and injuries in the years to come. If you need added information, contact Mike Crow, a lawyer in our firm who handles trucking litigation, at 800-898-2034 or by email at Mike.Crow@beasleyallen.com.

Sources: Daily Journal, FMCSA.gov and Petition by OOIDA

THE NEW ELD REQUIREMENT MAY AFFECT SOME WHO DON’T EXPECT IT

I will now mention how the new electronic logging device (ELD) requirements affect another group of “truckers.” Recently, there has been a great deal of discussion in the horse industry about whether those individuals who own, show and tow their horses are required to have special licensure or special equipment on their trucks to continue to haul horses or other livestock. The new law that has recently gone into effect is somewhat complicated and will apply to some, but not all, individuals who tow horse trailers, livestock trailers, car trailers, boats, and similar trailers or attachments.

The new law specifically references livestock trucks and trailers, which most agree will apply to horse trailers or stock trailers hauling other types of livestock, whether for commercial or recreational purposes. The new Act goes further and applies to other trucks and trailers that one may operate or tow for hobby or activity where hauling the items is for the purpose of winning money, such as a car trailer or hauling a boat.

For those who operate trucks or truck-trailer combinations (such as a truck and horse trailer) greater than 10,001 pounds and who use the vehicle for purposes of hauling to a horse show across state lines
with the intention of making a profit (referred to as a “furtherance of a commercial enterprise”), then that vehicle would fall into the commercial motor vehicle (CMV) guidelines. A truck and trailer combination can become a commercial motor vehicle if the weight restrictions apply and the following instances may pull the owner into the new ELD requirements:

- Writing off the truck and trailer as a business expense on your tax returns;
- Being a commercial trainer or considering yourself a professional;
- Being paid money by someone else to haul livestock (or other items), even if paid by a friend to haul his or her horse or equipment;
- Planning to win prize money at an event, regardless if a profit is actually made in the endeavor; and
- Obtaining sponsorships in furtherance of your hobby or trade and hauling with the benefit of those sponsorships.

There is some debate about whether simply winning money (or having the opportunity to do so) is enough to trigger these new requirements. For example, one may go to a horse show, enter a class that pays money, but he or she does not have to claim the money as income or does not write off the expenses on his or her tax return. It is unclear whether this casual performer may be subject to the new regulations. Litigation may be required before questions like this can be resolved. But what is apparent is that a Department of Transportation (DOT) number may be required if your vehicle qualifies as a CMV, is greater than the minimum weight restrictions (10,001 pounds), and you regularly travel across state lines.

So what does this all mean? The new law and associated regulations will include more vehicles than the traditional tractor-trailers and buses. Now, other vehicles will be required to purchase and include the ELDs. As we pointed out above, the ELD is a system designed to track hours of operation and miles traveled. The Hours of Service requirements of the FMCSRs, for example, will apply to those who fall into this expanded category of driver/operators. An example of this would be that the driver must take a 30-minute break after an 8-hour trip. The ELD will record and monitor compliance with the Hours of Service requirements, and the system may be checked by law enforcement if the driver/operator is stopped on the roadways.

The new law does provide for “short-haul exemptions.” These exemptions apply when:

- The driver operates within a 100 air-mile radius from the “normal starting work location.”
- The driver starts and returns to the same location within 12 hours.
- The driver operates the vehicle no more than 11 hours in this 12-hour timeframe.
- The driver takes 10 consecutive hours off between “shifts” (or trips).
- The driver is required to use a time-clock (punching in and out for work, which will record time).

Further, a driver who hauls “agricultural commodities,” which would include livestock, are exempt from the ELD requirements (including the Hours-of-Service requirements) provided:

- The driver does not haul further than 150 air-miles and not more than eight days within a 30-day period.
- The pulling vehicle was manufactured before 2000.

While the answer to the question about whether the new ELD requirements may apply to those hauling horse trailers or other types of trailers is not as simple as one would hope, generally, some good guidelines to follow are these:

- If your truck-trailer combination is less than 10,001 pounds, the laws and regulations do not directly apply to you.
- If your truck-trailer combination is between 10,001 and 26,001 gross pounds, you are not required to have a commercial driver’s license (CDL) (though some state laws may place driver-license restrictions or requirements for operation of these vehicles), but you may be subject to the ELD requirements.
- If your truck-trailer combination is more than 26,001 pounds, then you most likely will need a CDL and the FMCSR and accompanying state regulations will apply to your operation of a commercial motor vehicle.

If you have questions about any of the above or need more information, contact Ben Locklar or Mike Crow at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com or Mike.Crow@beasleyallen.com.

3M SETTLES MINNESOTA SCOTCHGARD CHEMICAL SUIT FOR $850 MILLION

3M Company has agreed to an $850 million settlement of a lawsuit with the State of Minnesota. The settlement will resolve claims that 3M knowingly dumped chemicals into groundwater, impacting local wildlife and posing health risks to nearby communities. This settlement was reached just as the case was set to go to trial.

What began in 2010 as a lawsuit over fish and waterways in Minnesota had turned into a battle over whether 3M had contributed to health problems in its home state. In November, Minnesota said it had found cancer and premature births outside Minneapolis and would seek punitive damages. 3M disputed that finding.

The settlement will help establish a fund to support water sustainability and water quality in the Twin Cities East Metro region and the projects will also help improve wildlife habitats, recreational areas and open space preservation. The settlement marks an end to a lawsuit that Minnesota Attorney General Lori Swanson filed against the multinational conglomerate in December 2010. The suit alleged 3M has dumped chemicals from its process of making synthetic perfluorinated chemicals, or PFCs, at sites near Minneapolis for more than 40 years, contaminating drinking water and wildlife habitats.

Controversy is growing over the main chemicals involved, PFOS and PFOA, as well as the entire class of perfluorinated compounds—or PFCs—which are still used in stainproof and waterproof treatments and food packaging. The situation tested a state’s ability to force a major employer to pay for pollution as the U.S. without justification relaxes environmental rules. It also shows how liability can mushroom long after companies stop making chemicals like PFCs that don’t degrade, but accumulate in the food chain.

The chemicals are resistant to stains, grease and water and are used in Teflon and Scotchgard to stain-proof and water-
proof a variety of common household products, like paint and retardants. 3M makes tens of thousands of products, including adhesives, laminates, dental and orthodontic products, electronic materials and car care products, among others. 3M knew the chemicals were harmful, but concealed the effects from regulators and distorted science on their health impacts. The chemicals have been linked to tumors in the liver and pancreas in animal studies, as well as prostate cancer, cerebrovascular disease and diabetes in humans.

3M, best known for Post-It notes, dumped chemicals at sites near Minneapolis for more than 40 years—allowing them to get into wildlife and drinking water, Swanson claimed. The company knew the chemicals were harmful, but concealed the effects from regulators and distorted science on them, according to the lawsuit. It was one of the biggest amounts sought yet in growing lawsuits over PFCs.

3M denied the claims, saying the chemicals aren't a health risk at current exposures. According to 3M, it hasn't found adverse effects among its employees, who are exposed at higher levels than the general population. The company announced a phase-out of PFOA and PFOS—chemicals commonly used in non-stick applications such as Teflon—in 2000, around the same time as reports emerged that they were being found in most humans, including babies, and remote animals like polar bears.

In 2012, the results of a massive study of 80,000 people who sought to sue DuPont over PFOA were released, establishing links to cancers, ulcerative colitis and other health issues. Had this case gone to trial new reports on the health of Minnesota-area residents were expected to be a centerpiece of the trial. Minnesota said its expert report shows higher rates of cancers, leukemia, premature births and lower fertility in the suburbs east of St. Paul prior to 2006, when there were particularly high amounts of the chemicals in municipal water.

DuPont, which spun off the PFC business line as Chemours Co. and merged into DowDuPont Inc., has faced lawsuits and regulatory actions related to the chemicals, as well as a current Teflon agent. Last year in February, the companies agreed to pay $670.7 million to settle about 3,550 personal-injury lawsuits. While most major makers phased out PFOA and PFOS, many reformulated products with other PFCs. They say the new chemicals aren’t harmful, even as scientists and regulators express growing concern.

Minnesota Governor Mark Dayton said the settlement is an “enormously important advance” to protect the health of more than 67,000 Minnesotans in the East Metro area. His statement said:

I thank Attorney General Lori Swanson for her long and exceptionally hard work to obtain this settlement. Her success will greatly strengthen the protection of the region’s water quality for present and future residents.

Over the past decade, 3M has faced a large amount of litigation throughout the country involving residents and local water authorities who claim PFCs from its manufacturing processes have contaminated local drinking water supplies. Recently, a Western Massachusetts city sued 3M and two other companies in federal court, claiming their fire suppression foam contaminated soil and groundwater, shutting down city wells and potentially exposing residents to a higher risk of cancer and other diseases.

The case is Minnesota v. 3M Company (case number 27-cv-10-28862) in the Hennepin County District Court.

**INCriminating DOCUMENTS REVEAL MONSanto Knew It Was POISONING THE Environment With Its PCBs**

Documents that have come to light recently show that Monsanto continued to make and sell polychlorinated biphenyls (PCBs) for eight years after it knew that they were hazardous to the environment and human health. The company was already exposed for this practice when internal documents were digitized and posted as part of the Poison Papers Project, but notes from a Monsanto meeting that were recently posted on Toxicdocs show just how callous the company was about the matter.

Monsanto set up a meeting on Aug. 25, 1969, to address the problem of its PCBs in the environment. During the meeting, executives set out three approaches they could use:

- The first was to go out of business;
- The second? “Sell the hell out of them [PCBs].” Yes, you read that correctly; and
- Their third option was “Try to stay in business in controlled applications.”

The hand-written meeting notes can be viewed on the ToxicDocs database for free, along with millions of other incriminating documents showing corporate misconduct when it comes to asbestos, lead poisoning, and other toxins.

One would like to imagine that a company selling toxic wares would pull them from the market or close down altogether, but that’s not what happened here. In fact, in the year and a half that followed, Monsanto moved more PCBs than they ever had in the past, selling “the hell out of them” indeed. It wasn’t until 1977 that they finally stopped selling them.

Monsanto knew about the dangers of PCBs for a long time. Monsanto started manufacturing PCBs back in 1935, eventually dominating global production. The chemicals were used as lubricators in electrical equipment and as coolants. They were also found in paints, flame retardants, and refrigerators. They break down extremely slowly, and they continue to affect the environment to this day while also accumulating in the food chain.

A different internal memo that was released in the Poison Papers dated September 1969 says that Monsanto’s strategy for dealing with PCB leakages in the San Francisco Bay, Great Lakes, and Gulf Coast areas should be to “let govt prove its case on a case by case basis.” The memo states further:

We can prove some things are ok at low concentration. Give Monsanto some defense. We can’t defend us everything. Some animals or fish or insects will be harmed.

The documents also show that the company admitted later that year that PCBs are highly toxic to birds. One document, their “pollution abatement plan,” stated: “The evidence proving the persistence of these compounds and their universal presence in the environment is beyond questioning.” However, Monsanto’s knowledge of the harms of PCBs actually goes back much further. In 1937, autopsy showed that three of the company’s workers died from serious liver damage caused by handling the substance. A document from September 1955 states: “We know Aroclors [PCBs] are toxic but the actual limit has not been precisely defined.”

Monsanto is facing PCB contamination lawsuits from authorities in Oakland, Berkeley, San Diego, Portland, San Jose, Seattle, Long Beach, and Spokane, among other places. The state of Oregon recently filed a $100 million lawsuit against Monsanto for cleaning up the damage caused to the state’s rivers and waterways, while the state of Washington is also suing the
Settlement Reached In Philadelphia Benzene Case

Parties remaining in a benzene lawsuit pending in a Philadelphia court brought on behalf of a former steam fitter have reached a settlement agreement. The settlement came just days before trial was scheduled to begin.

Separate stipulations of dismissal were filed in the Pennsylvania Court of Common Pleas for Philadelphia County concerning Defendants Hess Corp., and Frank Lill & Son. In a docket entry, the court noted that the case had been settled and that the proceeding should be “removed from the applicable list and inventory of pending cases.” Meyer, et al. v. Atlantic Richfield Co., et al., July Term 2015 No. 02328 (Pa. Ct. Comm. Pls., Philadelphia Cty)

The Plaintiffs in this case made claims on behalf of James Meyer, contending that the decedent developed Acute Myelogenous Leukemia as a result of exposure to benzene-containing products he encountered while working as a steam fitter. The Plaintiffs alleged that during the course of his employment, Meyer was exposed to solvents, adhesives, and degreasers that contained benzene. Among the claims asserted was one for punitive damages.

As we have previously reported, benzene is a sweet-smelling, flammable chemical that evaporates quickly. Persons are mainly exposed by breathing it in the air or absorbing it through their skin. Benzene accumulates in the bone marrow and causes the bones to produce cancerous white blood cells. Benzene is found in many products, such as solvents (degreasers, cleaning agents, penetrating oils, etc.) and adhesives. Benzene is also found in gasoline, car exhaust, refineries, and in the manufacturing process of rubber and plastics.

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

Benzene is one of the 20 most widely used chemicals in the United States, and is a naturally occurring part of crude oil and gasoline. Benzene is a known carcinogen, based on evidence from both human and animal studies, and has been linked to the development of acute lymphocytic leukemia (ALL), chronic lymphocytic leukemia (CLL), and other blood-related cancers such as aplastic anemia or multiple myeloma. If an individual has been exposed to benzene-containing products and has been diagnosed with one of these diseases, they may have a claim.

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

Source: BeasleyAllen.com

Houston Company Faces Felony Charges For Dumping Benzene Down Storm Drains

Many of the world’s largest petrochemical companies are headquartered in Houston, Texas, where it is quite common to find refineries and other chemical plants nestled within residential neighborhoods. Unfortunately, these businesses often operate with little to no practical oversight, creating a heightened danger that companies will cut corners to turn a profit. Wright Containers, a business that deals in used industrial plastic containers meant to hold upwards of 330 gallons of hazardous liquids, is one such company, and the company is currently facing felony charges that could land its managers in prison for 10 years.

Wright Containers is accused of instructing its employees to dump the residual toxic chemicals from its containers down a storm drain located in a residential neighborhood, such chemicals including raw benzene, toluene, ethylbenzene, and dichloromethane. The storm drain in question is in close proximity to hundreds of homes, is located less than a mile from three public schools, and eventually drains into Galveston Bay.

The company accomplished this illegal dumping by stacking its plastic containers around the storm drain to conceal it from public view, thereby allowing its activities to go unnoticed for multiple months. Authorities became aware of the dumping when company employees injured by exposure to the chemicals became whistleblowers.

If you would like more information about these cases, you can contact John Tomlinson or Grant Cofer, lawyers in our firm’s Toxic Torts Section. They can be reached at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com or Grant.Cofer@beasleyallen.com.

Source: Quartz

5th Circuit Court Of Appeals Upholds $81 Million Damages In Citgo Spill Lawsuit

The Fifth Circuit Court of Appeals has rejected Citgo Petroleum Corp.’s attempt to overturn an $81 million Clean Water Act penalty tied to a 2006 oil spill. The court found that the Louisiana district court had not erred in calculating how the oil company could have prevented the damage. Both Citgo and the U.S. Environmental Protection Agency (EPA) had appealed then-U.S. District Judge Richard T. Haik’s December 2015 decision that Citgo should pay a total $81 million penalty following a spill at its Lake Charles, Louisiana, plant. Citgo contended that the penalty should be less and the EPA said it should have been more.

A mostly united three-judge panel of the Fifth Circuit found that neither Citgo’s nor the government’s arguments over Judge Haik’s calculations had merit, rejecting, among other things, Citgo’s contention that, to prevent the spill, it needed only one additional water tank, not two as Judge Haik had determined, according to the decision. The majority wrote in its decision:

This calculation, however, is based on a scenario where ‘all tanks were operated at the minimum level and all conditions were perfect. There is ample record evidence that this best-case-scenario does not conform to the realities of running the plant.

The panel upheld Judge Haik’s calculation of Citgo’s least costly alternative to prevent the spillage, plus a weighted average cost of capital on the funds Citgo did not spend to build the extra tanks it needed to prevent the spill and additional Clean Water Act penalty factors.

The spill occurred in June 2006, the result of heavy rainfall that caused storage tanks to overflow at Citgo’s Lake Charles refinery. When the storage tanks were emptied, a secondary holding pond leaked, and millions of gallons of oil flowed into the Indian Marais stream. In imposing the original penalty—which
with dementia antipsychotic drugs to restrain residents. The report, titled “They Want workers, pharmacists, and long-term care relatives who represent them. Researchers experts. The report, titled “They Want residents, family members, nurses, social workers, pharmacists, and long-term care experts. The report, titled “They Want

Docile: How Nursing Homes in the United States Overmedicate People with Dementia,” suggests that antipsychotic medications are administered as a cost-effective “chemical restraint” to sedate their residents into passivity and ease the load on overwhelmed staff personnel.

Antipsychotics are a powerful class of drugs intended to treat serious mental illnesses such as schizophrenia and bipolar disorder. The Food and Drug Administration (FDA) has not deemed antipsychotic drugs an effective or safe way to treat symptoms associated with dementia, including anxiety, wandering, verbal outbursts, restlessness, and confusion. In fact, the FDA warns that antipsychotic drugs pose dangers for elderly patients with dementia, even doubling the risk of death. Other possible side effects outlined in the report include an onset of nervous system problems, low or high blood pressure, high blood sugar, blood clots, and other serious problems. The report says:

Antipsychotic drugs alter consciousness and can adversely affect an individual’s ability to interact with others. They can also make it easier for understaffed facilities, with direct care workers inadequately trained in dementia care, to manage the people who live there.

Instances of antipsychotic drug use on elderly nursing home residents with dementia “should be zero,” according to Kelly Bagby of the AARP foundation, which has engaged in several court cases challenging nursing home medication practices. Bagby contends that the drugs are frequently used for their sedative effect, not because they have any benefit to the recipients. Indeed, there are other ways for nursing homes to deal with dementia-related symptoms in residents that don’t involve potentially dangerous pharmaceuticals. Improvements can be achieved through providing activities, reducing loneliness, creating routines, encouraging relationships with familiar staff members, offering exercise and promoting programs like music therapy and pet therapy.

According to the report, contrary to Federal regulations, nursing homes often administer antipsychotic drugs without obtaining consent from residents or the relatives who represent them. Researchers heard from family members who hadn’t been informed of the dangers of these drugs. Others felt they had no choice but to agree to the administration of antipsychotic drugs for fear that their loved ones would be evicted from their nursing home facility.

Federal guidelines prohibit the use of drugs as chemical restraints for the convenience of nursing home staff in preventing a resident’s perceived problem behavior, including dementia-related behavior. Nevertheless, there is widespread concern across the country regarding whether nursing homes are following these guidelines and not giving unnecessary antipsychotic drugs to sedate and restrain residents. Using chemical restraints on nursing home residents is considered abuse and is alarmingly common.

If you or your loved one has suffered serious injury or there has been a death involved because of nursing home abuse, or if you have any questions about nursing home abuse and neglect, contact Chris Boutwell, a lawyer at Beasley Allen at Chris.Boutwell@beasleyallen.com or by phone at 800-989-2034. Chris handles nursing home litigation for the firm.

Source: CNN and ABC News

XIII. UPDATE ON NURSING HOME LITIGATION

STUDY REPORTS NURSING HOME MISUSE OF ANTIPSYCHOTIC DRUGS TO RESTRAIN RESIDENTS WITH DEMENTIA

A report released in February by Human Rights Watch estimates that each week more than 179,000 people living in U.S. nursing facilities, mostly older residents with dementia, are given antipsychotic medications. The residents are given these medications even though they don’t have the psychiatric diagnoses to warrant use of the drugs. The report was based on a study during which researchers visited 109 nursing home facilities in six states and interviewed 323 people, including residents, family members, nurses, social workers, pharmacists, and long-term care experts. The report, titled “They Want

Johnson & Johnson and its top executives have been sued in a putative class action in New Jersey federal court. The suit alleges the company harmed its stockholders by concealing the truth underlying lawsuits and articles that contend J&J’s talcum powder products contain asbestos. The complaint, filed by named Plaintiff Frank Hall, alleges that J&J has known for decades that its talc products, such as its flagship Johnson’s Baby Powder, contain asbestos fibers and that exposure to J&J’s talc can

Stock-Drop Suit Filed Against J&J Over Claims Of Asbestos In Talc

In this Section, I will give a summary of activity involving class action lawsuit litigation. First, we will take a look at some of the cases recently filed and a ruling in one case that is currently pending. Then we will follow up with a brief summary of some of the recent settlements in cases. Hopefully this information will be helpful to lawyers and individuals with an interest in class action litigation.

Recently Filed Cases

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cause mesothelioma and ovarian cancer.

Hall contends that by not disclosing this danger, J&J has kept its stock price artificially high and harmed shareholders who have seen prices drop by more than 5 percent as the information came out. The complaint alleges:

Defendants misrepresented and failed to disclose the danger that J&J’s talc products posed to consumers, J&J’s significant contingent liability related to its talc products, and that J&J’s revenues from sales of these products were unsustainable due to the dangerous and harmful nature of its talc products.

The Plaintiff contends that after Bloomberg published an article in September 2017 saying documents showed J&J knew its talc contained asbestos since the 1970s, the company’s share price fell $2.28, closing at $129.47 per share. After CNBC published an article on Feb. 4 saying the lawsuits against J&J could expose “potentially damaging documents,” shares fell by $7.29, or more than five percent, to close at $130.39 per share. Hall’s suit comes as J&J is currently in New Jersey state court defending the second trial of a case alleging J&J’s talc contains asbestos and caused a consumer’s mesothelioma—an asbestos-linked cancer.

Hall contends that the company has known for decades that its talc is unsafe and should have disclosed this information to investors. He is seeking to represent all persons and entities that purchased, acquired or traded J&J stock between Feb. 22, 2013 and February 2018.

Hall is represented by Laurence M. Rosen of The Rosen Law Firm PA and Ben Crump of Ben Crump Law PLLC. The case is Frank Hall v. Johnson & Johnson et al. (case number 3:18-cv-01833) in the U.S. District Court of New Jersey.

Source: Law360.com

**STOCK-DROP SUIT OVER PENSION RESERVES FILED AGAINST METLIFE**

An investor has filed suit against MetLife in a New York federal court, alleging that two stock drops followed reports that the insurer didn’t set aside enough money in its reserves for annuity and pension payments. The putative class action alleges that MetLife Inc. violated the Securities Exchange Act of 1934 when it told shareholders that it everything was under control when in fact it had failed to pay 600,000 people the benefits they were due. The complaint states:

Defendants made false and/or misleading statements and/or failed to disclose that MetLife’s practices and procedures used to estimate its reserves set aside for annuity and pension payments were inadequate. MetLife had inadequate internal controls over financial reporting; and as a result, defendants’ statements about MetLife’s business, operations and prospects were materially false and misleading and/or lacked a reasonable basis at all relevant times.

Dating back to February 2013, MetLife’s filings with the U.S. Securities and Exchange Commission (SEC) reported that its management found it “maintained effective internal control over financial reporting,” the complaint said. But in December 2017, MetLife filed a form with the SEC aftermarket hours acknowledging that it had not been able to locate some of the people who were due annuities. The statement said:

We are improving the process used to locate a small subset of our total group annuitant population of approximately 600,000 that have moved jobs, relocated, or otherwise can no longer be reached via the information provided for them.

This was followed by a Wall Street Journal article reporting on the alleged missing payments and estimating that MetLife may owe an additional $540 million as a result of the discovery. Upon this news, the complaint alleges, shares of MetLife fell 62 cents per share, or more than 1.2 percent, over the next two trading days to close at $50.79 per share. In January, the complaint alleges that MetLife issued a press release about its quarterly earnings, noting it would have to make revisions to prior financial statements as a result of weaknesses in its internal controls. The release stated:

We expect the full year 2017 net income impact to be between $165 million and $195 million pre-tax. In addition, the company intends to make prior period revisions to reflect the balance of these adjustments in the appropriate historical periods.

On this news, the complaint alleges, shares of MetLife fell $6.28 per share, or more than 11.6 percent, over the next two trading days to close at $47.67 per share on Jan. 31, 2018, damaging investors. The investors are represented by Phillip Kim of The Rosen Law Firm PA. The case is Parchmann v. MetLife, Inc. et al (case number 1:18-cv-00780) in the U.S. District Court for the Eastern District of New York.

Source: Law360.com

**CASCADIAN INVESTOR FILES SUIT AGAINST CASCADIAN THERAPEUTICS INC.**

A shareholder of biopharmaceutical company Cascadian Therapeutics Inc. has filed a class action lawsuit in a Delaware federal court, alleging the company’s directors omitted material information from documents detailing a proposed $614 million merger deal with Seattle Genetics Inc. David Kim said in the complaint that a registration statement filed with the U.S. Securities and Exchange Commission (SEC) violated the Securities Exchange Act of 1934 and SEC rules because it omitted information needed by shareholders to make a fully informed decision about the deal, which would see Cascadian be acquired by Seattle Genetics in a stock tender offer.

The suit claims the registration statement failed to include information about Cascadian’s financial projections relied upon by the company’s financial advisers—Perella Weinberg Partners LLP—in rendering a fairness opinion on the transaction, the valuation analysis conducted by those advisers in support of the opinion, and potential conflicts among insiders of Cascadian. “In short, the proposed transaction will unlawfully divest Cascadian’s public stockholder of the company’s valuable assets without fully disclosing all material information concerning the proposed
transaction to company stockholders," the complaint said.

Kim is seeking to stop the closing of the merger by asking the court to enjoin the stock tender offer that began Feb. 8 and is scheduled to expire March 9. Under the terms of the tender, Cascadian shareholders will receive $10 per share in the deal. That per-share price represents a premium of 69 percent to the closing price of Cascadian Therapeutics' common stock on Jan. 30, when the deal was announced.

Cascadian Therapeutics is in the business of developing cancer treatments; its most advanced program is tucatinib, an investigational oral, small molecule tyrosine kinase inhibitor that is highly selective for HER2, a growth factor receptor that is overexpressed in multiple cancers, including breast, colorectal, ovarian and gastric. Tucatinib is currently being evaluated in a global trial, and the company says that previous trials have showed promise. Kim's complaint alleges that certain Cascadian executives will be eligible to receive closing bonuses totaling more than $4 million in the aggregate, while company directors also stand to receive material fees for their work on the board if the deal closes.

The registration statement acknowledges that conflicts exist, the complaint says, but doesn't describe them with any detail so that stockholders can be fully informed when they make their decision on the tender offer. The shareholders are seeking to stop the tender offer and prevent the closing of the transaction until the alleged disclosure violations are remedied.

Kim and the proposed class are represented by Blake A. Bennett of Cooch & Taylor PA and Juan E. Monteverde of Monteverde & Associates PC. The case is David Kim et al. v. Cascadian Therapeutics Inc. et al. (case number 1:18-cv-00250) in the U.S. District Court for the District of Delaware.

Source: Law360.com

A Pending Case

**CLASS CERTIFICATION GRANTED IN COST OF INSURANCE INCREASE SUIT AGAINST TRANSMERICA**

The Central District of California recently granted class certification to plaintiffs who filed suit alleging Transamerica improperly raised the monthly deduction rate (MDR) of their universal life insurance policies. Specifically, the Plaintiffs in Feller v. Transamerica Life Insurance Co., No. 2:16-cv-01378 (C.D. Cal.) allege that Transamerica dramatically increased the applicable MDRs in 2015 in order to induce “shock lapses” and avoid paying out death benefits to policyholders. Additionally, because Transamerica allegedly depleted its capital reserves, and the low interest rate economy undermined the profitability of Plaintiffs’ policies, the Plaintiffs allege that Transamerica increased MDRs to recoup past losses and avoid its obligation to meet the high interest rates it guaranteed under Plaintiffs’ policies.

The Plaintiffs proposed three classes: a national class, a California subclass, and a California senior subclass. They sought certification of five claims: (1) breach of contract with respect to the National Class and California subclasses; (2) breach of the implied covenant of good faith and fair dealing under California law with respect to the California Subclass; (3) tortious breach of the duty of good faith and fair dealing with respect to the California Subclasses; (4) violation of the UCL under the “unfair prong” with respect to the California Subclasses; (5) declaratory relief on behalf of all classes; and (5) violation of California’s Welfare and Institutions Code section 15610, et seq., with respect to the California Senior Subclass.

In granting the Plaintiffs’ motion, the Court necessarily found all Rule 23(a) and 23(b) requirements to be met. The Court’s opinion thus provides guidance for several similar class actions filed against other life insurance companies. Importantly, in analyzing the commonality requirement, the Court held that the case was susceptible to classwide proof as the law relating to the elements of a claim for breach of contract do not vary greatly from state to state, and the policies all contain the standardized non-recoupment provision that Plaintiffs contend Transamerica breached through its MDR increase. Furthermore, the Court found the typicality requirement to be met because the Plaintiffs’ injuries are “reasonably co-extensive” with those of other putative class members, insofar as each potential representative owns a policy that was subjected to the MDR increase.

Of note, the Court also rejected Transamerica’s reliance on the Supreme Court’s decision in Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County, 137 S. Ct. 1773 (2017) (BMS). Transamerica requested the Court limit the classes to owners of policies that were issued to then-California residents or that were issued before Transamerica moved its operations from California. The Feller Court refused to follow BMS, which discussed personal jurisdiction in the mass tort context and did not address the narrow issue of whether its opinion “would also apply to a class action in which a Plaintiff injured in the forum State seeks to represent a nationwide class of Plaintiffs, not all of whom are injured there." 137 S. Ct. at 1789, n. 4 (Sotomayor, J., dissenting). Holding that the BMS reasoning does not reach so far as to bar nonresident unnamed class members, the Court failed to extend the holding of BMS to restrict the Feller class definitions.

Transamerica is not the only insurance company raising premiums and cost of insurance in order to account for its bad investments and wrongful use of captive reinsurance schemes, and the Feller opinion provides guidance and a framework by which other classes may be certified. Multiple other life insurers have sent their universal life and/or flexible premium policyholders letters informing them of an upcoming raise in costs—usually claiming these increases are due to “an increase in mortality rates.” Beasley Allen has filed suits against several other companies who have engaged in such conduct, and we are currently investigating others.

If you have seen this practice by any life insurance company, there may be a claim that our firm would like to investigate. Contact lawyers Andrew Brashier, Rachel Boyd, or Paul Evans in our Consumer Fraud & Commercial Litigation Section at andrew.brashier@beasleyallen.com, rachel.
LendingClub Unveils $125M Settlement of Investor Suits

LendingClub Corp. has reached a $125 million settlement with the Plaintiffs behind two securities class actions in California federal and state court that allege the peer-to-peer lending company misled investors in the run-up to its $1 billion initial public offering in 2014. The settlement, which is subject to court approval, provides for the company to pay $77.25 million out of its own coffers and for LendingClub’s insurers to pay another $47.75 million, according to a statement announcing the company’s fourth-quarter and full-year 2017 financial results.

Investors began suing LendingClub in federal court in May 2016 after the online peer-to-peer lender disclosed that its board of directors had accepted CEO Renaud Laplanche’s resignation in the wake of an investigation into altered loan documents and an internal review that found the company had sold $22 million in loans to an investor where the loans didn’t meet the investor’s portfolio criteria. The suits were later consolidated by U.S. District Judge William Alsup certified as a class action in October, asserts both Securities Act and Exchange Act claims against LendingClub, Laplanche and an array of other current and former top brass as well as the underwriters of the 2014 IPO.

The state court case, meanwhile, dates back to February 2016 and asserts Securities Act claims only against the same set of Defendants, based on similar allegations around the company’s purportedly deficient offering documents. A state judge allowed the case to proceed as a class action in June, led by named Plaintiffs Kathy Geller, Dylan Youngblood and Alton Consulting LLC.

The investors in the federal suit are represented by Darren J. Robbins, Jason A. Forge, Scott H. Saham, Rachel L. Jensen, Michael Albert and Carissa J. Dolan of Robbins Geller Rudman & Dowd LLP.

The state Plaintiffs are represented by John T. Jasnoch, Beth A. Kaswan, William C. Fredericks, Max Schwartz and Sean Masson of Scott & Scott Attorneys at Law LLP and Mark C. Molumpathy and Alexandra P. Summer of Cotchett Pitre & McCarthy LLP.

The cases are In re LendingClub Securities Litigation (case number 3:16-cv-02627) in the U.S. District Court for the Northern District of California, and In re LendingClub Corp. Shareholder Litigation (case number CV373500) in the Superior Court of the State of California, County of San Mateo.

Source: Law360.com

Opus Bank Settles Litigation Involving Risky Loans

Opus Bank has agreed to pay $17 million to settle investors’ claims that the bank and its executives misled them on the quality of its loans, causing its stock to drop by 21 percent. In a motion for preliminary approval of a class action settlement, filed with the court, lead Plaintiff Arkansas Public Employees Retirement System (APERS) asked the court to preliminarily sign off on an all-cash settlement under which class counsel would receive up to 25 percent of the fund, or $4.25 million, for fees, as well as $100,000 to cover expenses. APERS said that the deal is fair and adequate considering the risks involved with litigation.

If approved, the agreement would settle a putative class action initially filed in October 2016 by lead Plaintiff Nancy Schwartz in the wake of the Irvine, California-based bank’s announcement that loan charge-offs would impact its quarterly earnings. Within a day of the announcement, Opus’ stock price fell 21 percent, or $7.25 per share, according to the complaint. In February 2017, the court appointed APERS as lead Plaintiff, Cohen Milstein Sellers & Toll PLLC as lead counsel and Glancy Prongay & Murray LLP as liaison counsel.

The investors amended their complaint in April, asserting claims under the Securities Exchange Act of 1934 and violations of U.S. Securities and Exchange Commission (SEC) rules against the bank, CEO Stephen H. Gordon and former co-President Michael L. Allison. The amended complaint accuses the bank and its executives of falsely representing that it had a disciplined and conservative approach to extending credit, when the bank instead repeatedly disregarded or deviated from those underwriting standards and extended credit guidelines, putting the company and its investors at greater risks.

In November, the bank and its executives agreed to the proposed settlement. The parties are now asking the court to preliminarily approve the settlement and to certify a class of all persons or entities who purchased Opus common stock between Jan. 26, 2015, and Jan. 30, 2017, for the purposes of the settlement. A hearing on the motion is set for March 2.

The investors are represented by Lionel Z. Glancy, Robert V. Prongay and Lesley F. Portnoy of Glancy Prongay & Murray LLP and Steven J. Toll, Daniel S. Sommers, S. Douglas Bunch and Elizabeth A. Aniskevich of Cohen Milstein Sellers & Toll PLLC. The case is Nancy Schwartz v. Opus Bank et al., (case number 2:16-cv-07991) in the U.S. District Court for the Central District of California.

Source: Law360.com

Mitsubishi Agrees To $33 Million Settlement In Cathode-Ray MDL

Mitsubishi Electric Corp. has settled with a class of indirect buyers of cathode ray tubes for $33 million in a case pending in a California federal court. This brings total settlements in the multidistrict litigation (MDL) over an alleged price-fixing conspiracy involving electronics companies to $820 million. The Japanese conglomerate, formally named a co-conspira-
tor in 2013 and added to the multidistrict litigation in 2007, had already settled with direct buyers of the tubes used in televisions and computer monitors for $75 million last year.

Direct and indirect purchasers of color cathode ray tubes filed lawsuits against various electronics companies in different states in 2007. They alleged producers had collaborated to drive up the market and cut supply to boost prices since 1995. The MDL was consolidated in the Northern District of California in 2006, the U.S. Department of Justice (DOJ) conducted a criminal investigation that led to multiple criminal indictments. Companies that have reached settlements in the case include LG Electronics Inc., Panasonic Corp., Samsung Electronics Co. Ltd. and Toshiba Corp. An expert for the IPPs estimated damages in the scheme at $2.78 billion.

The IPPs said Mitsubishi’s “CRT market share was very small, and it was not a named target in the DOJ’s investigation or of any foreign government’s investigation into the alleged CRT conspiracy.” But they said evidence from discovery showed Mitsubishi had participated in the scheme and profited. Before a trial scheduled to begin in March 2015, Mitsubishi withdrew pending motions for summary judgment after settlements were reached with Philips, Panasonic, Hitachi, Toshiba and Samsung, and began negotiating with Plaintiffs.

In January 2017, Mitsubishi settled with direct purchaser Plaintiffs for $75 million, the final and largest share of more than $210 million ultimately secured by DPPs. This settlement defines the Plaintiff class as inclusive of people or entities that bought a CRT product made or sold by Mitsubishi from 1995 to 2007 for their own use and not resale, with some exceptions based on state or timeframe. The $33 million does not include interest, nor attorneys’ fees or costs that the indirect purchasers will seek from the court. Mitsubishi had agreed not to oppose that application.

The $33 million brings the total paid by various companies to IPPs to nearly $610 million. There has been some controversy over some of the past IPP settlements. Some have derided as unfair since they treat all class members equally and give equal payouts despite varying state consumer protection laws. It should be noted all class members are treated equally.

On the criminal side, Samsung SDI Co. Ltd. pled guilty and paid a $32 million fine for its role in the conspiracy. Chun-Cheng (Alex) Yeh, a Taiwanese citizen and former sales director Chunghwa Picture Tubes Ltd., pled guilty to his role and was sentenced to six months in prison in 2016.

Other indicted executives remained abroad, including in Taiwan, which does not have an extradition treaty with the U.S. A Chinese company has also tried to evade U.S. court jurisdiction in the matter; Irico Group and Irico Display Devices Co. Ltd. claimed sovereign immunity and have not appeared to face the suit in California for a year. The IPPs are represented by Mario N. Alioto, Joseph M. Patane and Lauren C. Capurro of Trump Alioto Trump & Prescott LLP. The case is In re: Cathode Ray Tube (CRT) Antitrust Litigation (case number 17-cv-04067) in the U.S. District Court of Northern California.

Source: Law360.com

**Aveo Agrees To $18 Million Settlement To End Cancer Drug Investor Suit**

Investors in Aveo Pharmaceuticals Inc. have asked a Massachusetts federal judge for an initial approval of a settlement worth more than $17.7 million that would resolve a class action alleging the drugmaker hid U.S. Food and Drug Administration (FDA) concerns about tivozanib, Aveo’s drug candidate for treating kidney cancer.

The proposed settlement provides for Aveo to pay $15 million into a settlement fund for distribution to a class of investors who purchased Aveo stock during a period of about a year beginning in May 2012, around the time the Cambridge, Massachusetts-based biopharmaceutical company was allegedly asked by the FDA to conduct another clinical trial of tivozanib, but didn’t publicly say so.

The settlement fund would also include warrants that Aveo has agreed to issue for the purchase of 2 million shares of its common stock, the value of which the Plaintiffs estimate at around $2.73 million.

The proposed settlement comes a little more than two months after U.S. District Judge Denise J. Casper granted the Aveo investors’ bid for class certification, appointing Levine and Windham as class representatives and approving their selection of Pomerantz LLP as class counsel. The investors first alleged in May 2013 that Aveo and its executives convinced them that tivozanib, also known as Tivopath, was likely to be approved by the FDA even though the agency had expressed concern about problems with the drug’s clinical trial and the possibility it might be toxic.

The claims potentially settled arose from a May 2012 meeting between Aveo and the FDA regarding its planned new drug application for tivozanib during which the FDA allegedly recommended that Aveo conduct a second clinical trial due to flaws in the first, known as TIVO-1.

The FDA said further that it was concerned about the drug possibly increasing deaths in patients and warned that the first study’s defective design made it hard to tell if the drug was toxic, according to the investors. The investors have said that Aveo executives began misleading them after this meeting, omitting from any public discussions of TIVO-1 that the FDA had recommended a second clinical trial or that the drug might be toxic. Meanwhile, the company was said to have been planning internally for a second trial at a cost of $83 million that would take three years to complete. When the FDA’s concerns were made public a year later, the stock fell nearly 50 percent.

In 2016, Aveo agreed to pay $4 million to settle U.S. Securities and Exchange Commission (SEC) claims that it broke the law by hiding its concerns about tivozanib from investors. The investors are represented by Adam M. Stewart and Edward F. Haber of Shapiro Haber & Urmy LLP and Patrick V. Dahlstrom, Joshua B. Silverman and Louis C. Ludwig of Pomerantz LLP. The case is In re: Aveo Pharmaceuticals Inc. Securities Litigation (case number 1:13-cv-11157) in the U.S. District Court for the District of Massachusetts.

Source: Law360.com
INSULET AGREES TO PAY $19.5 MILLION TO END INVESTOR SUIT

Insulet Corp. has agreed to a $19.5 million settlement of a proposed class action alleging the medical device maker misled investors about the success of a new insulin infusion pump system it launched in 2013. It was alleged further that the company manipulated a critical performance metric to mask declining new patient growth. Lead Plaintiffs Arkansas Teacher Retirement System, the City of Bristol Pension Fund and the City of Omaha Police & Fire Retirement System have asked U.S. District Judge Mark L. Wolf to grant preliminary approval to the proposed cash settlement, which they said “readily meets the requisite preliminary legal tests of procedural and substantive fairness and adequacy.” The judge was also asked to approve a notification plan and tentatively certify a settlement class consisting of investors who bought Insulet common stock between May 7, 2013, and April 30, 2015.

The $19.5 million proposed settlement would resolve a suit that dates back to 2015 and alleges Insulet duped investors by reporting that its new OmniPod Eros insulin-delivery device, launched in 2013, received positive initial feedback from users and that new customers chose the product over the older model, driving up the company’s growth in the United States and abroad.

Investors have said Insulet had run into serious manufacturing and quality control issues that were showing up in the form of higher defect rates on the new Eros units and production shortfalls. Sales and patient growth eventually suffered, investors have said, but Insulet allegedly kept these problems hidden by, among other things, altering the way it calculated and reported how many new patients started using the device.

The investors are represented by James A. Harrod and Rebecca E. Boon of Bernstein Litowitz Berger & Grossmann LLP, William C. Fredericks and Sean T. Masson of Scott + Scott Attorneys at Law LLP, Steven J. Buttacavoli of Berman Tabacco and Robert V. Prongay, Joshua L. Crowell and Alexa Mullarky of Glancy Prongay & Murray LLP.

The case is Arkansas Teacher Retirement System et al. v. Insulet Corp. et al. (case number 1:15-cv-12345) in the U.S. District Court for the District Court of Massachusetts.

Source: Law360.com

TWO MITSUBISHI BANKS SETTLE LIBOR RIGGING SUIT FOR $30 MILLION

The Bank of Tokyo-Mitsubishi UFJ Ltd. and Mitsubishi UFJ Trust and Banking Corp. have agreed to a $30 million settlement to resolve two investor suits alleging they rigged Libor. The two Japanese banks asked the court to preliminarily approve the settlement and appoint Lowey Dannenberg PC as class counsel for the settlement. The investors said:

The terms of the settlement are substantially the same as those in the $206,000,000 of collective settlements the court has already approved in connection with plaintiffs’ settlements with Citib, HSBC, Deutsche Bank, JPMorgan and R.P. Martin.

The settlement resolves claims against the two banks outlined in a case filed in 2015 known as the Sonterra suit, and another known as the Laydon case, filed in 2012. Both suits allege that the Bank of Tokyo-Mitsubishi, Mitsubishi UFJ Trust, Citigroup Inc. and dozens of other major banks conspired to rig yen-denominated Libor, which tracks how much banks charge one another to borrow funds. It also alleged they fixed the Euroyen Tokyo Interbank Offered Rate and Euroyen Tibor contracts.

The investors have already received final approval for other settlements, including a $23 million settlement with Citibank and RP Martin Holdings Ltd., and a $35 million deal with HSBC, in addition to the $148 agreement with Deutsche Bank and JPMorgan. All of the settlements have included agreements from the banks to provide more information about the alleged rigging.

The investors are represented by Vincent Briganti, Geoffrey M. Horn and Peter St. Phillip of Lowey Dannenberg PC; Joseph J. Tabacco Jr., Todd A. Seaver and Patrick T. Egan of Berman Tabacco; and Christopher Lovell and Gary S. Jacobson of Lovell Stewart Halieben Jacobson LLP.

The cases are Laydon v. Mizubo Bank Ltd. et al. (case number 1:12-cv-03419) and Sonterra Capital Master Fund Ltd. et al. v. UBS AG et al. (case number 1:15-cv-05844) both in the U.S. District Court for the Southern District of New York.

Source: Law360.com

PELLA TO PAY $26 MILLION TO SETTLE WITH WINDOW BUYERS IN DEFECT SUIT

Pella Corporation has agreed to pay $25.75 million to resolve a class action accusing the company of making windows that leak and cause rot. Pursuant to the settlement, the manufacturer will separately pay as much as $9 million to cover attorneys’ fees, costs and expenses and will also cover the costs of notifying class members. A previous $90 million settlement in the case had been overturned by the Seventh Circuit Court of Appeals.

The proposed settlement would end years of litigation brought by a class of consumers alleging Pella ProLine casement windows are prone to leaks, a problem that then causes premature wood rot and other property damage. Some window owners paid thousands of dollars to replace the products and repair the surrounding structures.

Under the terms of the agreement, Pella would set aside $23.75 million to pay claims submitted during the claims period and another $2 million to pay claims submitted in an extended claims period. The proposed settlement class would include all nationwide purchasers of Pella ProLine brand aluminum clad wood casement, awning or transom windows that were made by the company between Jan. 1, 1991, and Dec. 31, 2009. It appears that a relatively small number of windows experienced the problems.

Members of the proposed settlement class who have paid for repairs or replacements will receive an amount based on the cost of the new window, as well as installation, finish and repairs. If the damage occurred within 15 years of purchasing the product, the consumer will receive a payment worth the sum of these four costs, but if the damage happened more than 15 years after the purchase, the payment will be 25 percent of the total costs of these four catego-
ries. Consumers who haven’t paid for repairs will receive a replacement window or cash worth the cost of a replacement. If these consumers are fixing a window that is more than 15 years old, they will receive 25 percent of the expenses to repair or replace the product.

The parties had reached a $90 million settlement in 2013, which the Seventh Circuit reversed a year later. The appeals court found that “almost every danger sign in a class action settlement that our court and other courts have warned district judges to be on the lookout for was present in this case.”

The Seventh Circuit said then-class counsel Complex Litigation Group LLC had to be replaced for an egregious conflict of interest: The lead lawyer was the son-in-law of a class representative. The appeals panel also said the value of the settlement was grossly overestimated.

In the instant case, the consumers are represented by Shannon McNulty and Robert Clifford of Clifford Law Offices, George Lang of Lang Law Office, John Yanchunis and Marcio Valladares of Morgan & Morgan PA, Edward Moor of Moor Law Office PC and Joel Rhine of Rhine Law Firm PC. The case is Kent Eubank et al. v. Pella Corp. et al. (case number 1:06-cv-04481) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

XV. THE CONSUMER CORNER

PREDATORY LENDING IN ALABAMA

Predatory lending is alive and well in Alabama and is hurting working men and women. Legislation passed in 2003 carved out a legal loophole to allow the payday loan industry to exist in Alabama. Currently, Alabama is one of the states in our country that has a very high number of storefront payday lenders. Alabamians have paid well over $100 million dollars in fees to payday lenders annually over the last two years, mainly to out-of-state payday corporations. Nearly 20 states and the United States military have protected themselves from this industry by restrict-

ing the triple-digit interest rates and unfair terms. In Alabama, the average payday loan APR is 300 percent.

The payday loan industry markets these loans for emergency use. The average payday loan borrower in Alabama makes eight loans a year, indicating these loans were made not for emergencies, but for day-to-day living expenses. More than 20 percent of the payday loan borrowers in Alabama rolled over loans from 13 to 30 times.

The Community Foundation of Greater Birmingham commissioned the Public Affairs Research Council of Alabama to conduct a poll of registered voters in 2017. A few highlights from the results of that statewide poll:

• Two-thirds of Alabamians, according to recent polling, support banning payday loans outright; and

• in focus groups, two-thirds of participants said they would not vote to re-elect legislators who take money from the lending industry and then vote against meaningful reform.

Payday lenders have victimized thousands of Alabama citizens who work hard, live paycheck to paycheck, and go to the loan sharks to borrow money. As more individuals and organizations become aware of the predatory lending practices in Alabama, there is an increased awareness of the need for major reform.

Senate Bill 138, sponsored by Senator Arthur Orr, changes the minimum long-term of payday loans from 10 to 30 days. While this change does not address all of the desired reforms for these loans, the change does give borrowers a more reasonable timeframe to pay their debt before incurring additional interest and fees.

Senate Bill 138 gives Alabama’s payday loan borrowers more time to manage their financial resources over the course of the month and repay loans on time, placing payday loans on the same monthly repayment schedule that is typical for virtually all other bills. Hopefully, the legislature will stand up against the lobbyists for the payday lenders and pass the bill. My real hope, however, is for total reform of this industry, which is badly overdue.

Source: AL.com

HUNDREDS OF ALABAMIANS ELIGIBLE FOR COMPENSATION AFTER $45 MILLION SETTLEMENT WITH MORTGAGE LENDER

Alabama Attorney General Steve Marshall announced recently that he and a number of other state attorneys general have reached a settlement with one of the largest mortgage companies in the nation. Marshall, 48 other state attorneys general, the District of Columbia, and more than 45 state mortgage regulators have reached a $45 million settlement with PHH Mortgage Corporation.

The settlement was related to claims that PHH, a New Jersey-based mortgage lender—the nation’s ninth largest non-bank residential mortgage service—improperly serviced mortgage loans from Jan. 1, 2009, through Dec. 31, 2012. Attorney General Marshall said about 920 consumers in Alabama could now be eligible for compensation. A national settlement administrator, retained by the multi-state group’s committee, will contact all persons who are eligible. The Alabama Attorney General said in a statement:

I am pleased that this settlement will return funds to consumers in Alabama and nationwide who may have been harmed by improper mortgage loan servicing. It is important that this agreement also requires new standards to help keep these problems from recurring.

Borrowers who were subjected to foreclosures from PHH during the eligible period will qualify for a minimum $840 payment. Borrowers who faced PHH foreclosures initiated during the period but did not lose their home will receive a minimum $285 payment. The settlement also requires PHH to follow comprehensive mortgage servicing standards, conduct audits, and show audit results to a multi-state committee. The agreement does not release the company from liability for misconduct that occurred beginning in 2013. The black box warning is the strictest of FDA warnings.

Source: AL.com

THE FTC TARGETS MORE STUDENT LOAN DEBT RELIEF SCAMMERS IN FURTHERANCE OF ‘OPERATION GAME OF LOANS’

The Federal Trade Commission (FTC) has charged three private student loan debt relief service companies for allegedly scamming consumers out of $28 million in connection with their deceptive student loan debt relief scheme. The Defendants are American Financial Benefits Center, its President Brandon Demond Frere, AmeriTech Financial, and Financial Education Benefits Center, who specialize in student loan document preparation and processing services to allegedly assist bor-
The Federal Consumer Financial Protection Bureau Is Being Gutted

The Federal Consumer Financial Protection Bureau (CFPB), created by Congress to protect consumers, is now under fire by the Trump Administration. An editorial from USA Today's editorial board appeared on Feb. 13 in the Montgomery Advertiser. It is an excellent rendition of how the badly needed federal consumer protector is now being gutted. Because of its importance, I am setting the editorial out below.

For nearly seven years since it began, the federal government's first agency dedicated to protecting consumers fought successfully to prevent rip-offs by credit card and loan issuers, debt collectors, payday lenders and other big financial players. Now, in less than three months, Mick Mulvaney, the acting director named by President Trump, is dismantling the Consumer Financial Protection Bureau (CFPB) piece by painful piece. Mulvaney, who also has a demanding day job as the White House budget director, is doing just what many Republicans and their business allies have long wanted, reining in the only federal agency that has stood up for the little guy, collecting nearly $12 billion compensation for them from financial scammers.

On Monday, the administration doubled down on its plan to defang the bureau: Trump's new budget would slash its funding, curtail its enforcement powers, and turn power over its future budget to Congress, where Republican lawmakers can starve it. Further, a new strategic plan promises that the bureau will act with "humility and moderation." Less money, less power and more humility sounds like the formula for an industry lapdog, not a watchdog. It's easy to tell the agency's new direction just by looking at who's happy and who's not. Consumer groups are mortified. Sen. Jeff Merkley, D-Ore., says Mulvaney is transforming the CFPB into "the corporate financial protection bureau." Meanwhile, the rapacious payday lenders are pleased, and they plan to hold their annual conference in April at—you guessed it—the Trump National Doral Golf Club in Florida. Among the acting director's most troubling actions:

- Weakening a commonsense rule, created during the previous director's watch, requiring payday lenders to determine before granting a high-interest, short-term loan that borrowers can pay it back, usually in 45 days. This and other restrictions, five years in the making, were designed to prevent borrowers from getting trapped in debt. For now, the bureau will grant waivers to payday lenders while it reconsiders the rule.
- Legitimate businesses normally want to know before making loans whether they'll get their money back. In fact, the last time lenders didn't care—recall the no-doc loans of the mid-2000s—it helped lead to a housing bubble and a historic financial crisis.
- Dropping a lawsuit against four online payday lenders accused of charging customers from 440 to 950 percent interest—violating interest-rate caps in 17 states. Typically, an $800 loan could cost a consumer $3,220 over 10 months. These lenders look similar to "rent-a-tribe" operations established on Native American reservations to avoid state law enforcement, but actually do business elsewhere. Some owners have been convicted in federal courts for exploiting borrowers across the country.
- Stripping enforcement powers from the Office of Fair Lending and Equal Opportunity, an office mandated in the 2010 Dodd-Frank Act that created the bureau. The office has pursued lenders accused of charging higher rates to minorities, and it collected more than $80 million for people cheated in auto loans. Mulvaney is moving the unit into his own office, where the bureau said it can "focus on its other important responsibilities." It's hard to see which responsibilities could be more important than stopping lenders from discriminating.

These are just a few of the actions that undermine the bureau's mission. Last week, for example, Mulvaney named a new chief of staff—a longtime top aide to a Texas Republican who has repeatedly pushed House measures to defang the aggressive agency. And according to a report by Reuters, Mulvaney won't pursue subpoenas and sworn testimony to investigate credit bureau Equifax for a data breach that exposed personal data of 145 million Americans. The agency responded that it is working with government partners "on Equifax's data breach and response." We'll see.

Regardless of any single action, Mulvaney is an odd choice to direct any agency dedicated to consumers. He
What is being done to the Consumer Financial Protection Bureau by the Trump Administration is totally against the best interests of the American people. Consumers must be protected and the bureau had been doing a fair, impartial and highly effective job on that front. One has to wonder what is motivating the Administration to literally gut an agency that is so badly needed. Hopefully, the American people will wake up and decide that this consumer protector should be allowed to do its job.

Sources: Montgomery Advertiser and USA Today

WEBSITES HIJACKING YOUR COMPUTER TO MINE CRYPTO CURRENCY

Cryptocurrencies such as bitcoin are the newest fad in investing. What one might characterize as a public mania, akin to the 17th Century Dutch Tulip craze, the market for this digital currency is having far-reaching economic effects.

The supply for cryptocurrency is governed in large part by solving complex mathematical formulas. By solving a given formula, a new coin is created and the solver is rewarded with the coin or coins. Solving these formulae requires incredible amounts of computing power. Therefore, this has caused the price of GPUs to skyrocket as a result of this “digital gold rush.” More importantly, it has also led to less scrupulous tactics.

Hackers are targeting consumers’ personal computers and smartphones, enlist¬ing their spare processing power to mine coins. But, more interestingly, legitimate websites are getting in on the act. Popular web magazine Salon.com recently announced that it was presenting its readers with a choice. Hackers could disable this ad-blocking software or agree to let Salon use their computer’s processing power to mine cryptocurrency. To be fair, Salon.com does inform their readers of this choice, but one can imagine in the not too distant future that such choice will be buried in less transparent disclosure and the number of websites offering this choice skyrocketing (provided, of course, the cryptocurrency market doesn’t implode).

The consequences of allowing your computer to be used for this process can be dire—increased power consumption (and thus a bigger power bill) and increased wear and tear on your personal computer (resulting in shorter shelf life for your PC). The computational power used in mining cryptocurrency is not small. In aggregate, it is speculated that worldwide bitcoin mining exceeds the annual electrical consumption of Ireland. On a smaller level, setting one’s PC to mine bitcoins or other cryptocurrency (voluntarily or not) can potentially run up a sizeable power bill.

If you would like to have more information on this subject, contact Jeff Price, a lawyer in our firm, at 800-898-2034 or by email at Jeff.Price@beasleyallen.com.

Source: BBC News

CPSC SUES BRITAX OVER HAZARDOUS JOGGING STROLLERS

In an effort to prevent children and adults from suffering further harm, the U.S. Consumer Product Safety Commission (CPSC) has filed an administrative complaint against Britax Child Safety, Inc., alleging that certain models of their B.O.B. jogging strollers have defects in their design that present a substantial product hazard. The complaint charges that consumers reported stroller wheel detachments resulting in injuries to children and adults. Children have suffered injuries including a concussion, injuries to the head and face requiring stitches, dental injuries, contusions and abrasions. Adults have sustained injuries including torn labrum, fractured bones and torn ligaments, contusions and abrasions.

The Commission authorized the filing of the complaint after Britax refused to recall or repair the strollers that pose a substantial risk of injury to children and adults. CPSC staff seeks a finding that the strollers present a substantial product hazard and an order that Britax provide the remedies outlined in the complaint to stop further incidents and injuries to the public.

Britax imported and distributed about 493,000 single and double occupant B.O.B. jogging strollers from December 2011 through September 2015. An undetermined number of strollers were imported and distributed by B.O.B. Trailers, Inc. between 1997 and when it was acquired and merged into Britax in December 2011. The three-wheeled strollers include the following 17 models: Ironman, Ironman Duallie, Revolution, Revolution CE, Revolution Flex, Revolution Flex Duallie, Revolution Pro, Revolution Pro Duallie, Revolution SE, Revolution SE Demo, Revolution SE Duallie, Revolution SE Duallie Plus, Revolution SE Plus, Sport Utility Stroller, Stroller Strides Duallie and SUS Duallie.

The complaint charges that the design of the strollers allows a consumer to use the stroller without the front wheel being properly secured. When the quick release fails to secure the front wheel to the fork, the front wheel can suddenly detach during use. When the front wheel of the stroller detaches, the front fork can dig into the ground and cause the stroller to stop abruptly and tip over, posing a risk of serious injuries to children in the stroller and adults operating the stroller. Since January 2012, approximately 200 consumers have reported front wheel detachments while using the stroller, resulting in at least 97 injuries to children and adult consumers. At least 50 children and 47 adults have been injured.

The Commission voted 3-1 to approve the filing of the complaint that seeks, among other things, an order that the company stop distributing various models of the strollers, notify the public of the defect and offer consumers a remedy that may include a repair, replacement, or refund as set out in the complaint.

Source: US Newswire

XVI. RECALLS UPDATE

We are not reporting as many safety-related recalls as usual in this issue. Actually we don’t have a single auto recall listed. Hopefully, that is a good thing. We have included some recalls that were issued in February. 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. If so let Shanna know.
HUSQVARNA RECALLS LAWN MOWERS DUE TO FIRE HAZARD

An outdoor power tool company has recalled a brand of lawn mowers. The recall includes more than 7,000 zero-turn Husqvarna riding mowers due to potential fire hazards. The Consumer Product Safety Commission says incorrect routing of the fuel line can cause it to wear and leak. The recall includes Husqvarna and Poulan Pro brand zero-turn mowers with a Briggs and Stratton twin-cylinder engine. The mowers were sold at Lowe’s and other home centers from July 2017 through December 2017. The company says anyone with the recalled product can arrange for a free inspection and repair. For a full list of recalled models, go to https://www.cpsc.gov/Recalls/2018/Husqvarna-Recalls-Residential-Zero-Turn-Riding-Mowers-Due-to-Fire-Hazard.

MONSTER MOTO RECALLS MINI BIKES DUE TO FIRE HAZARD

Monster Moto LLC, of Ruston, La., has recalled about 1,800 Monster Moto Classic 212cc mini bikes. The fuel tank venting system can leak, posing a fire hazard. This recall involves model “MM-B212” off-road mini bikes. The recalled bikes have a black powder-coated, gusset-reinforced, welded tube steel frame. Attached to the frame are two pneumatic tires with steel rims that measure 19 inches by 7 inches, a front fork with shocks, front and rear hydraulic disc brakes, and a head light. The bikes are powered by a pull start self-contained 212cc, 7.5 hp gas engine and have a retractable kick stand. The mini bikes weigh 164 pounds and measure 64 inches long by 32.5 inches wide by 36 inches tall. There are two circular “MM 212” decals on the pull start and the transmission cover located on the left and right side of the bikes, a “Monster Moto” decal on the left and right shock absorbers, and an “MM 212” and Monster Moto logo on the left and right frame gussets. The firm has received 38 reports of gasoline leaks. No injuries or fires have been reported.

The bikes were sold at Mills Fleet Farm, True Value and other stores nationwide and online at Amazon.com and MonsterMoto.com from October 2017 through January 2018 for between $800 and $850. Consumers should immediately stop using the mini bikes and contact Monster Moto for a free repair kit or to arrange a free repair at an authorized repair center. Consumer Contact: Monster Moto toll-free at 888-698-3508 from 8 a.m. to 5 p.m. CT Monday through Friday, email at recalls@monster moto.com or online at www.mon stern moto.com and click on Recalls for more information or directly at www.mon ster moto.com/recalls Pictures available here: https://www.cpsc.gov/Recalls/2018/Monster-Moto-Recalls-Mini-Bikes-Due-To-Fire-Hazard

SPECIALIZED BICYCLE COMPONENTS RECALLS BICYCLES DUE TO CRASH HAZARD

Specialized Bicycle Components Inc., of Morgan Hill, California, has recalled 5,550 bicycles in the U.S. In addition, about 390 were sold in Canada and 260 in Mexico. The fork on the bicycle can break and cause the rider to lose control, posing a crash hazard. This recall involves all model year 2018 Specialized Allez (Base), Allez Sport, and Allez Elite road racing bicycles. The recalled bicycles have an alloy frame and composite fork. “Specialized” is printed on the downtube, “Allez” is printed on the bottom of each fork leg and “FACT” is printed on the inside of the left fork leg. The firm has received one report of cracking in the fork. No crashes or injuries have been reported.

The bicycles were sold at Authorized Specialized retailers nationwide from July 2017 through December 2017 for between $750 and $1,200. Consumers should immediately stop using the recalled bicycles and contact an Authorized Specialized Retailer for instructions on how to receive a free installation of a new fork. Contact an Authorized Specialized Retailer directly or Specialized Bicycle Components, Inc. toll-free at 877-808-8154 from 8 a.m. to 6 p.m. PT Monday through Friday, email ridercare@specialized.com or online at www.specialized.com and click on “Safety Notices” for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Specialized-Bicycle-Components-Ret-Sections-Recalls-Bicycles-Due-to-Crash-Hazard

LENOVO RECALLS THINKPAD LAPTOPS DUE TO FIRE HAZARD

Lenovo Inc., of Morrisville, North Carolina, has recalled about 78,000 of its ThinkPad X1 Carbon Laptops (5th Generation). An unfastened screw can damage the battery causing overheating, posing a fire hazard. This recall involves models X1 Carbon 5th Generation laptops. They were sold in silver and black. The product name “5th Generation Lenovo ThinkPad X1 Carbon,” the machine type 20HQ, 20HR, 20K3 or 20K4 and the serial number or S/N are printed on the bottom of the laptop. Laptops manufacture dates from 16/12 through 17/10 (for December 2016 through October 2017) are included in the recall. The manufacturing date codes can be found on the bottom of the laptop. There have been no reports of overheating in the United States.

The laptops were sold at Lenovo.com, CDW, Insight, Connection, Zones, and to other PC resellers from December 2016 through November 2017 for between $1,100 and $2,600. Consumers should immediately visit https://support.lenovo.com/X1C_5GEN_RECALL to see if their laptop is included in the recall and for assistance in locating the nearest authorized repair center for inspection and repair. If the laptop is included in the recall, stop using it immediately. Contact Lenovo Services at 800-426-7378, 24 hours a day, seven days a week, or an authorized Warranty Services Provider or online at https://support.lenovo.com/X1C_5GEN_RECALL or www.lenovo.com and click on products and services to access the recall section.

WHIRLPOOL RECALLS MORE THAN 40,000 KITCHENAID ELECTRIC KETTLES DUE TO BURN HAZARD

Whirlpool has announced that it has recalled about 40,200 KitchenAid electric kettles due to a burn hazard. The handle on the affected model can loosen and separate from the unit causing hot liquid to spill out. The Consumer Product Safety Commission deemed these electric kettles unsafe after receiving 79 reports in the United States of the handles detaching and three reports of minor burn injuries.

The electric kettles were sold between September 2013 and February 2018 at home improvement and retail stores across the country including Bed, Bath & Beyond, Target, and Amazon.com. They cost around $100 to $120 and were sold in stainless steel, red, black, white, liquid graphite, and cocoa silver.

To find out if your kettle was included in the recall, you can check to see if your model and serial number is on the full list on Whirlpool’s website. These numbers are located on the bottom of the kettle. Consumers who own a faulty unit should stop using the recalled kettle immediately and contact Whirlpool for a free replacement by calling 800-874-0608 from 8 a.m. to 8 p.m. ET Monday through Friday, or visiting repair.whirlpool.com.
ISOBELauty RecallS Hair Dryers Due To Burn Hazard

ISO Beauty, of Chatsworth, California, has recalled 75,000 Ionic Pro hair dryers. The cord can become brittle near the base of the dryer, posing burn hazards. This recall involves the Ionic Pro 2000 and 2000W hand-held hair dryers sold under the ISO Beauty and Proliss brand names. The bottom rear of the dryers has “ISO” or “Proliss” printed and model number HD-1820. The dryers were sold in the following colors: black, white, white pearl, peacock, white zebra, pink leopard, blue, and giraffe. ISO Beauty has received 35 reports of the dryers sparking or smoking, including two reports of flames coming from the dryers and three reported burn injuries to hands or fingers.

The dryers were sold at Groupon.com, Target.com, ISObeauty.com, Proliss.com and Amazon.com from March 2013 through January 2018 for between $30 and $40. Consumers should immediately stop using the recalled hair dryers and contact ISO Beauty for instructions on removing the cord and receiving a refund in the form of a credit for a replacement product from the firm. Contact ISO Beauty at 800-490-5919 between 7 a.m. and 9 p.m. PT Monday through Friday or online at isobeauty.com and click on “Product Recall” for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/ISO-Beauty-Recalls-Hair-Dryers-Due-to-Burn-Hazard

RURAL KING RECALLS ELECTRIC BLANKETS AND THROWS DUE TO FIRE AND BURN HAZARDS

About 9,600 electric heated blankets and throws have been recalled by Rural King, of Mattoon, Illinois. The blankets and throws’ electric cord can overheat and catch on fire, posing fire and burn hazards. This recall involves Rural King’s electric heated blankets and throws. The 100 percent polyester blankets and throws were sold in cream and brown colors and in two sizes: 50 x 60 inches (smaller than a twin size) and 84 x 90 inches (queen size). They have one or two multi-setting controllers attached to the electric cord. Model numbers starting with BLV-OB and ending in 200, 201A, 201B, 201C, 202, 202BN, 202CM, 203, 204A1, 204A2, 204A3, 204A2BR, 204A2CM, 205B1, 205B2, 205B3 or 206C1 can be found on a corner tag. Matton Rural King Supply, Inc. is printed on the back of the tag. Rural King has received four reports of the blankets and throws overheating. Two incidents resulted in fires and one burn injury to a consumer’s foot.

The throws were sold at Rural King stores nationwide and online at www.ruralking.com from October 2017 through December 2017 for between $30 and $60. Customers should immediately stop using the recalled blankets and throws and contact Rural King for a full refund. Contact Rural King at 800-561-1752 from 9 a.m. to 5 p.m. CT Monday through Friday or online at www.ruralking.com and click on the Safety Recall Information link at the bottom of the page for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Rural-King-Recalls-Electric-Blankets-and-Throws-Due-to-Fire-And-Burn-Hazard

OUTDOOR GAS FIRE PITS MADE BY YAYI RECALLED DUE TO BURN HAZARD

Home Depot Product Authority LLC, of Atlanta, Georgia, has recalled about 58,000 Outdoor Gas Fire Pit Table Patio Heaters. The bowl base of the fire pits lacks a heat shield to protect consumers from burns while turning off the propane tank after use, posing a burn hazard. This recall involves Hampton Bay 50,000 BTU, 30-inch Cross Ridge Outdoor Gas Fire Pit Table Patio Heaters with model number G-FTB51057B and UPC 6944937601579. The fire pit has an antique bronze finish with a natural slate tabletop and a black base that holds a propane tank. The model and UPC are printed on the product’s packaging. The company has received three reports of consumers who were burned while turning off the propane tank after using the gas fire pit.

The heaters were sold exclusively at Home Depot stores nationwide and online from August 2016 through November 2017 for about $200. Consumers should contact Yayi for a free repair kit which includes a heat shield and installation instructions. Contact Yayi toll-free at 855-600-9294 from 8 a.m. to 8 p.m. ET Monday through Friday or by sending an email to customer-care@china-yayi.com or online www.china-yayi.com/ and click on Recall for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/ISO-Beauty-Recalls-Hair-Dryers-Due-to-Burn-Hazard

COST PLUS WORLD MARKET RECALLS BLEEDING Drip Taper Candles Due To Fire Hazard

About 8,400 bleeding drip taper candles have been recalled by Cost Plus Management Services Inc., of Alameda, California. The candles’ high flame can ignite the surface of the wax, posing a fire hazard. This recall involves Cost Plus World Market’s bleeding drip taper candles sold in a pack of two candles. The unscented wax candles are black and bleed red wax as they melt. They measure about 10 inches long. World Market, Bleeding Drip Taper Candles and SKU/UPC 544668/000000544668 can be found on the product packaging. The company has received two incident reports, including one of a candle catching on fire. No injuries or property damage have been reported.

The candles were sold at Cost Plus World Market and World Market stores nationwide and online at www.worldmarket.com from August 2017 through October 2017 for about $7. Consumers should immediately stop using the recalled candles and return them to any Cost Plus World Market or World Market store for a full refund. Contact Cost Plus World Market toll-free at 877-967-5362 from 7 a.m. to midnight ET daily or online at www.worldmarket.com and click on “Product Recalls” for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Cost-Plus-World-Market-Recalls-Bleeding-Drip-Taper-Candles-Due-to-Fire-Hazard

TEA COLLECTION RECALLS CHILDREN’S ROMPERS DUE TO CHOKING HAZARD

Tea Living Inc, San Francisco, California, (d/b/a Tea Collection) has recalled about 3,800 children’s rompers. The snaps near the collar can detach, posing a choking hazard to young children. This recall involves two styles of children’s rompers sold in sizes 0-3 months and 18-24 months. They are Vermillion Painted OPP Floral Romper with style number 7F32500, and the Shocking Fuchsia Rose Romper with style number 7F32504. The Vermillion rompers are red with white floral print, and the Shocking Fuchsia are maroon with a pink floral print. The style number is printed on a tag sewn on the inside of the garment located in the waist area. The company has received five reports of the snaps detaching from the garments. No injuries have been reported.

The rompers were sold at Nordstrom, Von Maur and various boutique stores nationwide and online at teacollection.com.
com from July 2017 through December 2017 for about $27. Consumers should immediately take the recalled rompers away from children and contact Tea Living for a full refund. Contact Tea Collection toll-free at 866-374-8747 from 6 a.m. to 6 p.m. PT Monday through Friday, email or online at and click on the recall tab at the bottom of the page for more information.

**Nemo Equipment Issues Recall For Stargaze Recliner Chairs**

Nemo Equipment is recalling its Stargaze Recliner Chairs after reports of a fall hazard. The Consumer Product Safety Commission reports that the straps on the chair’s seat can fail, causing the chair to collapse and the person in the chair to fall. The recall was issued after one chair was reported to have broken. The recall includes the regular recliner chairs as well as the “Low and Luxury” models. They were sold through the retail chain REI last year.

Nemo equipment says customers should stop using the faulty chairs and contact them for a replacement. Contact NEMO Equipment at 800-997-9301 from 9 a.m. to 5 p.m. ET Monday through Friday, or email at journey@nemoequipment.com or online at www.nemoequipment.com and click on Recall Safety Information for more details or https://www.nemoequipment.com/stargaze-recall/

If you need more information on any of the recalls listed above, visit our firm’s web site at BeasleyAllen.com or our consumer blog at RightingInjustice.com. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

**NEMO EQUIPMENT ISSUES RECALL FOR STARGAZE RECLINER CHAIRS**

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

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

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

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

Chris grew up in Roanoke, Alabama, and now lives in Wetumpka. He serves as the youth pastor at the Oaks Church in Auburn, Alabama, and enjoys cycling, hiking, podcasting, drinking good coffee and writing. Chris is also a professional magician and says that “turning himself into a lawyer” is the best trick he has ever performed. We are blessed to have Chris in the firm.

**CHRIS BALDWIN JOINS OUR CONSUMER FRAUD & COMMERCIAL LITIGATION SECTION**

Jimmie Birley joined Beasley Allen in October 2016 and he now works in the firm’s Mass Torts Section. He is working on cases from all areas in the section and is busy preparing cases for trial.

After earning a bachelor’s of science in Sociology from the University of Missouri-St. Louis, Jimmie earned his J.D. from Faulkner University’s Thomas Goode Jones School of Law in May 2012 and earned his LL.M. Business Law Certificate at the University of Southern California Gould School of Law in December 2017.

Jimmie says he had an interest in becoming a lawyer from a young age due to his interest in the advocacy aspect of law. “Interning with a state judge in California while a senior in high school, and seeing the system from that perspective as well really sealed it for me,” he explained. Now, Jimmie says his favorite part of practicing law is “the intellectual challenge of attempting to best opposing counsel while they are attempting to do the same.”

Jimmie says Beasley Allen is “one of those rare breeds whose lawyers are willing to go up against the corporate giants which are all too often allowed to go unchecked due to the vast power and resources they possess.” Because he values equal access to the court system, Jimmie said he is glad to work for a firm that’s at the forefront of that fight. Prior to joining the firm, Jimmie worked as a law clerk for two magistrate judges at the United States District Court for the Middle District of Alabama.

Jimmie is a member of Phi Alpha Delta International Law Fraternity. He also became a member of the board of directors of the Montgomery-based Friendship Mission Inc. in January of 2018. From Huntington Beach, California, Jimmie loves the beach and surfing. He also enjoys watching and attending college football games and is an avid concert-goer. He has a Dachshund-mix, a Jack Russell Terrier, two cats, and usually has a set of foster kittens.

Jimmie is a hardworking lawyer who is dedicated to the practice of law and to his clients. We are fortunate to have him with us.

**RACHEL BOYD**

Rachel Boyd joined Beasley Allen in 2014 as a second-year law student in the Consumer Fraud & Commercial Litigation Section. She returned to the firm as a lawyer after graduating and obtaining her law license and was recently named an Associate in the same section, handling class actions, antitrust issues, whistleblower claims and Medicaid fraud litigation.

Rachel graduated cum laude from the University of Illinois Springfield in May 2012 with a B.A. in political science and psychology. She earned her J.D. from Faulkner University’s Thomas Goode Jones School of Law, graduating summa cum laude in 2015. While at Jones, Rachel was a Walter J. Knabe Scholar, a Senior Editor of Jones Law Review, a Dean’s Fellow and a teaching assistant. She also received 10 Best Paper awards in various courses.

Rachel’s love of writing has carried over from law school. Specifically, she enjoys drafting creative arguments for motions in
Tabitha is a hardworking employee who is definitely an asset to the firm. She is dedicated to her work and to the clients she serves. We are blessed to have Tabitha with us.

CANDICE WYATT

Candice Wyatt in June will be a 16-year veteran of Beasley Allen. She is currently legal secretary to Parker Miller in the firm’s Personal Injury & Product Liability Section. Candice handles all calendaring for Parker’s office, conducts electronic and paper filing, helps to keep clients’ files organized, transcribes dictation, and revises motions and correspondence issued and any other secretarial duties as needed.

In the last 15 years, Candice has worked in several different areas of the firm. She was hired as a clerical assistant and worked in that position for six months before moving to trial graphics where she assisted Dr. James R. Lauridson, then-director of the firm’s trial graphics department. As the firm grew and changed, Candice has had the opportunity to work as legal secretary for other lawyers in the section.

Candice is married to Travis Wyatt and they have two beautiful daughters, Kaileigh (18) and Kennedy (13). The family attends The River of Life Church in Decatur, Alabama. In her spare time, Candice says she enjoys reading and gardening.

Candice is a very good employee who works hard and is dedicated to the clients served. We are blessed to have her with the firm.

XVIII. SPECIAL RECOGNITIONS

GIBSON VANCE ELECTED PRESIDENT OF THE SOUTHERN TRIAL LAWYERS ASSOCIATION

Gibson Vance was elected president of the Southern Trial Lawyers Association at the organization’s 33rd Annual Conference, held in New Orleans, Louisiana, Feb. 7-11. Gibson will lead the organization for a one-year term. The STLAs mission is to promote fellowship, learning and networking among trial lawyers throughout the 13 southeastern states. Gibson had this to say about his newest position with the organization:

It will be an honor to lead the Southern Trial Lawyers Association over this next year. I’m humbled to be asked to lead such an accomplished group of lawyers.

Membership in the STLAs is by nomination made by a member of the Board of Directors, with approval by other Board members from the nominee’s state and, thus, consists of some of the “best of the best” throughout the South.

Gibson graduated from Troy University and Faulkner University’s Thomas Goode Jones School of Law. He joined Beasley Allen in 2000. Gibson practices in the firm’s Personal Injury and Consumer Fraud sections, concentrating in litigation against those who negligently or intentionally harm others. He has participated in dozens of jury trials in his legal career, many of which have resulted in large verdicts for his clients.

In addition to his work with STLAs, Vance is a past-president of the American Association for Justice, Montgomery Trial Lawyers Association and the Alabama Civil Justice Foundation. He is also an Alabama State Bar Commissioner, representing the 15th Judicial Circuit. Gibson is married to Kate Vance, and they have two children, Carter and Andrew. Gibson Vance is a tremendously talented lawyer who is a most valuable part of Beasley Allen. We are blessed to have him with us.

BEASLEY ALLEN TALC TEAM SELECTED AS A LAW360 2017 PRACTICE GROUP OF THE YEAR AWARD WINNER

Beasley Allen has been selected as recipient of one of Law360’s 2017 Practice Group of the Year awards in the Products Liability Section for our firm’s work on litigation related to Johnson & Johnson talcum powder and its link to an increased risk of ovarian cancer. The group, composed of dozens of Beasley Allen lawyers and support staff, leads the litigation against Johnson & Johnson (J&J), Johnson & Johnson Consumer Companies, Inc., and Imerys Talc America, Inc (Imerys). Ted Meadows, who is the co-lead lawyer on the Talc Litigation Team, says:

It is an honor to be recognized for our work on behalf of so many women who were misled for decades about the danger of J&J’s talc-based products. An estimated 20,000 women are diagnosed each year with ovarian cancer, and more than 14,000 die. Published scientific literature states that more than 10 percent of these diagnoses and deaths are caused by genital talc
use. With baby powder having been on the market for more than 100 years, that puts the affected women in the hundreds of thousands.

Law360 launched the Practice Group of the Year award eight years ago to honor law firms behind some of the most significant national litigation wins each year. In this round of award winners, Beasley Allen was one of the national law firms recognized for their work. Submissions were considered for work that was conducted between Oct. 1, 2016 and Oct. 1, 2017.

The Beasley Allen Talc Litigation Team has partnered with other law firms around the country to try six of the talc cases since February of 2016 and obtained favorable verdicts on behalf of five Plaintiffs totaling more than $724 million. Three of those verdicts were awarded in the October 2016 to August 2017 time frame and totaled more than $597 million.

Evidence that jurors have seen included one of the earliest epidemiological studies released in 1982 by Dr. Daniel Cramer, head of the Obstetrics and Gynecology Epidemiology Center at Brigham and Women's Hospital in Boston. This study showed a 92 percent increased risk of ovarian cancer from genital talc use. An even earlier study suggested that talc particles can travel through the vagina and the fallopian tubes and become deeply embedded in the ovaries, creating a cancer risk.

The team has also introduced during trials a letter a letter from Dr. Alfred P. Wehner, written in 1997 warning the company executives that J&J's statement that talc presents no significant risk of cancer was "outright false." The letter was a part of Dr. Wehner's work as a consultant for J&J since at least 1975.

The internal documents from J&J are as damaging to the company as any I have seen in product liability litigation over the years. Any person who sees and reads the documents will realize how truly bad J&J's conduct and cover-up of a known problem has been.

Source: Law360

XIX.
FAVORITE BIBLE VERSES

Kellie Dudley, a clerical assistant in the Consumer Fraud & Commercial Litigation Section, sent in her two favorite verses for this issue. Kellie says: "Many years ago my father had open heart surgery. It was, of course, very scary for all of us. The night before his surgery, he had a vision that involved this verse. He told us the next morning about it and he knew that was God telling him that he was going to make it through his surgery. He made it through the surgery and that verse became our entire family's favorite."

For He will command His angels concerning you to guard you in all your ways. Psalm 91:11

Kellie says her second favorite is Psalm 46:10. She says this is the one she turns to whenever she feels overwhelmed and the world around her seems to be going crazy. She says: "I speak it out loud to myself. When I say it, I say it pretty loud the first time, then say it again a little quieter, and finally as a whisper. By the time I whisper it, I'm usually calmer as I remember that God is taking care of things."

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

James Lampkin, a lawyer in the firm’s Mass Torts Section, has been very busy lately. However, he found time to send in the following verses for this issue.

When the Son of Man comes in His glory, and all the holy[α] angels with Him, then He will sit on the throne of His glory. All the nations will be gathered before Him, and He will separate them one from another, as a shepherd divides his sheep from the goats. And He will set the sheep on His right hand, but the goats on the left. Then the King will say to those on His right hand, 'Come, you blessed of My Father, inherit the kingdom prepared for you from the foundation of the world: for I was hungry and you gave Me food; I was thirsty and you gave Me drink; I was a stranger and you took Me in; I was naked and you clothed Me; I was sick and you visited Me; I was in prison and you came to Me.' ‘Then the righteous will answer Him, saying, ‘Lord, when did we see You hungry and feed You, or thirsty and give You drink? When did we see You a stranger and take You in, or naked and clothe You? Or when did we see You sick, or in prison, and come to You?’ And the King will answer and say to them, ‘Assuredly, I say to you, inasmuch as you did it to one of the least of these My brethren, you did it to Me.’ Matthew 25:31-40

For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish but have everlasting life. For God did not send His Son into the world to condemn the world, but that the world through Him might be saved. John 3:16-17

Amy Methvin, wife of our Managing Shareholder, Tom Methvin, shared two verses with us this month. Amy is a Godly woman who loves her Lord and walks the walk daily.

Trust in the LORD with all thine heart; and lean not unto thine own understanding. [6] In all thy ways acknowledge Him, and He shall direct thy paths. Prov.3 Verses 5 to 6

Jesus saith unto him, I am the way, the truth and the life; no one cometh unto the Father but by Me. John 14:6

Leon Hampton, a lawyer in the firm, sent in his favorite verses for this issue. Leon says, “Trust is a very loaded word and it implies that the person that you are putting trust in is trustworthy. That trustworthiness is often measured by past experiences and past outcomes. Before I decide to trust someone I often ask myself—are they reliable; do they keep their words; do they follow through. As it relates to God, I can answer each of those questions with a resounding, YES!! It's easy to fall into pattern of worry and anxiety about the unknown, but it's then that we should do a quick look back over our life and see how God has directed our steps in the past. His past faithfulness should cause us to cast off all of our anxiety about the future. It reminds me of an old hymn that says 'I don't worry about my future... for he knows what lies ahead'."

Trust in the LORD with all thine heart; and lean not unto thine own understanding. In all thy ways acknowledge him, and he shall direct thy paths. Proverbs 3:5-6

Be anxious for nothing but everything by prayer and supplication, with thanksgiving, make your request known unto to God and the peace that passes all understanding will guard your heart and mind in Christ Jesus. Philippians 4:6-7
XX.
CASES BEASLEY ALLEN LAWYERS ARE WORKING ON

I have been asked to list some of the litigation that lawyers at Beasley Allen are currently working on. Needless to say, our lawyers are very busy these days in litigation in a number of areas. Therefore, I am listing specific things the lawyers and support staff are concentrating on at this juncture. To learn more about what is going on at the firm, visit www.beasleyallen.com. It should be noted that I am not breaking down the areas of litigation we are involved in by section. I am simply listing the various areas. As you may already know, our firm has four sections, each dealing with specific litigation areas.

Those sections are: Personal Injury & Products Liability, headed by Cole Portis; Mass Torts, head by Andy Birchfield; Toxic Torts, headed by Rhon Jones; and Consumer Fraud & Commercial Litigation, headed by Dee Miles. Each of these Sections also has a Section Head Administrator: Sloan Downes, Personal Injury & Products Liability (Sloan.Downes@beasleyallen.com); Melissa Prickett, Mass Torts (Melissa.Prickett@beasleyallen.com); Sandra Walters, Toxic Torts (Sandra.Walters@beasleyallen.com); and Michelle Fulmer, Consumer Fraud & Commercial Litigation (Michelle.Fulmer@beasleyallen.com).

Personal Injury And Products Liability

Product Liability—Our lawyers continue to focus on accident cases involving automobiles, heavy equipment and consumer products. Some of these auto cases involve single-vehicle crashes, while others involve multiple-vehicle accidents. We would like to review any case involving catastrophic injury or death. Contact: Cole.Portis@beasleyallen.com.

Takata Airbag Recall—The largest automotive recall in history centers on the defective Takata airbags found in millions of vehicles manufactured by Honda, BMW, Chrysler, Daimler Trucks, Ford, General Motors, Mazda, Mitsubishi, Nissan, Subaru, and Toyota. The defect results in shrapnel-like metal shards and airbag components being propelled throughout the interior of vehicles. This frequently results in lacerations and blunt force trauma that can cause injury or death. We are also handling Honda airbag cases with smaller injuries that normally would not qualify for claims under our usual review process. Contact: Cole.Portis@beasleyallen.com or Chris.Glover@beasleyallen.com.

Truck 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. Our lawyers, staff and in-house accident investigators immediately begin the important task of documenting and preserving the evidence. Contact: Cole.Portis@beasleyallen.com.

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

On-the-job Product Liability—Many times product claims arise from worker's compensation claims. After our lawyers investigate the circumstances that caused the injuries, many times they discover a defective machine may be the cause of the injuries. Contact: Cole.Portis@beasleyallen.com.

Heavy Truck Product Liability Claims—Tractor trailer and other heavy trucks are not required to contain many of the same protections for occupants as smaller passenger cars. They can contain dangerous defects putting the truck driver or passengers at risk of serious injury or death. These trucks many times have particularly weak roofs that crush in rollovers. The passenger compartments are often not protected by effective cab guards, and this allows loads to shift into the truck cab. We would like to review any case involving catastrophic injury or death. Contact: Cole.Portis@beasleyallen.com.

E-cigarette Explosions—Our firm is handling cases involving e-cigarettes. In addition to concerns about toxic chemicals associated with the devices, we are currently investigating cases involving severe injuries caused by exploding e-cigarette devices and exploding e-cigarette batteries. These explosions have been linked to faulty e-cigarette products, defective lithium-ion batteries, and insufficient warnings for users. With few regulations to ensure their safety, e-cigarette devices have been aggressively marketed and sold in stores throughout the United States. Even though these cases involve personal injury, including serious burn injuries, contact our Toxic Torts Section for assistance with cases you may have involving these devices. Contact: William. Sutton@beasleyallen.com.

Nursing Home Abuse and Neglect—Nursing homes are supposed to be in the business of providing skilled nursing care to elderly and disabled residents. Unfortunately, statistics indicate residents in nursing homes suffer abuse and neglect more and more frequently at the hands of nursing home corporations. In many cases residents have died or have been severely abused as a result of neglect. They may suffer physical abuse, emotional or psychological abuse, or neglect. Our lawyers are investigating cases involving serious injury or death resulting from nursing home abuse or neglect. Contact: Rhon. Jones@beasleyallen.com or Chris.Boutwell@beasleyallen.com.

Pharma and Medical Devices

Xarelto—Lawsuits filed against Johnson & Johnson subsidiary Janssen Pharmaceuticals and Bayer Corp. over the blood thinner Xarelto have been consolidated in Louisiana federal court. Xarelto has been linked to serious side effects including internal bleeding, gastrointestinal bleeding, brain bleed and death. The Xarelto lawsuits come on the heels of the recent $650 million Pradaxa settlement. Researchers linked Pradaxa, also a blood thinning medication, to more than 500 deaths. Xarelto blood thinner litigation has been consolidated before U.S. District Judge Eldon Fallon in the Eastern District of Louisiana, who presided over suits against Merck & Co. over its medication Vioxx. The Vioxx litigation resulted in a $4.85 billion settlement in 2007. Contact: David.Byrne@beasleyallen.com or Melissa.Prickett@beasleyallen.com.
Talcum powder and ovarian cancer—As many as 2,200 cases of ovarian cancer diagnosed each year may have been caused by regular use of talcum powder. Talc is widely available in various products including baby powder and adult products including body and facial powder. Talc products used regularly in the genital area increase the risk of ovarian cancer. In February 2016, a jury found Johnson & Johnson knew of the cancer risks associated with its talc products but failed to warn consumers, and awarded the family of our client $72 million. She died of ovarian cancer after using J&J talc-containing products for more than 30 years. Contact: Matt.Teague@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Testosterone Replacement Therapy (TRT) products for men have been linked to an increased risk of death, heart attack and stroke. Researchers found men who used testosterone therapy were 30 percent more likely to have a heart attack, stroke, or die after three years of use. A second study found that men had a significant increase in risk of heart attack and stroke in just the first 90 days of testosterone therapy use. Furthermore, men who started the study with clear, unobstructed coronary arteries were just as likely to have a heart attack, stroke or die as men who entered the study with established coronary artery disease. Testosterone therapy, such as the prescription topical treatments Androgel, Testim and Axiron, are used to help boost testosterone levels in men who have a deficiency of the male hormone. Symptoms of low testosterone include decreased libido and low energy. Contact: Matt.Teague@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Proton Pump Inhibitors—Proton pump inhibitors (PPIs) were introduced in the late 1980s for the treatment of acid-related disorder of the upper gastrointestinal tract, including peptic ulcers and gastrointestinal reflux disorders, and are available both as prescription and over-the-counter drugs. Beasley Allen lawyers are currently investigating PPI-induced Acute Interstitial Nephritis (AIN), which is a condition where the spaces between the tubules of the kidney cells become inflamed. The injury appears to be more profound in individuals older than 60. While individuals who suffer from AIN can recover, most will suffer from some level of permanent kidney function loss. In rare cases individuals suffering from PPI-induced AIN will require kidney transplant. Contact: Roger.Smith@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Taxotere—Taxotere (docetaxel) is a chemotherapy drug approved in the treatment of breast cancer along with other forms of cancer. It is administered intravenously through a vein, and is a member of a family of drugs called taxanes. In 2007, manufacturer Sanofi-Aventis issued a press release touting the efficacy of Taxotere based on a clinical study. However, Sanofi-Aventis failed to inform the FDA, health care providers, and the public that permanent hair loss was observed in a number of the patients taking Taxotere. In December 2015, the FDA announced it had ordered Sanofi-Aventis to change Taxotere’s label to warn patients of the risk of permanent hair loss. While hair loss during chemotherapy is expected, patients undergoing chemotherapy with Taxotere were not warned they could potentially experience permanent hair loss. Permanent hair loss is an extremely debilitating condition, especially for women. Our lawyers are currently investigating claims for women who suffered permanent hair loss following chemotherapy with Taxotere for breast cancer. Contact: Beau.Darley@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

Risperdal, an atypical antipsychotic drug used to treat schizophrenia and certain problems caused by bipolar disorder, has been linked to the development of gynecomastia in boys and young men. Gynecomastia is a condition that causes boys to grow breasts. The drug is manufactured by Johnson & Johnson. Contact: James.Lampkin@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

Metal-on-Metal Hip Replacement parts—The FDA has ordered a review of all metal-on-metal hip implants due to mounting patient complaints. Problems with metal-on-metal include, but are not limited to loosening, metallosis (ie: tissue or bone death), fracturing, and/or corrosion and fretting of these devices, which require revision surgery. Many patients that require revision surgery due to these devices suffer significant post-revision complications. Our lawyers are investigating all cases involving metal-on-metal hip implants, including the DePuy Orthopedics ASR XL Acetabular System and the DePuy ASR Hip Resurfacing System, recalled in August 2010; the Stryker Revena and ABG II modular-neck stems, recalled in July 2012; the Stryker LFIT Anatomic v40 Femoral Head (recalled August 29, 2016); the DePuy Pinnacle, the Zimmer Durom Cup, the Wright Conserve, and the Biomet M2A “38mm” and M2A-Magnum hip replacement systems, which have not been recalled. Reported problems include pain, swelling and problems walking. Contact: Navan.Ward@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Invokana—Approved in March 2013, Invokana (canagliflozin) is an SGLT2 Inhibitor used to treat adults with Type 2 diabetes, manufactured by Janssen Pharmaceuticals, a subsidiary of Johnson & Johnson. SGLT2 inhibitors work by preventing high blood sugar by helping the patient’s kidneys remove excess sugar through their urine. In May 2015, the U.S. Food and Drug Administration (FDA) issued a warning the drug has been linked to cases of ketoacidosis, a serious condition where there is too much acid in the
blood. Complications of diabetic ketoacidosis include difficulty breathing, nausea/vomiting, abdominal pain, confusion and unusual fatigue or sleepiness. The condition can lead to diabetic coma and/or death. Contact: Danielle.Mason@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

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

Zofran—Manufactured by GlaxoSmithKline, Zofran (ondansetron) was approved to treat nausea during chemotherapy and following surgery. Zofran (ondansetron) works by blocking serotonin in the areas of the brain that trigger nausea and vomiting. Between 2002 and 2004, GSK began promoting Zofran off-label for the treatment of morning sickness during pregnancy, despite the fact the drug has not been approved for pregnant women and there have been no well controlled studies in pregnant women. The FDA has received nearly 500 reports of birth defects linked to Zofran. Birth defect risks include cleft palate and septic heart defects. Contact: Roger.Smith@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Physiomesh—Intended for hernia repair. Physiomesh is a flexible polypropylene mesh designed to reinforce the abdominal wall, preventing future hernias from occurring. Though there are several types of hernias, most occur when an organ or tissue protrudes through a weak spot in abdominal muscles. The condition often requires surgery where mesh, like Physiomesh, which is intended for laparoscopic use, is used to fill in a hole in the abdominal muscle or laid over or under it to prevent any further protrusions. Independent studies have found Physiomesh to lead to high rates of complications including hernia reoccurrence, organ perforation, mesh migration, sepsis and even death. In May 2016, Ethicon issued a market withdrawal of Physiomesh in the U.S. and recalled the product in Europe and Australia. Our lawyers are currently investigating cases involving serious injury or death as a result of Ethicon’s Physiomesh. Contact: Melissa.Prickett@beasleyallen.com.

ATTUNE Knee Replacement—Despite the overall high success rate in knee replacement surgeries, researchers have identified larger-than-usual failure rates with the DePuy Synthes ATTUNE® Knee System. Problems with ATTUNE include loosening of the tibial component at the implant-cement interface within the first two years after implant. Patients often present with pain on weight bearing, swelling, and decreased range of motion. Researchers believe that these failures are likely underreported, as competing companies cannot provide data on the revision components that they replace. We are currently investigating cases involving individuals who have undergone revision surgery due to loosening after a knee replacement using an ATTUNE device. Contact: Roger.Smith@beasleyallen.com, Liz.Eiland@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

FRAUD AND RELATED LITIGATION

Life Insurance Fraud—Our lawyers have uncovered fraudulent accounting practices by a number of life insurance companies concerning premium increases. The accounting method may result in the policyholder being charged excessive insurance premiums. A client who has a life insurance policy and who has been notified of a substantial increase in premium payments, or if they have been told their policy’s “cost of insurance” has increased, they may have a valuable legal claim. We are currently handling a number of these cases. Contact: Dee.Miles@beasleyallen.com, Andrew.Brashier@beasleyallen.com or Rachel.Boyd@beasleyallen.com.

False Claims Act / Whistleblower—Our firm is handling and investigating whistleblower claims of government fraud ranging from Medicare/Medicaid to military contracts, and any other type of fraud involving a government contract. Under the False Claims Act (FCA) the whistleblower is entitled to a percentage of the recovery. Studies show that as much as 10 percent of Medicare/Medicaid charges are fraudulent. Common schemes involve double-billing for the same service, inaccurately coding services, and billing for services not performed. Additionally, the Commission on Wartime Contracting has warned that the lack of oversight of government contractors has led to massive fraud and waste. Contact: Lance.Gould@beasleyallen.com, Larry.Golston@beasleyallen.com, or Andrew.Brashier@beasleyallen.com.

Self-funded Health and Pharmacy Insurance Plans—Third Party Administrators and Pharmacy Benefit Managers may have been charging unauthorized fees to self-funded insurance health and pharmacy benefit plans. These extra fees may be in violation of the contracts with the self-funded plan and a breach of fiduciary duty under ERISA. We are looking into these cases on behalf of self-funded plans. Contact: Alison.Hawthorne@beasleyallen.com.

Supplemental Disability Insurance Denial—Our firm has successfully litigated bad faith denial of benefits cases for years in the disability insurance area and we are interested in reviewing cases involving denial of Individual and Group disability insurance. These cases can be either employee sponsored benefit plan policies (ERISA), individually owned policies or non-ERISA governed supplemental insurance. Contact: Larry.Golston@beasleyallen.com.

Pharmaceutical Pricing—Our lawyers are continuing to handle claims involving chain pharmacies falsely reporting their generic pricing transactions to state Medicaid agencies. This misconduct has led to millions of dollars in overpayments by Medicaid agencies for generic drugs to the chain pharmacies. Contact: Alison.Hawthorne@beasleyallen.com or Leslie.Pescia@beasleyallen.com.

Auto Defect Class Actions—Our Consumer Fraud & Commercial Litigation Section is working on numerous auto defect class actions against many of the
major automobile manufacturers like VW, Toyota, General Motors, Ford and even some suppliers like Takata. These cases continue to be filed because of corporate misconduct in designing and manufacturing unsafe vehicles that are purchased by consumers, corporations and state agencies. We continue to investigate these automobile problems for class relief treatment. Contact: Dee.Miles@beasleyallen.com, Archie.Grubb@beasleyallen.com or Clay.Barnett@beasleyallen.com

Antitrust—Our lawyers are handling claims related to the violation of federal and state antitrust laws. We are currently involved in claims alleging a wide array of anticompetitive conduct, including illegal tying, exclusive dealing, monopolization, and price fixing. Contact: Archie.Grubb@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

Health Care Fraud—Our firm is looking into cases of fraud in the health care industry. These may include cases dealing with pricing, off-label prescriptions, or other health care abuse. Contact: Alison. Hawthorne@beasleyallen.com.

Fair Labor Standards Act (FLSA)—Our lawyers are working on a number of cases involving Fair Labor Standards Act (FLSA) violations. The FLSA cases are brought on behalf of clients whose job title is misclassified by their employers so that employees are not compensated for overtime worked. Cases may also involve unequal pay, where women are paid less for doing the same job as men. Contact: Lance. Gould@beasleyallen.com or Larry. Golston@beasleyallen.com.

State and Municipalities Litigation—Our firm has represented numerous states throughout the country. These cases have been handled through the Attorneys General and have involved various types of civil actions. Many times, individuals are barred from bringing a consumer fraud type claim, but the state government is not. We recently concluded litigation in six of eight states for recoveries involving medical fraud, with still two states remaining. For more information, contact Dee.Miles@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

Employment Law—Our lawyers are handling a number employment cases. Situations that may be addressed in this area include minimum wage and overtime pay, unfair labor practices, all types of discrimination, employee benefits, and whistleblower claims. Contact: Larry.Golston@beasleyallen.com.

Toxic Torts

Opioids—Opioid abuse has reached epidemic proportions in the United States. According to the Department of Health & Human Services, 12.5 million people misused prescription opioids and 35,091 Americans died from opioid overdose in 2015 alone. These medications provide important pain relief for many. However, over the years, drug companies inflated the effectiveness of delayed-release medications like OxyContin and downplayed their addictive properties, creating conditions ripe for abuse. Our lawyers are investigating cases involving opioid-related deaths and overdose, or symptoms of overdose requiring hospitalization.

In addition to individual cases of serious injury and death related to opioid abuse, Beasley Allen lawyers are representing the state of Alabama, a number of local governments in Alabama and in other states against both manufacturers and distributors of opioids for increased costs faced by local governments related to the opioid epidemic. Providing tax payer resources to battle the opioid crisis causes governments to sustain economic damages and ongoing significant financial burdens. Contact: Rhon.Jones@beasleyallen.com, Melissa.Prickett@beasleyallen.com or Roger.Smith@beasleyallen.com.

Mesothelioma—Mesothelioma is a highly aggressive and rare form of cancer usually affecting the lining of the lungs (pleural) or abdominal cavity (peritoneal). Occasionally, it also may affect the lining of the heart (pericardial). The only known cause of mesothelioma is exposure to asbestos. About 2,000 new cases of mesothelioma are diagnosed in the United States each year. For years, asbestos was widely used in many industrial products and in building construction for insulation and fire protection. When asbestos is broken or disturbed it can release microscopic fibers that can be inhaled or ingested, posing a health risk, including the development of asbestos diseases and mesothelioma. Contact: Rhon.Jones@beasleyallen.com.

Benzene—Benzene is widely used in a number of industries and products, yet many people remain unaware of the toxic danger of this chemical substance. Exposure to products containing benzene, whether through inhalation or skin absorption, can cause life-threatening diseases including Acute Myeloid Leukemia (AML), Myelodysplastic Syndrome (MDS), lymphomas and aplastic Anemia. Some of these diseases do not manifest themselves until several years after exposure to benzene. Due to certain statute of limitations for bringing a claim of this nature it is important to contact a lawyer as soon as possible if you believe your condition is a result of benzene exposure. Contact: John. Tomlinson@beasleyallen.com

Severe Lung Disease—Our firm is investigating numerous cases involving severe lung disease, including where a client has received any of the following diagnoses: any interstitial lung disease, pulmonary fibrosis (whether idiopathic or not), silicosis, black lung, bronchiolitis obliterans, sarcoidosis, berylliosis or chronic beryllium lung disease, metal lung disease, hypersensitivity pneumonitis, pneumococcosis, and non-smoker’s lung cancer and emphysema. These are grave diseases that oftentimes result in either death or a lung transplant, and they are frequently caused by exposure to dusts, fibers, metals, chemicals, vapors, food flavoring additives or other tiny particles in the workplace or as a result of a defective product. Often overlooked, these cases can have merit. Contact: Chris.Boutwell@beasleyallen.com

Roundup—Our lawyers are actively investigating cases where landscapers, farmers, groundskeepers or commercial gardeners used commercial grade Roundup and developed Non-Hodgkin’s Lymphoma (NHL). Plaintiffs across the country have filed lawsuits after having been diagnosed with NHL after using Monsanto’s herbicide. Contact: John.Tomlinson@beasleyallen.com or Rhon.Jones@beasleyallen.com.

PFC Contamination in Water Systems—In May 2016, the U.S. Environmental Protection Agency (EPA) issued new lifetime health exposure guidelines for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) in the water supply. After the EPA issued the new exposure limits, an advisory warning was provided to eight water systems in Alabama and more than fifty nationwide. The EPA advisory focused on PFOA and PFOS, man-made chemical compounds that are used in the manufacture of non-stick, stain-resistant, and water-proofing coatings on fabric, cookware, firefighting foam, and a variety of other consumer products. Exposure to the chemicals over time, even in trace amounts, could promote serious health problems, the EPA warns. Contact: Rhon.Jones@beasleyallen.com.

You can go to our firm’s website (www.beasleyallen.com) to keep up to date on

BeasleyAllen.com
the activity in all Sections in the firm. We take pride in being on the cutting edge of new areas of litigation. You can also contact the Administrator in each Section for information relating to activity in the Section. That person will put you in touch with the appropriate lawyer in the Section.

XXI.
CLOSING
OBSERVATIONS

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 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

XXII.
PARTING WORDS

How Many More Mass Murders Of Innocent Americans Will It Take?

Have we in America become so accustomed to mass murders in schools, churches and public places by individuals using assault rifles, that these mass shootings have become routine? The latest shooting that tragically occurred at Marjory Stoneman Douglas High School in Florida murdered 17 innocent children, with 15 more being injured, should wake up the American people. But will it? So far, with all of the previous mass murders, that has not happened. There have already been 18 school shootings in the United States this year with eight of the shootings resulting in deaths or injuries.

Sadly, there have been many other mass murders in churches and public venues. The catastrophic Las Vegas shooting, where a man shot and killed 58 people and injured more than 800 more, caused a great deal of concern for a time. Unfortunately, that concern pretty much went away after a few weeks. That has been the recurring story after each one of the mass murders.

The mass killings have a common denominator—a military style assault rifle designed to kill human beings—and that should serve as a serious wake-up call for the American people.

The senseless killing of innocent victims is heartbreaking and we must pray for all of the families affected by all of the tragic incidents. However, I agree with the children who survived the Florida massacre who say that “thoughts and prayers” by politicians are not enough. We must find a way to bring these mass killings to an end.

How many more mass shootings in schools, churches, malls, clubs and other public places will it take to get the attention of Congress? The current occupant of the White House should 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.

We must demand immediate action in Congress and not be satisfied until we have reasonable gun control in place. Who other than the NRA could be against strict background checks for persons attempting to buy a handgun or rifle? Who other than the NRA and the manufacturers could, in good conscience, object to the banning of assault rifles?

We must all pray for the families of the victims in Florida and for a community that has been devastated by a young man with hate in his heart and a military style assault rifle in his hands. We must also pray that President Trump and Congress will do the right thing on the gun control issue. Children all across the land are becoming a consolidated voice and the politicians had better start to listen. I believe the battle between American children and the NRA favors the children. The children have an agenda and their agenda is not controlled by political contributions. The NRA may well have finally met their match, and if so, America will be better and safer for it. God bless the children!
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. 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.

During his career, Jere has tried hundreds of cases. His numerous courtroom victories include landmark cases that have made a positive impact on our society. His areas of practice include litigation in products liability, insurance fraud, business, nursing home and personal injury.

It has been nearly 40 years since he began the firm with the intent of “helping those who need it most.” Today, Beasley Allen has offices in Atlanta, Georgia and Montgomery, Alabama, and employs more than 250 people, including more than 70 attorneys.

Beasley Allen is one of the country’s leading firms involved in civil litigation on behalf of claimants, having represented hundreds of thousands of people.