I. CAPITOL OBSERVATIONS

THE OPIOID CRISIS

America is facing a most serious crisis that is causing overwhelming hurt, misery and huge economic losses throughout the country. The opioid epidemic is totally out of control and must be dealt with. In 2016, the last year with publicly available data, 42,000 people in America died from opioid overdoses. The rate of overdose deaths involving opioids has quadrupled since 1999, according to the Centers for Disease Control and Prevention (CDC). According to reports, the opioid epidemic is costing the United States more than $500 billion per year. It is without question a public health and economic emergency.

Many communities across the country have been ravaged. While the most serious aspect of the epidemic is that people in great numbers are dying, the financial toll is also hurting badly. A financial burden has been put on government entities at every level, increasing the use of drug treatment services, inpatient hospital services, medical examiner costs, criminal justice costs, and law enforcement costs. Those costs include about 45,000 emergency-room visits for opioid patients in 2017, and delivering naloxone, an antidote for overdoses.

The opioids that are killing tens of thousands of Americans every year include prescription pills (including Vicodin and Oxycontin), as well as heroin and fentanyl, a drug that can be injected or taken through a skin patch or as a lozenge.

Some of the areas seeing the most overdose deaths are southwest and northeast Ohio, eastern Kentucky, western West Virginia and western Pennsylvania, according to the Federal Reserve Bank of Cleveland.

The new analysis from the Council of Economic Advisors (CEA) goes beyond “conventional methods” to account for the value of lives lost. Since the previous studies were done by the CEA, the opioid crisis has worsened and caused more deaths. Patients with untreated opioid use disorders tend to incur $18,000 more in health care costs annually than those without such a disorder, according to a 2011 study in the American Journal of Pharmacy Benefits. The following is a brief summary of findings from several studies:

HOSPITALS
One study from the Beth Israel Deaconess Medical Center in Boston found that the average cost of treating an opioid overdose victim in intensive care units jumped 58 percent between 2009 and 2015. As the addiction persists, patients arrive in a worse condition and require longer stays. In 2015, average cost among 162 academic hospitals was $92,400 per patient in intensive care.

CRIMINAL JUSTICE
The U.S. spent nearly $8 billion on criminal justice-related costs due to selling and consuming opioids, which was almost entirely a cost to state and local governments, according to the 2015 National Center for Injury Prevention and Control study published in the journal Medical Care. Worse, the recidivism rate for drug addicts is around 45 percent within three years of prison release.

BUSINESSES
The cost in lost productivity is about $20 billion, the 2015 study found. Some seven in 10 employers have felt some effect of prescription drug usage among their employees, including absenteeism or decreased job performance, according to the National Safety Council, a nonprofit based in Illinois. Fatal overdoses cost nearly $22 billion in health care and lost productivity costs.

UNSEEN COSTS
Of course, these are just the costs researchers can actually measure, said Curtis Florence, one of the authors of the study published in Medical Care. It doesn’t even begin to touch the impact of quality of life or pain endured by those affected. No part of our society, not young or old, rich or poor, urban or rural, has been spared the plague of opioid-related drug addiction.

There has already been a huge amount of litigation arising out of the opioid crisis. Claims in the lawsuits are that the drugmakers have deceptively marketed opioids and that the distributors ignored red flags indicating the painkillers were being diverted for improper uses.

As we have previously reported, a multidistrict litigation (MDL) has been created in Ohio to deal with the crisis. I will have more to say on that in a separate section of this issue. At this juncture Alabama has the only state case in the MDL. We believe this will prove to be a good move by Alabama Attorney General Steve Marshall.

Source: Insurance Journal, Law360.com, CNN and Bloomberg

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II. MORE AUTOMOBILE NEWS OF NOTE

FIAT CHRYSLER LOSES APPEAL OF $40 MILLION FATAL JEEP FIRE CASE AWARD

The Georgia State Supreme Court has upheld a $40 million award to the family of a young boy who died in 2012 when riding in a 1999 Jeep Grand Cherokee after the car was rear-ended and burst into flames. Four-year-old Remington was riding in the back seat of a 1999 Chrysler Jeep Grand Cherokee in March 2012 when it was struck from behind by a pickup truck driven by Bryan Harrell. The rear-located gas tank was punctured and the Jeep Cherokee caught fire, killing the boy.

The National Highway Traffic Safety Administration (NHTSA) had recommended a recall of the model in 2009. However, after CEO Sergio Marchionne met with two political appointees heading NHTSA, the 1999 Jeep Cherokee model was excluded from the recall. When pressed on the stand during the trial, the CEO refused to admit that he had persuaded the agency to resolve its investigation without finding a defect in order to avoid a drop in sales.

A then-record $105 million penalty was assessed by NHTSA against Fiat Chrysler in July 2015 for failing to properly execute safety recalls for more than 11 million defective vehicles, including older Jeeps with gas tanks in the rear.

In 2015, a Georgia state court jury ruled for the parents, awarding them $120 million in damages for wrongful death and $30 million in damages for pain and suffering after finding Harrell, the driver of the pickup, to be 1 percent at fault and Fiat Chrysler to be 99 percent at fault. The trial court judge denied the automaker’s motion for a new trial, but reduced the wrongful death verdict to $30 million and the pain and suffering damages award to $10 million.

On appeal, Fiat Chrysler argued that the lower court judge wrongly denied its directed verdict request, but the appellate court was unpersuaded, writing in November 2016 that the Waldens had presented sufficient evidence to support their claim that Fiat Chrysler knew that the location of the fuel tank in the 1999 Grand Cherokee was dangerous, yet continued to sell the vehicle with the gas tank in that location without warning the public.

During the trial, evidence of 17 other instances in which a Jeep vehicle with a fuel tank located behind the rear axle was rear-ended, causing gas to leak, were shown to the jury. Fiat Chrysler argued those incidents involved different Jeep models with different fuel structures, but the appellate court said additional evidence presented by the Waldens supported the judge’s finding that there was a common enough design.

The Waldens are represented by Karsten Bicknese and Robert H. Betts of Seacrest Karesh Tate & Bicknese LLP, James Butler Jr. and James E. Butler III of Butler Wooten & Peak LLP, Cathy Cox of Mercer Law School, and George C. Floyd of Floyd & Kendrick LLC. The case is Chrysler Group LLC v./a FCA US LLC v. Walden et al., (number S17G0832) in the Supreme Court of Georgia.

Source: Law360.com

1.2 MILLION JEEP CHEROKEE OWNERS NEVER NOTIFIED ABOUT DEADLY SAFETY ISSUE

Chris Glover from our Atlanta office is handling a case against Fiat-Chrysler in Georgia involving the death of Erica Scannavino, a 32-year-old woman who was killed in a fire-related motor vehicle accident. The fire that killed her was caused by the automaker and the maker of a trailer hitch mounted near the gas tank on the Jeep Cherokee. These defects have been known by both Jeep and the manufacturer of the trailer hitch for a long time. It’s been five years since Fiat-Chrysler recalled 1.5 million vehicles from 1993 through 1998 Jeep Grand Cherokee and 2002 through 2007 Liberty SUVs. However, only a fraction of drivers with those gas tanks got any warning of the potential danger, which results from a gas tank mounted behind the rear wheels, leaving it exposed in a rear-end collision.

The lawsuit filed by the family of Erica Scannavino says the tank itself is only part of a dangerous and sometimes deadly problem. Ms. Scannavino was killed in July in Cobb County, Georgia, when a rear-end crash set a Jeep Cherokee ablaze. This was the kind of collision where a person in the struck vehicle is not supposed to die. Tragically, this young woman was burned alive because of the placement of the gas tank on her 1996 Cherokee. An after-market trailer hitch had been mounted only inches away from the gas tank. These after-market trailer hitches can make an already bad situation disastrous.

The trailer hitch on the Cherokee is adjustable to fit multiple makes and models. Two bolts that lock the proper fit protrude toward the gas tank. In this incident, there are two holes where the bolts punctured the tank on impact. One of them has the bolt threads melted right into the gas tank.

When the recall was issued, Jeep agreed to provide a trailer hitch, saying it would add additional protection for the gas tank during a rear impact After-market hitches already installed would be inspected for any evidence of sharp edges or puncture risk. That is exactly what they are supposed to be looking for. The two punctures in the Scannavino vehicle are clear evidence of what happened to cause the fire.

Cherokee owners did not get a recall and drivers of the Cherokees got no trailer hitch inspections. Erica Scannavino died because she didn’t get that badly needed information.

Cobb solicitor Barry Morgan dropped vehicular homicide charges against the driver who hit Erica Scannavino. He cited the Cherokee gas tank as the problem. Morgan stated the following to a reporter with Channel 2 Action News:

_The crash itself didn’t cause injuries sufficient to cause her death. The placement of the gas tank actually is what caused her death._

We will keep you up to date on developments in this most important litigation. If you have any questions, contact Chris Glover in our Atlanta office at 800-898-2034 or by email at Chris.Glover@beasley-allen.com.

UBER HALTS AUTONOMOUS CAR TESTS AFTER FATAL CRASH IN ARIZONA

Uber Technologies Inc. halted autonomous vehicle tests after one of its cars struck and killed a woman in Tempe, Arizona. This appears to be the first pedestrian fatality involving the technology. The 49-year-old woman, Elaine Herzberg, was crossing the road outside of a crosswalk when the Uber vehicle operating in autonomous mode under the supervision of a human safety driver struck her.

The incident is under investigation. Uber has said that it is halting tests of all its self-driving vehicles on public roads in Pittsburgh, San Francisco, Toronto and the greater Phoenix area.

JereBeasleyReport.com
Companies including Alphabet Inc., General Motors Co., Uber and Baidu Inc. are investing billions of dollars to develop autonomous-vehicle technology. The proponents say it has the potential to transform the auto industry and transportation in general. The fatality in Tempe should slow the testing and it could delay commercialization. This should put a damper on the optimism shared by the named companies in their rush to the market.

Testing has expanded to complex urban areas in states like Arizona and Texas, which have taken a light-touch regulatory approach. Companies have been racing to be first to commercialize the technology. That may have helped to improve the systems, but it has also increased the chance of pedestrian deaths. Sadly, experts have long worried about the impact deadly crashes could have on the industry.

The National Transportation Safety Board (NTSB) opens relatively few highway accident probes each year, but has been closely following incidents involving autonomous or partially autonomous vehicles. The NTSB partially faulted Tesla Inc.’s Autopilot system for a fatal crash in Florida in 2016.

Many safety experts believe the federal and state governments need to slow down and take a long look at the safety issues that self-driving technology will incur in contrast with the Department of Transportation (DOT), which revised its policy on self-driving vehicles. At this juncture, there is some conflict between the NTSB and the DOT. Jason Levine, Executive Director of the Center for Auto Safety, a Washington-based advocacy group, observed:

As always we want the facts, but based on what is being reported this is exactly what we have been concerned about and what could happen if you test self-driving vehicles on city streets. It will set consumer confidence in the technology back years if not decades. We need to slow down.

Uber has had incidents in the past. Last year, Uber suspended its self-driving car program after one of its autonomous vehicles was involved in a high-impact crash in Tempe. Police said at the time that the Uber vehicle was not responsible for the incident. There were no injuries in that crash.

The federal government, through the U.S. Department of Transportation’s National Highway Traffic Safety Administration (NHTSA), last September released an updated policy offering broad federal guidance—but no binding rules—on how self-driving cars should be developed and tested. But it has left it up to states to determine what cars can be tested on their roads.

Consumer Watchdog has called for a national moratorium on self-driving car testing on public highways, and urged NHTSA to collect more data about the cars before changing federal policies “that would effectively pave the road for unregulated robot cars.” John M. Simpson, Consumer Watchdog’s privacy and technology project director, said in a statement:

There should be a national moratorium on all robot car testing on public roads until the complete details of this tragedy are made public and are analyzed by outside experts so we understand what went so terribly wrong. Arizona has been the wild west of robot car testing with virtually no regulations in place. That’s why Uber and Waymo test there. When there’s no sheriff in town, people get killed.

It is quite obvious that there must be a more deliberate approach to this radical change in the automobile industry. I am afraid that things are moving much too fast when it comes to testing of the autonomous vehicles. Safety should be a top priority in the rush to market that appears to be “driving this train” at present.

Source: Bloomberg & Law360.com

TOYOTA AND KOBÉ STEEL SUED BY DRIVERS OVER SUBSTANDARD METAL PARTS

A class action lawsuit was filed last month in a California federal court against Toyota and Kobe Steel Ltd. It’s alleged in the lawsuit that Kobe misrepresented that certain steel, aluminum and copper products used in Toyota Motor Corp. vehicles are in compliance with quality standards. The named Plaintiffs, Alejandro Nava and Shantnu Malhotra, who drive Priors made with allegedly substandard metal, alleged that Kobe falsified certain documents to indicate to automakers such as Toyota that its metal meets quality standards related to tensile strength, thickness and durability. It’s further alleged that Toyota falsely claimed that its own investigation found that the metals complied with the automaker’s standards.

A self-inspection of records conducted by Kobe in 2017 showed that quality assurance information about Kobe’s aluminum, copper and steel products had been rewritten to state that the products were in compliance with safety standards when they were not. Items that are alleged to be substandard were subsequently shipped to 525 companies, the suit alleged. Jack Fitzgerald, one of the lawyers for the Plaintiffs, stated:

No one wants to be driving around wondering if systems in their cars are going to fail at the wrong time because of the use of substandard materials.

Toyota owns a 15 percent stake in Kobe’s aluminum division through Toyota Tsusho Corp. Toyota was a customer of Kobe for the metal. The affected metals have been used in the automaker’s hoods, doors and “peripheral areas” made in Japanese plants.

Toyota said in January that it had investigated the allegedly substandard materials and found that its vehicles’ “quality and performance satisfy our own internal standards,” according to the complaint. It’s alleged further that, despite the automaker’s assurances, certain Toyota-made Priors, Camry, Land Cruiser and Lexus vehicles do in fact contain substandard parts. The named Plaintiffs, Nava and Malhotra, said their Priors, each manufactured in Japan, were made with substandard metal. Had they known this, the Plaintiffs say that they would not have purchased or leased the vehicles at the prices they did, if at all.

Nava and Malhotra seek to represent a class of people nationwide who have purchased or leased Toyota vehicles made with substandard metals, as well as a subclass of drivers of allegedly defective vehicles in California. The drivers are represented by Jack Fitzgerald, Trevor M. Flynn and Melanie Persinger of The Law Office of Jack Fitzgerald PC. The case is Alejandro Nava v. Kobe Steel Ltd. et al., (case number 3:18-cv-01423) in the U.S. District Court for the Northern District of California.

Source: Law360.com

CLASS ACTION LAWSUIT FILED AGAINST AUDI AND VOLKSWAGEN OVER TAKATA AIR BAGS

A class action lawsuit was filed last month against Audi and parent company Volkswagen AG in a Virginia federal court. The suit by a group of drivers accused the automakers of concealing facts about the safety of its vehicles
equipped with Takata Corp. air bags that posed an explosion risk. Two months after an additional 4.3 million vehicles with the defective air bags were recalled, the drivers allege that Audi of America LLC has long been aware of the well-reported incidents and recalls automakers have issued over Takata’s air bags, but failed to promptly alert and accommodate its customers. The complaint says:

*By concealing their knowledge of the nature and extent of the defect from the public, while continuing to advertise their products as safe and reliable, defendants have shown a blatant disregard for public welfare and safety.*

The Virginia complaint states that in the late 1990s, Takata’s managers pressured engineers to devise and utilize a lower cost air bag propellant based on ammonium nitrate, despite concerns from the engineering team about the risk of disintegration and irregular, overly energetic combustion. The air bags were used by an array of automakers nonetheless, and have since been responsible for at least 12 deaths and 180 serious injuries in the U.S. alone as of last summer. Honda was the first carmaker to issue a public recall, stating in 2008 that the bags could produce excessive internal pressure, causing the inflator to rupture and spray metal fragments through the air bag cushion. The suit seeks to certify a class of any U.S. resident who, before the issuance of the recall, purchased or leased a vehicle manufactured by Audi and containing a defective Takata airbag, and who either still own or lease the vehicle or sold it after the recall was issued.

The drivers are represented by Mikhael D. Charnoff and Scott M. Perry of Perry ARCOS that receives roughly 80 million transactions involving controlled

Lawsuit Says GM, Fiat, VW And Mercedes Hid Takata Airbag Defect

Three federal proposed class actions filed last month against General Motors LLC, Fiat Chrysler, Volkswagen Group of America and Mercedes-Benz USA LLC allege that the automakers knowingly misrepresented that vehicles made with Takata airbags were safe even though the airbags posed an explosion risk. The three suits were filed as part of multidistrict litigation (MDL) in a Florida federal court.

The suits allege that while Takata and its automaker customers have known of the defect since at least 2003, the Defendants didn’t begin to recall their affected vehicles until years later. Owners or lessees of the vehicles would have paid less if they had known about the airbag defect, the suits claim. Peter Prieto, lead counsel for the consumer Plaintiffs in the MDL, had this to say:

*These auto manufacturers were well aware of the public safety risks posed by Takata’s airbags long ago, and still waited years to disclose them to the public and take action. The consolidated class action complaints are an important step forward in holding them accountable, and ensuring all consumers exposed to these dangerous airbags receive the recourse they deserve.*

As we have reported previously, the ammonium nitrate that inflates the Takata airbags is a “notoriously volatile and unstable compound” that too often explodes and sprays passengers with debris and shrapnel. Even after competitors that had installed Takata airbags recalled about 4 million affected vehicles in April and May of 2013, it is said that the Defendants were nonetheless very slow to issue their own recalls.

So far, six automakers have reached settlements to exit the multidistrict litigation. Toyota, Subaru, Mazada and BMW agreed to pay a combined $553.6 million in May, Nissan settled for $98 million in August, and Honda reached a $605 million settlement in September. Ford is still facing claims similar to those brought in these suits. Volkswagen was hit with a separate proposed class action alleging similar misconduct in Virginia federal court, as well.

The MDL Plaintiffs are represented by Peter Prieto, Aaron S. Podhurst, Stephen F. Rosenthal, John Gravante, Matthew P. Weinshall and Alissa Del Riego of Podhurst Orseck PA. The MDL is In re: Takata Airbag Products Liability Litigation (case number 1:15-md-02599) in the U.S. District Court for the Southern District of Florida.

U.S. Probes Air Bag Failures In Deadly Hyundai And Kia Car Crashes

The U.S. National Highway Traffic Safety Administration (NHTSA) has opened an investigation into why some air bags failed to deploy in Hyundai and Kia vehicles after crashes in which four people were reportedly killed and another six injured. The agency said it was reviewing 425,000 2012-2013 Kia Forte and 2011 Hyundai Sonata cars. It also said it will determine if any other manufacturers used similar air bag control units and if they posed a safety risk. Hyundai Motor Co issued a recall in February for 154,753 U.S. Sonatas after non-deployment reports were linked to electrical overstress in the air bag control unit, but said it did not have a final fix yet.

NHTSA says it is aware of six crashes in which six people were injured when air bags failed to deploy in frontal crashes, including four in 2011 Hyundai Sonatas and two in 2012 and 2013 Kia Fortes. The 2013 Forte crash occurred in Canada. NHTSA said the air bag control module was built by ZF Friedrichshafen-TRW, a German auto supplier that acquired TRW Automotive Holdings Corp in 2015.

Source: Reuters

III. THE OPIOID LITIGATION

An Update On The Opioid MDL

Last month, the U.S. Drug Enforcement Administration (DEA) told U.S. District Judge Dan Aaron Polster, the Ohio federal judge presiding over the opioid multidistrict litigation (MDL), that it will divulge nine years of data on opioid sales. The DEA told Judge Polster that it will provide the identities of manufacturers and distributors that sold more than 90 percent of opioids in every state from 2006 through 2014. Previously, the DEA had only agreed to release a very limited amount of data.

The data will include a state-by-state breakdown and will show the cumulative amount of prescription opiate pills sold and the market shares of each manufacturer and distributor. The information comes from a federal database called ARCOS that receives roughly 80 million reports annually from drug companies about transactions involving controlled

Source: Law360.com
substances. The disclosure will help the lawyers involved in the litigation to identify Defendants and to allocate damages.

Meanwhile, following two months of settlement talks, Judge Polster issued an order requesting the lawyers come up with a plan for a litigation track. He is permitting lawyers to proceed with discovery and motion filings. The Judge’s order indicated that a litigation track would be the quickest way to overcome many of the barriers preventing some type of global resolution. Judge Polster also scheduled another settlement conference for May 10 and he requested that settlement negotiations continue during the interim.

Judge Polster wrote in his order: “The parties reported important and substantial progress on several fronts, but also identified various barriers to a global resolution.” So it is now clear that the judge will allow motions and bellwether trials. Trials of that nature are test cases used in mass litigation to help both sides gauge the range of damages and define settlement options.

The lawsuits have generally accused the drugmakers of deceptively marketing opioids and allege distributors ignored red flags indicating the painkillers were being diverted for improper uses. The Defendants include opioid manufacturers Purdue Pharma LP, Johnson & Johnson, Teva Pharmaceutical Industries Ltd, Endo International Plc and Allergan Plc and drug distributors AmerisourceBergen Corp, Cardinal Health Inc. and McKesson Corp.

To facilitate a global settlement, Judge Polster has invited state attorneys general who have cases in state courts not before him and those who are conducting a multistate investigation to participate in those talks. At this juncture, Alabama has the only state case that is actually in the MDL. We believe this was a good move by Alabama’s Attorney General Steve Marshall. While Judge Polster in his order said some litigation will now take place, he directed three special masters appointed to facilitate settlement talks to continue participating in negotiations. Another settlement hearing was scheduled for May.

The case is In re: National Prescription Opiate Litigation in the U.S. District Court for the Northern District of Ohio. If you have any questions regarding the litigation, or if you would like for us to review a potential claim, contact Rhon Jones, who heads up our firm’s Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com.

President Trump Unveils Four-Point Plan for Dealing with the Opioid Crisis

President Donald Trump unveiled a four-part plan last month for curbing the opioid crisis with a wide-ranging mix of policies, including tougher criminal enforcement, stricter border security, expanded addiction treatment and a nationwide educational campaign. The blueprint, which Trump outlined during a speech in New Hampshire, largely reflected recommendations advanced last year by a presidential commission. However, it did include some new ideas as well, including a plan to seek the death penalty for certain drug traffickers.

The opioid crisis claimed an estimated 42,000 lives in 2016. Deaths have resulted from prescription painkillers, such as oxycodone, and illicit drugs, such as heroin. Let’s take a look at the Trump plan:

- One component of the four-part plan focuses on reducing the supply of opioids. In addition to wider use of capital punishment, the component includes a more aggressive posture by the U.S. Department of Justice (DOJ) toward opioid manufacturers and “criminal negligence doctors, pharmacies and distributors.” The Department of Justice is looking very seriously at bringing major litigation against some of these drug companies. To reduce the opioid supply, Trump wants to require advance electronic information about 90 percent of international mail shipments with goods.

- A second component focuses on reducing demand and improper prescribing. The president set a goal of reducing opioid prescriptions by one-third within three years and ensuring that 95 percent of government-reimbursed opioid prescriptions are prescribed in accordance with best practices within five years. Trump also backed a public advertising campaign to “scare” Americans away from abusing opioids, and he rolled out a website—crisisnextdoor.gov—that invited Americans to share personal stories related to opioid abuse.

- A third component emphasized help for people struggling with addiction. Wider availability of overdose-reversal drug naloxone and more opportunities for drug offenders to enroll in treatment programs as alternatives to incarceration, among other initiatives, were proposed.

- The plan’s fourth component, which overlapped with the other categories, is targeted at “the driving forces” of the opioid crisis. It includes various goals of reducing unnecessary prescribing, curtailing illicit drug supplies and expanding addiction treatment.

Attorney General Jeff Sessions has created a new task force focused specifically on targeting opioid manufacturers and distributors. Jeff says he intends to hold them accountable for their unlawful practices. The Justice Department has also filed a statement of interest in the multidistrict litigation (MDL), which involves hundreds of lawsuits against opioid manufacturers and distributors. It remains unclear how much money Congress will allocate for various initiatives and whether congressional authorization can be obtained for certain policies. I believe that Congress provided about $4 billion for the opioid battles in the legislation passed on March 23 to keep the federal government open. I am reasonably sure that the federal government will file civil lawsuits to recover damages from the manufacturers and distributors of the opioids. The damages for the government will be huge.

Source: The Washington Post and Law360.com

Alabama Pill Mill Health Care Providers Indicted

Four Alabama health care providers were arrested on Dec. 5, 2017, after being indicted by a federal grand jury for their role in operating a “pill mill” that indiscriminately prescribed unnecessary and addictive opioid prescriptions. The “pill mill” operated out of Family Practice, a medical practice located in Montgomery, Alabama. Among those arrested were a doctor and three nurse practitioners.

Dr. Gilberto Sanchez, owner of Family Practice, pleaded guilty on Nov. 28, 2017, to drug distribution, health care fraud, and money laundering charges. The indictment in this case alleges that the Defendants conspired with Dr. Sanchez to “un unnecessarily and illegitimately prescribe controlled substances to the patients of Family Practice.” Further, it charges the Defendants with committing health care fraud by billing or causing insurance companies to be billed for unnecessary office visits. Those visits had no purpose other than to refill unnecessary medications. Finally, the indictment alleges that one of the named Plaintiffs conspired with Dr. Sanchez to commit money laundering.

Source: Law360
Unfortunately, allegations like the ones in the indictment have become all too frequent over recent years as the opioid epidemic has unfolded across the nation. According to the Centers for Disease Control and Prevention (CDC), since 1999, the number of overdose deaths involving opioids (including prescription opioids and heroin) quadrupled. From 2000 to 2015 more than half a million people died from drug overdoses and currently 91 Americans die every day from an opioid overdose. Correspondingly, opioid prescriptions have also quadrupled over the same time period, but there has not been an overall change in the amount of pain Americans report. “Pill mills,” such as Family Practice, definitely share responsibility with the manufacturers and distributors for such over-prescribing and resulting death. All of them are allowing huge amounts of unnecessary opioids to be made, distributed and sold for their own financial benefit.

These indictments highlight only the criminal aspects of the law. However, under the *qui tam* provisions of the False Claims Act, whistleblowers with firsthand knowledge about similar “pill mills” or unnecessary opioid prescribing can bring a civil case on behalf of the United States. This is particularly applicable when a government agency, such as Medicare or Medicaid, is billed for the unnecessary opioid prescriptions. Not only can the whistleblower take a stand against the unnecessary opioid prescribing can bring a civil case on behalf of the United States. This is particularly applicable when a government agency, such as Medicare or Medicaid, is billed for the unnecessary opioid prescriptions. Not only can the whistleblower take a stand against the government for such unnecessary opiates and the office visits associated with such prescriptions. Further, the whistleblower who originally files the case is entitled to 15-30 percent of the government’s recovery as well as the vacatur of the rule, then it appears the fiduciary rule becomes null and void. The Fifth Circuit’s decision is schedule to take effect on May 7, 2018, if there is no appeal.

Micah Hauptman, financial services counsel for the Consumer Federation of America, told ThinkAdvisor that the “case was wrongly decided. The industry opponents went forum shopping and finally found a court that was willing to buy in to their bogus arguments. This is a sad day for retirement savers.” The opinion, Hauptman added, “is extreme by any measure. It strikes at the essence of the DOL’s authority to protect retirement savers under ERISA. It’s not only an attack on the rule, it’s an attack on the agency.” Apart from DOL, the Securities and Exchange Commission (SEC) has been conducting its own review of the fiduciary rule with the intent of releasing its own fiduciary rule. SEC Chairman Jay Clayton indicated that the Fifth Circuit’s decision has not deterred the agency’s fiduciary rulemaking and he hopes to release an SEC fiduciary proposal soon.

Source: Law360.com, CNBC, National Law Review

**Fifth Circuit Court of Appeals Scraps Obama-Era ‘Fiduciary Rule’**

On March 15, a three-judge panel for the Fifth Circuit Court of Appeals overturned the United States Labor Department’s (DOL) fiduciary rule, a set of regulations that would have required financial institutions and advisers to act in the best interests of their clients when making recommendations concerning retirement investments. According to a 2015 study from former President Barack Obama’s Council of Economic Advisors, conflicted advice was costing consumers about $17 billion in retirement earnings each year, which prompted the rule. DOL proposed the new regulations in April 2016, and it partly took effect in June 2017. Once the Trump administration took over, however, it delayed enforcement of the rule to reassess its impact and continued to delay full implementation.

The challengers to the rule included the U.S. Chamber of Commerce, the Securities Industry and Financial Markets Association and the Financial Services Institute, which claimed DOL exceeded its authority in promulgating the rule. The Fifth Circuit ruling came just days after DOL won in the Tenth Circuit Court of Appeals in a case brought by an insurance distributor who argued the rule arbitrarily treated fixed index annuities differently than fixed annuities. The Tenth Circuit found that DOL’s decision to include fixed indexed annuities was not arbitrary or capricious. Not long after the Fifth Circuit ruling, the National Association of Fixed Annuities (NAFA) withdrew its lawsuit challenging the rule, which was pending in the D.C. Circuit Court of Appeals. NAFA’s appeal came after a federal district judge upheld the rule. While the Tenth Circuit upheld a specific provision, the Fifth Circuit’s decision vacates the fiduciary rule in its entirety.

In response to the Fifth Circuit opinion, DOL has since chosen to put enforcement of the rule on hold, “pending further review.” Although DOL is delaying enforcement of the rule, it is still unclear whether it will continue to defend the rule in court. If it chooses to continue defending the rule, DOL can ask for a rehearing in the Fifth Circuit or seek Supreme Court review. If DOL and DOJ decline to appeal or otherwise challenge the vacatur of the rule, then it appears the fiduciary rule becomes null and void. The Fifth Circuit’s decision is schedule to take effect on May 7, 2018, if there is no appeal.

**U.S. Supreme Court Refused To Review The $655 Million Madoff Settlement**

The U.S. Supreme Court has rejected a petition from hedge fund investors who said that an allocation plan for a complex $655 million settlement connected to Bernie Madoff’s massive Ponzi scheme denied them and many other funds representation of their interests. The petitioners said that the Second Circuit abused its power in approving the settlement. The Supreme Court denied *certiorari*. The 2011 settlement was with the Bernard L. Madoff Investment Securities LLC bankruptcy trustee, and one of the two massive funds it created, the “Fund Distribution Account.” It was the subject of a yearlong mediation and 2014 plan of allocation.

Source: Law360.com
V. WHISTLEBLOWER LITIGATION

Beasley Allen Lawyers Secure a $14.7 Million Judgment in Whistleblower Case

U.S. District Judge Virginia Hopkins entered a judgment in the amount of $14,708,630.06 on behalf of whistleblower Barry Taul, who uncovered and reported an illegal kickback scheme and false billing that defrauded Medicare and taxpayers. A jury found in favor of Mr. Taul in the whistleblower case on Feb. 5. After discovering the fraud perpetuated 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, he 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.

The final judgment order notes damages in the amount of $1,769,710.02, which were trebled pursuant to 31 U.S.C. § 3729(a). As a result, the Court entered a damages judgment of $5,309,130.06 against both Defendants. The jury found 1,709 violations of the False Claims Act, leading the court to assess a civil penalty in the amount of $5,500 per claim and enter a civil penalties judgment of $9,399,500 against both Defendants. As a whistleblower award, Plaintiff Barry Taul is entitled to 27.5 percent of the proceeds with a continuing investigation of individuals and entities not released in the agreement, and to pay an additional $5.78 million to relator Aaron Westrick, former research director for vest manufacturer Second Chance Body Armor Inc.

The whistleblower, Westrick, now employed as a tenured professor at Lake Superior State University in Michigan and an active state deputy sheriff, said in a statement that although the suit cost him his job and career, he has no regrets and would blow the whistle again. He stated:

“I only wanted to stop the sale of unsafe Zylon vests to police officers, federal agents, and members of our armed services. I tried to convince my company to stop selling these vests. They refused. The defective Zylon product was taken off the market and Toyobo (along with other companies) were held accountable.

The government’s investigation into Toyobo’s Zylon fiber arose from a 2003 fatal shooting of a police officer in California after a bullet pierced his vest. Ten days later, a Pennsylvania officer was shot in the stomach through his vest. Both vests contained Zylon. The two incidents sparked a run into bankruptcy for Second Chance and widespread federal charges against Zylon vest manufacturers, weavers and Toyobo.

This is the latest settlement to arise out of the whistleblower suit filed in 2004 by Westrick. The former Second Chance employee alleged the company knew Zylon, the key ballistic material in its bulletproof vests, deteriorated more quickly than expected but concealed that fact from the government.

The suit also named manufacturers Toyobo Co. Ltd. and Toyobo America Inc. and four former executives at Second Chance as Defendants, with two of the former executives settling in May 2012. Second Chance settled and was dismissed from the suit for $3.6 million four months later. Toyobo, however, kept battling claims that it also knew of Zylon’s degradation issues, but concealed them from Second Chance. The company argued that the government’s body armor contract did not list durability or degradation resistance as a requirement for the procurement, and thus any alleged misstatements would have had no bearing on the ultimate purchase decisions.

The government is represented in-house by Alicia J. Bentley. Westrick is represented by Stephen M. Kohn of Kohn Kohn and Colapinto LLP. The case is U.S. et al. v. Second Chance Body Armor Inc. et al. (number 1:04-cv-00280) in the U.S. District Court for the District of Columbia.

Source: Law360.com

False Claims Act Lawsuit Filed Against Compounding Pharmacy and Others Alleging Payment of Kickbacks

The United States has filed a complaint in intervention against Diabetic Care Rx LLC doing business as Patient Care America (PCA), a compounding pharmacy located in Pompano Beach, Florida. It’s alleged that the pharmacy paid illegal kickbacks to induce prescriptions for compounded drugs reimbursed by TRICARE. The government also brought claims against Patrick Smith and Matthew
Smith, two pharmacy executives, and Riordan, Lewis & Haden Inc. (RLH), a private equity firm based in Los Angeles, California, which manages both the pharmacy and the private equity fund that owns the pharmacy, for their involvement in the alleged kickback scheme.

TRICARE is a federally funded health care program for military personnel and their families. The government alleges that the Defendants paid kickbacks to marketing companies to target TRICARE beneficiaries for prescriptions for compounded pain creams, scar creams, and vitamins, without regard to the patients' medical needs. According to the complaint, the compound formulas were manipulated by the Defendants and the marketers to ensure the highest possible reimbursement from TRICARE.

The lawsuit, United States ex rel. Medrano and Lopez v. Diabetic Care Rx, LLC dba Patient Care America, et al., [No. 15-CV-62617 (S.D. Fla.)] was originally filed in the U.S. District Court for the Southern District of Florida by Marisela Medrano and Ada Lopez, two former employees of PCA. The lawsuit was filed under the qui tam provision, which allows that the Defendants and marketers split the profits from the scheme.

The defendants, United States ex rel. Medrano and Lopez v. Diabetic Care Rx, LLC dba Patient Care America, et al., [No. 15-CV-62617 (S.D. Fla.)] was originally filed in the U.S. District Court for the Southern District of Florida by Marisela Medrano and Ada Lopez, two former employees of PCA. The lawsuit was filed under the qui tam provision of the False Claims Act. When these statutes are violated, the government is defrauded. The FCA, through its qui tam provision, provides an avenue for ordinary citizens to blow the whistle on fraud when those citizens have knowledge of someone defrauding the government, which is what happened in this case.

Dr. Tullio Emanuele filed this lawsuit under the qui tam provision of the FCA alleging that Hamot paid Medicor $2 million per year under arrangements that were to ensure patient referrals. The complaint went on to allege that Hamot had no legitimate need for the services and that the services were either duplicative or not even performed in some instances.


Source: U.S. Department of Justice

SAN DIEGO COMMUNICATIONS COMPANY SETTLES FALSE CLAIM ACTION

TrellisWare Technologies, Inc., a communications company located in San Diego, has agreed to pay $12,177,631.90 to settle a False Claims Act lawsuit. It was claimed that the company was ineligible for multiple Small Business Innovation and Research (SBIR) contracts it had entered into with government defense agencies. TrellisWare is a majority-owned subsidiary of ViaSat, Inc., a global broadband services and technology company headquartered in San Diego.

The SBIR program is designed to stimulate technological innovation by funding small businesses to engage in federal research and development efforts. To be considered a small business for purposes of SBIR awards, a contractor must not be majority owned by another company. Between 2008 and 2015, TrellisWare was awarded multiple SBIR contracts to provide the Navy, Army and Air Force with a variety of technology services and products involving communications and signal processing systems, including wireless networks used in military tactical environments.

TrellisWare self-certified that it met the small business size requirements for eligibility to receive SBIR funding. But based on certain disclosures that TrellisWare later made about its ownership relationship with ViaSat, the government conducted an investigation into TrellisWare's eligibility for SBIR awards. The government contends that TrellisWare was not eligible for SBIR awards because it was actually a majority-owned subsidiary of ViaSat at the time it was awarded and performed on SBIR contracts.

Source: U.S. Attorney's Press Release

CALIFORNIA GENETIC TESTING SERVICE TO PAY $11 MILLION TO SETTLE FALSE CLAIMS CASE

United States Attorney Russell M. Coleman, acting on behalf of the Office of Inspector General of the Department of Health and Human Services, the TRICARE Program, and the Federal Employees Health Benefits Program (FEHB) has announced a $10,635,615.90 settlement with Natera, Inc. This settlement will resolve claims that Natera improperly billed federal health care programs for Natera's non-invasive prenatal test known as Panorama. Natera has also agreed to pay an additional $756,183 to a number of state Medicaid programs. United States Attorney Russell Coleman stated:

Let this hefty settlement send a message that pursuing health care fraud is a priority of our Office and of the Department of Justice. Overbilling federal health care programs steals from taxpayers and drives up the cost of health care for us all. Recovering taxpayer dollars lost to fraud helps keep strong those critical public health care programs so many Kentucky families depend on.

The United States contended that between Jan. 1, 2013, through Dec. 31, 2016, Natera knowingly submitted false or fraudulent claims seeking payment from the TRICARE Program, FEHB, and Medicare program for Natera's genetic testing services, including its non-invasive prenatal test known as Panorama® (including optional panels that screened for microdeletion syndromes).
Specifically, the United States contended that for dates of service between Jan. 1, 2013, through March 4, 2015, Natera improperly billed TRICARE for its Panorama® test, (including optional panels that screened for microdeletion syndromes), when TRICARE did not reimburse for certain laboratory developed test. Further, during dates of service between Jan. 1, 2013, through Dec. 31, 2016, Natera improperly billed TRICARE for non-invasive prenatal screening of certain microdeletion syndromes when TRICARE did not reimburse for this screening.

During the same period, Natera improperly billed TRICARE, FEHBP, and Medicaid for its Panorama® test and for its non-invasive prenatal screening of certain microdeletion syndromes by using an improper code that misrepresented the services Natera was billing to these programs. Lastly, during the same dates of service, Natera billed TRICARE, FEHBP, and Medicaid for its Panorama® test (including optional panels that screened for microdeletion syndromes) for patients with low-risk pregnancies.

This matter arose as a complaint for monetary damages under the qui tam provisions of the federal False Claims Act. The relators, Sallie McAdoo and Steven Aldridge, filed a qui tam action on Jan. 26, 2015, in United States District Court for the Western District of Kentucky (United States, ex rel. Sallie McAdoo and Steven Aldridge v. Natera, Inc., Civil Action No. 3:15-cv-88-DJH).

Natera is entering into a separate settlement agreement in the amount of $56,183.00 (the “Medicaid State Settlement Agreement”) for similar conduct related to various state Medicaid programs. The Medicaid State Settlement Agreement was negotiated by a team with the National Association of Medicaid Fraud Control Units.

Source: Defense.gov

$33 MILLION SEC WHISTLEBLOWER AWARD SETS AGENCY RECORD

The U.S. Securities and Exchange Commission (SEC) has awarded a whistleblower more than $33 million—the largest fee issued in the seven-year history of the agency’s program for rewarding whistleblowers—for tipping off authorities about misconduct at Merrill Lynch. In addition to the $33 million award, which broke the previous high of $30 million issued in 2014 to a whistleblower in a foreign country, the SEC announced that two other whistleblowers would share a nearly $50 million award.

The three whistleblowers, represented by Labaton Sucharow LLP partner Jordan Thomas, helped an SEC investigation into Bank of America Corp.’s Merrill Lynch brokerage that resulted in a $415 million settlement in 2016 and an admission that the firm’s brokerage unit misused consumers’ cash. The settlement resolved claims that Merrill Lynch violated the agency’s Customer Protection Rule by keeping at its disposal billions of dollars that should have been deposited into a reserve account meant to protect customers in the event of the firm’s failure.

The three whistleblowers reported anonymously to the SEC through their lawyer, Jordan Thomas. The agency’s rules require whistleblowers reporting anonymously to retain legal counsel. Thomas, in an interview with Law360, stated:

The best protection against retaliation and blacklisting is the ability to report anonymously. My clients have been fortunate to avoid such negative outcomes because of the SEC whistleblower program. As a result my clients have been able to live a normal life and will be able to live a normal life—just with a lot more money.

In a prepared statement, Thomas described his clients as “a shining example of integrity in action” and said they planned to donate “a substantial part of this life changing award” to charities. The SEC has a policy against identifying whistleblowers.

The SEC has to date awarded 53 whistleblowers since the program’s start. The agency has approved more than $262 million in whistleblower awards since issuing its first award, of $50,000, in 2012. Jane Norberg, chief of the SEC’s whistleblower office, stated:

These awards demonstrate that whistleblowers can provide the SEC with incredibly significant information that enables us to pursue and remedy serious violations that might otherwise go unnoticed. We hope that these awards encourage others with specific, high-quality information regarding securities laws violations to step forward and report it to the SEC.

The latest awards come at a challenging time for the SEC’s whistleblower program, which was created as part of the Dodd-Frank financial reforms passed in 2010. In February, the U.S. Supreme Court unanimously ruled that whistleblowers must contact the SEC to benefit from Dodd-Frank’s more robust protections against retaliation. The ruling dealt a blow to the SEC’s broader interpretation of the statute. The agency and the U.S. Justice Department had taken the view that Dodd-Frank’s whistleblower protections also extended to tipsters who only reported concerns internally to their employers.

It was reported by Law360.com that the Supreme Court’s ruling in Digital Realty Trust v. Somers could backfire against corporate America and drive employees who might otherwise report internally to contact the SEC with suspicions or evidence of misconduct.

Source: Law.com

VI.
PRODUCT LIABILITY UPDATE

Beasley Allen is Fourth in Nation in Number of Product Liability Cases Filed

Our firm was listed in a report by Lex Machina, which appeared recently in Law360, as being in the top 5 law firms in the country in the number of product liability cases filed from 2013 through 2017. Lex Machina is an IP litigation research company that develops legal analytics and software. The report included the following:

BeasleyAllen.com
Corrosion and dissociation injuries present an urgent need for revision surgery, which is a painful and risky operation that poses risks of infection, decrease in integrity of the bone, dvt, foot drop, nerve damage and even death.

The damage caused by the corrosion alone, without the added complications of dissociation, can lead to serious and permanent complications, such as the destruction of muscle systems, such as the abductor muscle complex, decreased stability, increased risk of dislocation, infection, revision, fractures and amputations.

In August, 2016, Stryker initiated a recall of certain LFIT devices with the stated reason of incidence of harm due to taper lock failure in certain specific lots. Though the recall is limited to these certain lots, we are investigating all lots of the LFIT that were implanted with any Stryker/Homedica titanium femoral stem prior to August, 2016.

As previously reported, a multidistrict litigation (MDL) in the U.S. District Court for the District of Massachusetts is underway in Boston, with Judge Indira Talwani presiding. There is also a New Jersey Consolidation in Bergen County being presided over by Judge Rachelle Harz. Both judges continue to work together with the parties' leadership to ensure the litigations move forward efficiently. The parties have agreed to the fact sheet discovery and are working diligently to meet those requirements. Bellwether selections have been made in these cases, but so far, dates have yet to be set. Given the time it will take to prepare, it will likely be some months before the bellwether cases are trial-ready.

Lawyers at Beasley Allen continue to investigate and file lawsuits related to Stryker Rejuvenate and ABG II Modular femoral stem failures. These devices were voluntarily recalled by Stryker/Homedica Osteonics corporation in 2012, and, thus far, there have been two rounds of settlements. A third settlement has not been announced and can not be guaranteed.

Stryker continues to vehemently maintain that the LFIT V40 debacle “is not Rejuvenate,” that it is a completely different device, and it absolutely cannot be compared to Rejuvenate in any respects. The only difference in the eyes of the Plaintiffs is that the Rejuvenate and LFIT are different components and constructs, but the metals and reasons for failure are very much the same, with the added complication of dissociation in the LFIT.
As the Mahe family deals with the tragedy, they want this lawsuit to promote awareness so similar events will not happen to others. As stated by their lawyer, “the Mahe family is trying to make the best of it, and they are trying to use this tragedy to help others know.”

Source: Salt Lake Tribune

$37 MILLION VERDICT RETURNED AGAINST HANKOOK TIRE CO.

A Virginia federal jury has returned a $37 million verdict against Hankook Tire Co. Ltd. in favor of a man who became a quadriplegic in a 2014 accident when his cement truck crashed due to a tire suddenly deflating. The jury unanimously found in favor of Robert Benedict in his lawsuit alleging Hankook was negligent in its manufacture of the right front tire of the cement truck. Benedict was driving for work in November 2014. The jury awarded Benedict $37.83 million.

Benedict was driving a cement mixer truck on his way to the first delivery of the day when he said he heard a loud boom; the tread on the right front tire had separated, resulting in a sudden loss of all air pressure. Soon after the boom, Benedict’s truck veered to the right and hit an embankment on the side of the road, rolling once before coming to rest upright. Benedict estimated that there was, at most, two to three seconds in between the boom and the collision. He was driving normally and at legal speed before the accident. Benedict suffered a spinal cord injury that made him a quadriplegic in a 2014 accident when his cement mixer truck crashed due to a tire suddenly deflating. The jury unanimously found in favor of Robert Benedict in his lawsuit alleging Hankook was negligent in its manufacture of the right front tire of the cement truck. Benedict was driving for work in November 2014. The jury awarded Benedict $37.83 million.

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The tire’s compromised integrity by virtue of inadequate bonding and adhesion predisposed the tire to failure by way of tread/belt separation during the service life of the tire.

The tire’s inadequate inner liner also allowed oxygen to permeate the tire, which degraded various internal tire components over time, which also predisposed the tire to fail, Benedict alleged. The tire at issue was a Hankook Aurora TH08 Radial made overseas by Seoul-based Hankook Tire and sold to Hankook Tire America Corp., its subsidiary in the U.S. Hankook Tire then sold the tire to an interim distributor.

Benedict is represented by Jonathan E. Halperin, Isaac McBeth, and Andrew Lucchetti of the Halperin Law Center LLC and Jay Halpern and Ernesto L. Santos of Halpern Santos & Pinkert PA. The case is Benedict v. Hankook Tire Company Limited et al. (case number 3:17-cv-00109) in the U.S. District Court for the Eastern District of Virginia.

Source: Law360.com

APPELLATE COURT SAYS STATE CAN BE HELD LIABLE FOR DANGEROUS GUARDRAILS

Reversing a line of Commonwealth Court case law that dates back a decade, the Pennsylvania Supreme Court has ruled that while the state has no duty to erect guardrails along its roadsides, the state can be held liable for installing guardrails that are negligently and dangerously designed. This reversal is not only logically correct, but it is also legally sound based on Pennsylvania law.

The justices unanimously reversed the Commonwealth Court’s ruling in Cagey v. Commonwealth that the state is immune from claims seeking to hold it responsible for dangerous guardrails. The Commonwealth Court had affirmed a trial judge’s grant of the Pennsylvania Department of Transportation’s motion for judgment on the pleadings. Justice Christine Donohue, writing for the Supreme Court, stated:

In Dean, we held only that a “dangerous condition of commonwealth agency real estate” must be an artificial condition or defect of the land itself, as opposed to the absence of such a condition.

Justice Donohue said the Plaintiffs in the case before the court put forth claims that clearly fell within the exception to sovereign immunity for “[a] dangerous condition of commonwealth agency real estate,” found in Section 8522(b)(4) of the Sovereign Immunity Act.

Plaintiffs Joisse and Dale Cagey alleged in their complaint that injuries they suffered when their vehicle spun out on an icy Pennsylvania highway were the result of a PennDOT-installed guardrail. The guardrail, they alleged, was a dangerous “boxing glove” design—with a U-shaped metal cap—that was negligently installed in an area that should have been traversable. The Plaintiffs also claimed PennDOT failed to correct an uncrashworthy blunt end of the guardrail, which pierced the side of their car, causing their injuries.

This decision from the Pennsylvania Supreme Court is a good one and should result in guardrails, which are definitely needed on highways, to be safer in the state.

Source: Law.com

TAURUS FIREARM DEFECTS

Forjas Taurus SA, commonly referred to as “Taurus Firearms” is a Brazilian gunmaker whose products have taken the U.S. firearm marketplace by storm. Taurus firearms manufactures both revolver and semi-automatic handguns that are among the most affordable on the market. A Taurus revolver is available for less than $200 and most of the semi-automatic hand guns are less than $400. The Taurus Model 85, which retails for around $250, is the No. 1 selling revolver in the country. Similarly, many of the semi-automatic weapons are amongst the most popular handguns sold in their respective categories. However, as is the case with so many products, affordability typically does not equate to quality design and manufacturing processes.

Recently, Taurus has come under fire as many of its handguns suffer from a serious, and often deadly, defect. Due to a design flaw, many of the Taurus semi-automatic weapons can fire without a trigger pull. Despite this defect, the weapons have not been recalled. Surprisingly, no governmental entity has the power to regulate defective firearms or mandate firearms manufacturers to recall defective weapons. Let that sink in! The Department of Transportation can recall automobiles; the Food and Drug Administration can recall tainted food or dangerous drugs, but no organization has the authority to recall defective firearms.

One might think the Consumer Product Safety Commission, or the Bureau of Alcohol, Tobacco and Firearms would have the authority to regulate and recall defective weapons; however, that is not the case. In fact, when the Consumer Product Safety Commission was formed in the 1970s, an express prohibition against the regulation of firearms was included. The foxes have been left to guard the hen houses as the gun manufacturers are allowed to self-regulate.

In July 2013, a class action suit was brought against Taurus for the defective firearms. The suit alleged that nine of the Taurus handguns can fire without a trigger pull when the firearm is dropped,
bumped or jostled. Additionally, some of the Taurus handguns will fire when the trigger is pulled even with the safety on. It is estimated that nearly one million Taurus firearms that suffer from these defects are owned in the U.S. The class action suit was resolved in 2016.

Not surprisingly, Taurus has not taken it upon itself to recall the defective weapons. However, the company has offered to repair or replace the nine handguns listed in the 2013 suit. The repair or replace campaign has not been widely advertised. Despite the settlement and buyback program, Taurus has maintained that it was not negligent and that the firearms are not defective.

Anyone owning a Taurus firearm should immediately check to see if their weapon is listed as a “repair or replace” candidate. These guns are defective and should be removed from the marketplace. No level of care can ensure that these guns are used safely.

If you need more information on this subject, contact Evan Allen, a lawyer in our firm’s Personal Injury & Products liability Section, at 800-898-2034 or by email to Evan.Allen@beasleyallen.com.

APPEALS COURT SAYS AUTOLIV MUST FACE FATAL CRASH LAWSUIT IN GEORGIA

The Eleventh Circuit Court of Appeals has reinstated part of a lawsuit against seat belt manufacturer Autoliv Japan Ltd., ruling Georgia law doesn’t exempt the company from liability for the death of a driver whose family claims that his seat belt failed when he ran off the highway and crashed.

Jamie Lee Andrews, whose husband Micah was killed in a 2013 car crash, had her suit against Autoliv dismissed after a judge said she had failed to prove the company was “actively involved” with the design of the seat belt.

In a “nonprecedential” decision, the Eleventh Circuit said the lower judge misapplied a section of Georgia law. The appeals court wrote:

Autoliv manufactured seat belt components in the deceased’s Mazda and plaintiff alleges that those components were defective when sold. Consequently, Autoliv can be held liable under Section 51-1-11 if a component it manufactured was defective “when sold by the manufacturer” and if the component’s condition when sold is the proximate cause of the injury sustained.

The appellate panel ruled that even if Andrews had been required to show that Autoliv was “actively involved” in the design of the seat belt, the appellate panel ruled, the evidence wasn’t clear either way on that point. Therefore, it shouldn’t have been decided at the summary judgment stage. The appeals court decision clears the way for the case to proceed toward trial. The three-judge panel said its decision to revive Andrews’ claim under Section 51-1-11—a state statute that imposes strict liability on manufacturers—also saves her claims for negligence and punitive damages. However, the judges affirmed the lower court’s decision to dismiss the failure-to-warn claim against Autoliv, calling it “not plausibly pled.”

In 2014, Andrews sued a large group of Defendants affiliated with Mazda Motor Corp. and auto parts makers Autoliv Inc. and Robert Bosch GmbH. It was alleged by the Plaintiff that her husband was killed as a result of the shoddy design and manufacture of the components of his car that were supposed to restrain him in a crash. Most of the Defendants either negotiated settlements or won dismissal of the claims against them over the years. Currently, only two Autoliv entities remain as Defendants.


Source: Law360.com

JURY AWARDS $18.7 MILLION TO FAMILY OF SURGEON KILLED IN CRASH WITH AN OUTDATED BUS

In April of 2017 Kayvan Khiabani, a 51-year-old reconstructive hand surgeon, was killed while riding his bicycle. A bus, manufactured and designed by Motor Coach Industries, collided with him. At the conclusion of trial, a Las Vegas, Nevada, jury returned a verdict of $18,700,000.00 in favor of Dr. Khiabani’s two teenage sons and his wife’s estate. Sadly, Mrs. Khiabani passed away several months after her husband was killed. The case was carried forth by the children and her estate.

At trial, the Khiabanis proved that Motor Coach Industries failed to warn of the dangers inherent in the old and outdated bus, manufactured in 2007, but designed in 1992. The Khiabanis also brought product defect claims alleging that the bus lacked certain safety features that could have prevented Dr. Khiabani’s death, including blind spot monitors, proximity sensors on the side of the bus, and rear wheel protectors, among other warnings failures.

Despite not finding the bus maker liable for the defective design elements, the jury did determine that Motor Coach Industries failed to provide an adequate warning that would have been acted upon, including the danger of “air blast” created by the bus. The jury awarded Dr. Khiabani’s two teenage sons $9.2 million and $7 million for future loss of companionship and loss of future financial support, as well as $1 million to the estate of Mrs. Khiabani for pain and suffering, and another $1.5 million for her pain and sorrow.

Source: Law360.com

E-CIGARETTE BATTERY EXPLODES IN MAN’S PANTS

Daniel Anderson has filed suit against Big E’s Vapor Shop, a Wichita vaping shop, for injuries received when a spare battery for his e-cigarette exploded in the front pocket of his pants. He suffered chemical and thermal burns to his left leg and hands caused by fire and heat that rolled out of the lithium ion battery. The explosion was said by Anderson to have been like “a flame thrower,” igniting in “a big ball of fire.”

Anderson was carrying the spare battery, his car keys and coins in his left front pocket of his pants the morning of Feb. 29, 2016, while he was at work. When the metal items touched, it caused a short to the outside of the battery. The battery then “experienced thermal runaway causing an explosion,” the lawsuit says. Thermal runaway is internal heating and energy release that can cause a battery to overheat.

Anderson is suing the shop that sold him the battery, as well as the battery’s distributor, Oklahoma-based VapeUSA Corp. The lawsuit contends the components knew, or should have known, that a design defect makes the type of battery Anderson bought dangerous for use in e-cigarettes. The Defendants, according to the complaint, also failed to warn customers of the risks.
The cause of the thermal runaway in this case “was an external short (on the battery) that resulted from contact with metallic objects” that were in his pocket. The battery Anderson bought “had no warnings or instructions concerning the risk of explosion or fire if the battery came into contact with conductive objects,” the lawsuit states. Anderson suffered severe burns, including second- and third-degree chemical and thermal burns on his left leg that stretch from thigh to shin and second-degree burns to his fingertips and hands.

The U.S. Food and Drug Administration (FDA) Center for Tobacco Products identified 274 cases of e-cigarettes overheating, catching fire or exploding between 2009 and June 2017. But the numbers are underreported, the center’s spokesman Michael Felberbaum said. On its website, the FDA suggests users keep loose batteries in a case in their pockets so they don’t come into contact with metal objects, such as coins and keys, and short circuit.

Some of Anderson’s wounds required skin grafts to heal. He was off work for 16 months recovering from severe burns, including second- and third-degree chemical and thermal burns on his left leg that stretch from thigh to shin and second-degree burns to his fingertips and hands.

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Some of Anderson’s wounds required skin grafts to heal. He was off work for 16 weeks, lost $13,103.20 in wages and to date has more than $109,000 in medical bills. The suit was filed in Sedgwick County District Court by Dustin DeVaughn, a lawyer from Wichita.

Source: Witchitaeagle.com

VII. MASS TORTS UPDATE

$35 MILLION VERDICT AGAINST JOHNSON & JOHNSON IN PELVIC MESH TRIAL

An Indiana federal court jury has returned a $35 million verdict against Johnson & Johnson and Ethicon Inc., a Johnson & Johnson subsidiary. The verdict was in favor of Barbara Kaiser, the Plaintiff who was harmed by a pelvic mesh device. The jury found that the mesh implant was negligently designed and that the company failed to warn of its risks.

The members of the jury found that Ethicon deliberately failed to warn of the risks of the Prolift pelvic mesh device and sold a product that was defective and in unreasonably dangerous condition. One of the lawyers for Mrs. Kaiser said:

"Ethicon defended an indefensible product and the jury stood up for Barb Kaiser. They were asked to send a message to Ethicon to deter future wrongdoing and they did, a company that sold a medical device without doing any clinical testing and caused thousands of women to suffer painful complications from mesh in their pelvic area."

The verdict includes $10 million in compensatory damages and $25 million in punitive damages. In January 2009, Mrs. Kaiser was implanted with the Prolift device to treat her pelvic organ prolapse. Two years later, she learned from a doctor that her complaints of low pelvic pain could be tied to the implant.

Contrary to the company’s marketing to the medical community and patients, the Prolift device has high failure, injury and complication rates and has caused severe injuries to a “significant” number of women. A 2011 safety alert from the U.S. Food and Drug Administration (FDA) warned health care providers and patients that serious complications associated with surgical mesh for treating pelvic organ prolapse are not rare. It was also found that it was not clear that treating transvaginal pelvic organ prolapse with mesh was more effective than traditional repairs that didn’t use mesh. Kaiser said in the complaint:

"During a hearing in September 2011 in Gaithersburg, Maryland, an FDA review team concluded there was insufficient scientific evidence as to the safety and efficacy of transvaginal surgical mesh used to treat pelvic organ prolapse, including defendants' Prolift."

The company failed to use adequate testing and research to evaluate the risks and benefits of the Prolift device, according to the complaint. Kaiser said:

"Defendants failed to design and establish a safe, effective procedure for removal of their Prolift in the event of a failure, injury or complication associated with the device."

Ethicon says it plans to appeal this verdict. Kaiser is represented by Thomas Plouff of Costello McMahon Burke & Murphy Ltd., Jeff Kuntz of Wagstaff & Cartmell LLP, and Edward Wallace of Wexler Wallace LLP. The case is Kaiser et al v. Johnson & Johnson et al. (case number 2:17-cv-00114) in the U.S. District Court for the Northern District of Indiana.

Source: Law360.com

$15 MILLION PELVIC MESH VERDICT UPHELD IN NEW JERSEY

A New Jersey state judge has upheld the $15 million verdict returned against Ethicon, the Johnson & Johnson unit, in another case involving the product Prolift. The verdict was in a lawsuit alleging that this pelvic mesh product left a woman in debilitating pain. Superior Court Judge Rachelle Lea Harz cited evidence that the business did not warn about certain risks associated with the device. Judge Harz denied the company’s motion for judgment notwithstanding the verdict or a new trial, upholding a jury’s finding in December that Plaintiff Elizabeth Hrymoc’s injuries were caused by the defective design of Ethicon Inc.’s Prolift and its inadequate warnings.

The judgment is comprised of $10 million in punitive damages, compensatory damages of $4 million for Mrs. Hrymoc, and $1 million for her husband who was also a Plaintiff. “The evidence presented before this jury was more than sufficient for them to conclude that the Prolift’s design defects were a cause of Ms. Hrymoc’s injuries,” Judge Harz told the parties from the bench.

Hrymoc and her husband established that Ethicon provided “partial and vague warnings” regarding the extent and gravity of certain risks related to the Prolift, Judge Harz said. The judge rejected the company’s claim that risks omitted from its warnings were commonly known to pelvic floor surgeons. Judge Harz said:

"This court finds that the testimony and evidence at trial established that pelvic floor surgeons did not have common knowledge of the unprotected risks related to the Prolift."

Judge Harz noted that Mrs. Hrymoc’s physician ultimately said that if Ethicon had informed him of the potential risk that women would experience what she suffered, he would not have used the device.

Judge Harz said on the issue of punitive damages that Ethicon’s failure to advise the medical community about such risks was part of how the company acted with “willful and wanton disregard.” The judge said that the “jury heard substantial evidence from [Elizabeth Hrymoc] as to her physical and emotional suffering.”

Mrs. Hrymoc is among thousands of women nationwide who have filed suits alleging Ethicon and J&J failed to fully disclose risks associated with its Gynecare

Source: BeasleyAllen.com

BeasleyAllen.com
Prolift pelvic floor support mesh product, which was on the market from 2005 through 2012. The Hrymocs are represented by Adam Slater and Cheryl A. Calderon of Mazie Slater Katz & Freeman LLC. The case is Elizabeth Hrymoc et al. v. Ethicon et al. (case number L-13696-14) in the Superior Court of the New Jersey, County of Bergen.

Source: Law360.com

1,200 XARELTO MDL CASES TO UNDERGO DISCOVERY & TRIALS NATIONWIDE

The Xarelto multidistrict litigation (MDL) has reached a significant milestone with nationwide case remands set to begin this year. U.S. District Judge Eldon Fallon recently ordered that 1,200 Xarelto cases undergo case-specific discovery in 2018 and then be remanded from the MDL to their original jurisdictions for trials.

Judge Fallon ordered that the cases be selected in two groups of 600. The initial round of 600 cases will be selected by April 30, and the second group will be identified by Aug. 30. Within each group of 600 cases, 200 will be selected by the Plaintiffs’ Steering Committee (PSC), 200 selected by the Defendants, and 200 selected randomly by the court. Once selected, each lawsuit will be subject to case-specific discovery to prepare each case for trial. Upon completion of case-specific discovery, each case will be remanded to its originating jurisdiction for trial.

This is a major development in the Xarelto MDL, which includes approximately 20,000 lawsuits filed by individuals injured by Xarelto. In 2017, the MDL bellwether process resulted in individual trials for three Plaintiffs in just two states—Louisiana and Mississippi. Now, the nationwide-remand of 1,200 cases will ensure that Plaintiffs from every state will have the opportunity to advance their cases toward final resolution through jury trials in their home states.

These cases are important, and the facts need to be heard by juries in open court. Our lawyers are prepared to take these lawsuits to court one by one anywhere in the country until Xarelto’s makers take the basic steps necessary to correct the known health and safety risks associated with this drug. Our firm is totally committed to seeing this important litigation to a successful conclusion for our clients.

In addition to the case remands, the Plaintiffs’ Steering Committee will continue conducting general liability discovery applicable to all Xarelto MDL cases. The parallel state-court Xarelto litigation in Philadelphia, Pennsylvania, continues to move at a fast pace, with the second trial in Philadelphia slated to start this month on April 2. Two additional trials are scheduled for June and August of this year.

A dedicated team of Beasley Allen lawyers continues to work diligently in both the federal and state court Xarelto litigations to advance the interest of all individuals who have suffered serious medical complications from the use of Xarelto. Andy Birchfield, the head of Beasley Allen’s Mass Torts Section and co-lead counsel of the Xarelto Plaintiffs’ Steering Committee, is dedicated to carrying this litigation to a successful conclusion. If you have any questions about the Xarelto litigation, please contact Joseph VanZandt or Sonny Wills at 800-898-2034 or by email at Joseph.Vanzandt@beasleyallen.com or Sonny.Wills@beasleyallen.com.

UPDATE ON THE RISPERDAL LITIGATION

Beasley Allen lawyers continue to pursue Risperdal claims on behalf of individuals who have been injured as a result of taking Risperdal. Risperdal is the brand name drug manufactured by Janssen Pharmaceuticals, Inc., a division of Johnson & Johnson. The drug went on the market in 1993 after receiving approval from the U.S. Food and Drug Administration (FDA) for the treatment of schizophrenia. In 2003, the drug was approved for short term treatment of acute manic/mixed episodes associated with Bipolar I Disorder in adults.

Until 2006, the drug was not approved for any indication to treat minors. In 1997, the FDA denied a request by Janssen for a pediatric indication for the drug. Despite this denial, Janssen marketed the drug for the treatment of depression, anxiety, Attention Deficit Disorder (ADD), Attention Deficit and Hyperactivity Disorder (ADHD), conduct disorder, sleep disorders, anger management and mood enhancement/stabilization.

In 2006, Janssen obtained approval to market the drug for autistic irritability for children and adolescents between the ages of 5 to 16 years old. In 2007, Janssen obtained approval to market the drug for treatment of schizophrenia in adolescents between the ages of 13 to 17 years old and short-term treatment of manic or mixed episodes of Bipolar I Disorder in children and adolescents between the ages of 10 to 17 years old.

Use of Risperdal can cause gynecomastia (enlarged breasts in males), galactorrhea (milky nipple discharge), weight gain, hyperglycemia, diabetes and inhibited reproductive function.

There has been a potentially significant development in the Risperdal litigation occurring in Philadelphia. In January, the intermediate Pennsylvania appellate court reversed the lower trial court’s global ruling that Janssen would not be subject to punitive damages in trials in Philadelphia. The lower trial court’s global ruling was based on a provision of New Jersey law that prohibited punitive damages in situations where the drug was approved by the FDA.

The appellate court determined there was a conflict between Wisconsin law (state where the Plaintiff lived when Risperdal was prescribed) and New Jersey law. The appellate court ruled that the trial court erred by failing to determine whether Wisconsin law should apply to the punitive damage issue instead of New Jersey law. The issue of whether New Jersey law should apply was remanded back to the trial court for consideration of whether Wisconsin law should apply to the punitive damage issue.

The appellate court reversed a similar ruling by the trial court in a separate case involving a Maryland resident on Feb. 20, 2018, for the same reasons. In the Feb. 20, 2018, decision, the appellate court rejected Janssen’s argument that an expert witness could not rely on a photograph of the Plaintiff to reach a conclusion the Plaintiff had developed gynecomastia.

The appellate court noted that the expert relied on school, medical and pharmacy records in addition to the photograph and determined that the evidence was sufficient to support the expert’s opinion that the Plaintiff developed gynecomastia while taking Risperdal.

If you or a loved one has suffered an injury as a result of taking Risperdal, contact James Lampkin, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at James.Lampkin@beasleyallen.com. James handles the Risperdal litigation for the firm.

AN UPDATE ON THE PROTON PUMP INHIBITOR LITIGATION

Beasley Allen lawyers continue to investigate and file claims resulting from
proton pump inhibitor (PPI) drugs. PPI drugs are those drugs such as Nexium, Prevacid and Prilosec, which are prescribed to treat acid reflux, GERD and the like. Use of these drugs has been scientifically linked to the development of kidney failure. Proof of use of a name brand PPI is required in pursuing these claims. If these factors are unknown, lawyers in our firm’s Mass Torts Section will investigate to determine if a claim is viable based on current, known criteria.

On Aug. 2, 2017, the Judicial Panel on Multidistrict Litigation (JPML) granted the renewed request for a multidistrict litigation (MDL), consolidating all of the federal PPI court cases into a single venue for purposes of pre-trial discovery. The MDL is located in New Jersey and will be presided over by Judge Claire C. Cecchi. Beasley Allen lawyer Navan Ward has been appointed to the Plaintiff Executive Committee. This Committee will be crucial in the future of this litigation. Since the MDL was just formed, it will take some time before the first cases are ready to be tried. There are currently more than 350 cases filed in the MDL. Cases to be tried will be selected by the bellwether process. The Court will try the cases most representative of the litigation.

To discuss your potential PPI claim, contact Beasley Allen lawyers Tiffany Roberts or Navan Ward at 800-898-2034 or by email at Tiffany.Roberts@BeasleyAllen.com or Navan.Ward@BeasleyAllen.com.

**JUDGE SCHEDULES FIRST 3 TRIALS IN ABILIFY MDL**

A Florida federal judge has settled upon a random order for the first three cases that will be tried in the multidistrict litigation (MDL) over side effects of the antipsychotic drug Abilify. Consumers who brought the suits were unable to reach a settlement with the drugmakers Bristol-Meyers Squibb Co. and Otsuka Pharmaceutical Co. Otsuka America Pharmaceutical Inc. U.S. District Judge Matthew Kennelly, reminding them that these cases—chosen from approximately 750 cases in the multidistrict litigation—are not intended to serve as a true bellwether sample because their selection was based neither on an analysis of their characteristics nor randomness, but for the convenience of being eligible for trial before her in the Northern District of Florida without a venue waiver.

A case brought by Fanny Lyons will go first, with the trial scheduled to start on June 18. The Lyons case will be followed by the trial on Aug. 6 of the suit filed by David and Cassie Viechec. Jennifer Lilly’s case, the third case, will be tried on Aug. 27. Judge Rodgers selected the order by assigning each case a number using a random number generator function in Microsoft Excel and setting the order from the lowest number to the highest.

The suits allege that Abilify, which the U.S. Food and Drug Administration (FDA) has approved to treat schizophrenia, bipolar I disorder and major depressive disorder, caused consumers to exhibit compulsive behaviors. The claims include product liability and fraud claims against the companies. The cases involve consumers from several states, including Arizona, California, Delaware, Florida, New Jersey, New York and Pennsylvania, who all claim the companies failed to warn them that Abilify causes “uncontrollable compulsive behaviors.”

The consumers are represented by Gary L. Wilson and Eric M. Lindenfeld of Robins Kaplan LLP, Bryan F. Aylstock of Aylstock Witkin Kreis & Overholtz PLLC and Kristian Rasmussen of Cory Watson PC.

The case is In re: Abilify (Aripiprazole) Products Liability Litigation (case number 3:16-md-02734) in the U.S. District Court for the Northern District of Florida. The three trial pool cases are Lyons v. Bristol-Myers Squibb Co. et al. (case number 3:16-cv-414) Viecbc v. Bristol-Myers Squibb Co. et al. (case number 3:16-cv-291) and Lilly v. Bristol-Myers Squibb Co. et al. (case number 3:17-cv-186) also in the U.S. District Court for the Northern District of Florida.

Source: Law360.com

**BLUE CROSS AND TAKEDA SETTLE ACTOS CANCER CLAIMS**

Blue Cross and Blue Shield of Massachusetts and drug manufacturer Takeda Pharmaceutical Co. Ltd. have settled dozens of claims by the insurer alleging that a link between Actos and bladder cancer was long known to Takeda. This is the latest in a number of settlements involving the diabetes treatment. The case had gone into mediation in November, resulting in the settlement.

Blue Cross joined a multidistrict litigation (MDL) over the bladder cancer risk in June 2014, after a jury returned a $9 billion punitive damages verdict against Takeda in a bellwether case that year. The trial judge reduced the drugmaker’s damages to about $38 million. Takeda ended up settling the vast majority of the claims for $2.4 billion in April 2015.

As in the hundreds of other complaints, Blue Cross claims Takeda knew from rat testing in the 1990s that extended use of the drug that decreases insulin resistance in people with Type 2 diabetes could cause bladder cancer. The suits claimed Takeda hid those results when it won approval for the drug from the U.S. Food and Drug Administration. Blue Cross has been looking to recoup the cost of medical bills for hundreds of people who allegedly developed cancer after prolonged use of Actos. This settlement is separate from the 10-figure settlement already reached. The suits were against Japan-based Takeda, Asia’s largest pharmaceutical company, and its Indianapolis-based marketing partner, Eli Lilly & Co.

Blue Cross is represented by David J. McMorris and Marilyn T. McGoldrick of Thornton & Naumes LLP. The case is Blue Cross and Blue Shield of Massachusetts Inc. et al. v. Takeda Pharmaceuticals America Inc. et al. (case number 1:17-cv-11660) in the U.S. District Court for the District of Massachusetts.

Source: Law360.com

**ENDO, AUXILIUM AND GSK REACH SETTLEMENT IN TESTOSTERONE MDL**

Drugmakers Endo, Auxilium and GlaxoSmithKline have agreed to a tentative settlement of their cases in the Testosterone Replacement Therapy multidistrict litigation (MDL), in which thousands of patients claim drugmakers failed to warn of risks of heart attack and other health conditions. Endo Pharmaceuticals Inc., Auxilium Pharmaceuticals LLC and GlaxoSmithKline LLC received a 45-day stay of the cases against them while they work out details of the settlement.

U.S. District Judge Matthew Kennelly told the remaining Defendants—including AbbVie and Actavis—to be on the alert because he may replace the settling Defendants’ now-canceled upcoming trials with trials against Defendants who have not settled.

The three settling Defendants “have entered into a memorandum of understanding regarding a potential global settlement, including all filed cases,” according to Judge Kennelly. The judge said:

*The Auxilium bellwether trial date [April 6, 2018] and the Endo bell-
Former co-defendant Eli Lilly notified the court on Dec. 21 that it had reached its own settlement. Plaintiffs in the MDL claim the drugmakers knew the drugs could increase the risk of cardiovascular events.

Early trial Plaintiff Jeffrey Konrad, for example, said AbbVie Inc. declined to test for those risks, instead working to widen the market for AndroGel, the company’s testosterone replacement drug, by advertising it to treat aging-related low testosterone in addition to medical low testosterone without U.S. Food and Drug Administration (FDA) approval. Konrad, the second bellwether Plaintiff, was awarded more than $140 million. AbbVie has asked the judge to reduce the award, noting $140 million in punitive damages is 1,000 times Konrad’s compensatory damages award. Both parties have filed post-trial briefs.

In the first bellwether trial involving Plaintiff Jesse Mitchell, which was tried last year, the jury said AbbVie wasn’t liable for Mitchell’s heart attack and awarded no compensatory damages. However, the jury awarded Mitchell $150 million in punitive damages based on a finding that the company’s marketing misrepresents that AndroGel was safe and effective. That verdict was overturned in December and the case has been tried again. The retrial ended on March 26 and the result will be discussed below.

On Nov. 16, Auxilium won its own first case when a federal jury said testosterone drug Testim did not cause the heart attack of Plaintiff Steve Holtsclaw, who used Testim to treat chronic fatigue. Holtsclaw said Auxilium marketed the drug to men whose symptoms were simply part of aging—a use Holtsclaw said the company had not proven was safe or effective.

The Plaintiffs’ Steering Committee includes lawyers from Simmons Hanly Conroy LLC, Schachter Hendy & Johnson PSC and Seeger Weiss LLP. The MDL is In Re: Testosterone Replacement Therapy Products Liability Litigation, (case number:14-cv-01748) in the U.S. District Court for the Northern District of Illinois. Source: Law360.com

**Judge Returns $3 Million Verdict in AndroGel Retrial**

An Illinois federal court jury found that AbbVie Inc.’s AndroGel product did cause Jesse Mitchell’s heart attack and ordered the company to pay $3.3 million in damages. This verdict came in the latest bellwether trial in the multidistrict litigation (MDL) over testosterone replacement therapy drugs. As stated above, this was a retrial of the case. The jury awarded Plaintiff Mitchell $200,000 in compensatory damages and $3 million in punitive damages after finding for him on his negligence claim. However, the jury found for AbbVie on Mitchell’s claims of strict liability and fraudulent misrepresentation.

Mitchell is represented by Troy Rafferty of Levin Papantonio Thomas Mitchell Rafferty & Proctor PA, David Buchanan of Seeger Weiss LLP, Bill Robins of Robins Cloud LLP and David Diamond of Goldberg & Osborne. The case is Mitchell et al. v. AbbVie Inc. et al. (case number 1:14-cv-09178) and the MDL is In re: Testosterone Replacement Therapy Products Liability Litigation (case number 2545) both in the U.S. District Court for the Northern District of Illinois. Source: Law360.com

**GlaxoSmithKline Says It Is ‘Still Searching’ For Contracts That Could Reveal Outside Influence In Off-Label Marketing Scheme**

A central issue in the Zofran multidistrict litigation (MDL) involves GlaxoSmithKline’s (GSK) marketing efforts of Zofran for an off-label use. Previously, in this Report, we explained that discovery was “well underway.” According to a GSK lawyer, the company has produced 3.8 million documents. However, in a recent status conference, lawyers for the families told a federal judge that they have been waiting more than eight months for critical documents concerning GSK’s marketing relationships with outside companies.

In April 2017, the families requested copies of contracts between GSK and at least 40 different marketing partners. Interestingly, GSK responded that it cannot locate any of these legally binding documents. According to the Plaintiffs, these marketing contracts could lead to critical information about whether GSK’s marketing partners advised the company to wrongfully engage in off-label marketing practices. If GSK does not produce the contracts this month, the families will seek a federal court order to compel GSK to produce the documents.

There are currently 423 cases filed in the Zofran MDL according to the Judicial Panel on Multidistrict Litigation’s most recent data. Plaintiffs claim that GSK promoted Zofran for the treatment of nausea and vomiting during pregnancy, when this use had never been tested or approved by the U.S. Food and Drug Administration (FDA). These marketing efforts led to a massive spike in profits for the pharmaceutical giant. Plaintiffs allege that their children were born with congenital heart defects or cleft palate after being exposed to Zofran in utero.

Sources: The U.S. Judicial Panel on Multidistrict Litigation and Law360

**Court Says Pharma Companies Liable For Generic Labels**

The Massachusetts Supreme Judicial Court has ruled that name-brand drugmakers can be held liable for mislabeled generic equivalents under state law in the commonwealth, home of the nation’s largest bio-pharmaceutical hub. This was a loss for Merck & Co. as well as for the industry groups watching the case. The court said consumers who use generic drugs and experience serious side effects they were never warned of can blame their injuries on their medication’s brand-name predecessor if it recklessly, not just negligently, passed on bad information to the generic company.

Manufacturers that intentionally fail to update their labels knowing of an unreasonable risk of injury or death are responsible not only for their own consumers but those of their competitors as well, the court said. This was because federal law requires generic companies to copy brand-name warning labels. Chief Justice Ralph D. Gants wrote for the court:

In other types of cases where we have circumscribed liability for public policy reasons, we have nevertheless consistently recognized that there is a certain core duty—a certain irreducible minimum duty of care, owed to all persons—that as a matter of public policy cannot be abrogated: that is, the duty not to intentionally or recklessly cause harm to others.

The court vacated a lower court’s dismissal of a claim of negligence that Brian Rafferty had made against Merck after experiencing erectile dysfunction, hypogonadism and testosterone deficiency allegedly caused by a generic version of Merck’s Proscar, similar to claims made
against Merck’s stronger finasteride drug. Propecia. Rafferty said Merck failed to properly warn him, through the generic copycat label, that those side effects could last the rest of his life.

After the case was removed to federal court and remanded to state court, Middlesex Superior Court Judge Kenneth J. Fishman dismissed the case. Dozens of tort claims against pharmaceutical companies have fallen into a vacuum of legal responsibility since the U.S. Supreme Court decided in Pliva Inc. v. Mensing that product liability and other claims against generic drugmakers are preempted by federal law mandating they copy brand-name warning labels.

The 2011 decision shielded generic drugmakers, but did not shift culpability to brand-name companies, leaving the issue of innovator liability open-ended. The industry group Pharmaceutical Research and Manufacturers of America filed an amicus brief in the Massachusetts case, echoing Merck’s arguments that shifting blame to them would be unfair, subject them to limitless liability for generic products and ultimately stifle innovation.

The court agreed with respect to recklessness, but not on the negligence claims. Justice Gants wrote:

If we were to shield brand-name manufacturers entirely from liability for the failure to warn generic drug consumers, we would leave those consumers with no chance of obtaining compensation for their injuries because generic manufacturers are already immune from state law claims.

The issue presents a special circumstance, the court said, because generic drug labels must be identical to those provided by their brand-name predecessors under federal law. That makes the labels “inseparable,” Justice Gants wrote.

The court provided what may be the only instance when the standard of general negligence is satisfied even if the requirements of product liability are not. Justice Gants wrote:

Where a brand-name drug manufacturer provides an inadequate warning for its own product, it knows or should know that it puts at risk not only the users of its own product, but also the users of the generic product.

The court decided benefits outweigh any costs, the latter of which are “difficult to accurately assess.” “It is far from clear whether the development of any new drug would be prevented merely because of the incremental costs that would arise from the imposition of a duty to warn generic drug consumers,” Justice Gants wrote. “Meanwhile, imposing such a duty on brand-name manufacturers would have undeniable benefits.”

Brand-name manufacturers will have a greater financial incentive to revise their warning labels, the court said, especially after their patents expire and their share of the market decreases. Rafferty is represented by Emily E. Smith-Lee, Sana Abdul-lah, Beth M. Nussbaum and Rebecca Tatem of Smith Lee Nebenzahl LLP. The case is Rafferty v. Merck (case number SJC-12347) in the Massachusetts Supreme Judicial Court.

Source: Law360.com

U.S. SUPREME COURT HAS REFUSED TO HEAR TEVA CHALLENGE IN DRUG-CANCER LINK

The U.S. Supreme Court refused last month to hear Teva Pharmaceuticals USA Inc.’s challenge to the revival of claims the drugmaker and GlaxoSmithKline LLC’s inflammatory bowel disease medication, when taken with other drugs, increased the risk of a rare cancer. In June the Ninth Circuit Court of Appeals reversed Teva’s summary judgment victory and remanded the case filed by Stephen and Lisa Wendell to the lower court. The Ninth Circuit found the lower court erred in excluding testimony from the Wendells’ medical experts.

Stephen and Lisa Wendell had filed suit alleging negligence and strict liability claims against the drugmakers in California state court in July 2009. The case was removed to federal court later that year. They alleged the companies’ IBD medication, Purinethol, combined with other drugs caused Maxx, the Wendells’ son, to develop hepatosplenic T-cell lymphoma (HSTCL), a rare and aggressive cancer that ultimately led to his death at age 21.

GSK had transferred its rights to Purinethol to Teva in 2003 as part of a settlement of patent litigation. The Wendells alleged Teva and GSK did not adequately warn about the risk of developing HSTCL. The district court granted GSK’s motion for summary judgment in 2012 and granted Teva’s motion two years later because the Wendells’ causation experts, Dr. Andrei Shustov and Dr. Dennis Weisenburger, were said not to meet the Daubert standard of reliability.

On reviewing the decision, a three-judge Ninth Circuit panel found that the lower court inappropriately required the experts’ opinions to rely on animal or epidemiological studies, which the panel said may not always be possible to conduct. But Teva argued in its petition to the Supreme Court that trial courts, rather than appellate courts, should make the bulk of the decisions about whether to exclude testimony and that the Ninth Circuit did not grant the lower court the proper amount of deference. The Supreme Court obviously disagreed and rejected Teva’s petition.

The Wendells are represented by Matthew W.H. Wessler and Rachel Bloomekatz of Gupta Wessler PLLC and Esther Berezofsky and Michael Quirk of Berezofsky Law Group LLC. The case is Teva Pharmaceuticals USA Inc. v. Wendell (case number 17-747) in the Supreme Court of the United States.

Source: Law360.com

FDA INVESTIGATING REPORTS OF TREMOLITE ASBESTOS IN MAKEUP

The U.S. Food and Drug Administration (FDA) is investigating reports of tremolite asbestos contamination in cosmetics products containing talc. Asbestos is a known carcinogen that can occur naturally in talc. To prevent contamination, talc mining sites are selected carefully and steps are taken to purify the ore. An FDA spokesperson told Chemical Watch that the agency is looking into reports of asbestos contamination in certain cosmetic products from Claire’s Stores Inc. Tests carried out by the U.S. Public Interest Research Group (PIRG) on 15 makeup products containing talc claimed to have found asbestos in three sold at children and teenagers’ retail chain Claire’s Accessories.

Dev Gowda, director of the Campaign for Toxic-Free Products with U.S. PIRG Education Fund said: “Claire’s should immediately recall the three makeup products and investigate how such high levels of asbestos were found in these products.” The U.S. PIRG is calling on policymakers to require makeup companies to test products for asbestos prior to selling them—especially those containing talc.

Rep. Frank Pallone, Jr., who is on the House Committee on Energy and Commerce, has written to the FDA calling for an investigation “into the presence of asbestos and other hazardous impurities in children’s cosmetics.”
The products claimed to have asbestos in them are Claire’s contour palette, shadow and highlight finishing kit, and compact powder. Testing was carried out by STAT Analysis Corporation, an independent laboratory that is accredited for asbestos testing.

In December of last year, Claire’s issued a recall of nine makeup products after tests carried out by Sean Fitzgerald, director of research and analytical services of the Scientific Analytical Institute (SAI) confirmed asbestos. Claire’s and Justice Retail deny that their products contain asbestos and claim that some testing confirms the FDA has not confirmed whether it is also investigating Justice Retail or any other companies.

VIII. BUSINESS LITIGATION

SEC ANNOUNCE ITS INTENT TO REGULATE CRYPTO CURRENCY MARKET

Lawyers in our firm are looking into potential fraudulent claims against cryptocurrency promoters, investment funds, and entities marketing themselves as involved in the cryptocurrency market. Our lawyers believe there are potential securities violations involved. Cryptocurrencies are a form of digital currency not backed by any government or commodity (like gold).

The U.S. Securities and Exchange Commission (SEC) had previously left this new industry relatively unregulated. However, investment in this industry has skyrocketed. Clearly regulation is necessary. In 2017 alone, more than 900 new cryptocurrencies debuted in what are style “Initial Coin Offerings.” Promoters raised billions of dollars in real money, but nearly half of that 900 have already failed. Meanwhile, other businesses are trying to take advantage of the craze. Given this environment, it is highly likely that some businesses are seeking to associate their businesses with the industry to boost the value of their stock.

The SEC, in a press release, announced its intent to regulate cryptocurrency markets, stating:

If a platform offers trading of digital assets that are securities and operates as an “exchange,” as defined by the federal securities laws, then the platform must register with the SEC as a national securities exchange or be exempt from registration.

The SEC staff has concerns that many online trading platforms appear to investors as SEC-registered and regulated marketplaces when they are not. Many platforms refer to themselves as “exchanges,” which can give the misimpression to investors that they are regulated or meet the regulatory standards of a national securities exchange.

It was not entirely clear whether cryptocurrencies would be considered a security within the meanings of the Securities Act of 1933 and the Securities and Exchange Act of 1934. However, cryptocurrency likely falls within the catchall definition of a security as an investment contract security contained in 15 U.S. Code § 77b(a)(1). The Supreme Court of the United States has refined the definition of an investment contract as one that “contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.

These developments come on the heels of Google and Facebook pulling ads for cryptocurrencies from their platforms because of the recurring theme of misleading statements being made in the advertisement this “product.” There is a veritable explosion in the number of available cryptocurrencies to invest in, most of which are highly volatile, of dubious value, and, obviously, until now unregulated.

If you need additional 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: CNBC.com and npr.org

IX. AN UPDATE ON SECURITIES INSURANCE AND FINANCE LITIGATION

JUSTICES KEEP SECURITIES CLASS ACTIONS ALIVE IN STATE COURTS

The U.S. Supreme Court ruled last month that state courts can continue to hear certain securities class actions brought under federal law. Underwriters and newly public companies argued such claims can only be brought in federal courts. In the matter of Cyan Inc. v. Beaver County Employees Retirement Fund, a unanimous high court said that amendments to the federal Securities Act of 1933 do not in fact give the federal courts exclusive jurisdiction over covered class actions brought under the law.

Instead, the high court ruled the Securities Litigation Uniform Standards Act of 1998 (SLUSA) still allowed state courts to retain concurrent jurisdiction over securities claims that involve 50 or more Plaintiffs. “SLUSA did nothing to strip state courts of their longstanding jurisdiction to adjudicate class actions brought under the 1933 Act,” Justice Elena Kagan wrote for the unanimous court.

The decision marks the end of the legal battle, largely centered in California, over whether state courts have concurrent jurisdiction over covered class actions brought under the 1933 Act, such as claims alleging that a company’s stock price dropped because directors had made materially misleading statements in their stock registration statements. A California state appeals court ruled in 2011 that state courts do indeed have authority over such claims. Defendants like Cyan have argued that this decision opened the floodgates to new securities class actions. In the case of Cyan, the former telecommunications company urged the high court to find that SLUSA actually curtailed state courts from hearing investor suits like the one it is facing in California.

SLUSA, passed in 1998, aimed to limit the flow of securities class actions to state courts after an earlier law enacted tougher standards on Plaintiffs bringing federal securities claims. Cyan argued that a provision of the law should be read as ending the “concurrent jurisdiction"

U.S. District Judge Lucy Koh in San Jose, California, has rejected a bid by Verizon Communications Inc, to dismiss a number of claims, including those for negligence and breach of contract. Judge Koh did, however, dismiss some other claims. The judge had previously denied Yahoo's attempt to dismiss some unfair competition claims. Yahoo was accused of being too slow to disclose three data breaches that occurred from 2013 and 2016, increasing users' risk of identity theft and requiring them to spend money on credit freeze, monitoring and other protection services. The breaches were revealed after New York-based Verizon agreed to buy Yahoo's Internet business, and prompted a cut in the purchase price to about $4.5 billion.

The Plaintiffs amended their complaint after Yahoo revealed in October that the 2013 breach affected all 3 billion users, tripling its earlier estimate. Judge Koh said the amended complaint highlighted the importance of security in the Plaintiffs' decision to use Yahoo. "Plaintiffs' allegations are sufficient to show that they have had behaviorally differed had Defendants disclosed the security weaknesses of the Yahoo Mail System," Judge Koh wrote. She also said the Plaintiffs could try to show that liability limits in Yahoo's terms of service were "unconscionable," given the allegations that Yahoo knew its security was deficient but did little.

In seeking a dismissal, Yahoo said it has long been the target of "relentless criminal attacks," and the Plaintiffs' "20/20 hindsight" did not cast doubt on its "unending" efforts to thwart "constantly evolving security threats." Last March, U.S. prosecutors charged two Russian intelligence agents and two hackers in connection with one of the Yahoo breaches. One accused hacker, Karim Baratov, a Canadian born in Kazakhstan, pleaded guilty in November to aggravated identity theft and conspiracy charges. The other Defendants remained at large in Russia. The case is In re: Yahoo Inc Customer Data Security Breach Litigation (case number 16-md-02752) U.S. District Court, Northern District of California.

Source: Reuters


Elizabeth Holmes, founder of the embattled blood testing start-up Theranos, has been charged with "massive fraud," according to the Securities and Exchange Commission (SEC). Ms. Holmes agreed to settle and pay a $500,000 fine, and she will be barred from serving as a director or officer of a public company for 10 years. In its case in civil court, the SEC alleged that Theranos raised more than $700 million from late 2013 to 2015 while "deceiving investors by making it appear as if Theranos had successfully developed a commercially ready portable blood analyzer that could perform a full range of laboratory tests from a small sample of blood."

The SEC said Theranos deceived investors by "hosting misleading technology demonstrations, and overstating the extent of Theranos' relationships with commercial partners," noting that at times Theranos' technology could only do about 12 tests of the more than 200 tests advertised. The SEC also said former Theranos President Ramesh "Sunny" Balwani and Ms. Holmes lied about the extent of Theranos’ involvement with the military. Balwani worked at Theranos from 2009 to 2016, after extending credit to his then-girlfriend Ms. Holmes.

The pair collaborated closely, the SEC said, with Ms. Holmes working on innovation, strategic relationships and the board, while Balwani concentrated on technology and human resources. The SEC said it is also seeking an order requiring Balwani to pay a fine and prohibiting him from acting as an officer or director of a public company.

Theranos was once considered a high-flying start-up. Ms. Holmes was very active, including being on major magazine covers, being touted as the “personification of innovation.” Over the past five years Wall Street Journal investigations have questioned the efficacy of Theranos' blood testing technology, raising flags for regulators.

Theranos has now settled proceedings with the Centers for Medicare & Medicaid Services, as well as with the Arizona Attorney General. Theranos previously settled a lawsuit with one of its biggest investors, Partner Fund Management, which invested more than $96 million in Theranos in 2014. Jina Choi, director of the SEC’s San Francisco regional office, said in a statement

The Theranos story is an important lesson for Silicon Valley. Innovators who seek to revolutionize and disrupt an industry must tell investors the truth about what their technology can do today, not just what they hope it might do someday.

Hopefully, the aggressive action in this case by the government will discourage others who might seek to mislead investors.

Source: CNBC.com

F A M I L Y D O L L A R P A Y S C L A S S $ 4 5 M I L L I O N I N P A Y B I A S S U I T

A North Carolina federal judge has approved a $45 million settlement ending class action claims by more than 37,000 former and current female Family Dollar Stores Inc. managers alleging their employer paid them less than their male counterparts, ending a case that began nearly 15 years ago. The settlement also provides "comprehensive programmatic relief," requiring Family Dollar to review its manager compensation setting process in consult with labor economics experts.

In his order approving the settlement, U.S. District Judge Max O. Cogburn Jr. noted that the suit “has been vigorously litigated over the last 10 years.” Judge Cogburn said:

This is not a case in which the parties reached an early or easy settlement. Instead, this has been a hard-fought case in which both sides worked diligently to gather and interpret information and to represent their clients in discovery.
in litigating class certification, in preparation for trial, and later in mediation.

The dispute over equal pay began in October 2008, when more than 50 former and current female store managers sued Matthews, North Carolina-based Family Dollar in Alabama federal court. The managers sought class certification under accusations that their employer violated the Civil Rights Act and the Equal Pay Act by routinely paying male store managers higher wages than those given to similarly situated female managers. The case was transferred to North Carolina federal court the following month, at which point the female managers acknowledged their allegations were “virtually identical” to those at issue in the Dukes v. Walmart case, which at the time was awaiting review before the Ninth Circuit on the question of class certification.

After the Plaintiffs in the Dukes case prevailed before the appeals court, which affirmed a lower court’s certification order, Walmart appealed to the Supreme Court. The high court ruled for the retail giant in June 2011, overturning certification for reason of lack of commonality among the Plaintiffs. Consequently, Family Dollar moved in September 2011 to strike the female managers’ class claims in the current matter based on the high court’s newly authored precedent.

Judge Cogburn granted the company’s motion to dismiss in January 2012, agreeing that the Dukes ruling required the case to be dismissed. But on appeal, the Fourth Circuit revived their putative class action after finding the lower court misinterpreted the Dukes ruling by refusing to let them amend their claims. According to the circuit court’s split October 2013 opinion, the female managers had added allegations of uniform corporate policies and high-level decision-making that set it apart from Dukes.

Family Dollar requested Supreme Court review in January 2014, but it was denied six months later. This opened the door for the employees to file their amended complaint in October 2014. The revised suit claimed disparate impact, disparate treatment and punitive damages under Title VII of the Civil Rights Act, plus one count of violating the Equal Pay Act. By March 2017, Family Dollar asked the court to stay the case pending settlement efforts, and nine months later, the class of managers asked for preliminary approval on a $45 million settlement. This latest order granted final approval on that settlement, which will see nine class representatives receive $10,000 each. The remaining named Plaintiffs will receive a service award of $5,000.

According to a joint motion for final approval filed in court, nine class members—or .024 percent of the total class—have opted out of the settlement. The joint motion also stated that “only two” class members submitted written reasons for objections. Judge Cogburn said the low number of opt-outs and objections led him to conclude the proposed deal was fair and reasonable.

Plaintiffs are represented by Gregory Wiggins and Robert Wiggins Jr. of Wiggins Childs Pantazis Fisher & Goldfarb LLC. The case is Scott et al. v. Family Dollar Stores Inc. (case number 3:08-cv-00540) in the U.S. District Court for the Western District of North Carolina.

Source: Law360.com

WELLS FARGO’S $27.5 MILLION CALIFORNIA WAGE SETTLEMENT GETS FINAL APPROVAL

A California judge will approve Wells Fargo Bank NA’s $27.5 million settlement resolving a consolidated action brought by the bank’s hourly Golden State bankers and sales representatives. It was claimed that they were required to work more than 40 hours a week without overtime pay and were shorted meal breaks. During a hearing in Oakland, California, Alameda Superior Court Judge Winifred Smith said she would approve the settlement.

Under the settlement, approximately 28,463 class members will receive an average payment of approximately $660. The settlement resolves three putative class actions that were filed against the bank since 2010. The actions were coordinated before Judge Smith in April 2015, and they accuse the bank of failing to pay overtime and for split shifts, failing to provide workers with meal breaks and failing to provide itemized wage statements. The suits assert claims under the federal Fair Labor Standards Act (FLSA) and the state’s Unfair Competition Law and Private Attorneys General Act (PAGA), which allows workers to sue to recover civil penalties for themselves and on behalf of other employees and the State of California for alleged Labor Code violations.

The settlement in October, which the court preliminarily approved the following month, covers five categories of California-based hourly Wells Fargo employees, including its customer sales and service representatives, personal bankers, business bankers and premier bankers. Under the settlement, $625,000 of the settlement fund will be distributed
to the class specifically to resolve the FLSA claims and $200,000 will go to resolving the PAGA claims, of which $150,000 will be paid to the California Labor and Workforce Development Agency.

The eight lead Plaintiffs—Yvette Ramirez, Henry Marroquin, Jeremy Uzqueda, Ani Hanesghlyan, Maria Teresa Arguelles, Kimia Arya, Bernadette Richard and Michael Devito—will receive $10,000 each.

The settlement comes after Wells Fargo agreed in December to pay $13 million to approximately 44,000 California bank employees to end four other actions over missed meal and rest breaks and off-the-clock work brought by another class of Wells Fargo claimants.

The workers in this case are represented by Peter Rukin of Rukin Hyland LLP and Steven M. Tindall of Gibbs Law Group, David R. Markham of The Markham Law Firm, R. Craig Clark, Monique R. Rodriguez and Jessica R. Corrales of Clark Law Group, Walter Haines of United Employees Law Group and Brian F. Van Vleck of Van Vleck & Zaller LLP. The case is Wells Fargo Wage and Hour Cases (case number JCCP004821) in the Superior Court of the state of California, County of Alameda.

Source: Law360.com

XI.
PREMISES LIABILITY UPDATE

DEATH OF 2-YEAR-OLD GIRL HIGHLIGHTS IMPORTANCE OF A SAFE PREMISES

Recently, a 2-year-old girl was killed in Riverdale, Georgia, when a mirror fell on her at a Payless ShoeSource store. Reports indicate the family went to Payless to purchase the little girl some shoes when a mirror, which was held up by one screw, fell on top of her. The fire department, after investigating the scene, determined that the large mirror was not secured properly.

It is hard to comprehend what this poor family is going through, as losing a young child is unfathomable for mothers and fathers. Unfortunately, these types of accidents happen more frequently than most would imagine. Over the years, our firm has litigated many cases like this, and there is almost always a consistent trend that develops—the establishment is more concerned with getting the sale than paying attention to details that could present safety hazards to patrons.

Small children are especially at risk for many reasons. For instance, if owners only scan their establishments for hazards from the perspective of an adult, then they will completely miss those otherwise mundane details that are dangerous for children. As all parents have experienced at one time or another, no parent is completely immune to a child’s crafty, ninja-like ability to escape, fall from or swallow something in split-second fashion.

No family, including this family, should ever have to suffer through what this family experienced. Employees at the store will need prayer as well. This case highlights why the lawyers at Beasley Allen do what they do. Not only do we ensure the family is compensated fully for their loss, there is the hope that with a settlement or jury verdict, perhaps other establishments will think twice before procrastinating needed safety checks.

As we have reported on previously, it is vital that premises owners—particularly hotels—ensure that their guests are safe from criminals. When a person checks into a hotel, they are putting their life in the hands of that hotel as if it was their home away from home. Occasionally, we hear about a story similar to the one coming out of Georgia this past month, where a hotel guest was shot, raped or robbed by a criminal on the premises of a hotel.

Under Georgia law, hotels have a responsibility to take reasonable measures to ensure that their guests are safe from foreseeable hazards—including criminals. Guests in hotels are especially vulnerable because they oftentimes let their guard down due to the perceived belief that they are protected and safe. Unfortunately, this is not always the case. Criminals can prey on guests in the parking lot, in the hallways, and because many hotels allow access to all floors, criminals have been known to enter hotels unabated and break into rooms.

What’s more, guests are not typically from the area where they are staying, so they are often times not aware that their hotel is in a high crime area or suffers from criminal violence issues.

To protect their guests, hotels should hire security personnel and ensure they patrol the grounds. Because guests are vulnerable in parking lots, stairways, alleys and hallways, hotels should make sure these areas are properly lit, and permit access to hotel personnel, guests and their friends and family. Additional measures may be needed based on whether the hotel is located in a high crime area.

Lawyers in our firm are currently investigating negligent security cases where individuals have been murdered, raped or severely injured because of poor security. If you have any questions about these cases, contact Parker Miller, a lawyer in our firm’s Personal Injury & Products Liability Section, at Parker.Miller@beasleyallen.com or at 800.898.2034.

XII.
WORKPLACE HAZARDS

JURY AWARDS $21 MILLION IN ROCK CRUSHER DEATH CASE

A California state court jury has ordered a North Dakota-based construction equipment supplier to pay $21 million to the three minor children of a man killed in a rock crushing machine at the Southern California asphalt facility where he worked. Jurors found that the design of the rock crusher provided by General Equipment and Supplies Inc. was a “substantial factor” in the death of 34-year-old Rolando Anaya. The damages, divided equally between Anaya’s two sons and one daughter, are to compensate for the loss of their father’s “love, companionship, comfort, care, assistance, protection, affection, society, moral support and training and guidance,” according to a special verdict form in the case.

Anaya was pulled into the crusher after his pants leg became entangled in the conveyor belt of the machine. General Equipment had failed to install an emergency stop cord for workers on the chassis of the conveyor, which was required by the California Division of Occupational Safety and Health regulations. David Shoop of Shoop PC, a lawyer for the family, told Law360 the fact that the accident was preventable made it all the more tragic. He added:

When part manufacturers make dangerous equipment they’ve got to do everything in their power to ensure that workers who work around these machines and potentially make inadvertent contact with these machines are appropriately protected. This was a case where the safeguards were woefully inadequate and there was no
Although the jury said the family should be awarded $30 million total, General Equipment was found to be liable for 70 percent of that amount, $21 million, with remaining responsibility attributed to The R.J. Noble Co., where Anaya worked. R.J. Noble was not a Defendant in the suit. The family had reached a worker’s compensation settlement with the company, pursuant to the state’s exclusive remedy law.

The Anaya family is represented by Donald George Liddy of the Liddy Law Firm, and David R. Shoop of Shoop PC. The case is Johnny Anaya et al. v. Superior Industries Inc. et al. (case number BC594187) in the Superior Court of the State of California, for the County of Los Angeles.

Source: Law360.com

**FORMER GENERAL MOTORS EMPLOYEE FILES LAWSUIT OVER BENZENE EXPOSURE**

Lawyers in our firm recently filed a products liability lawsuit in the Circuit Court of Defiance County, Ohio on behalf of a former employee of General Motors who developed Multiple Myeloma, a type of cancer of the blood and bone marrow. The Plaintiff mainly worked on a foundry line and as a grinder operator for more than 30 years at General Motors and was constantly exposed to solvents and cleaners containing the chemical benzene. The Plaintiff has sued the manufacturers of these benzene containing products.

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

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

The Defendant manufacturers knew that the products the Plaintiff was exposed to contained benzene and they have known for years that benzene poses a health hazard and can kill humans working in close proximity to their products. Nevertheless, the manufacturers continued to manufacture and sell these products, while at the same time marketing the products as safe. The lawyers in our firm handling the case are very proud to be able to represent our client in his efforts to obtain justice and to recover for his injury.

John Tomlinson, who is involved in this case, is currently investigating other benzene exposure cases. If you need more information on this contact John, who is in our Toxic Torts Section, at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com.

**XIII. TRANSPORTATION**

**FLYING PHOENIES: COUNTERFEIT AVIATION PARTS PUT PUBLIC AT RISK**

As this Report discussed last month, counterfeit aviation parts and the failure of contractors and subcontractors to report the parts and suspect suppliers have raised alarm for the U.S. military. Yet, failure to report fake or unapproved parts and suspect suppliers isn’t a problem only for the military.

An audit of the Federal Aviation Administration (FAA) released last year by the U.S. Department of Transportation Office of Inspector General (OIG) harshly criticized the agency’s oversight of its Suspected Unapproved Parts (SUPs) Program. The FAA is the federal agency charged with regulating and promoting safety for the country’s civil aviation. The SUPs Program was established in 1993 in response to a growing number of SUPs cases in the aviation industry. Last year's OIG audit was the first in two decades and was conducted at the request of the House Committee on Transportation and Infrastructure. Committee members were concerned about the effectiveness of the FAA’s oversight of the program.

As the OIG audit explains, “[t]he public depends on the... FAA and the aviation industry to provide safe, reliable air transportation and ensure that aircraft are properly maintained and approved for flight.” The reported noted a number of shortcomings by the agency including:

- Weaknesses in FAA’s recordkeeping.
- Inspectors not adhering to agency guidance.
- Lack of a risk indicator in the FAA’s oversight system regarding risk assessment of manufacturers.
- Lack of coordination between FAA headquarters and various federal law enforcement agencies.

Industry safety experts, including former FAA safety inspectors, fault the industry’s outsourcing of manufacturing aircraft components. They also believe the FAA’s tendency to allow contractors to govern themselves with little to no repercussions contributes to the growing problem as well, according to Crime Report.

In fact, Chaosheng Shi was a supply chain manager for Moog, which is a U.S. aerospace company supplying Boeing with flight control systems. He became a whistleblower when he notified the FAA that Moog was using improperly manufactured components from a subcontractor in China. Shi explains that these parts are still in use today and could affect as many as 500 commercial airplanes. What’s even more alarming is that the parts are “single-point-of-failure,” which means if they malfunction and fail, then the entire system fails, too.

The agency allegedly investigated Shi’s claims, but dismissed them saying it found no evidence of violation. Shi renewed his concerns with the agency and asked for a second investigation. A regional FAA inspector found evidence to support Shi’s claims during a second investigation. The inspector also found that the subcontractor had falsified production records, which alone required the FAA to refer the matter to federal law enforcement agencies for further review. Rather than reporting it as required, the FAA once again dismissed the claims and determined that corrective action had been taken and no further action was necessary. To reach this conclusion, the FAA relied solely on Moog’s internal investigation and accepted the company’s explanation that it was simply an “accounting error.”

As a result of the agency dismissing Shi’s claims, the improperly manufactured parts were never recorded in the FAA’s Unapproved Parts Notification database. This database notifies aircraft owners, operators, manufacturers, maintenance organizations and parts suppliers about reported SUPs and their potential

JereBeasleyReport.com
The allegations against Moog and the FAA’s handling of the investigation demonstrate the OIG’s conclusion that “the FAA cannot accurately account for the number of SUPs or track safety-related trends to share with senior FAA management and federal law enforcement agencies.” A conclusion that continues to raise questions and alarm about the safety of aircraft and their components in U.S. aviation, both the military and civilian sectors.

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 the firm.

Lawsuit Filed Against Southwest Airlines

A lawsuit against Southwest Airlines has been filed by the family of a Prairie Village man who was thrown against the cabin wall on a flight last year after his seat belt came undone. Eugene Dreyer suffered injuries that would lead to his death months later, his family alleges in the wrongful death suit. Dreyer, 81, a stockbroker and financial adviser, had lost the use of his legs due to polio and was in a wheelchair when he and his wife boarded a Southwest plane in Kansas City on Feb. 21, 2017. The flight was going to Fort Lauderdale, Florida.

Dreyer was wheeled onto the plane by a Southwest employee and seated in the first row. Before take-off, Dreyer asked for a seat belt extension, and a flight attendant buckled him in using the seat belt and extension, according to the suit. Neither Dreyer, his wife or an assistant traveling with them touched or adjusted the belt during the flight, the suit says.

As the plane landed and began to decelerate, the belt “failed to restrain him” and he “flew forward into the bulkhead wall,” according to the lawsuit allegations. “Eugene Dreyer hit his head, leg, foot, shoulder and other parts of his body onto the front bulkhead wall,” according to the suit. The lawsuit says he suffered severe injuries to his head, shoulder, foot and leg, including a broken femur. “He suffered loss of cognitive functions and severe depression,” according to the suit.

The suit alleges that his death on April 23, 2017, was a direct result of those injuries. The suit was filed on behalf of Dreyer’s wife and two children and seeks an unspecified amount in damages.

 FAA Issues New Rules On Seat Harnesses After Helicopter Crash That Killed Five

In the wake of a deadly helicopter accident involving passengers who were harnessed into their seats for a “doors off” photo flight over New York City, the Federal Aviation Administration (FAA) said it will place new restrictions on aircraft operators. The FAA will order a halt to such flights that “involve restraints that cannot be released quickly in an emergency.”

At the same time, the agency said it will conduct a “top to bottom review of its rules” governing open-door flights, after a helicopter from New Jersey went down in the East River off Manhattan last month. “Operators, pilots, and consumers should be aware of the hazard presented by supplemental restraint devices in the event of an emergency evacuation during ‘doors off’ flights,” the agency said in a statement.

Five passengers were killed in the fatal mishap when the pilot of a Eurocopter AS350 being operated by Liberty Helicopters said he lost power. The incident marked the third serious accident since 2007 involving Liberty, which is based in New Jersey. Records released by the FAA show the company has been cited a number of times in recent years for maintenance and operations issues, but most were minor or resulted in no enforcement action. The aircraft, which took off from its base in Kearny, was flying without doors. This was so that passengers, restrained by safety harnesses, could lean out to take dramatic photos of the city.

Experts familiar with the restraint systems, however, say the lines and harnesses holding them back are difficult to quickly disengage without training, requiring a knife that was a part of the harness. While the pilot emerged from the cockpit when the helicopter flipped in the water after the apparent failure of a floating bag on the skids, all five passengers were trapped inside the cabin and had to be cut free by divers. None of them survived.

The National Transportation Safety Board (NTSB), which is investigating the accident, said it has conducted a teardown of the helicopter’s engine and found no evidence of any abnormalities. It said it is also examining whether the safety harnesses hindered efforts to escape from the sinking craft. The family of one of the victims has filed a lawsuit against Liberty Helicopters, calling the passenger harness system a “death trap” in a water crash.

Source: NJ.com

The Family Of ‘Star Trek’ Actor Settles Suit Over Jeep Accident

The parents of “Star Trek” actor Anton Yelchin have reached a confidential settlement with the makers of the Jeep Grand Cherokee and a gear shift they say led to their son’s death. The vehicle rolled down the son’s driveway and pinned him against his mailbox. Victor and Irina Yelchin agreed to a settlement to end their wrongful death suit against FCA US LLC, better known as Fiat Chrysler, and automotive supplier ZF North America Inc.

The Yelchins had accused Fiat in their 2016 lawsuit of failing to adequately remedy problems with the Jeep’s gear selector even though it knew there were widespread problems that had caused hundreds of crashes and property damage claims.

Anton Yelchin, who played Pavel Chekov in the recent “Star Trek” films, was killed in his driveway after he got out of his car. His parents alleged that he suffered for a time after he was pinned before he died.

The Jeep involved, as well as some Dodge Charger and Chrysler 300 models, are subject to a recall launched in April over a “monostable” gear selector, essentially a gear shift that operates as a software switch, but still looks like a traditional gear shift. The driver moves the selector to reach a certain gear, but the shift then goes back to its same starting position rather than staying in a fixed place.

The problems with the shifter arose when customers started getting confused about whether their cars were actually in park. They would exit the car while the car was still running, thinking it was in park when it wasn’t, and the vehicles would roll, according to the recall notice posted with the National Highway Traffic Safety Administration (NHTSA). The Defendant companies all knew about the defect, and despite that knowledge, the companies had failed to minimize the risk of danger to consumers.

In separate cases, Fiat Chrysler was sued in consumer lawsuits filed in Califor-
nia and New York courts over the same defect. Those suits were later consolidated into multidistrict litigation out of Eastern Michigan federal court, where the case is pending.

The Yelchin family is represented by Gary A. Dordick and Douglas Shaffer of Gary A. Dordick ALC. The case is Victor Yelchin, et al. v. FCA US LLC, et al. (case number BC629096) in the Superior Court for the State of California, County of Los Angeles.

Source: Law360.com

XIV. ENVIRONMENTAL CONCERNS

ALABAMA SECURES $3.3 MILLION SETTLEMENT WITH COLONIAL PIPELINE OVER 2016 EXPLOSION

The Alabama Attorney General’s office has announced a $3.3 million settlement with Colonial Pipeline Company resolving the state’s environmental claims resulting from a gasoline leak detected on Sept. 9, 2016 and an explosion and fire that happened on Oct. 31 of that year. The agreement includes a $1.3 million civil penalty, $1.1 million in “projects to benefit the state of Alabama,” and $200,000 to be paid to the Alabama Department of Conservation and Natural Resources, according to a news release from Alabama Attorney General Steve Marshall and the Alabama Department of Environmental Management. Marshall said:

This agreement first and foremost addresses the environmental damage to land and water caused by significant gasoline spills in Shelby County during 2016. I am pleased by the outstanding work of ADEM’s legal team who worked closely with our lawyers to achieve a settlement which I believe is fair, reasonable and benefits the people of Alabama.

The Sept. 9 incident involved a massive leak in the below-ground pipeline in Shelby County, at the site of an inactive coal mine near the Cahaba River Wildlife Management Area. A mining inspector detected the leak and notified authorities. Approximately 7,370 barrels or 309,540 gallons of gasoline were released in that incident. The pipeline, which carries gasoline from refineries near Houston to distribution points as far as New Jersey, was shut down for several days following the detection of the leak, leading to gas shortages and price spikes across much of the eastern United States.

According to the Attorney General’s office, the leak was caused by pipe fatigue that resulted from improper compaction of soil below that portion of the pipeline. Several weeks later, on Oct. 31, contractors working on the pipeline reportedly sparked an explosion when they accidentally struck the line with excavating equipment. Two workers were killed in the explosion, which witnesses say sent a “geyser” of burning gasoline 100 feet in the air. The fire burned for more than three days at the site before it was extinguished.

Another 4,444 barrels—or 186,648 gallons—of gasoline were released. A portion of the gasoline lost after the explosion was successfully recovered. The settlement also includes “three small releases elsewhere in Alabama.” Colonial’s primary regulator is the Pipeline and Hazardous Materials Safety Administration, which is a U.S. Department of Transportation agency, but the investigations into the two incidents are being headed by the National Transportation Safety Board. No public announcement has been made regarding the status of those investigations.

Source: AL.com

MINING COMPANIES WILL PAY $20 MILLION TO SETTLE EPA POLLUTION CLAIMS

Two Idaho mining companies have agreed to pay the U.S. Environmental Protection Agency (EPA) $20 million to settle claims that they contributed to pollution at a Superfund site in the state. Placer Mining Co. Inc. and Bunker Hill Mine Corp. agreed to pay the penalty to settle a Comprehensive Environmental Response, Compensation, and Liability Act lawsuit that the EPA filed in 2004, alleging the company was illegally sending mine waste into the Coeur d’Alene River. The Bunker Hill Mine is part of the Bunker Hill Mining and Metallurgical Complex Superfund site located in Idaho’s Silver Valley, which the EPA said is one of the largest historical mining districts in the world.

Under the settlement, Placer agreed to dismiss a lawsuit it had filed against the federal government alleging violations of the Constitution’s Takings Clause. The EPA reached an administrative settlement with the current lessee of the mine, Bunker Hill, which allows for the possible reuse of the mine, which has been closed for years.

Under the settlement, Placer executed a two-year lease agreement with Bunker Hill Mining, with an option for Bunker Hill to purchase the mine outright or extend the lease at the end of the lease term. The consent decree said:

Settling defendants agree that part of the consideration for the lease and sale of the mine shall consist of Bunker Hill Mining’s payment to the United States of $20 million in satisfaction of settling defendants’ liability for past costs incurred by the United States responding to releases and threatened releases of hazardous substances from the property.

Payments will be stretched out pursuant to the settlement over six years. The EPA said in a statement:

For nearly a century, the Bunker Hill Mine was one of the most productive mines in the Coeur d’Alene Mining District. As part of the agreement, BHMC has agreed to pay for future treatment of acid mine drainage coming from the mine. BHMC has also agreed to undertake various maintenance and monitoring tasks to help ensure previous cleanup work at the Superfund site remains protective and is not adversely impacted by new mining operations.

The EPA said it first listed the site on its National Priorities List in 1983. Cleanups have been ongoing since then, spurred by the toxic side effects of “widespread” contamination by lead and other metals, which began showing up in the 1970s in routine blood lead screenings for children who lived in the area. “Some of the highest blood lead readings ever documented in North America were measured in local children in the 1970s and 1980s,” the EPA said. The Coeur d’Alene tribe has often protested the pollution that came from the silver, lead and zinc mining in the area.

The case is United States of America v. Placer Mining Co. Inc. et al., (number 2:04-cv-00126) in the U.S. District Court for the District of Idaho.

Source: Law360.com
Shell, BP and Sunoco Reach $196 Million Settlement In Pollution Suit

Shell, BP and Sunoco entities have agreed to pay $196.5 million to settle New Jersey’s contamination claims over a gasoline additive that seeped into groundwater throughout the state. These are the latest settlements in the 11-year environmental litigation against dozens of companies. The oil giants were among nearly 50 companies named in the New Jersey Department of Environmental Protection’s June 2007 lawsuit alleging their manufacture, blending and distribution of the additive known as methyl tertiary butyl ether, or MTBE, affected the groundwater, Attorney General Gurbir S. Grewal announced in the settlement.

The state has so far received $350 million in settlements with the Defendants, which include major petroleum refiners, distributors and gasoline retailers in New Jersey, as well as independent chemical manufacturers of MTBE, Grewal said in a statement. The state continued to pursue settlements against remaining Defendants, including ExxonMobil Corp. Grewal said:

These are important legal settlements on behalf of New Jersey citizens—not only in terms of the dollars, but in terms of sending a message that we are committed to working with DEP to protect our state’s natural resources and hold accountable companies that pollute.

MTBE is a potential carcinogen, according to the New Jersey Sierra Club, an environmental advocacy group. The club said the companies “got off the hook cheap.”

New Jersey Sierra Club Director Jeff Tittel said in a statement:

They polluted millions of gallons of drinking water in communities across New Jersey. MTBE can cause serious health effects, including cancer. There wasn’t enough time to compare these settlements to other MTBE cases across the country or know what the original charge was.

Grewal said all three settlements were subject to a public comment and were reviewed and approved by a federal court. According to the breakdown provided by Grewal, Sunoco Defendants, including Sunoco Inc. and Sunoco Inc. R&M, have paid $64 million to resolve their liability.

The BP defendants, including BP America Inc., BP Amoco Chemical Co., BP Corp. North America Inc., BP Products North America Inc. and Atlantic Richfield Co., have already paid the state $32 million of their $64 million share, Grewal said. The Shell entities, including Equilon Enterprises, Motiva Enterprises, Shell Oil Co., Shell Oil Products Co. and Shell Trading (US) Co., have agreed to pay $68.5 million, Grewal said.

Source: Law360.com

Chemours & DuPont Investigated by Federal Prosecutors For Water Contamination

Federal prosecutors have served DuPont and its spinoff company Chemours with subpoenas in their investigation of the companies’ contamination of the Cape Fear River, which supplies the drinking water for hundreds of thousands in North Carolina. Chemours’ Fayetteville Works manufacturing facility has been blamed for contaminating the river, private wells, and the air with the chemical GenX, which is used in the manufacture of nonstick cookware, laptops, cell phones, and a host of similar applications.

GenX replaced the perfluorinated chemical PFOA, also known as C8, for use in making Teflon and other products. PFOA had been linked to cancer and other serious health problems and, as a result, resulted in numerous lawsuits filed by individuals and water systems against DuPont and other manufacturers for the contamination of their drinking water.

Although there is little research on GenX’s effect on human health, animal testing shows that GenX and other related chemicals can cause cancer and other serious health problems. In July 2017, the North Carolina Department of Health and Human Services set a “health goal” limit for GenX at 140 parts per trillion. This is currently the only exposure limit because the EPA has not developed a regulation or maximum contamination level for the chemical.

The North Carolina Department of Environmental Quality and the EPA also launched investigations of these companies in the summer of 2017. It is possible these ongoing investigations could result in penalties, sanctions, and additional litigation. Class action lawsuits filed on behalf of nearby residents allege that DuPont/Chemours secretly dumped GenX into the Cape Fear River for years despite telling the state otherwise and knowing the chemical was dangerous.

Although GenX was developed as a replacement for PFOA, it is still part of the family of perfluorinated chemicals, or PFCs, which pose known health risks.

Lawyers in our firm, along with Roger H. Bedford of Roger Bedford & Associates, have filed lawsuits on behalf of the water systems in Gadsden and Centre, Alabama, which are suffering from PFC contamination. Lawyers at Beasley Allen are investigating other PFC contamination cases. If you have any questions or need more information on this subject, contact Rhon Jones, Rick Stratton, or Ryan Kral, lawyers in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com, or Ryan.Kral@beasleyallen.com.

U.S. Supreme Court Rejects Flint’s Bid To Hear Toxic Water Suits

The U.S. Supreme Court declined last month to review a Sixth Circuit ruling that revived a pair of lawsuits stemming from the water contamination crisis in Flint, Michigan, leaving intact the circuit court’s conclusion that constitutional claims by residents and businesses are not preempted by the federal Safe Drinking Water Act (SDWA).

The justices denied certiorari petitions by the city of Flint, a group of Michigan Department of Environmental Quality officials and Genesee County Drain Commissioner Jeff Wright concerning a July ruling by the Sixth Circuit that breathed new life into the two proposed class actions brought by the Flint residents and businesses. The high court’s decision not to take up the dispute came in the form of a brief order providing no explanation, as is customary.

The underlying Sixth Circuit ruling gave a second chance to two of the many suits that came out of the public health crisis that followed a 2014 decision by Flint officials to source the city’s water from the Flint River rather than from Lake Huron. The residents and businesses behind the suits—which were consolidated before the Sixth Circuit—have claimed that Flint did not properly treat the water, resulting in contaminants like lead that poisoned locals.

Both suits include claims under Section 1983 of Title 42 of the U.S. Code alleging violations of the residents and businesses’ constitutional rights, but the litigation faltered when a Michigan district court concluded that the allegations were preempted by the SDWA. However, the Sixth Circuit disagreed, finding in July that neither the text of the SDWA nor its legislative history demonstrated that Com-
gress intended for the act’s “remedial scheme to displace Section 1983 suits enforcing constitutional rights.” Additionally, the circuit court said, the remedies provided by the SDWA “dive into significantly” from the Constitution’s protections.

The Sixth Circuit did, however, uphold the dismissal of the residents and businesses’ claims against the state and certain state agencies, finding that they are protected from the claims by sovereign immunity. The city of Flint, the MDEQ officials and Commissioner Wright filed their separate certiorari petitions in November and December. They argued that the Sixth Circuit had deepened a circuit split by holding that constitutional due process claims brought by Flint residents and businesses were not preempted by the SDWA.

The suits are Wright v. Mays et al. (suit number 17-666); Wyant et al. v. Mays et al. (suit number 17-901); and City of Flint et al. v. Boler et al. (suit number 17-989); all in the U.S. Supreme Court.

Source: Law360.com

XV.
UPDATE ON NURSING HOME LITIGATION

A Troubling Trend: Involuntary Discharge From Nursing Homes

Many people in nursing homes have become victims of a troubling trend: illegal evictions. Patient “dumping” occurs when a nursing home sends residents to institutions such as hospitals, psychiatric facilities, or even homeless shelters, and refuses to readmit them after being medically cleared to return to the home. These evictions are a terrible blow to the residents and their loved ones. Involuntary discharge from nursing homes is the leading complaint received by state long-term care ombudsmen, who received more than 9,000 such complaints in 2015.

States have the primary responsibility for policing the nation’s nursing homes, but state regulators have to at a minimum follow federal rules that include specific reasons a facility can legally evict a resident. Residents in nursing homes and other long-term care facilities that accept Medicaid/Medicare can be moved only if the facility can’t meet the patient’s needs, the patient doesn’t need the services, the health or safety of others is endangered, the patient won’t pay, or the facility closes. When transfer or discharge is necessary, nursing homes must follow specific procedures, including providing adequate notice to the resident and the resident’s family member, guardian, or legal representative, in writing, at least 30 days in advance.

In a memo to state officials, the Centers for Medicare and Medicaid Services (CMS), which oversees nursing homes, said discharges that violate federal regulations “can be unsafe and/or traumatic for residents and their families,” and that nursing home residents are sometimes left homeless or hospitalized for months when they are evicted. Rather than resorting to forced evictions, nursing homes can often resolve many of the permissible reasons for transfer or discharge through careful assessment and care planning.

Despite federal protections and the potentially devastating effects on residents, some unscrupulous nursing facilities try to illegally evict the residents who are the neediest of staff time and require the greatest levels of care—i.e. are the biggest drain on the nursing home’s profits. “The problem of patient dumping is one of the most troubling complaints of nursing home residents throughout the country,” says William Alvarado Rivera, AARP Foundation’s senior vice president for litigation. “This is basically a form of abuse by nursing homes that dump these patients, especially Medicaid patients, to fill their beds with ‘better’ [more profitable] residents.”

State long-term care ombudsmen can help nursing home residents who are treated unfairly. Your state or local health department can provide you with contact information for your state’s long-term care ombudsmen.

Beasley Allen lawyers continue to fight for residents and their families who have been harmed by a nursing home’s abuse, negligence, or poor care in general. If you or your loved one has suffered serious injury or death because of nursing home abuse or neglect, or if you have any questions about nursing home abuse and neglect, contact Chris Boutwell in our office at Chris.Boutwell@beasleyallen.com or by phone at 800-898-2034. Chris handles nursing home litigation for the firm.

Source: AARP

Syngenta Agrees To Pay $1.5 Billion To Settle Corn GMO Class Claims

Syngenta AG has agreed to a $1.51 billion settlement in the nationwide class action over its genetically modified corn seed, with classes of farmers in all but four of the multidistrict litigation (MDL) cases. A Kansas federal judge was asked to give preliminary approval to the settlement on March 12. The settlement covers all corn growers, grain facilities and ethanol plants across the country that purchased insect-resistant GMO corn seeds from Syngenta during the class period.

In a statement released by Scott Powell, a lawyer with the Birmingham firm Hare Wynn Newell & Newton LLP, who represented the Plaintiffs, it was said that the settlement is believed to be “the largest agricultural litigation settlement in U.S. history.” Even farmers who may have opted out of previous Syngenta lawsuits are eligible for the settlement. Funds could be distributed as soon as the first half of 2019. The statement said:

America’s corn farmers and related businesses were hurt economically and this settlement will provide fair compensation for their damages. It is an equitable result for all involved.

The deal comes after years of litigation over allegations that Syngenta should have delayed launching the seeds until Chinese authorities—controlling a major corn market for U.S. growers—approved importing the GMO corn.

The first trial in the MDL that won class certification in September 2016 tested the negligence claims of four Kansas farmers representing the 7,000 others who believe that Syngenta rushed its genetically modified pest-resistant Viptera seed to market in 2010, willfully ignoring the importance of Chinese regulatory approval. The Kansas farmers alleged that varieties of harvested corn were mixed together indiscriminately on their export journey. China discovered the “rogue strain” in November 2013 and immediately rejected American corn cargo, shutting down the Chinese market for U.S. corn and costing
The jury ruled for the farmers, finding Syngenta negligent and awarding the class of corn producers $217.7 million in compensatory damages. In July, Judge Lungstrum further consolidated the seven remaining separate state class actions in Arkansas, Illinois, Iowa, Missouri, Nebraska, Ohio and South Dakota, ruling that the actions overlapped in some places on common questions of law and fact and should be grouped into four trials.

The Plaintiffs are represented by Scott Powell of Hare Wynn Newell & Newton LLP, Don M. Downing of Gray Ritter & Graham PC, Patrick Stueve of Stueve Siegel Hanson LLP and William B. Chaney of Gray Reed & McGraw PC, among others. The case is In re: Syngenta AG MIR162 Corn Litigation, (case number 2:14-md-02591) in the U.S. District Court for the District of Kansas.

Source: Law360.com

**FACEBOOK'S $35 MILLION SETTLEMENT TO END IPO SUIT GETS INITIAL APPROVAL**

A New York federal judge has given preliminary approval to Facebook Inc.'s $35 million settlement. This settlement will resolve a certified securities class action alleging the tech giant hid key financial forecast information from investors leading up to its initial public offering in May 2012, causing its stock to languish in its first year. Class members are estimated to receive about 7 cents per share, according to the class notice.

If the court grants its final approval, the settlement would resolve multiple class actions that were launched in 2012 against Facebook, its underwriters and its top executives, including its CEO Mark Zuckerberg, its COO Sheryl K. Sandberg and billionaire board member Peter A. Thiel.

The consolidated complaint alleged that leading up to its IPO, the company intentionally hid key financial information from investors that revealed more users were using their phones to access Facebook's website, instead of their computers, and, as a result, the company's advertising revenues were taking a hit. The investors claimed that Facebook failed to disclose that it revised its revenue estimates, even in light of the information, in violation of the Securities Act of 1933. Instead they claim Facebook merely amended its registration statement with the U.S. Securities and Exchange Commission (SEC) days before the IPO, saying mobile usage "may" impact the company's revenues.

Facebook went public on May 17, 2012, and sold more than 421 million shares of common stock at $38 per share on the Nasdaq, raising $16 billion from investors. But the suits noted that Facebook's common stock price declined shortly after, hitting an $18 low, and then it took more than a year to rebound.

The litigation was centralized in New York's Southern District in October 2012, and two pension funds—the Arkansas Teacher Retirement System and the Fresno County Employees' Retirement Association—have since taken over as lead Plaintiffs. In December 2015, the court certified a class of institutional and retail investors who purchased or acquired common stock between May 17, 2012, and May 21, 2012. Since, 148 potential class members have asked to be excluded from the class.

The investors are represented by Thomas A. Dubbs, James W. Johnson and Thomas G. Hoffman Jr. of Labaton Sucharow LLP, Salvatore J. Graziano and John J. Rizio-Hamilton of Bernstein Litowitz Berger & Grossmann LLP, Steven E. Fineman and Nicholas Diamond of Lieff Cabraser Heimann & Bernstein LLP and Frank R. Schirripa of Hach Rose Schirripa & Cheverie LLP. The case is In re: Facebook Inc. IPO Securities and Derivative Litigation (case number 1:12-md-02389) in U.S. District Court for the Southern District of New York.

Source: Law360.com

**YAHOO TO PAY $80 MILLION TO SETTLE SECURITIES SUIT OVER DATA BREACH**

Yahoo will pay $80 million to settle a class action brought by investors who alleged that the company intentionally misled them about its cybersecurity practices in the wake of massive hacks that compromised 1.5 billion users' personal information. If approved, the settlement would create a cash fund amounting to about 12 cents a share. Investors accused the company and several former executives, including then-CEO Marissa Mayer, of trying to conceal the hacks in 2014 and 2016, alleging that even though the company had full knowledge that its cybersecurity practices weren't adequate, it still filed notices with regulators touting its practices.

Despite having a settlement agreement pending before the court, Yahoo filed a motion to dismiss the investors' second amended complaint after lead Plaintiff Ben Maher had apparently refused the settlement. Yahoo announced what is believed to be the largest data breach in history in December 2016 when it revealed that hackers had stolen data from one billion users in August of the previous year. The disclosure followed the company's announcement in September 2016 that the names, passwords and other information related to 500 million accounts were stolen in late 2014. The disclosures resulted in numerous lawsuits from consumers. It also caused temporary uncertainty on whether a proposed merger with Verizon, eventually price-reduced, would go through.

The company alerted about 32 million users that they had been the victims of yet another breach in 2015 and 2016 involving the creation of forged cookies that could have allowed intruders to access users' accounts without a password. In January, two investors brought claims under the Securities Exchange Act, saying they lost money when the company's stock value plummeted following the company's disclosures, which they also argue imperiled the Verizon deal.

After those suits were consolidated with a third in April, investors jointly filed an amended complaint in June accusing the company of "a brazen failure to disclose the two largest data breaches in U.S. history." Investors say that testimony from previous employees and the company's own internal investigation revealed that Mayer and other senior executives knew that state-sponsored hackers had accessed the accounts as early as 2014 but still continued to file corporate notices failing to disclose it.

Investors also argued that Yahoo boasted of industry-leading cybersecurity practices in corporate filings, despite knowing that it lacked the most basic protections.

The investors are represented by Joshua L. Crowell and Jennifer Leinbach of Glancy Prongay & Murray LLP and Jeremy A. Lieberman, Emma Gilmore, Michael Grunfeld and Patrick V. Dahlstrom of Pomerantz LLP. The case is In Re: Yahoo Inc. Securities Litigation (case number 5:17-cv-00373) in U.S. District Court for Northern California.

Source: Law360.com

**$166 MILLION LIDODERM PAY-FOR-DELAY SETTLEMENTS AGREED TO**

Direct purchasers of the Lidoderm pain patch have asked for preliminary approval in California federal court of pay-for-delay
class settlements totaling $166 million reached with branded pharmaceutical makers Teikoku and Endo and generics maker Actavis. Teikoku Pharma USA Inc. and Teikoku Seiyaku Co. Ltd. will pay $35 million; Actavis Inc., Watson Laboratories Inc. and Actavis PLC will pay $71 million; and another $60 million will come from Endo Pharmaceuticals Inc. under the settlements. The settlements will be paid pro rata based on how much Lidoderm individual class members bought.

Endo has also settled with several big name retailers, including Walgreen Co. and CVS Pharmacy Inc., but had not come to an agreement with a group of direct purchaser Plaintiffs and end payor Plaintiffs.

Direct purchasers of the pain patch included pharmaceutical wholesalers, pharmacies, hospitals and retail stores that purchased patches and supplied them to others. In the instant settlements, lead Plaintiffs American Sales Company LLC, Drogueria Betances Inc. and Rochester Drug Co-Operative Inc. each stand to receive a $100,000 service award on top of their share of the pro rata proceeds.

Endo has now reached settlements with both direct purchasers and end payors such as employee health and welfare benefit plans, unions or individuals, including end payors who previously opted out of the end payor class.

The litigation, consolidated in 2014, centered on claims that Teikoku Pharma and Endo resolved an underlying patent suit against Watson—which acquired Actavis Group, became Actavis PLC, then acquired Allergan Inc. and became Allergan PLC—in a $266 million deal to stymie a generic version of the blockbuster anesthetic. Purchasers asserted that the agreements amounted to illegal pay-for-delay arrangements that violated competition law.

The class under the proposed settlement would cover anyone who purchased brand or generic Lidoderm directly from the Defendants between August 2012 and May 2014, when an authorized generic version finally came online after having allegedly been delayed by seven-and-a-half months.

The direct purchaser class Plaintiffs alleged that in exchange for Watson's agreement to delay the launch of its generic Lidoderm, Endo/Teikoku paid Watson with $96 million worth of free brand Lidoderm, and with a promise not to launch an authorized generic Lidoderm for 7.5 additional months after Watson's delayed generic launch. It was alleged that if not for the “reverse payments,” a cheaper generic could have been available as early as mid-December 2012 instead of the following September.

In early November 2017, U.S. District Judge William H. Orrick denied summary judgment to Endo, Teikoku and Watson, ruling there was ample evidence to show that Watson could have prevailed in a patent infringement trial had the trio not settled.

The direct purchaser Plaintiffs are represented by Faruqui & Faruqui LLP, Hagens Berman Sobol Shapiro LLP, and Garwin Gerstein & Fisher LLP. The end payor Plaintiffs are represented by Girard Gibbs LLP, Cohen Milstein Sellers & Toll PLLC, Heins Mills & Olson PLC and the Joseph Saveri Law Firm Inc.

The case is In re Lidoderm Antitrust Litigation (case number 3:14-md-02521) in the U.S. District Court for the Northern District of California.

Source: Law360.com

XVII. THE CONSUMER CORNER

CITIGROUP, INC. TO REFUND $335 MILLION TO CUSTOMERS

Citigroup Inc., one of the world’s largest credit-card issuers, will refund $335 million to U.S. customers whose annual percentage rate (APR) should have been lower. The lender determined that a method it was using to calculate APRs didn’t properly reflect the full benefit customers should have received for good behavior, such as paying on time, the New York-based bank said in a securities filing that disclosed the issue and the total cost. Citigroup is currently reviewing accounts and plans to have refund checks in the mail by the second half of the year.

The Credit Card Accountability Responsibility and Disclosure Act (CARD) of 2009 requires lenders to periodically review accounts whose APR had been raised to see if subsequent good behavior makes them eligible for a rate reduction. From 2011 to 2017, the bank delivered $3 billion in savings through such reviews. That was about 90 percent of what customers should have received, Citigroup spokeswoman Liz Fogarty, in a statement, said:

Citi has semi-annually reviewed U.S. credit-card accounts that experienced an interest-rate increase to identify those eligible for a rate reduction. A periodic internal review identified potential flaws in the methodology used to reevaluate interest rates on some credit-card accounts.

Citi credit card customers are in line to receive $335 million in refunds after the bank said it didn’t properly credit some accounts. The New York-based bank said the method it used to calculate annual percentage rates charged to customers didn’t reflect the full benefit they should have received for things such as paying on time, Bloomberg reported.

Citigroup is currently reviewing accounts and will issue refund checks in the second half of the year. The rebates will impact about 1.75 million accounts with refunds of about $190 each. Lenders are required to periodically review accounts whose APR has been raised to see if they are eligible for rate reductions.

Citigroup conducted the reviews, but said “potential flaws in the methodology” were used to reevaluate the interest rates on some credit card accounts. The company said it discovered the flaw on its own and self-reported it to regulators.

The issue is said to be a setback for Chief Executive Officer Mike Corbat, who has tied some of bank’s future growth to expanding its credit-card operation. In 2015, the bank was ordered to pay $700 million to customers and fined $70 million over illegal practices related to its marketing of card add-on products. In the latest case, Citigroup will issue refunds, or in some instances reduce an account balance, for 1.75 million affected accounts, according to the filing. That works out to an average of about $190 an account, including interest owed. More than half of those affected should have gotten bigger rate cuts, while the rest were entitled to a reduction but didn’t get one.

Citigroup managed a total of 250 million accounts across its branded and retail-partner cards during the period in question. Currently, it has about 120 million accounts. The company will find customers who no longer have an account with the bank and make sure they receive their refund. The lender discovered the flaws on its own and self-reported it to regulators, according to the filing. It didn’t find any evidence of misconduct.

The Consumer Financial Protection Bureau oversees lenders’ compliance with the CARD Act.

Sources: AL.com and Bloomberg
**Furniture Tip-Overs Are a Hidden Safety Hazard in the Home**

The furniture tip-over problem in the United States is epidemic, but the public is largely unaware of the problem. A person in the U.S., usually a small child, is injured every 17 minutes by a furniture, television, or appliance tip-over, according to the Consumer Product Safety Commission (CPSC). After declining for a few years, estimated tip-over injuries and deaths for children younger than 6 years of age involving dressers and other clothing storage units increased in 2016 to 2,800 from 2,100 the year before, or by 33 percent, according to the CPSC.

Dressers and other clothing storage units account for at least 11 percent of furniture tip-over injuries, according to the CPSC. But it’s the number of tip-over deaths in the category—there were 195 reported to the CPSC between 2000 and 2016—that particularly makes it a crisis. The vast majority of the victims are children younger than 6 years of age. Many times, the children cause the tip-over by climbing on the front of a dresser or by playing inside a drawer.

The industry currently operates under a voluntary tip-over testing standard—which means any dresser taller than 30 inches should stay upright with 50 pounds of weight hanging from an open drawer. Because it’s voluntary, manufacturers are not required to conduct the testing, let alone meet the standard, in order to sell their dressers in the U.S. Some manufacturers meet the standard or go beyond it; others fall short.

Because of the continuing danger, Consumer Reports (CR) launched an investigation to assess the stability of dressers in the marketplace. Over the course of a year CR analyzed thousands of incident reports obtained from the CPSC through a Freedom of Information Act request to better understand the circumstances of injuries and deaths. CR also tested 24 dressers, representing a cross-section of the market, to find which ones could pass several progressively more stringent tip-over tests. Two tests were modeled after the industry’s current voluntary standard, but CR also devised a more rigorous test using up to 60 pounds of weight, a higher threshold that more fully represents the weight range of U.S. children younger than 6. CR also tested some dressers 30 inches and shorter, a slice of the market currently not covered by the voluntary standard.

CR’s investigation concluded that the industry standard is inadequate. At the same time, a majority of the dressers CR tested passed the 60-pound test. “Clearly, the marketplace has found that one can design a dresser at various prices that is safer and more stable,” says James Dickerson, chief scientific officer at Consumer Reports.

CR’s findings underscore that there is not one formula for greater stability. However, many of the dressers that passed all CR tests tended to be heavier, back-weighted, deeper dressers with less drawer extension. Perhaps most significantly, CR found that there is no easy way for consumers to simply look at a dresser and tell whether it is likely to tip over. A more effective and mandatory standard would help consumers trust that dressers for sale in the U.S. would resist tipping over onto young children.

Through interviews with parents of victims and with industry representatives, CR also found that the most effective prevention strategy available today, anchoring dressers to walls using brackets and straps, is not an easy option for families less proficient with tools or contending with brick walls. CR found the most parents did not know kits for anchoring dressers even existed.

CR, after its thorough investigation, found the following:

- **Children alone in their rooms.** Almost half of tip-over deaths (46 percent) happen in the bedroom, sometimes after a child has napped. The CPSC has identified certain “hazard patterns,” including children climbing on open drawers.

- **TV hazard.** CR recommends that consumers avoid placing TVs on top of dressers. The CPSC says that 53 percent of reported tip-over fatalities between 2000 and 2016 for children younger than 18 involved TVs and dressers tipping over together.

- **Weak tip-over standard.** The industry’s voluntary standard leaves too many children at risk. Based on its investigation, CR is calling for the tip-over test weight for dressers to be increased to 60 pounds, from 50 pounds, and for dressers 30 inches tall and shorter to be included in the standard because they also can tip over. Three of the four dressers CR tested that were 30 inches or shorter failed CR’s second test.

- **Industry responsible.** CR thinks the most effective way to prevent tip-overs is to secure dressers to walls. But that is not always an option for tenants or those not handy with tools. It’s the industry’s responsibility to ensure safer, more stable dressers and that safety shouldn’t rely on consumer skill at anchoring a dresser to a wall.

Based on their findings, Consumers Union, the advocacy division of Consumer Reports, is calling on regulators to set a strong, mandatory safety standard, allowing regulators to enforce the rules and more easily gain industry cooperation for recalls. In the meantime, CU says the industry should increase the voluntary standard test weight to 60 pounds and include dressers 30 inches and shorter. The CR investigation comes as the CPSC is considering issuing stricter, mandatory safety standards. William Wallace, senior policy analyst for CU, stated:

Our recommendations would lead to safer dressers for all consumers. Raising the test weight would cover more children, and lowering the minimum height would cover more dressers.

Ann Marie Buerkle, acting chairman of the CPSC, told CR it is key to educate consumers about securing dressers and TVs already in their homes. “Even if we put a mandatory standard into effect tomorrow, there are a lot of dressers out there that don’t comply,” she said.

The voluntary safety standard for dressers is managed by ASTM International, an independent organization that brings together manufacturers, government officials, academics, retailers, consumers, and others to establish standards for thousands of products and processes. Consumer Reports is an active member and participates in working groups, including dressers. CR has found that not all manufacturers participate, and not all comply with its voluntary standards.

In CR’s investigation, the Pottery Barn, Epoch Design, and Sauder models were evaluated, among others, and passed all three of CR’s tests. Other models from various manufacturers passed the first two tests, but failed CR’s tougher third test. Five models from three manufacturers—Ameriwood (one model), DaVinci (one model), and South Shore (three models)—did not pass CR’s second test.

Consumer advocates, including CR, believe setting a new tip-over testing standard that is reasonable should be based on protecting more at-risk children. A
mandatory, 60-pound standard would cover about 95 percent of U.S. children younger than 6 years—a group involved in 82 percent of dresser and clothing storage unit tip-over deaths, according to the CPSC.

Elliot Kaye, commissioner and past chairman of the CPSC, says having a mandatory standard tends to speed up the recall process. In many cases, the CPSC doesn’t have the practical resources to quickly force recalls and must either successfully sue or gain industry cooperation. He says:

With a voluntary standard, where really there’s no enforcement mechanism whatsoever, it’s truly voluntary. Basically what [many in the industry] are saying is let’s wait until more children are killed before we have to do anything, and that to me is—that’s morally reprehensible. I’m not comfortable waiting... when we know that there are concrete changes that can be made now that will save lives.

I encourage all parents and groups that deal with children to obtain and read the full report by Consumer Reports. If you need more information contact Shanna Malone by email at Shanna.Malone@beasleyallen.com.

Source: Consumer Reports

XVIII.
RECALLS UPDATE

We are again reported a large number of recently issue safety-related recalls. We have included some of the more significant recalls that were issued. Some were in late February and others in March. 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.

TOYOTA AND HYUNDAI RECALL ABOUT 110,000 VEHICLES

Toyota and Hyundai have recalled roughly a combined 110,000 trucks and sport utility vehicles, including the 2018 Toyota Tundra and Sequoia, and the 2018 Hyundai Santa Fe and Santa Fe Sport. In its recall announced Saturday, Hyundai says some of the Santa Fe vehicles are at risk for the steering wheel breaking away from the steering column. Roughly 43,900 vehicles are included in Hyundai’s recall. Toyota recalled roughly 64,900 Tundras and Sequoias, saying these vehicles are at risk for having their electronic stability control systems shutting down unexpectedly. Both carmakers will notify impacted owners of the recalled vehicles starting in March, and if necessary, will repair the vehicles at no cost. For more information on the recalls, visit www.safercar.gov.

HYUNDAI ISSUES RECALL ON 43,900 SANTA FE, SANTA FE SPORT SUVS

Hyundai has issued a recall affecting nearly 44,000 SUVs for a steering problem.

The recall affects Santa Fe and Santa Fe Sport SUVs manufactured between July and October 2017 at Hyundai’s Alabama-based manufacturing plant. According to the manufacturer, the steering-wheel assembly may break, possibly resulting in the steering wheel separating from the steering column while driving. Hyundai estimates 1 percent of the recalled vehicles were equipped with the defective parts. The company reports it is aware of two incidents where the steering wheel detached, but is not aware of any related crashes or injuries, according to MLive.com. Dealers will check the production lot number of the steering-wheel assembly and replace it for free, as necessary. Hyundai says it will begin notifying owners March 16. Owners can call 855-371-9460 for more information, the National Highway Traffic Safety Administration’s vehicle-safety hotline at 888-327-4236 or visit the website www.nhtsa.org.

FORD FOCUS AND FUSION RECALLED FOR CLUTCH PROBLEMS

Ford is recalling about 5,900 Focus and Fusion cars that could possibly catch on fire because of problems with the clutch pressure plate. The recalled 2013-2016 Ford Focus cars are equipped with 1-liter Fox GTDI engines and B6 manual transmissions, and the recalled 2013-2015 Ford Fusion cars have 1.6-liter Sigma GTDI engines and B6 manual transmissions. Ford says the clutch pressure plates can fracture due to the clutch linings wearing out prematurely. The premature wear and tear can cause the pressure plate material to wear down, allowing a large amount of heat and energy to cause cracks around the outer edges of the plates. The risk of fires comes from leaking transmission fluid that could hit an ignition source in the engine compartments. However, Ford says it hasn’t received any reports of fires or crashes related to the clutch plates. The automaker says 5,357 of the cars are in the U.S. and 515 are in Canada.

Ford dealers will handle repairs in two ways based on which model is involved. If you drive a Focus, the dealer will update the software to detect and prevent prolonged slipping of the clutch, in addition to checking the clutch and replacing it if needed. If you own a Fusion, your Ford dealership will replace the clutch assembly. The Ford Focus and Fusion clutch plate recall was announced the same day the automaker recalled nearly 1.4 million Fusion and Lincoln MKZ cars with steering wheels that can detach from the steering column. Focus and Fusion owners who have questions should call Ford at 866-436-7332 and ask about recall number 18S07.

FORD RECALLS 1.4 MILLION CARS FOR STEERING WHEELS THAT MAY DETACH

Ford Motor Co. is recalling about 1.4 million vehicles for potentially loose bolts that could cause the steering wheel to detach. The automaker says it knows of two accidents allegedly related to the issue. Ford is recalling approximately 1,378,630 million model year 2014-18 Ford Fusion and Lincoln MKZ vehicles in North America, according to a company statement. Steering wheel bolts in the affected cars can loosen over time, and if not serviced, the wheel could possibly detach and cause a driver to lose steering control, increasing the risk of a crash, the company said. The company said it’s aware of two accidents and one injury that may be related to the problem. “Dealers will replace the steering wheel bolt on the vehicle with a longer bolt with more robust thread engagement and larger nylon patch placed properly for proper torque retention—at no cost to customers,” the company said.

The affected vehicles were made at Ford plants in Michigan and Mexico between 2013 and 2018. The recall comes five months after the National Highway Traffic Safety Administration (NHTSA) opened an investigation into the safety of Ford Fusion vehicles after receiving three reports that the steering wheel became loose and in one case detached altogether. The agency opened the probe into roughly 841,000 Ford Fusion vehicles from model years 2014 through 2016 after
two drivers reported the bolt attaching the steering wheel to its column had loosened, and a third driver said the steering wheel became completely detached while the driver attempted to turn into a gas station. The driver whose steering wheel detached said the wheel had been “a little wobbly” for two weeks before falling into the driver’s lap during a September trip to Athens, Georgia. The two drivers whose steering wheels loosened without detaching took their cars to repair facilities to have the bolt attaching the wheel to the column re-tightened, according to the NHTSA. The investigation will evaluate the “scope, frequency and safety-related consequence of the alleged defect,” the NHTSA said.

**Briggs & Stratton Recalls Riding Mowers**

Briggs & Stratton Corp., of Wauwatosa, Wisconsin, has recalled about 18,000 Snapper, Simplicity, and Massey Ferguson riding mowers in the U.S. and about 300 were sold in Canada. The reverse-mow option switch can malfunction and allow the riding lawn mowers to unintentionally mow when being driven in a reverse direction, posing a risk of injury to bystanders. This recall involves Snapper, Simplicity and Massey Ferguson brand riding lawn mowers. The riding lawn mowers were sold in red/black or orange/black color combinations with a Snapper, Massey Ferguson or Simplicity logo on the hood. Riding mowers with the following model and serial numbers are included in the recall. The model and serial numbers are located on the frame near the front tires. If a black dot is present on either the equipment ID label or the shipping crate label, the product has been repaired and is not included in the recall.

The lawn mowers were sold at Briggs & Stratton dealers nationwide from August 2016 through January 2018 for between $1,500 and $13,000. Consumers should immediately stop using the recalled mowers and contact a Briggs & Stratton dealer to schedule a free repair. Contact Briggs & Stratton at 800-227-3798 between 8 a.m. and 5 p.m. CT Monday through Friday online at www.briggsandstratton.com and click on “Recalls & Warranty” for more information. Dealers can be found using the dealer locator at www.simplicitymfg.com, www.snapper.com, or www.masseylawn.com for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Briggs-Stratton-Recalls-Riding-Mowers-Due-to-Risk-of-Injury

260,000 Amazon Power Banks Recalled

Amazon is recalling 260,000 AmazonBasics power banks after receiving dozens of reports that they can overheat and cause fires and chemical burns, the U.S. Consumer Product Safety Commission announced last month. Six varieties are recalled, two with integrated microUSB plug-in cables, four without. The recall applies to AmazonBasics banks with capacities of 2,000 milliampere hours, two versions of 3,000 mAh, and one each of 5,600 mAh, 10,000 mAh and 16,100 mAh. “Amazon has received 53 reports of the power banks overheating in the U.S., including one report of chemical burns due to contact with battery acid and four reports of property damage, including fire and smoke damage,” the consumer watchdog agency said in its recall announcement.

“Consumers should immediately unplug and stop using the recalled power banks and contact Amazon for instructions on how to return the unit and receive a full refund. All known purchasers are being contacted directly,” the CPSC said. The power banks are used to power any device that can receive power through a USB cable, most commonly devices like phones and tablets. The actual maker of the power banks is Guang Electric Co. Ltd., the CPSC said. GGE also makes speakers and other audio components as a large part of its business, according to its website. Amazon did not immediately respond to an inquiry.

**Goodman Manufacturing Recalls Modular Blowers**

Goodman Manufacturing Company, L.P., of Houston, Texas, has recalled about 1,650 Modular blowers in the U.S. An additional 80 were sold in Canada. The labels found on the serial plate have incorrect electrical information that could result in installers and servicers using undersized wiring or incorrect fuse/circuit breaker parts, posing a fire hazard. This recall involves InSinkErator Single Outlet SinkTop Switches. The air activated switch mounts to the sink or countertop and is an alternative to the traditional wall switch for a garbage disposal. The model numbers are 76703, STS-SOSN, 78251 and 74300, and can be found on the back of the power module. InSinkErator is written on the front of the power module. The switches were sold with a chrome, white, or satin nickel button/bezel as an accessory for garbage disposals. Garbage disposals activated by a wall switch are not affected by this recall. InSinkErator has received 40 reports of water causing overheating damage to the power module and outlet beneath the sink. No injuries have been reported.

The switches were sold between 2005 and October 2017 at home improvement stores, online websites and through plumbing contractors and outlets for between about $50 and $90. Consumers should immediately stop using the

**InSinkErator® Recalls SinkTop™ Switch Accessory For Garbage Disposals**

About 1,400,000 InSinkErator Single Outlet SinkTop Switches have been recalled by the Manufacturer Tecmark of Mentor, Ohio and distributor InSinkErator of Racine, Wisconsin. In addition, about 28 were sold in Canada. Water can get into the power module, posing a fire hazard. This recall involves InSinkErator Single Outlet SinkTop Switches. The air activated switch mounts to the sink or countertop and is an alternative to the traditional wall switch for a garbage disposal. The model numbers are 76703, STS-SOSN, 78251 and 74300, and can be found on the back of the power module. InSinkErator is written on the front of the power module. The switches were sold with a chrome, white, or satin nickel button/bezel as an accessory for garbage disposals. Garbage disposals activated by a wall switch are not affected by this recall. InSinkErator has received 40 reports of water causing overheating damage to the power module and outlet beneath the sink. No injuries have been reported.

The switches were sold between 2005 and October 2017 at home improvement stores, online websites and through plumbing contractors and outlets for between about $50 and $90. Consumers should immediately stop using the

BeasleyAllen.com
recalled switches and contact InSinkEra-
tor for a free SinkTop switch replacement. Contact InSinkErator toll-free at 855-215-
5695 between 8 a.m. and 5 p.m. ET Monday through Friday or online at www.
insinkerater.com. For more information, visit www.insinkerater.safetynotice.
extpertinquiry.com or call 800-333-8656. Pictures available here: https://
www.cpsc.gov/Recalls/2018/InSinkErato-
Recalls-SinkTop-Switch-Accessory-for-
Garbage-Disposals-Due-to-Fire-Hazard

DOUBLE INSIGHT RECALLS MULTICOOKERS

About 104,000 Gem 65 8-in-1 multi-
cookers have been recalled by Foshan Lin-
shine Technology Co., Guangdong, China. A manufacturer defect can cause the mul-
ticooker to overheat and melt on the underside, posing a fire hazard. This recall involves Gem 65 8-in-1 model multiple cookers, a multifunctional, programmable cooking appliance, which includes the functions of roasting, baking, stewing, slow cooking, rice cooking, sautéing, steaming and food warming. Instant Pot is printed on the front of the multi-
cookers. Gem 65 8-in-1 and a batchcode of 1728, 1730, 1731, 1734 or 1746 are printed on the rating label on the underside of the product. Double Insight has received 107 reports of overheating, five resulting in minor property damage. No injuries have been reported.

The cookers were sold exclusively at Walmart stores nationwide and online at www.walmart.com from August 2017 through January 2018 for about $80. Consumers should immediately stop using the recalled multicookers, unplug the unit and return it to Walmart to receive a free replacement. Contact Double Insight toll-free at 888-891-1473 from 8:30 a.m. to 10 p.m. ET Monday through Friday and from 10 a.m. to 6 p.m. ET Saturday and Sunday or online at www.inspmulticooker.com and click on “Product Recall” or visit www.
gemmulticooker.com for more information.

MAAX SPAS RECALLS HOT TUBS AND SWIM SPAS

MAAX Spas Industries Corp., Chandler, Arizona, has recalled about 550 Maax Spas hot tubs and swim spas. In addition, about 630 were sold in Canada. The UV generator inside the hot tub and swim spa can ignite while in use, posing a fire hazard. This recall involves MAAX Spas hot tubs and swim spas containing a Delta UV generator. The generator is used to sanitize the water and plumbing inside the hot tub or swim spa. The generator's model number is EA-4H-5. The generator model numbers for the hot tubs and swim spas are: 461; 470; 471; 472; 480; 481; 482; 780; 781; 5200; 5300; 5400; 5600; 7000; 7500; 8000; 8500; 9000; DT6; ENV; ES; ESX; GRD; ET6; MON; MT6; NUG; PRS; RB4; RL4; RS1; RS2; X4B; X4; XSD; XL; XSL; XSP; and XSR. The model name is the first 3 or 4 digits of the hot tub or swim spa serial number, and is engraved into a silver plate on the lower right or lower left corner of the front side of the hot tub or swim spa. Maax Spas has received six reports of generators in the affected hot tubs and swim spas igniting and causing damage to the generators and surrounding hot tub or swim spa components. There have been no reports of injuries.

The tubs and spas were sold at Independent hot tub and swim spa retailers nationwide, from January 2012 through July 2015. Hot tubs were sold for about $4,000 to $15,000. Swim spas were sold for about $16,000 to $30,000. Consumers should immediately stop using the hot tubs and swim spas and contact MAAX Spas’ dealer for a free repair. Contact MAAX Spas at 800-413-2704 from 9 a.m. to 4 p.m., Arizona local time, Monday through Friday, email at duvrepair@maax-
spas.com or online at www.maaxspas.
com or www.deltaUVrepair.com for more information.

CARRIER RECALLS TO REPAIR COMMERCIAL ROOFTOP HVAC UNITS ZARD

About 530 Carrier WeatherExpert commercial packaged rooftop HVAC units were recalled by Carrier Corporation of Jupiter, Florida. The HVAC’s humidifier fan can fail to shut off when a connected smoke detector is tripped, posing a fire hazard. Carrier has received one report of a fan not shutting off during installation testing. No injuries have been reported.

The HVAC units were sold by carrier distributors nationwide from March 2014 to September 2017 for between $25,000 and $93,000. Contact Carrier toll-free at 844-864-8748 from 8 a.m. to 5 p.m. ET Monday through Friday, or online at www.carrier.com and click on “Product Safety Recall” to locate a local Carrier dealer for more information. This recall involves Carrier WeatherExpert 6-23 ton, 48/50 series, light commercial rooftop HVAC units intended for use in commercial and institutional buildings and that have a factory installed dehumidification feature. The model numbers are 48/50LC07-26 with an A in the 6th digit and a 0 (zero) in the 14th digit of the model number (e.g., 48LCTA24F2M5-0S1B3). Note that dashes should be counted as digits in the model number. The serial numbers are 1214P to 3317P. The model and serial number can be found on the unit rating plate located on the back of the unit. Purchasers should immediately contact their Carrier dealer for a free repair, which consists of free replacement and installation of the electronic control board. The company is contacting all known purchasers.

RADIO FLYER RECALLS ELECTRIC WAGONS

Radio Flyer Inc., of Chicago, Illinois, has recalled about 5,000 Children’s eWagons. Improper wiring can activate the wagon’s motor unintentionally, posing an injury hazard. This recall involves Radio Flyer’s eWagon children’s battery-operated electric wagons. When force is applied to the wagon’s electric handle, the motor activates to power the wagon. The foldable wagon is constructed of red and gray fabric and a steel frame and measures about 41 inches long, 25 inches wide, and 42 inches tall. The wagon has a removable canopy, two seats with seat belts, four cup holders, a storage pouch, a removable battery and a telescoping handle where the power button is. The Radio Flyer logo is printed on each side of the wagon. Only wagons with model number 3912/3912A are included in this recall. The model number can be found on the handle warning label located near the pivoting joint. The company has received two reports of the wagon’s motor activating unintentionally. No injuries have been reported.

The wagons were sold at Toys “R” Us stores nationwide and online at www.
radioflyer.com and www.toysrus.com from August 2017 through January 2018 for about $350. Consumers should immediately stop using the recalled wagons and contact Radio Flyer for a full refund. Contact Radio Flyer at 800-621-7613 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.radioflyer.com and click “Product Recalls” for more information.

ALLEN SPORTS RECALLS FOLDING BICYCLES

The R. A. Allen Company, Inc. of Portsmouth, New Hampshire, dba Allen Sports,
has recalled about 150 UltraX and Ultra1 Folding Bicycles. The bike’s frame can break during use causing the bicycle to collapse, posing a fall hazard to consumers. This recall involves Allen Sports model Ultra1 and UltraX carbon fiber folding bicycles. “ULTRA X” or “ULTRA ONE” are printed on the bicycle’s frame. Both bicycles were sold in black, have 20 speeds and wheel sizes of 451MM. The Ultra One weighs about 21 pounds and the Ultra X weighs about 18 pounds. The company has received two reports of the frame breaking causing the rider to fall. No injuries have been reported.

The bicycles were sold online at Amazon.com and eBay from May 2014 through July 2017 for between $500 and $4,000. Consumers should immediately stop using the recalled bicycles and email Allen Sports at customerservice@allensportsusa.com with photo of the bicycle to receive full refund instructions. Contact Allen Sports at 800-722-5556 between 8 a.m. and 4 p.m. ET Monday through Friday, or email customerservice@allensportsusa.com and online at allensportsusa.com and click on “Important safety notice on Allen Sports Ultra1 and UltraX Folding Bicycles” for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Allen-Sports-Recalls-Folding-Bicycles-Due-to-Fall-Hazard

Graco Recalls Highchairs

About 36,000 Graco Table2Table 6-in-1 Highchairs have been recalled in the U.S by Graco Children’s Products Inc., of Atlanta, Georgia. In addition, 3,200 were sold in Canada. This recall involves Graco Table2Table™ 6-in-1 highchairs with model number 1969721. The 6-in-1 highchairs convert to six different modes, including a traditional highchair, a booster seat and toddler chair and table. The highchair’s cushion is white with gold and gray polka dots. The model number is printed on a label on the underside of the booster seat and on a label on the back of the booster seat. Graco and Table2Table highchairs are also printed on the label on the underside of the toddler seat. Graco has received 38 reports of the rear leg pivoting out of position making the chair unstable and posing a fall hazard to a child in the highchair. Consumers should immediately stop using the recalled highchairs and contact Graco for a free repair kit. Contact Graco at 800-345-4109 from 8 a.m. to 5 p.m. ET Monday through Friday, or online at www.gracobaby.com and click on Support, then Product Recalls for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Graco-Recalls-Highchairs-Due-to-Fall-Hazard-Sold-Exclusively-at-Walmart

Woodstream Recalls Mosquito Magnet Traps

Woodstream Corporation, of Knoxville, Tennessee, has recalled about 28,000 Mosquito Magnet traps. The recalled mosquito traps can become damaged if cleaning it while powered on with the company’s Quick Clear Cartridge kits and can propel broken pieces of the regulator, posing an injury hazard to consumers. This recall involves Mosquito Magnet traps and Quick Clear Cartridge Kits. The traps are designed to attract and capture mosquitoes and other insects into the vacuum, where they dehydrate and die. The traps connect to a 20 gallon propane tank and measure about 30 to 35 inches tall. They were sold in green or green/gray combination with a black and green plastic stand. “Mosquito Magnet” is printed on the top front of the units. The model name, model number and serial number are printed on the back of the traps. The traps use Woodstream’s Quick Clear Cartridge kits to clean out the nozzle after changing propane tanks. There has been one report of damage to the mosquito trap line regulator while using the Quick Clear Cartridge Kits. No injuries have been reported.

The traps were sold at Home Depot and various hardware and home improvement stores and online at www.mosquitomagnets.com from December of 2014 through December of 2016 for between $330 and $50. Consumers should return the recalled brake pads to the store where purchased for full refund. Contact Helvetia Sports toll-free at 866-358-5218 between 8:30 a.m. and 5 p.m. ET Monday through Friday, email at steve@helvetiasports.com or online at www.helvetiasports.com for more information.

Cameroon Company Recalls Children’s Tents

Jewett Cameron Company, of North Plains, Oregon, has recalled about 84,000 Playtime Pals Pop-Up Hideaway Hut children’s tents. The fiberglass rod that supports the tent can break, splinter and become sharp, posing a laceration hazard to consumers. This recall involves the Playtime Pals Pop-Up Hideaway Hut animal themed children’s tent. The tent has four animal themes: hippo (pink), dog (brown), shark (blue) and tiger (orange). All have a fiberglass rod that springs to deploy the tent to shape and provides the support for the nylon shell. The firm has received 270 reports of tent rods breaking, including two reports of bruises and lacerations.

The tents were sold exclusively at Home Depot stores nationwide during November 2017 for about $13. Consumers should immediately stop using the recalled tents and return them to Home Depot stores.

Recalls-Mosquito-Magnet-Traps-Due-to-Injury-Hazard

Helvetia Sports Recalls SwissStop Bicycle Disc Brake Pads

About 750 SwissStop EXOTherm cycling disc brake pads have been recalled by SwissStop of Mendrisio, Switzerland and their distributor Helvetia Sports, of Peterborough, ON, Canada. The brake pads can separate from the backplate, posing a fall hazard to the user. This recall involves SwissStop EXOTherm cycling disc brake pads sold separately as aftermarket spare parts. The model numbers are listed on the product’s original packaging. The recalled disc brake pads were sold for certain bicycle brake systems. A full list of these brake systems can be viewed on the company’s site at: http://www.swissstop.ch/brakepads/disc-brakes/. The company has received two reports of the brake pads separating from the backplate. No injuries have been reported.

The pads were sold at various cycling shops nationwide from October 2015 through June 2017 for between $40 and $50. Consumers should return the recalled brake pads to the store where purchased for full refund. Contact Helvetia Sports toll-free at 866-358-5218 between 8:30 a.m. and 5 p.m. ET Monday through Friday, email at steve@helvetiasports.com or online at www.helvetiasports.com for more information.
Kidde Recalls 400,000 Smoke Alarms

If you have a Kidde smoke detector, you should inspect it immediately. Models PI2010 and PI9010 have been recalled due to a manufacturing defect that inhibits their ability to smell smoke. The United States Consumer Product Safety Commission (CPSC) announced the recall last month. If your model doesn’t have the pill shape across the front, you are not affected. If it does, take it off the wall and check the back to see if it matches either of the two model numbers above. If it matches, look inside the unit for a yellow cap. If you see one, go to Kidde’s site to get a replacement. If not, your smoke detector isn’t affected. If there is any doubt, I suggest you have the year model checked out. The affected units are dual-sensor alarms. According to the CPSC, roughly 452,000 have been sold in the US and 40,000 more were sold in Canada. All models were sold between September 2016 and January 2018.

Apparently, the problem stemmed from an oversight in the manufacturing process that left a yellow cap covering one of the two smoke sensors. Again, you should be able to see this cap by looking inside your smoke detector. You shouldn’t have to disassemble it.

PL Sleep Children’s Sleepwear Recalled By Lemur Group

Lemur Group Inc., owner of the PL Sleep and Petit Lem brands, of Canada, has recalled about 1,100 of its children’s nightgowns. The children’s nightgowns fail to meet the flammability standards for children’s sleepwear, posing a risk of burn injuries to children. This recall involves PL Sleep’s children’s 100 percent polyester nightgowns. The nightgown has a gray and white snowflake print on the long sleeves and a faux Sherpa fleece body with a red scarf, three black buttons and black belt decoration on the front. The sleepwear included coordinating red and white striped socks. PL Sleep and model numbers 17FT62F561 and #101 are printed on a label sewn into the left inside seam. PL Sleep and the size are on the neck label. The nightgowns were sold in children’s sizes 2 through 7.

The sleepwear was sold at Lord & Taylor, Saks Fifth Avenue and Von Maur stores nationwide and online at Amazon.com and Chasing-Fireflies.com from October 2017 through February 2018 for between $16 and $38. Consumers should immediately take the recalled nightgowns away from children and return the garments, with or without the socks, to the retailer where they were purchased or contact Lemur Group for instructions to get a full refund of the purchase price.

Contact Lemur Group toll-free at 877-748-6698 from 9 a.m. to 5 p.m. ET, Monday through Friday, by email at customerservice@petitlem.com or online at www.petitlem.com and click on Product Notices for more information.

While we weren’t able to include all of the recently issued recalls in this issue, we included those of the highest importance and urgency. If you need more information on any of the recalls listed above, visit our firm’s web site at www.BeasleyAllen.com or our consumer blog at www.RightingInjustice.com. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated 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.

JereBeasleyReport.com
helping employees recover wages and benefits to which they are entitled.

Initially, Lance handled actions brought by individuals who were victims of predatory lending practices. Some of these deceptive practices included mortgage fraud, equity theft, loan flipping and insurance packing. He was a member of the trial team in a landmark case that actually shut down a door-to-door sales and finance scam in Alabama, resulting in a $581 million verdict.

While Lance didn’t originally plan to be a lawyer, he realized that as a lawyer he would have a more direct and effective way to help people and to seek justice for folks who wouldn’t otherwise be heard. That is what he enjoys most about practicing law—helping clients obtain justice. Lance says:

"Our profession provides us with the unique ability to do something about it when we see a need and to truly make a difference. The result has been personal satisfaction that I am not sure could have been achieved repetitively and on the same level doing anything else."

Lance says he is thankful for the organizational structure at Beasley Allen because it allows him and his law partners to focus on specific areas of law. He believes it is an approach that effectively uses the wealth of knowledge, experience and talent within the firm.

Lance is married to the former Connie Gardner, and they have three children, Madison, Jake and Caroline. They are active members of Frazer United Methodist Church. We are blessed to have Kelli. She too is a dedicated, hard working lawyer who truly cares about her professionally and the firm. She appreciates how the firm goes above and beyond to assist other talc litigation lawyers including Dearing and Danielle Mason. She also helped, handled, and prepared cases for trial in state and federal courts across the United States including Baycol, Hormone Replacement Therapy, Vioxx, Fosamax, Yaz, Gardasil and Transvaginal Mesh.

Before earning her law degree from Faulkner University’s Thomas Goode Jones School of Law in 2002, Kelli graduated from Troy University with a Bachelor of Science in 1999. She is a member of the Alabama State Bar and the Montgomery County Bar Association.

The Selma, Alabama, native says that the legal profession was a natural choice for her since she was the daughter of a state Trooper, a teacher and a politician. However, she was always interested in history, and in college majored in political science and minored criminal justice. She never imagined she would one day be a Plaintiff’s lawyer. Kelli says:

"I realized very quickly how important Plaintiff's work is the first time I met a client we helped in a case against a major pharmaceutical company. Without Beasley Allen’s representation, our client may never have been able to obtain the medical treatment that he’d need for the rest of his life."

Kelli is also thankful to be part of a firm where she has been supported, encouraged and loved in a Christian environment by leadership and coworkers who truly care about her professionally and personally. It is the same kindness and respect she observes her law partners and staff showing clients. She appreciates how the firm goes above and beyond to also help those who need it most in our community, across the country and even other parts of the world.

Kelli is married to Matt Alfreds, also a lawyer, and they have one son, Sebastian, and twin daughters, Rollie and Sloane. They are members of Frazer United Methodist Church. We are blessed to have Kelli in the firm. She too is a dedicated, hard working lawyer who truly cares about her clients’ cases.

ELLEN ROYAL

Ellen Royal first joined Beasley Allen as a temporary employee in February 2004 and eight months later was hired full time as a staff assistant for the firm’s Mass Torts Section. She then worked as the legal secretary for Chad Cook. Currently, Ellen is the front office legal secretary for five lawyers in Mass Torts. She maintains communication with clients, handles travel arrangements, schedules appointments and attorneys’ calls, helps keep client files organized and assists other legal and staff assistants as needed.

Ellen was blessed with two sons. Her son, Thomas, lives in Montgomery and is majoring in Criminal Justice at South University. He served two tours in Iraq with the U.S. Army’s 101st Airborne as part of the Army’s Military Police. Thomas is a great daddy to Ellen’s beautiful grand daughter Clairea who lives in Kentucky with her mother. Ellen’s other son, Matthew, was 13 when he went to his heavenly home to live with the Lord and his grandmothers. Roy Billingsley, Ellen’s dad, lives nearby in Montgomery.

As a member of First Presbyterian Church in Prattville, Ellen has participated in the church choir and was part of several combined choir programs in Prattville, Montgomery and Birmingham. She also serves on the board of the church’s Women’s Ministry and is a member of The String Section, the Prayer Shawl ministry. In her free time, Ellen enjoys spending time with family and knitting gifts for others. She also loves helping people through various charities supported by Beasley Allen and helping meet other specific needs, anonymously, that she hears about in the community.

Prior to joining Beasley Allen, Ellen worked as a church nursery director, secretary for contractors at Union Camp (now International Paper), clerk in accounts payable and receivable for a bridge building firm, and clerk for a cotton brokerage firm.

Ellen is a very good, hard-working employee who is an asset to the firm. We are blessed to have her with us.

BECKY LAMB

In January, Becky Lamb began her 13th year with Beasley Allen. She is the legal secretary for Mass Torts Section and talc litigation attorneys Ted Meadows, David Dearing and Danielle Mason. She also assists other talc litigation lawyers including Brittany Scott, Ryan Beattie and Lauren Razzick.

Among her responsibilities, Becky handles travel arrangements, manages calendars including scheduling meetings and other events, completes reports, updates internal documents, assists with lawyers’ accounting needs, manages documentation and dues for attorneys’ professional associations and continuing legal education courses, and assists with documentation for multidistrict litigation.

Like other team members at Beasley Allen, Becky also assists other legal and staff assistants as needed. She has worked in the Mass Torts Section since she joined the firm and previously worked with litigation teams handling the Vioxx and
Hormone Replacement Therapy litigations.

Becky graduated from Troy University in 1999 with a Bachelor of Science in Psychology and Human Services. She also obtained a Paralegal Certificate from Auburn University. Becky has a 15-year-old daughter, Lauren, who is a high school freshman. Lauren plays volleyball, is a varsity cheerleader and a member of the Junior Beta Club and Future Farmers of America (FFA).

In her free time, Becky enjoys cleaning, organizing, decorating and bowling. Becky says she is “extremely blessed and fortunate to have the opportunity to work at Beasley Allen” and couldn’t ask for better coworkers or a better team of lawyers. Becky is a dedicated employee who works hard and does a very good job in her position with the firm. We are most fortunate to have her with us.

CAROL THOMPSON

Carol Thompson got her start at Beasley Allen as the “Word Processor.” She typed the pleadings, discovery and briefs for all of the firm’s lawyers and was charged with opening and closing all cases that came into the firm. She also kept each lawyer updated on all the activity for their cases. But, she only held the position two months before her talents were discovered by Greg Allen, who is now the Senior lawyer in the firm’s Personal Injury & Products Liability Section.

As Greg’s Legal Assistant for 28 years, Carol has helped and worked closely with many of the firm’s personal injury & products liability clients. She helps coordinate a number of aspects of a client’s case including drafting correspondence, complaints, pleadings, discovery motions, and preparing discovery responses. Carol meets with clients throughout case preparation and trial. She processes documentation such as medical records and bills, manages document control, and handles matters involving Medicare, Medicaid and Social Security. Carol also researches and collects data and information from sources such as government agencies and ensures that all exhibits, trial resources and witnesses—experts and others—are ready when trial begins. Carol has been involved in several of the firm’s most important personal injury and products liability cases.

The Montgomery native graduated from Jeff Davis High School and shortly after graduation began working in the Montgomery County District Court and later transferred to the Circuit Court. Carol has worked in the legal industry for her entire career.

Carol is married to Mark Thompson, the Chief of Police in Prattville, and they are celebrating 35 years together. They have three sons—Jason, Todd and Ty—as well as five grandsons—Gavin (14), Mason (8), Kolby (7), Kaden (5) and Griffin (3)—and are expecting a sixth grandchild later this year. Carol enjoys spending as much of her free time with her grandsons as she can, including attending their baseball and soccer games. Throughout football season, you’ll find Carol cheering “Roll Tide” during the University of Alabama’s SEC football games. She also enjoys walking and making artwork and frames out of distressed wood.

Carol is a tremendously talented legal assistant and she is a most valuable asset to our firm. She is totally dedicated to the welfare of the clients Greg represents. We are most fortunate to have Carol with us. She has set a very high standard for all of the legal assistants in our firm and that’s definitely a good thing. Carol has been a real blessing!

XX.
SPECIAL RECOGNITIONS

Leigh O’Dell Honored by The National Trial Lawyers Association

Leigh O’Dell has been selected to The National Trial Lawyers’ Mass Tort Trial Lawyers Association—Top 25. This is an invitation-only professional organization composed of and limited to the Top 25 lawyers from each state or region who serve individuals and families who need lawyers to represent them in the American legal system regarding Mass Tort claims. Members of the Mass Tort Trial Lawyers Association—Top 25 exemplify superior qualifications of leadership, reputation, influence and performance in their area of specialty.

Leigh practices in our firm’s Mass Torts Section. Currently, she is serving as co-lead counsel for consolidated multidistrict litigation (MDL) in New Jersey federal court concerning talcum powder’s link to ovarian cancer. It is estimated that 14,000 women die from talc-related ovarian cancer each year. One medical expert calculates that this use of talcum powder leads to nearly 10 percent of the new ovarian cancer cases reported annually. The lawsuits allege Defendant Johnson & Johnson is liable for personal injuries or wrongful deaths that resulted from ovarian or uterine cancer in women who used the company’s talc products for feminine hygiene. More than 70 cases are pending in the MDL.

Leigh has been selected for inclusion on the Best Lawyers in America list since 2011 and was included in the 2017 Super Lawyers list. In 2013 and 2017, Leigh was selected as Beasley Allen’s Mass Torts Section Lawyer of the Year. In 2014, Leigh was named Beasley Allen Litigator of the Year. The Litigator of the Year award is presented to the lawyer who demonstrates exceptional professional skill throughout the course of the year.

In 2015, Leigh was selected as the recipient of the Chad Stewart Award. This honor was created in memory of Beasley Allen lawyer Chad Stewart, who passed away unexpectedly in April at the very young age of 41. In addition to being a dedicated lawyer who worked hard for his clients, Chad truly modeled Christ in his daily walk. The Chad Stewart Award was created to recognize a lawyer who best exemplified Chad’s spirit of service to God, his family and the practice of law in the service of “helping those who need it most.” Leigh was selected as such a lawyer.

Beasley Allen Lawyer Chris Glover Recognized as a Leader

Beasley Allen lawyer Chris D. Glover has recently been recognized by his peers for his leadership, professionalism and skills as a trial lawyer. In January, Chris was inducted into the American Board of Trial Advocates (ABOTA) at the Georgia Chapter’s annual meeting. Membership into ABOTA is by invitation only, following a rigorous nomination and voting process. Chris is one of only 62 Georgia lawyers that are ABOTA members. Chris says:

I’m honored to be selected for inclusion in ABOTA. As a trial lawyer, I’m privileged to help each of my clients strive for justice, but I’m particularly proud when a client’s positive outcome at trial leads to broader, positive changes. The real success comes when a verdict or ruling forces a company to improve the safety of a product and prevents further tragedies and loss.
ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. Qualifications for admission into the Georgia Chapter includes having tried to conclusion a minimum of 10 civil jury trials; receiving a nomination by an existing member whose practice typically is on the opposing side of the nominee; and approval by 75 percent of those members voting on membership. Criteria evaluated includes exceptional jury trial skills, civility, professionalism and integrity.

Chris practices out of our firm’s Atlanta, Georgia, office in the Personal Injury & Products Liability Section. He has represented injured individuals and their families in a wide range of serious injury and death claims, including those that were the result of defective products, car accidents, commercial truck accidents, workplace accidents and aviation accidents. Chris’ clients have received verdicts and settlements in the course of his career totaling more than $100 million. Most recently, Chris was the firm’s lead attorney litigating numerous personal injury and wrongful death cases involving defective Takata airbags. Chris was also a member of a 2017 trial team in Dekalb County Georgia that received a $2.6 million jury verdict in favor of the family of Alfred Holt, who was killed after a Michelin Pilot tire failed on the recreational vehicle he was driving, and the RV crashed into a tree. He also was lead counsel on a $4.7 million trial verdict in Gwinnett County Georgia against seat belt manufacturer Key Safety Systems.

Additionally, as a member of the Georgia Trial Lawyers Association (GTLA), Chris has been selected to lead the group’s Membership Committee this year. The committee is responsible for encouraging and growing the GTLA’s membership. Chris has served in other leaderships positions, including president of the Southern Trial Lawyers Association, chair of the Emerging Leader’s Division of the Alabama Association for Justice, and currently serves on the Attorney Information Exchange Group’s Trucking Committee.

In 2011 through 2014, Chris was recognized as a top up-and-coming attorney, landing him on the Super Lawyers “Rising Stars” list. In 2015 through 2017 he was elevated to the Super Lawyers list for his ongoing success in the courtroom. On four separate occasions, Chris’ law partners selected him as Beasley Allen’s Lawyer of the Year—in 2011 and 2013 for the Products Liability Section and in 2015 and 2016 for the Personal Injury Section. The award-winning lawyer also authored a book, An Introduction to Truck Accident Claims: A Guide to Getting Started, in 2015, to serve as a primer for lawyers interested in trucking litigation.

As a husband and father, Chris is active in his children’s school and he and his family attend Christ Covenant Church in Buckhead. He is a board member for Urban TREC Homeless Ministry, TREC India Orphanage and serves on the Jacksonville State University Alumni Association Advisory Board.

XXI.
FAVORITE BIBLE VERSES

Ben Locklar’s wife, Lisa, sent in several verses this month and we are including two for this issue. The first was John 15:5.

I am the vine, you are the branches; he who abides in Me, and I in him, he bears much fruit; for apart from Me you can do nothing. John 15:5

Lisa says John 12:5 “is a great reminder of our need to be in God’s Word daily, apart from God, we are nothing and can do nothing. She says trying to live life in her own power is fruitless, it’s frustrating and hard! When we walk with God, Lisa says it doesn’t mean that trials and struggles won’t come, but when they do come, “we have the peace and assurance that He is with us, we are not alone.”

Trust in the LORD with all your heart and lean not on your own understanding. Proverbs 3:5

Lisa had this to say about Proverbs 3:5: “Trusting in society, worldly ways and yourself will not get you where God intends for you to be. His path and idea for your life is a million times better than anything we could choose for ourselves! We have to trust that even if it’s in conflict with what we think is right. God will NEVER lead you astray.”

Tiffany Owens, a clerical assistant with the firm, sent in a verse for this issue.

Therefore I tell you, do not worry about your life, what you will eat or drink; or about your body, what you will wear. Is not life more than food, and the body more than clothes? Look at the birds of the air; they do not sow or reap or store away in barns, and yet your heav-

only Father feeds them. Are you not much more valuable than they? Matthew 6:25-26

Tiffany says she likes this scripture because it reminds her to “trust in God, rely on God, wait for God, believe in Him, and rejoice in Him.” She added that if she does these simple things, there will be no time for worrying and she can just keep her focus on God.

Jenny Chou, Executive Assistant to Tom Methvin, sent in the following verses for this issue. She said Micah 6:8 is her favorite verse and is the one she carries with her all the time.

He has shown you, O mortal, what is good. And what does the Lord require of you? To act justly and to love mercy And to walk humbly with your God. (NIV) Micah 6:8

Jenny says she also loves to start her quiet time every morning with Psalm 18:24 and that it helps her get in the right mind to start her day.

This is the day that the Lord has made; Let us rejoice and be glad in it. (NRSV) Psalm 18:24

XXII.
OUR MONTHLY REMINDERS

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

2 Chron 7:14

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

Edmund Burke

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

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

Isaiah 10:1-2
I am still determined to be cheerful and happy, in whatever situation I may be; for I have also learned from experience that the greater part of our happiness or misery depends upon our dispositions, and not upon our circumstances.

Martha Washington (1732—1802)

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

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

Vincent Lombardi

XXIII.
PARTING WORDS

I wrote last month about the looming battle on the horizon over reasonable gun control and the need for action by our political leaders. Since then an army of young people has been organizing and marching, culminating with a march on Washington on Saturday, March 24. The crowd that day was estimated to have been in excess of 600,000 and it may well have been much larger. In fact, some observers put the number at 800,000. In any event, it was a huge crowd! There were also coordinated marches on the 24th around the country. Any politician who underestimates the political power of this massive movement does so at his or her peril.

To date, no group has been able to cope with the power of the NRA in the gun control battle. As I suggested last month, however, the NRA may have finally met its match. The young protestors don’t have an agenda that includes taking political contributions from the gun lobby. Their agenda separates them from the NRA and the politicians who take their money. The agenda of the young people is one that promotes reasonable gun control and saving lives and it is one I subscribe to. We can no longer allow the NRA to dictate policy on the need for reasonable gun control.

There are a number of politicians who are virtually owned by the NRA and the gun manufacturers and they now find themselves between the proverbial “rock and a hard place.” Many of them will be running for reelection in the mid-term Congressional races. Some pundits say young people don’t ever register, and those who do register, fail to show up to vote. That may have been true to some extent in the past, but I really believe this army of youngsters is different. I predict they will be a huge factor in future elections.

I totally support the efforts of this growing army and I am very proud of these young people. I also believe we will finally see reasonable gun control in this country become a reality and hopefully soon. The NRA has not helped its cause by making some pretty dumb and negative comments about the children and their efforts. I was shocked at the harshness of these comments.

Too many lives have been lost in America and so very little has been done about it. The children are now involved and I pray for their efforts to be successful. God bless and protect the children!

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.
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.