I. **CAPITOL OBSERVATIONS**

**Beasley Allen Celebrates 40 Years Of Helping Those Who Need It Most**

Beasley Allen will celebrate its 40th Anniversary this month. After an unsuccessful run for governor of Alabama in 1978, I was faced with the challenge of starting a law practice all over again. I had tried to get a job with several law firms in the Capital City, but nobody was interested. With no other option, I opened an office in Montgomery on Jan. 9, 1979.

I soon started to get a feel for practicing law in Montgomery. I never realized how much I missed the courtroom until I got back into the active practice of law. I was determined to use my skills as a lawyer to build a career “helping those who need it most.” That later became the official motto of the firm.

The firm was established to provide legal service to individuals who have been wronged by no act of their own, a protection provided by the Seventh Amendment to the United States Constitution—the right to a trial by jury. This is one of the most important rights a citizen has. That’s because it levels the playing field for the average person who have to take on big corporations.

What started as a one-lawyer firm has grown to a firm of more than 90 lawyers and over 200 support staff in Montgomery and Atlanta. Everybody at Beasley Allen works tirelessly to represent clients from all over the nation. Through the years, the firm has gained a national reputation for being at the forefront of consumer litigation. Beasley Allen has secured more than $26 billion in verdicts and settlements for our clients. We have helped to improve workplace safety and the safety of myriad products for consumers worldwide. I am very proud of the work we have done—and continue to do—that makes a difference the lives of people, and helps to make their lives better.

People often come to us at one of the most difficult times in their life, facing great pain and loss. If someone can leave our offices better off than when they came in, we are accomplishing our mission and making a difference. I couldn’t ask for more than that.

Our lawyers and support staff have also been an integral part of the community, providing hundreds of hours of pro-bono legal work to low-income residents, donating millions of dollars to charitable organizations, and committing countless hours to community service, as well as time and resources to revitalization efforts in the City’s downtown area. The lawyers in our Atlanta firm are already making their mark on the community, serving folks in Georgia beyond the courtroom.

God has blessed our law firm and we are deeply grateful. As we look forward to what the future holds, we will strive to continue seeking justice for all and serve as a leading citizen in our community for generations to come.

II. **MORE AUTOMOBILE NEWS OF NOTE**

**General Motors Settles With Family In Gear Shift Lawsuit**

General Motors (GM) has settled with the family of an 8-year-old girl who was killed when a Chevrolet Suburban shifted out of park. A jury had returned a $2.88 million verdict in the case. U.S. District Judge Janet C. Hall will vacate the jury verdict and other rulings in the cases. The verdict was on appeal to the Second Circuit Court of Appeals. The automaker and the family of Maggie O’Connor had reached a conditional settlement on those rulings by the court with the verdict being vacated. The appeals court had ordered the parties to go through its mediation program and as a result the case was settled.

The terms of the settlement were not disclosed in the ruling granting the parties’ joint request. However, Judge Hall did say she was informed that the financial settlement was “satisfactory” to GM and the O’Connor family. The judge said that setting aside a judgment is an “extraordinary remedy” that should only be granted in “exceptional circumstances.” But she said the facts justified her granting the parties’ request.

A Connecticut federal jury in July 2017 found that GM’s failure to warn about the dangers of the shifters in Chevrolet Suburbs caused the accident that killed Maggie and injured her brother, Grant. In July 2011, Rose O’Connor was getting ready to pick up her older son at the library. While Ms. O’Connor was still gathering her things and her toddler son—a period of only a few minutes—Maggie and Grant got into the car. While Ms. O’Connor was still in the house, the 2004 Suburban the children were sitting in shifted from park to neutral, rolled down the family’s driveway and hit some trees. Maggie died in the crash.

Bernard Pitterman, the administrator of Maggie O’Connor’s estate, and the family filed the lawsuit in Connecticut state court in June 2014, and it was removed to federal court the following month. In January, Judge Hall declined GM’s request to have the Connecticut Supreme Court weigh in on whether state law required...
the automaker to warn drivers of the gear-shift risk after the sale. The judge had concluded that the O’Connor family could move forward on that theory, citing the Second Circuit’s 2002 decision in Densberger v. United Technologies Corp.

The O’Connor family is represented by Joram Hirsch of Adelman Hirsch & Connors LLP. The case is Bernard Pitterman et al. v. General Motors LLC, (case number 3:14-cv-00967) in the U.S. District Court for the District of Connecticut.

Source: Law360.com

**Harley-Davidson settles brake defect suit**

Harley-Davidson Motor Co. Groups LLC and the wife of a man who died from injuries sustained in a motorcycle accident agreed to a confidential settlement last month on the eve of a California jury trial. The settlement resolves claims that an anti-lock braking system defect in the motorcycles contributed to the man’s death. A jury had been selected when the case settled. The wrongful death lawsuit was filed by Plaintiff Vita Davis against Harley-Davidson, the City of Oakland, the County of Alameda and the State of California in August 2015. The Plaintiff’s husband, Irvan Jude Davis, died from injuries in the motorcycle crash in August 2014.

Irvan Jude Davis was driving his 2008 CVO Ultra Classic Electra Glide 3 Harley-Davidson motorcycle at about 45 mph as he approached an intersection. The traffic lights at the intersection weren’t working. Davis tried to brake, but the motorcycle’s anti-lock braking system and throttle failed, causing a collision that led to his death. The claims against Harley-Davidson included strict liability, failure to warn, failure to recall and breach of implied warranty. The jury would have had to determine the percentage of fault attributed to Harley-Davidson. The damages sought were for past and future economic loss, non-economic loss, emotional distress and exemplary damages.

In February, Harley-Davidson recalled approximately 175,000 2008-2011 Touring, CVO Touring and VSRD motorcycles equipped with anti-lock brakes over concerns the brakes will fail due to poor maintenance. The recall came two years after the National Highway Traffic Safety Administration (NHTSA) launched an investigation into Harley-Davidson’s motorcycles with anti-lock braking systems in 2016. This came after receiving dozens of consumer complaints about the brakes allegedly failing suddenly and without warning.

The Plaintiff is represented by Scott D. Righthand of Law Office of Scott Righthand PC. The case is Davis v. Harley-Davidson Motor Co. Group LLC, (case number RG15782921) in the Superior Court of California, Alameda County.

Source: Law360.com

**VW faulty-engine settlement gets final approval**

A New Jersey federal judge has signed off on a settlement in the consolidated class action against Volkswagen and Audi involving claims that the automakers concealed a timing chain system defect in certain vehicles that can cause “catastrophic” engine failure. Chief U.S. District Judge Jose L. Linares granted the parties’ application for final approval of the class action settlement, finding that the proposed deal is “fair, reasonable and adequate” and consistent with all applicable requirements. “The settlement is in the best interests of all class members and Defendants,” Judge Linares said in an order.

The lawsuit alleged that when the timing chain system of the vehicles in questions fails, drivers might not be able to accelerate or maintain their speed or could experience “catastrophic engine failure.” It was contended:

Drivers and occupants of the class vehicles are at risk for rear-end collisions or other accidents caused by the inability to maintain an appropriate speed, and the general public is also at risk for being involved in an accident with a class vehicle that suddenly stops or is unable to maintain an appropriate speed.

Pursuant to the settlement agreement Volkswagen and Audi will reimburse drivers who went to an independent service station as much as $6,500 for engine repairs and $2,000 for timing chain system repairs. The automakers will also extend the timing chain warranties on the affected vehicles to cover them for 10 years or 100,000 miles.

Judge Linares certified a settlement class of persons and entities that purchased or leased certain 2008 through 2014 Volkswagen and Audi vehicles in the U.S. and Puerto Rico. Judge Linares also appointed 32 drivers as class representatives for the settlement class, and named Carella Byrne Cecchi Olstein Brody & Agnello PC, Kantrowitz Goldhamer & Graifman PC, and Kessler Topaz Meltzer & Check LLP as lead settlement class counsel.

The drivers are represented by Carella Byrne Cecchi Olstein Brody & Agnello PC, Kessler Topaz Meltzer & Check LLP, Kantrowitz Goldhamer & Graifman PC, Thomas P. Sobran PC, Mazie Slater Katz & Freeman LLC, Seeger Weiss LLP, Baron & Budd PC, and Podhurst Orseck PA. The case is In re: Volkswagen Timing Chain Product Liability Litigation, (case number 2:16-cv-02765) in the U.S. District Court for the District of New Jersey.

Source: Law360.com

**Kia and Hyundai defect can cause cars to erupt in flames**

A proposed class action has been filed in a California federal court against Hyundai Motor Co., Kia Motors Corp., and related companies. Kia and Hyundai knew about an engine defect that led to hundreds of their vehicles “spontaneously bursting into flames,” but the companies failed to warn customers. It’s alleged that a defect in certain vehicles with gasoline direct injection engines can cause the cars to catch fire in “non-collision” circumstances, meaning drivers have an “increased risk of accident, injury or death.” While the companies did issue technical service bulletins and conduct safety recalls of some of the affected vehicles, they never conducted a needed “widespread” recall or adequately fixed the defect, a group of drivers said in the suit. The drivers said in the complaint:

The catastrophic engine failure and fire risk is the direct result of a defect concealed by, and still unremedied by Hyundai and Kia.

Vehicles that could have this defect include the 2011-2019 Hyundai Sonata, 2013-2019 Hyundai Santa Fe and Santa Fe Sport, 2011-2019 Kia Optima, 2012-2019 Kia Sorento, 2012-2019 Kia Soul and 2011-2019 Kia Sportage. The proposed class includes everyone in the U.S. who purchased or leased an affected vehicle, excluding those individuals with personal injury claims. That includes more than 350 drivers who reported fires in their affected cars to the National Highway Traffic Safety Administration (NHTSA).

Kia and Hyundai are accused of breach of implied warranty as well as violating California’s unfair competition law, false advertising law and Consumer Legal Rem-
edies Act, which allows consumers to seek damages after being harmed by unfair or deceptive business practices. The suit names eight lead Plaintiffs from around the country who’ve purchased affected cars. Several said their cars burst into flames in noncollision incidents.

Engine lines associated with the defect include Theta II, Gamma, Nu and Lambda II, which were introduced in the U.S. between 2009 and 2013. The defect causes problems when it restricts oil flow to key engine parts, and the lack of oil lubrication then causes these parts to break. Sometimes the broken parts punch a hole in the engine block, allowing engine fluids to leak and ignite. Besides the safety hazard, the defect often leads to a total loss of the cars, the suit said.

In 2015 and again in 2017, Hyundai recalled about a million of its vehicles and issued technical service bulletins for their repairs. In March 2017, Kia also recalled 600,000 of its vehicles. In October 2018, Kia sent car owners “Product Improvement Campaign” letters. But the suit said none of these recalls or notices adequately tackled the defect. In October, the Center for Auto Safety demanded a recall of nearly 3 million 2011-2014 Kia and Hyundai vehicles. But that didn’t happen. In November, Hyundai’s and Kia’s CEOs refused a request to testify at a U.S. Senate hearing, saying that the senate should investigate noncollision fires in all automakers, not just in their cars.

The suit seeks reimbursement to owners of affected vehicles for all expenses associated with repairing or replacing the cars, including time off work. It also asks for Hyundai and Kia to be ordered to repair, recall or replace all affected vehicles.

The Kia and Hyundai customers are represented by Christopher R. Pitoun and Steve W. Berman of Hagens Berman Sobol Shapiro LLP. The case is Leslie Flaherty et al. v. Hyundai Motor Company et al., (case number 8:18-cv-02223) in U.S. District Court for the Central District of California.

Source: Law360.com

### MANY VEHICLE HEADLIGHTS POSE POOR PERFORMANCE HAZARD

The Insurance Institute for Highway Safety (IIHS) has determined that many vehicles on the road today are equipped with poor headlights. For 2018 model year vehicles, the best-available headlights on just 32 of 165 vehicle models tested received the organization’s highest rating of “good.” This figure is actually an improvement from IIHS testing performed in previous years.

When IIHS conducted its first headlight tests in 2016, only two of 95 headlight systems were given a “good” rating. Of the remaining 2018 vehicle models most recently tested, 58 were rated “acceptable,” 32 were rated “marginal,” and 43 were rated “poor.”

The list of vehicles with “poor” performing headlights was not limited to one particular type or cost of vehicle. Cars, trucks, and SUVs from foreign and domestic manufacturers, including luxury brands, were found at the bottom of the rankings.

Several pickup trucks were among the worst performing vehicles, with “poor” rated headlights the only available for the Ford F-150, Chevrolet Silverado 1500, Chevrolet Colorado, GMC Canyon, and Nissan Frontier. Other “poor” rated models ranged from the Audi Q5 SUV to the Dodge Charger, to the 2-door Honda Civic. However, there were some success stories. The Hyundai Genesis G90 sedan and Lexus NX SUV were given top ratings across all options packages.

Often, “good” rated headlights are only available on more expensive vehicle trim lines or options packages. But David Aylor, manager of active safety testing at IIHS, has stated that consumers shouldn’t have to buy a fully loaded vehicle in order to get good headlights. Replacing vehicle headlights can also be costly. For a majority of vehicles with good-rated headlights, replacing just one front headlight can run upward of $1,000.

The tests performed by IIHS engineers analyzed the reach of vehicle headlights on straight roads and around curves. Sensors on IIHS’s test track measured the length and intensity with which vehicle headlight illuminated the surface and surrounding areas. Glare from oncoming vehicles was also tested. Each vehicle’s headlights were tested as received from the dealer. In the evaluation, the performance of low beams was weighted more heavily than high beams since low beams are used with much greater frequency during travel.

Vehicles typically utilize halogen, high-intensity discharge, or LED lights. In recent years, an increasing number of vehicle manufacturers have been outfitting their models with LED lights, which are typically brighter and stronger. Yet, this does not always translate to better performance on roads and in IIHS testing, since halogen lights are reported to better reduce glare from oncoming traffic. If you need more information about the above, contact Cole Portis or Dan Philyaw, lawyers in our firm, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com or Dan.Philyaw@beasleyallen.com.

Sources: IIHS, CED Communications

### III. OPIOID LITIGATION

#### AN UPDATE ON THE OPIOID LITIGATION

#### Court Upholds a Majority of Governments’ Claims Against Defendants

Local governments designated as Track 1 cases received a favorable ruling from U.S. District Court Judge Dan A. Polster when he adopted a majority of the report and recommendation (R&R) issued by Magistrate Judge David A. Ruiz in October. The ruling upheld most of the claims asserted by Summit County, Ohio and the City of Akron but, importantly, rejected the R&R’s dismissal of the County’s common-law public nuisance claim.

The R&R was the first major victory for the plaintiffs in the opioid multidistrict litigation (MDL) consolidated in Cleveland, Ohio. Judge Polster designated several different governmental entities as Track 1 cases to brief threshold legal issues that may assist in settlement negotiations or prepare the test cases for trial. The R&R was the first ruling from a court on motions to dismiss the bellwether Plaintiffs’ claims.

Judge Polster disagreed with the R&R’s recommendation to dismiss the Summit County’s common law public nuisance claim, concluding that the Ohio Product Liability Act did not abrogate the claim. He Court also held that the County’s statutory public nuisance claim is limited to injunctive relief. Moreover, the order adopted the dismissal of Akron’s drug-related nuisance claim for lack of standing, reasoning that the statute vested enforcement authority with counties, the State, and the Board of Pharmacy but not city governments.

Notably, Judge Polster upheld all other claims for relief, including the Plaintiffs’ claims under the Racketeer Influenced and Corrupt Organization (RICO) Act, 18 U.S.C. § 1961, et. seq. This claim alleges that the manufacturer and distributor Defendants worked together to expand
the opioid market and that there was a common understanding among all Defendants to ignore their obligations to report suspicious drug orders to effectuate that goal.

This ruling was a great result for the numerous lawsuits filed nationwide that have been consolidated in the MDL. We expect decisions to be issued on the other bellwether cases soon. This includes the State of Alabama, the counties of Cabell (West Virginia), Monroe, Michigan and Broward (all Florida), and the City of Chicago. Although claims for relief will necessarily vary across jurisdictions, many core issues common to all cases were decided in the Plaintiffs’ favor. Hopefully these cases will be decided on their merits by a jury rather than dismissed before discovery reveals the full nature of the Defendants’ conduct.

The Court ordered the Defendants to file their answers by Jan. 19, 2019.

**Discovery Update**

One of the key legal theories asserted by the Plaintiffs in the opioid litigation is that manufacturers, distributors and pharmacies that dispensed opioids failed to halt, investigate and report suspicious orders that these entities suspected may have been diverted for non-medical purposes.

The Controlled Substances Act mandates that any registrant who distributes opioids to “design and operate a system to identify” suspicious orders to the DEA and prevent the illicit diversion of these drugs. Federal regulations explain that suspicious orders include “orders of unusual size, orders deviating substantially from a normal pattern, and orders of unusual frequency.” 21 C.F.R. § 1301.74(b). Despite the language illustrating when the reporting requirement is triggered, the lack of clear numeric thresholds has generated confusion in the litigation.

This confusion is currently being addressed in the discovery process where the MDL bellwether Plaintiffs (Summit and Cuyahoga counties, Ohio and the City of Cleveland) identified which particular orders shipped to their areas were suspicious as well as the criteria used to identify those orders. The Plaintiffs used three different methodologies to arrive at these figures. All estimates were based on raw measures of pills shipped to individual pharmacies in the region around Cleveland and Akron.

- Methodology 1 identified monthly shipments that exceeded the amount shipped to a pharmacy in any of the preceding six months. This yielded the lowest estimate of 52,544 suspicious orders (or 5.4 percent of the total) between January 1996 and May 2018.
- Methodology 2 removed the suspicious order months identified under the first methodology from the six-month period and flagged orders that exceeded the total in any non-suspicious month. This produced an estimate of 364,291 orders over the 22-year period, or 36 percent of all orders.
- Methodology 3 assumed that once a pharmacy placed a suspicious order, it should have been halted and all subsequent orders treated as suspicious. This yielded the largest estimate of 875,055 orders or 86.4 percent of the total.

Because the figure of suspicious orders ranged between 5 percent and up to 86 percent, the Defendants argued that the flagged orders and the methodology were so convoluted that they are still unable to determine which orders the Plaintiffs contend were suspicious. The Plaintiffs responded that these methodologies are as accurate as possible without knowing which metrics the Defendants use to identify suspicious orders.

Special Master David R. Cohen was appointed by Judge Polster to adjudicate discovery disputes between the parties in the MDL. He issued Discover Order 12, which required the Plaintiffs to identify, by Dec. 31, 10 suspicious orders along with the date of shipment, name of the entity that placed the order, and the number and type of drugs shipped. The Plaintiffs are also required to explain in detail how they identified the orders, why the Defendants’ due diligence was insufficient, and why the “order was so suspicious that there was no amount of due diligence that could have removed every basis to suspect the customer was engaged in diversion.”

This order appears to be a compromise between the Defendants’ demand for the Plaintiffs to identify every illegitimate order that allegedly contributed to the opioid crisis and the need for the Plaintiffs to provide some tangible evidence of wrongdoing. Due to the complexities of this litigation, we expect to see more clarifying orders from Special Master Cogen as the discovery process unfolds.

**Fentanyl Is America’s Deadliest Drug**

Federal health officials announced last month that fentanyl is now the deadliest drug in America, with more than 18,000 overdose deaths in 2016, the most recent year for which statistics are available. It’s the first time the synthetic opioid has been the nation’s deadliest drug. From 2012 to 2015, heroin topped the list. On average, in each year from 2013 to 2016, the rate of overdose deaths from fentanyl increased by about 113 percent a year. The report said fentanyl was responsible for 29 percent of all overdose deaths in 2016, up from just 4 percent in 2011.

More than 63,000 Americans died of drug overdoses in 2016, according to the report, which was prepared by the National Center for Health Statistics (NCHS), part of the U.S. Centers for Disease Control and Prevention (CDC). That’s an average of 174 deaths a day. The study also said many people who die from overdoses have multiple drugs in their system. “We’ve had a tendency to think of these drugs in isolation,” Dr. Holly Hedegaard, lead author of the report, told Huff-Post. “It’s not really what’s happening.”

Roughly, 40 percent of people listed as dying of a cocaine overdose also had fentanyl in their system. After fentanyl, heroin, cocaine and methamphetamine were the deadliest drugs in 2016. After declines earlier in the decade, the report said, overdose deaths from both cocaine and methamphetamine were starting to rise again. The study said illegal drugs such as fentanyl and heroin were the primary causes of unintentional overdoses, while prescription drugs such as oxycodone tended to be used in suicide overdoses.

Source: Law360.com

**The Beasley Allen Opioid Litigation Team**

Because of the enormity of the opioid litigation, and Alabama’s personal involvement in the multidistrict litigation (MDL), our firm has put together an “Opioid Litigation Team,” which includes these lawyers: Rhon Jones, Parker Miller, Ryan Kral, Rick Stratton, Will Sutton and Jeff Price. This team of lawyers represents the State of Alabama, the State of Georgia, and numerous local governments, as well as other entities in the MDL, and individual claims on behalf of victims. If you need more information on the opioid litigation contact one of these lawyers at 800-898-2034 or by email at Rhon.Jones@beasleyal-
As we move into 2019, the talcum powder litigation continues to move forward in several venues across the country. At the state court level, our lawyers are currently preparing to take several cases to trial in the first half of 2019. In January, Beasley Allen lawyers will return to St. Louis, Missouri for a multi-Plaintiff trial, which is expected to last several weeks. This is the same venue where a jury returned a $4.6 billion verdict in favor of 22 talcum powder Plaintiffs in June 2018. Once that trial concludes, our litigation team will travel to Atlanta, Georgia, for a single-Plaintiff trial. That will be the first talcum powder trial in Georgia. We return to St. Louis in August for a second multi-Plaintiff trial.

At the federal court level, the multidistrict litigation (MDL) has been focusing on the selection, deposition, and qualification of expert witnesses. Leigh O'Dell from our firm and Michelle Parfitt of Ashcraft & Gerel are co-lead counsel in the MDL. Over the past several months, Plaintiffs' lawyers have conducted depositions of several corporate representatives in order to gain insight into the knowledge and actions of Defendants and third-party companies related to issues of talc safety. Using information gained in those depositions, lawyers for the Plaintiffs recently disclosed information regarding expert witnesses they expect to testify on scientific and causation issues related to the litigation.

Moving into 2019, the Defendants will also disclose their expert witnesses, and the parties will begin conducting depositions of these experts. We expect that Daubert hearings, where the court will rule on the admissibility of expert testimony, will occur in June 2019.

As the science surrounding talc safety continues to develop, we hope that U.S. regulatory bodies will take a closer look at the potential harm talcum powder can cause. On Dec. 5, Health Canada, Canada's national public health agency, released a report finding that genital talc use may carry an increased risk of developing ovarian cancer. The report also found that inhalation of loose talc powders may increase the risk of developing lung cancer. In response, Tolga Yalkin, Director General of Health Canada's Consumer Product Safety Directorate indicated that the government is considering additional warnings on these products. It is our hope that other regulatory bodies will take similar steps to protect consumers from the risks associated with talcum powder.

Lawyers in our firm currently represent more than 12,000 individuals. They have filed 2,658 individual cases in state and federal courts. Thus far, our lawyers and staff have evaluated over 50,000 potential claims with a large number still under review. To date we have been involved in eight trials with another case with 13 Plaintiffs to be tried this month. There are more than 10,000 cases pending in the MDL that was mentioned above.

Beasley Allen lawyers continue to investigate new cases involving women who have suffered from ovarian cancer after using Johnson's Baby Powder and Shower to Shower. For more information, contact Melissa Prickett or Brittany Scott, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com or Brittany.Scott@beasleyallen.com.

A Very Important Report from Canada’s National Public Health Agency

Health Canada, the national government agency responsible for public health in Canada, has issued a report finding that the use of talc for genital hygiene may expose women to a greater risk of ovarian cancer. This is a very important and highly significant action by Health Canada. This report, especially in conjunction with the Reuters article, is devastating for J&J.

Health Canada issued an informational letter on the respiratory and cancer dangers of talc use to all health care professionals, recommending they advise patients not to use talc in the genital area. The advisory notes that loose talc can be found in a wide array of products, including baby powder and deodorants as well as asbestos and multiple reports from the 1970s, from testing conducted by different labs, found evidence of asbestos in J&J’s talc. One report even described the asbestos level as “rather high.” Over the next several decades, asbestos and asbestos-like particles (which Reuters says carry no distinction to the Environmental Protection Agency [EPA] and the Occupational Safety and Health Administration [OSHA]) were found in a number of talc deposits used for sourcing J&J’s talc products. Although the company has improved its testing processes over time, internal documents show that these methods may allow trace amounts of asbestos to go undetected.

The Reuters report had a strong and swift impact on J&J’s stock, as shares plummeted more than 10 percent following the article’s release. In response, J&J issued a statement claiming that the Reuters article was “one-sided, false and inflammatory,” but Reuters has stood by its story, saying that the report was based on J&J’s own documents. In fact, Plaintiffs’ lawyers, including those at Beasley Allen, have used these same documents as evidence in several recent trials relating to talcum powder and ovarian cancer.

Throughout all talc trials, J&J has maintained that its talc does not contain asbestos. As these trials continue, Plaintiffs’ lawyers will learn even more about J&J’s knowledge of asbestos contamination, as well as other potential contamination, in J&J’s talc products. Our lawyers have learned during the MDL proceedings that J&J had withheld a good number of documents in the prior litigation that were damaging to the company.

Sources: Reuters, J&J, CNBC
as cosmetics, natural health products and non-prescription drugs.

The governmental action is based on a thorough analysis of scientific studies linking talc exposure to ovarian cancer and respiratory conditions such as fibrosis. The report notes that the Canadian Cancer Society identifies genital talc use as a possible risk factor, supported by numerous published studies reporting a small but significant association between ovarian cancer and perineal talc use.

In a news conference announcing the health advisory, Tolga Yalkin, Director General of Health Canada’s Consumer Product Safety Directorate, said that the government will consider a number of actions to further restrict talc use. Mr. Yalkin said:

*Currently we have warnings on loose powder products intended for use with infants and children, and we’ll investigate adding additional warnings based on the scientific evidence.*

It is encouraging that the Canadian government is taking the lead in notifying medical professionals about the potential dangers of talc use. Every organization responsible for public health and education about cancer needs to carefully examine how to make doctors and consumers more aware of the science and symptoms surrounding ovarian cancer.

Ted Meadows from our firm is a member of the litigation for an upcoming trial that has as Plaintiffs 13 women and their families who allege that perineal use of Johnson & Johnson’s talcum powder products caused their ovarian cancer. That trial is scheduled to begin on Jan. 22 in State District Court in St. Louis.


J&J Loses An Important Talc Battle In Mississippi

A Mississippi state judge has denied Johnson & Johnson’s bid to dismiss a first-of-its-kind suit filed by Mississippi Attorney General Jim Hood, alleging the pharmaceutical giant is putting Mississippians at risk by not disclosing its talcum powder products can increase the risk of ovarian cancer. Hinds County Chancellor J. DeWayne Thomas, in his order, denied a motion for summary judgment filed by J&J. Valeant Pharmaceuticals, which is named in the suit as the distributor of J&J’s Shower to Shower scented talc product, joined in with J&J on the motion.

The two companies argued that the Attorney General’s suit alleging they violated the Mississippi Consumer Protection Act (MCPA) by not putting a warning label on talc fails because the MCPA does not cover cosmetics labeling and, even if it did, the U.S. Food and Drug Administration (FDA) has already determined there is “no scientific basis” for putting a warning label on cosmetic talc products.

Chancellor Thomas, however, rejected the arguments and wrote there were “clearly material issues” of facts in dispute that can’t be resolved on summary judgment. The chancellor wrote that it would be a mistake to dismiss the suit before a full trial, given the complex legal issues and serious allegations.

The suit was filed in August 2014, alleging false advertising and insufficient labeling by J&J and Valeant, contending that they misrepresented the benefits and risks of the talc products they sold in Mississippi. The attorney general specifically alleged that the companies failed to inform the state’s residents about scientific evidence linking the perineal use of talc with an increased risk of ovarian cancer—the same theory underlying all of the suits against the company in recent years. The suit also alleged that internal documents reveal that J&J targeted talc sales at African-American and Hispanic women, even as it was aware of studies showing these groups got ovarian cancer at higher rates than women of other ethnicities.


Source: Law360.com

V. LEGISLATIVE HAPPENINGS

A Look at Alabama’s New Legislature

The 2018 elections boosted the Republican party’s super majority in the Alabama Legislature to a super super majority, with five more House seats and one Senate seat going red. Five seats in Alabama’s 105-member House went to Republicans in November, giving them a 77 to 28 advantage over the Democrats. The GOP gained one additional seat in the Senate, which now has 27 Republicans and eight Democrats.

Thirty percent of the seats in both chambers are now occupied by newcomers, though three of the newly elected Senators were previously House members. Most of the Republican gains were seats vacated by members not seeking re-election or vacated in the pursuit of other offices.

All but two Democratic incumbents managed to hold their seats. Rep. Alvin Holmes, the longest-serving member of the House, lost the District 78 seat to Kirk Hatcher in the Democratic Primary. Rep. Elaine Beech of Chatom lost to Republican Brett Easterbrook in District 65 in southwest Alabama.

Sen. Paul Bussman of Cullman was the sole Republican incumbent to lose his seat. He was narrowly defeated by Garlan Gudder, a Cullman City Councilman and Republican.

JereBeasleyReport.com
The demographics of the Alabama Legislature show that Republicans and Democrats are divided further than ever along racial lines. All 104 Republican representatives and senators are white, and all but two of the 36 Democratic Senators are black. The only two remaining white Democrats in the Alabama Legislature are Rep. Neil Rafferty D-Birmingham, who replaced Democratic Rep. Patricia Todd, and Sen. Billy Beasley, D-Clayton, who happens to be my brother.

There are 22 women in the Alabama Legislature, an increase of one over the last session. All four of the state’s women senators are Democrats and 11 of the state’s 18 female representatives are Democrats. The percentage of women to men in the legislature is about half the national average.

It is quite evident there are some significant challenges facing the Alabama Legislature. Hopefully, the members will be successful in meeting these challenges and will help take our state to another level.

Sources: AL.com, Alabama Today

VI.
THE NATIONAL SCENE

FATHER OF SANDY HOOK VICTIM SUES RIGHT-WING EXTREMISTS

The father of a boy killed in the Sandy Hook shootings has filed a defamation suit against James Fetzer and Mike Palecek, two theorists. The father, Leonard Pozner, whose son Noah was among the 26 first-graders and educators killed by a gunman at Sandy Hook School, is suing the extremists, who are co-editors of “Nobody Died at Sandy Hook,” for defamation and conspiracy.

These two individuals have made the insane claim that Sandy Hook was a hoax and that the shootings never happened. Fetzer and Palecek claim, among other things, that Mr. Pozner forged his son’s death certificate to advance the hoax. The complaint states:

[The] defendants acted together, as a cabal, to accomplish their defama
tion. [The] defendants’ defamatory publications were designed to harm (Pozner’s) reputation and subject (him) to public contempt, disgrace, ridicule or attack.

The lawsuit is the latest in a number of defamation cases filed by Sandy Hook families against these conspiracy extremists. In April, Mr. Pozner had filed a defamation lawsuit against Texas-based conspiracy extremist Alex Jones. Mr. Pozner filed that lawsuit along with Noah Pozner’s mother, Veronique De La Rosa, and Neil Heslin, another parent of a Sandy Hook student who was killed.

Six more Sandy Hook families and an FBI agent filed defamation lawsuits in May against Jones and his Infowars broadcast program. Jones, who had claimed the worst crime in modern Connecticut history was a hoax, said in his defense in court earlier this year that he now believes the shootings happened. He makes the bizarre claim that he has a right to be wrong.

Mr. Pozner and Ms. De La Rosa published a critical letter in July of last year to Facebook CEO Mark Zuckerberg accusing him of providing conspiracy extremists such as Jones with “a safe haven for hate.” Facebook responded, along with YouTube, Apple and other social media companies, with suspensions and restrictions on Jones and his Infowars sites, citing him for inciting violence and promoting hate speech.

Mr. Pozner’s suit against Fetzer and Palecek accuses the two of endangering his life. In 2016, it’s alleged in the lawsuit that a Florida resident named Lucy Richards, who visited websites maintained by Fetzer, threatened to kill Mr. Posner in an online message. At Richards’ sentencing, U.S. District Judge James Cohn said, “There are no alternative facts.”

The two Defendants should be dealt with harshly to the fullest extent of the law. Hopefully, their conduct exposes them to criminal prosecution. In any event, however, juries in civil cases should punish these evil men severely by awarding huge punitive damages in each of the cases.

Source: CTPost.com

VII.
WHISTLEBLOWER LITIGATION

MEDTRONIC TO PAY MORE THAN $50 MILLION TO SETTLE MEDICAL DEVICE CLAIMS

Medtronic PLC, the world’s largest medical device maker, will pay $50.9 million to settle kickbacks and other claims against two companies it owns.

Nearly $18 million of that amount is related to the allegedly reckless marketing of a product designed to treat brain defects. One of the subsidiaries, Minnesota-based ev3 Inc., also agreed to plead guilty to a misdemeanor in Boston federal court in connection with the distribution of the brain defect device, known as the Onyx Liquid Embolic System.

In a criminal information filed on Dec. 4, prosecutors said ev3 marketed Onyx for uses outside the brain from 2005 to 2009, even though they were unapproved and the U.S. Food and Drug Administration (FDA) had warned the company about safety concerns.

The other company, Covidien LP, which bought ev3 in 2010, paid $13 million to settle False Claims Act charges based on its alleged kickbacks paid to hospitals to use its Solitaire mechanical thrombectomy device, designed to restore blood flow in stroke patients. Covidien paid a fee to hospitals starting in 2014 to participate in a registry to collect data about patients using the thrombectomy device, in what amounted to a kickback system.

Jeffrey Faatz, the whistleblower who brought that civil suit, will receive more than $2 million as part of the resolution, the DOJ said. Assistant Attorney General Jody Hunt of the DOJ’s Civil Division, in a statement, said:

The Department of Justice will hold corporations accountable when they violate laws designed to protect consumers and protect public funds. This resolution demonstrates the department’s continued commitment to protect taxpayer dollars and deter companies from putting profits before patient safety.

Medtronic will also pay an additional $20 million to settle an unspecified DOJ investigation into “various market development and physician engagement activities” by ev3 and Covidien. Most of the conduct in question took place before Medtronic acquired ev3 and Covidien in 2015. The company, in a statement, said:

Medtronic cooperated fully with the Department of Justice during its investigation, and we believe our ongoing, rigorous compliance programs and ethical practices enabled us to reach a fair resolution of these cases.

The misdemeanor to which ev3 will plead guilty is for introducing adulterated medical devices into interstate commerce.
U.S. Attorney for Massachusetts Andrew E. Lelling had this to say:

"ev3 disregarded laws designed to protect patient safety. The U.S. Attorney's Office is committed to protecting patients and the integrity of federal health care programs, and we will continue to use our criminal authority to ensure that medical device manufacturers play by the rules that protect the public and ensure quality of care.

The settlements come on the heels of a sweeping investigation by the International Consortium of Investigative Journalists into the dangers and poor regulation of medical devices worldwide. The investigation found that Medtronic, which operates in more than 140 countries, paid well over $150 million to American doctors and hospitals in 2017 for research, travel and other expenses, substantially more than any other medical device maker.

The FDA said it planned to overhaul its approval system for medical devices. The government is represented in the Boston case by Christopher R. Looney of the U.S. Attorney's Office for Massachusetts. The case is U.S. v. ev3 Inc., (case number 1:18-cr-10461) in the U.S. District Court for the District of Massachusetts.

Source: Law360.com

**FINANCE OF AMERICA MORTGAGE SETTLES FHA MORTGAGE FRAUD LAWSUIT FOR $14.5 MILLION**

Finance of America Mortgage (FAM), a Blackstone portfolio company, has agreed to pay the U.S. government $14.5 million to settle a whistleblower lawsuit involving mortgage fraud. The payment settles the claim that Gateway Funding Diversified Mortgage Services, one of several companies FAM acquired in 2015, knowingly originated and underwrote deficient mortgage loans insured by the Federal Housing Administration (FHA) in violation of the False Claims Act. As a direct endorsement lender participating in the FHA's loan program, Gateway was required to follow specific underwriting guidelines, maintain a quality control program and report deficient loans to the Department of Housing and Urban Development (HUD).

According to the Department of Justice, Gateway failed to audit all early-payment default loans as required, and when it did perform an audit, it did not act on calls from compliance regarding concerns about the quality of these loans. The lawsuit alleged that when Gateway team members alerted executives that the lender's loans had a high default rate, and that specific branches and underwriters were displaying "a pattern of poor performance," nothing was done to address the problem.

Gateway admitted that it did not adhere to HUD's self-reporting requirement for deficient loans, and acknowledged it approved loans for FHA insurance that were not eligible. As a result, HUD incurred significant losses when those loans defaulted and insurance payments were made to Gateway. United States Attorney Grant Jaquith, in a statement, said:

"Gateway misrepresented that its federally insured loans met HUD's quality standards, harming borrowers who were left underwater on their homes and taxpayers who backed the mortgages. We are committed to holding mortgage lenders accountable when they abuse government programs for their own gain."

Source: Housingwire.com

**FLORIDA HOME HEALTH SERVICES COMPANY OWNER PLEADS GUILTY FOR ROLE IN $8.6 MILLION HEALTH CARE FRAUD CONSPIRACY**

On Dec. 4, 2017, two Miami, Florida residents pleaded guilty to health care fraud charges for carrying out an $8.6 million health care fraud scheme. Alexander Ros Lazo, owner and operator of T.L.C. Health Services Inc., a home health agency, "pleaded guilty to one count of conspiracy to commit health care fraud before U.S. District Judge Jose E. Martinez of the Southern District of Florida." Misledy Ibarra, a licensed massage therapist, also pleaded guilty to one count of conspiracy to commit health care fraud before Judge Martinez.

As part of his guilty plea, Ros Lazo admitted that he paid kickbacks and bribes to his co-conspirators in exchange for home health services prescriptions and the referral of Medicare beneficiaries to T.L.C. Health Services, a company based in Miami. He also admitted that he and Ibarra agreed to commit health care fraud with their co-conspirators by “arranging for Ibarra to render therapy services on behalf of licensed therapists despite the fact that they knew she was not licensed to render the physical and occupational therapy services to the Medicare beneficiaries and then billing Medicare for those services.

As part of Ibarra's guilty plea, she admitted to conspiring with Ros Lazo to commit health care fraud by rendering physical therapy services to Medicare beneficiaries while not being licensed to provide such services. Medicare paid $8.6 million in benefits that it otherwise would not have paid as a result of these fraudulent actions.

The Fraud Section leads the Medicare Fraud Strike Force, which is part of a joint initiative between the Department of Justice and Department of Health and Human Services (HHS) to focus their efforts on preventing and deterring fraud, as well as enforcing current anti-fraud laws around the country. “Since its inception in March 2007, the Medicare Fraud Strike Force, which maintains 14 strike forces operating in 23 districts, has charged nearly 4,000 Defendants who have collectively billed the Medicare program for more than $14 billion.”

Health care fraud continues to be a huge problem in our health care systems in this country. Our firm has increased its health care whistleblower practice for this very reason. Lawyers on our firm’s Whistleblower Litigation Team are working in this important arena. For example, our team recently obtained a $14 million verdict in Birmingham Federal Court dealing with a health care whistleblower issue. Our lawyers continue to pursue other cases throughout the country involving abusive practices in the health care industry.

Source: U.S. Department of Justice

**GOVERNMENT SAYS BUNDLE BUYS DON’T AVOID FCA LIABILITY**

The federal government has weighed in on a whistleblower suit accusing Bayer Corp. of paying kickbacks to get doctors to use a surgery drug called Trasyllol. The government says that the company can still be held liable under the False Claims Act (FCA) even though the government pays for the drugs as part of a “bundle” rather than individually. In a statement of interest, the government urged a New Jersey federal court to reject Bayer’s argument that its violations of the Anti-Kickback Statute are not material to the government because the alleged kickbacks would not affect the amount the U.S. paid for the drugs.

The government is only weighing in on this specific question of law. It is not taking a position on the merits of the suit. The government wrote:
Under the defendants’ theory, even if a pharmaceutical company gave a doctor an envelope stuffed with cash as a kickback to use a drug that is paid for through a bundled payment, the company could not be liable under the FCA due to the absence of materiality.

In the suit, Laurie Simpson, a former Bayer marketing employee, claimed the company misbranded Trasylol by promoting off-label uses of the drug, including use in valve replacement surgeries, surgeries involving pediatric patients, liver transplants and other medical scenarios. The surviving claims after a motion to dismiss was partially granted allege that Bayer’s conduct led to the submission of claims involving Trasylol uses that were not “reasonable and necessary” and therefore not covered under Medicare, according to court documents. The government contends:

When a company causes a hospital to misrepresent that claims complied with material requirements for payment relating to a drug, and the company acts knowingly within the meaning of the FCA, there is potential liability under the FCA, regardless of whether the government paid for the drug as an individual item or, as here, through a flat payment for a bundle of goods and services.

The bundle payment scheme exists to provide incentive for health providers to economize the costs of care by having the government pay flat payments based on the average cost for patients in similar circumstances. Citing the Supreme Court’s decision in Universal Health Services v. U.S. ex rel. Escobar, the government argued that under the FCA, questions of materiality are focused on whether knowledge of the false claims would influence the government’s decision to pay the flat rate, not on whether it would change the cost. The government wrote:

Compliance with the AKS and drug coverage rules are both material to such payment decisions. This is true regardless of the manner by which the government chooses to pay for goods and services, whether separately or through bundled payments.

The question of how much the government paid and whether Bayer’s conduct cost the government more money is one for determining damages, not materiality, the government wrote further.

The government contended further that, regardless of the pay scheme, a misrepresentation of compliance with the Anti-Kickback Statute makes the claims false, and a claim for reimbursement materially false. The government also urged the court to reject Bayer’s argument that allowing liability leads to “absurd” results because a Defendant could be held liable for any hospital claim for reimbursement that included any marginal noncompliance, saying that a bundled payment doesn’t create a material violation where none would otherwise exist.

Instead, the government contended, the only “absurd” result would come from adopting Bayer’s theory. The government said:

If accepted, the defendants’ argument would mean that the government could never recover when kickbacks or drug coverage violations occur in the context of inpatient hospital stays.

In addition, the government says the court should reject Bayer’s argument that the company is not liable because the claims for reimbursement did not name Trasylol, saying the drug is implied as part of the goods and services in the claim and is therefore considered to be included among the things a patient received in the hospital. The government said:

Because the claim covers everything, it does not need to specifically identify Trasylol in order for it to constitute a claim for Trasylol.


Source: Law360.com

The Beasley Allen Whistleblower Litigation Team

It has become abundantly clear that whistleblowers are the key to exposing corporate wrongdoing and government fraud. A person who has first-hand knowledge of fraud or other wrongdoing may have a whistleblower case. Before you report suspected fraud or other wrongdoing—before you “blow the whistle”—it is important to make sure you have a valid claim and that you are prepared for what lies ahead. Beasley Allen has an experienced group of lawyers dedicated to handling whistleblower cases. The lawyers on our firm’s Whistleblower Litigation Team are Archie Grubb, Larry Golston, Lance Gould, Andrew Brasher and Paul Evans.

A lawyer on our Whistleblower Litigation Team will be glad to discuss any potential whistleblower claim either in person or by phone. You can reach these lawyers by phone at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com, Larry.Golston@beasleyallen.com, Lance.Gould@beasleyallen.com, Andrew.Brasher@beasleyallen.com or Paul.Evans@beasleyallen.com.

VIII. PRODUCT LIABILITY UPDATE

Life Of Young Husband, Father Forever Changed By Corporate Wrongdoing

On August 4, 2016, Ivan Rodriguez went to work at Mobley Safeway like any other day since he became an employee. Tragically that day would change his life and the lives of his wife and young sons forever. The culmination of bad decisions and negligence on the behalf of several defendants rendered our client a C6 ASIA-A quadriplegic. Ivan now requires 24-hour nursing care and can no longer enjoy life with his wife, nor can he teach his young sons sports as he once dreamed of doing.

The day Ivan’s catastrophic injuries occurred he was operating a front-end loader with an open cab. While using the front-loader to move empty sandblasting bags, one of the bags blew into the open cab and became entangled on Ivan’s foot. The other end of the bag was pulled under the tire of the moving front-loader and began pulling Ivan from his seat. Although he was wearing his seatbelt, it unexpect-
edly unlatched and allowed him to fall out of the loader headfirst onto the ground below.

Investigation by Mike Andrews and our in-house investigators, along with some expert testing, revealed a very dangerous design defect in the subject seat belt. Even though the buckle was purportedly designed for use in harsh environments, the buckle is actually more prone to release when used in environments where it can be exposed to debris—in short, it is defective and not fit for its intended use.

Ivan has settled with some of the defendants for an undisclosed amount. The case remains open against other defendants with the anticipation of going to trial in federal court in March 2019. Settlement of claims such as Ivan’s is about helping our clients obtain justice for wrongdoing and achieving the best quality of life as possible following such a devastating injury.

Mike Andrews, a lawyer in our firm’s Personal Injury & Products Liability Section, is handling this case. Based on Ivan’s serious and permanent injuries, and the existence of multiple safer alternative buckle designs that would have prevented this tragedy, Mike is looking forward to presenting Ivan’s case to a jury.

JURY AWARDS $774,000 TO MACHINE OPERATOR INJURED ON THE JOB

A jury in Conecuh County, Alabama, has awarded our client John Dees $774,000 for injuries he suffered while working for Onin Staffing, LLC at Tenax Manufacturing Alabama, LLC. Mr. Dees was injured on a machine manufactured by Tenax SPA, an Italian Company. The jury determined that Tenax SPA acted wantonly due to its failure to guard against the machine’s known defect. Tenax SPA designed the machine with an inadequate guard, prohibited by both U.S. and European design standards.

The manufacturing plant made netting used for erosion control. The netting is heated and stretched before final preparation on RAM machine. The RAM process required Mr. Dees to manually guide the netting through rollers that create an in-running nip point.

While working on the RAM IV machine at Tenax in January 2015, Mr. Dees was feeding netting into the long tubular stretching machine’s system of rollers when his finger was caught. As stated above, the machine lacked adequate safety guards and safety devices to shut the machine off and otherwise protect workers. Mr. Dees’ finger, left hand and arm, up to his shoulder, were pulled into the machine. Following the incident, Mr. Dees lost partial use of his arm and has been left permanently disfigured.

The subject RAM machine was designed and manufactured in Italy, and then sold for use in Alabama. Mr. Dees’ injury in Alabama was not the first time someone had been injured on the same design. Three years before Mr. Dee’s incident, an employee of the Italian manufacturer was injured when he was threading the rollers and his fingers were pulled under the circular guard. Mr. Dees’ injury occurred when his hand was pulled into the nip over the top of the circular guard.

After an investigation into the Italian accident, an expert safety consultant prepared examined the incident and the guard. He then prepared a report that stated that the design of the circular guard violated the benchmark safety standard. The subject benchmark standard, a European Union standard, prohibited the use of circular guards to protect user from the in-running nip point. In response to the Italian accident, the manufacturer changed the guard in Italy to comply with the applicable safety standard. The manufacturer, however, did not inform the Alabama employer of the accident, the expert’s findings and recommendation, nor of their change of the safety guard.

Even after the filing of Mr. Dees’ suit and years of discovery, the Italian manufacturer never informed the Alabama employer of this important information. The Alabama employer was informed by Evan Allen, a Beasley Allen lawyer, during a deposition. Needless to say, both the Plant Manager and Director of Safety of the Alabama employer testified that they needed this information and they would have acted to change the shape of the guard if they had known of the prohibition of its use.

Plaintiff’s expert engineer in the Dees case did a good job of explaining why the circular guard was prohibited. Simply put, the use of a circular guard turned one hazard into two hazards. He also told the jury that not only did European standards outlaw the use of the circular guard, but so did American safety standards including ANSI (American National Standards Institute) and OSHA (Occupational Safety & Health Administration).

The RAM manufacturer defended the case as Defendants normally defend any case. First, it blamed Mr. Dees. Next, it blamed the Alabama employer for not properly training Mr. Dees. For good reason, the jurors did not buy that defense.

Evan Allen and Kendall Dunson, lawyers from our firm’s Personal Injury & Products Liability Section, represented Mr. Dees in his case. They did a very good job in preparation and trial of the case. The case was filed in the Circuit Court of Conecuh County, Alabama (case number CV-2015-900036).

SAFETY DESIGN STANDARDS DO MATTER

Safety Design Standards are enacted or adopted to ensure that products (vehicles, machines, etc.) are safe for us by consumers. Lawyers representing injured clients often refer to these standards as “minimum safety standards” because they are commonly watered down as much as possible to ensure safety and to impose the minimum burden on product manufacturers. Manufacturers that are really safety conscious normally advertise that their products exceed these safety standards. The purpose of design safety standard was crystalized during the recent trial in Conecuh County, mentioned above.

An in-running nip point is created when two rollers are in close proximity and are moving in opposite directions; thus, creating a force that pulls product and anything else, including clothing and human body parts, into the nip/hazard.

The necessity of guarding in-running nip points has been accepted and required for more than a century. Believe it or not, our lawyers still see cases where in-running nips are not guarded at all. In the Dees case, however, the manufacturer made a weak effort to guard the hazard, but that effort actually violated existing safety standards. The jury saw through the Defendant’s baseless arguments and found that the use of the circular guard violated European and American safety standards and rendered a verdict in Mr. Dees’ favor.

BUSINESSES SUE DRONE MAKER OVER $1.4 MILLION FIRE

The tenants of a Pittsburgh-area office building have filed a lawsuit in a Pennsylvania state court against DJI Technology Inc. The company allegedly manufactured defective drone batteries that started a December 2016 fire resulting in more than $1.4 million worth of damage to businesses and a restaurant in the building.
Konica Minolta Business Solutions USA LLC, Steeplechase Business Solutions, CorVel Corp., SSW Holdings Inc. and Ohio Security Co.—insurer for the Sco glo Green tree restaurant—filed two suits against California-based DJI Technology, several of its subsidiaries, its distributor and the tenant who had purchased the DJI drone.

It's alleged in the complaints that the lithium polymer battery in the drone caused a fire in the early morning of Dec. 11, 2016, at the Foster Plaza building in the Pittsburgh suburb of Green Tree. The complaints say:

The DJI battery was in a defective condition unreasonably dangerous to plaintiff at the time it left the possession of defendant DJI Technology Inc. The DJI Battery was the proximate cause of the fire, which occurred at the property.

The separate complaints, filed by the Plaintiffs, which contained largely identical language for the claims and the background of the fire, included claims of negligence and strict liability against each of the five DJI Defendants and its distributor, Koozam Group Inc., and negligence against Tetra Tech Inc., the tenant that had purchased the allegedly defective battery. It's alleged that smoke and water from the fire damaged other tenants and lost them business during the cleanup process.

It's alleged that Koozam sold the drones online, including through Amazon, and in retail outlets such as Apple stores. Consulting and engineering firm Tetra had bought two DJI Phantom 3 drones from Amazon the year before and kept them in its Foster Plaza office, including one with the defective battery that caused fire. Tetra's failure to properly charge, store or handle the battery led to the fire. “Tetra Tech, Inc. had a duty to other tenants, including Plaintiffs, to be familiar with the DJI Phantom 3 drones, including their instructions and warnings, to ensure that Tetra Tech's use of the drones did not create an unreasonable risk of harm to nearby property.”

CorVel and SSW jointly sought damages in excess of $600,000. Ohio Security sought more than $100,000 it had paid in insurance claims to Sco glo, and although they hadn't filed a complaint, court records showed Konica Minolta and Steeplechase would seek more than $700,000.

Source: Law360.com

AN UPDATE ON THE E-CIGARETTE PRODUCT LIABILITY LITIGATION

As the use of electronic cigarettes (e-cigarettes) continues to gain popularity, so too have catastrophic injuries arising out of the use of those products. As a result, the number of lawsuits involving these products continues to rise. The lawsuits typically center on claims of strict liability and negligence. Under a strict liability theory, the manufacturer or seller of an unreasonably dangerous product may be found liable for the product’s defective condition even though there was no overt negligence or carelessness in the manufacture or sale of the defective product. Under a negligence theory, the manufacturer or seller’s actions or inactions in the manufacture or sale are at issue. In many cases both theories are applicable due to an already unreasonably dangerous product being sold without the manufacturer’s instructions and warnings leaving the consumer with a potentially explosive situation.

One of the unique aspects of this litigation is that sellers (and sometimes the distributors) of the products can be held liable as part of the chain of distribution in some states (e.g. Florida and California), but not in other states (e.g. Alabama, Mississippi and Tennessee) that have passed varying types of legislation to protect “sellers” unless certain conditions are met. The “innocent seller” legislation can take a variety of forms with some states providing statutory indemnification to the seller or distributor from the product manufacturer. Other states have created statutory tests allowing dismissal of sellers assuming certain criteria are not met by the Plaintiff. There are even a few states that simply bar certain claims against sellers altogether.

Another unique aspect of the litigation is that the major name brand battery manufacturers are attempting to defend these product liability lawsuits by claiming that they never anticipated their 18650-sized lithium ion batteries would be used in applications such as e-cigarettes, which require 18650-sized lithium ion batteries. For instance, after LG Chem, Ltd. was named in dozens of lawsuits as the manufacturer of defective 18650 lithium ion batteries, LG Chem, Ltd. subsequently issued various “safety warnings” stating that its batteries are “not intended for sale to or use by consumers.” However, tens of thousands of their 18650-sized batteries continue to be sold as replaceable and rechargeable batteries for e-cigarette devices.

Beasley Allen lawyers have filed several lawsuits throughout the country against manufacturers and sellers of defective e-cigarette products. These cases typically involve significant trauma and burn injuries resulting from the explosions and fires from unreasonably dangerous devices that were marketed as a safer alternative to traditional cigarettes. Unfortunately, we anticipate that this litigation will continue until appropriate steps are taken by the e-cigarette industry to protect the consumers.

If you need more information on this subject, or have a potential claim, contact Will Sutton, a lawyer in our firm’s Toxic Torts Section, at 800-898-2034 or by email at William.Sutton@beasleyallen.com.

ENGINEERING CO. WORKER’S $3.3 MILLION JURY AWARD REDUCED TO $600,000

A Florida federal judge reduced a $3.3 million award by a jury to a woman whose hands were mangled by an R.T. Engineering Corp. wire bundling machine to $608,744. U.S. District Judge Brian J. Davis did not elaborate on his reasons for reducing the award to Cheri M. Conklin in his order. The jury found in Conklin’s favor, deciding that R.T. Engineering was 18 percent responsible for her injury, while her employer, Carlisle Interconnect Technologies, was 77 percent responsible. The jury found that a defective design or manufacture of the 22042 Wrap Line Power Feeder Big Blue Five Head, or “Big Blue,” machine that injured Conklin was responsible for the injury. It also found that Conklin was partly responsible for his injury.

The Plaintiff alleged that while she was a manufacturing associate at Carlisle, she was working on Big Blue, which was installed by R.T. Engineering and used to make aircraft wire bundles. She saw that the tape wrapping the bundles being fed into the machine was becoming wrinkled and attempted to smooth out the wrinkles before the wire bundle was pulled into the machine, per her training. However, her right hand got caught in the machine and when she tried to pull it out with her left hand, both hands became caught and pulled into the machine. She suffered several lacerations, fractures, breaks and nerve damage to both hands, and a portion of the skin was torn off her right hand.
It was alleged that Big Blue was in an “unreasonably dangerous condition,” with no safety guards on mechanisms that could pull body parts into the machine. In addition, it was alleged that there were no warnings about the lack of a safety guard or the danger that body parts could be caught and pulled into the machine. The machine also did not have instructions provided on how to shut it down in an emergency, and the control panel could not be reached by someone operating the machine, according to the complaint.

The Plaintiff is represented by Keith L. Maynard and Sarah Shedlarski of Spohrer & Dodd PL. The case is Conklin v. R.T. Engineering Corp., (case number 3:17-cv-00415) in the U.S. District Court for the Middle District of Florida.

Source: Law360.com

IX. MASS TORTS UPDATE

FDA PROPOSING CHANGES TO DEVICE APPROVAL PROCESS

On Nov. 26, 2018, the U.S. Food and Drug Administration (FDA) announced plans to overhaul the process through which most medical devices are cleared to be marketed in the United States. The changes are intended to modernize the decades-old process, which has been criticized by experts for causing the widespread marketing of dangerous medical devices.

In 1976, Congress passed the Medical Device Amendments to the Federal Food, Drug and Cosmetic Act (FDCA), a law meant to assure Americans that devices recommended by their doctors would do good and not harm. Under the Medical Device Amendments (MDA), the manufacturer of a Class III medical device (those that present a potential, unreasonable risk of illness or injury) must obtain the FDA’s approval of a premarket approval application (PMA) before marketing the device in interstate commerce.

There are several ways that medical devices can avoid being subjected to the PMA requirement. Most notably, a medical device is not subject to the PMA requirement if it is “substantially equivalent” to a predicate device. A predicate device may be either:

• one marketed prior to the MDA’s enactment in 1976; or
• one “substantially equivalent” to a device marketed prior to the MDA’s enactment in 1976.

A device manufacturer can obtain an FDA finding of “substantial equivalence” by submitting a pre-market notification to the agency in accordance with Section 510(k) of the FDCA. A device found to be “substantially equivalent” to a predicate device is said to be “cleared” by the FDA as opposed to being “approved” following submission of a PMA.

If the FDA concludes on the basis of the Section 510(k) notification that the device is “substantially equivalent” to a pre-existing device, it can be marketed without further regulatory analysis. This is a much easier bar to pass than the FDA’s rigorous PMA process under which manufacturers must submit detailed information regarding the safety and efficacy of their devices, which the FDA then reviews, spending an average of 1,200 hours on each submission.

The Section 510(k) notification process is by no means comparable to the PMA process; in contrast to the 1,200 hours necessary to complete a PMA review, the Section 510(k) review is completed in an average of only 20 hours.

A Section 510(k) notification requires little information, rarely elicits a negative response from the FDA, and gets processed very quickly. In “clearing” a device under the Section 510(k) process, the FDA makes absolutely no findings related to safety or efficacy.

A number of medical devices that obtained approval through the Section 510(k) process have proven to be defective and linked to serious, permanent injuries in vast numbers of patients. Examples of these defective devices include metal-on-metal hip replacements and transvaginal mesh linked to pain and bleeding.

The FDA’s overhaul of the 510(k) process is meant to prompt manufacturers to base new products on technologies that are 10 years old or less. Almost 20 percent of medical devices are cleared after a showing of “substantial equivalence” to a predicate device that’s more than a decade old. The FDA’s announcement to overhaul the 510(k) process came one day after the publication of a global investigation into medical device safety by more than 50 media organizations.

Led by the International Consortium of Investigative Journalists, the group found that more than 1.7 million injuries and nearly 83,000 deaths suspected of being linked to medical devices had been reported to the FDA over a 10-year period. Earlier this year, a documentary film titled “The Bleeding Edge” was released that exposed the loose regulatory requirements that often allow dangerous medical devices to enter the U.S. market. “The Bleeding Edge” can be seen on Netflix.

The proposed changes are certainly a step in the right direction. However, device manufacturers would still be able to base 501(k) clearances on predicate devices that were also 510(k)-cleared, meaning neither the new device nor its predecessor are approved by a showing that the device is safe and effective.

If you need more information contact Beau Darley, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Beau.Darley@beasleyallen.com.

Sources: Br. of U.S. as Amicus Curiae in Horn v. Thoratec, Inc., 3d Cir. No. 02-4597 (filed May 14, 2004); Medtronic, Inc. v. Lohr, 518 U.S. 470 (1996); Associated Press; Law360.com

THE BONE CEMENT LITIGATION

Our firm is actively involved in the Bone Cement Litigation. This litigation currently involves four models of high-viscosity (HV) bone cements used in total knee replacement surgeries. Those models are:

• Simplex HV Bone Cement;
• Cobalt HV Bone Cement;
• CMW 1 Bone Cement; and
• SmartSet HV Bone Cement.

Simplex HV Bone Cement, which was approved most recently, is marketed by Howmedica Osteonics Corporation, also known as Stryker Orthopaedics (Stryker). It is manufactured for Howmedica/Stryker by aap Biomaterials GmbH in Dieburg, Germany. Prior to the release of Simplex HV, Stryker promoted a non-HV bone cement, called Simplex P, as being stronger, safer, and more effective than HV bone cements manufactured and sold by other companies at that time. Despite Stryker promoting that its non-HV cements were stronger, safer, and more effective than HV bone cements, Stryker devised a plan to design, manufacture, market and sell its own HV bone cements to tap into the growing HV cement market.

A few years later, in 2014, Stryker started advertising its new Simplex HV Bone Cement as faster and having the
same strength as non-HV Simplex P. However, in fact—and as previously advertised by Stryker—the HV cement is less effective, and more prone to component shifting, loosening, and failure than its non-HV counterpart. Now, medical literature is beginning to confirm something Stryker has known for years: that HV bone cements are more prone to failure than non-HV cements.

Beasley Allen lawyers have filed two separate actions in federal court in Dallas, Texas, on behalf of individuals who suffered early failures of the total knee replacements due to tibial component debonding, leading to the need for revision procedures. They expect that discovery and medical literature will show this trend of failures was not a coincidence but, instead, the result of calculated decisions by Stryker to market and sell Simplex HV bone cement knowing that it would increase individuals’ risk of early failures.

Lawyers in our firm’s Mass Tort Section continue to investigate cases involving early knee replacement failure due to high-viscosity bone cement. If you or a loved one has experienced complications from knee replacement surgery, requiring revision surgery, or you need more information on a potential claim, contact Roger Smith or Ryan Duplechin, lawyers in our firms Mass Tort Section, at 800-898-2034 or by email at Roger.Smith@BeasleyAllen.com or Ryan.Duplechin@BeasleyAllen.com.

X. BUSINESS LITIGATION

**Stryker’s $248 Million IP Judgment Is Affirmed On Appeal**

The Federal Circuit Court of Appeals has affirmed Stryker Corp.’s $248 million judgment in a surgical tool patent dispute that had previously gone to the U.S. Supreme Court as part of a case that set a new and more relaxed standard for awarding enhanced damages in patent suits. In an order, a three-judge panel summarily affirmed the $248 million in damages a Michigan federal judge had ordered Zimmer Inc. to pay for infringing Stryker’s surgical tool patents. This came after the high court’s decision in a case known as Halo, which made it easier to win enhanced damages in patent cases.

In early December, the appellate panel heard oral arguments on whether it should reconsider the damages award. The judges had repeatedly pushed back against Zimmer’s argument that a lower amount was warranted, saying it was not the job of an appellate court to split hairs over specific damages amounts. Federal Circuit Judge Sharon Prost had said:

> You’re saying you’re agreeing there is going to be enhancement, but now we are talking about whether it should be three times, or two and a half times. It is hard for us as an appellate court to scrutinize exactly what percentage the district court should have applied.

The panel was unpersuaded by Zimmer’s contentions and upheld the treble damages the lower court had awarded to Stryker.

The case began in 2010, when Stryker filed suit alleging that Zimmer infringed several patents. The jury found in favor of Stryker in 2013, after which the district judge awarded enhanced damages and attorneys’ fees. However, the Federal Circuit held in 2014 that under the standard that existed at the time, Stryker was not entitled to enhanced damages or fees. The test required that enhanced damages could be awarded only when there was a high likelihood that the infringing party knew of the risk of infringement.

Stryker appealed to the Supreme Court, which agreed to hear the case in tandem with an appeal by Halo Electronics Inc., and held that the enhanced damages test was “unduly rigid.” The justices granted district judges discretion to decide when to award enhanced damages, but said it should “be reserved for egregious cases typified by willful misconduct.” After the new Halo test was implemented, the district judge ruled in June 2017 that Stryker was entitled to treble damages and said it should receive $248 million from Zimmer.

The patents-in-suit are U.S. Patent Numbers 6,022,329; 6,179,807; and 7,144,383. The case is Stryker Corp. v. Zimmer Inc., (case number 17-2541) in the U.S. Court of Appeals for the Federal Circuit.

Source: Law360.com

**Boston Scientific Wins $35 Million Verdict In Heart Valve Patent Suit**

A Delaware federal jury found last month that Edwards Lifesciences Corp. damaged Boston Scientific SciMed Inc. in the amount of $35.4 million by infringing a heart valve patent. The jury rejected claims that Boston Scientific infringed three Edwards patents. The jury found in part that Boston Scientific’s U.S. Patent Number 8,992,608 for a catheter-placed valve was valid, and was infringed by Edwards’ Sapien 3 aortic valve through December 2016. Interest and damages for 2017 and 2018 will be set by the court post-trial.

While the jury’s award was well below the $119 million in royalty damages claimed by the company, there will be further damages proceedings in the case. Edwards’ claims that Boston Scientific’s Lotus aortic valve infringed three Edwards patents, referred to as the “Spenser” patents, were rejected by the jury.

Desiree Ralls-Morrison, Boston Scientific senior vice president, general counsel and corporate secretary, in a statement, said:

> We continue to be encouraged by the sustained record of positive legal rulings, first in European courts and now in the U.S., which upholds our company’s intellectual property.

Edwards, in its own statement, said it “does not expect to pay the jury award since, earlier this year, the U.S. Patent and Trademark Office determined that all asserted claims of the ’608 patent were invalid.” The company also said it plans to appeal the jury’s finding that its Spenser patents are valid, but not infringed.

Jurors found that Edwards both directly infringed Boston Scientific’s patent and supplied infringing components from the U.S. “to another country, intending them to be combined in a way that Edwards knew would have directly infringed if it occurred in the United States.” Edwards, meanwhile, failed to convince the jury that it had been using the same feature as described in the Boston Scientific patent for more than a year before the ’608 patent’s effective date.

Boston Scientific argued that Edwards directly infringed three claims of the ’608 patent, titled “Everting Heart Valve,” which was issued in March 2015. In its initial complaint, filed in April 2016, the company accused Edwards of selling the Sapien 3 knowing it to be “especially made or especially adapted for use in an infringement” of the ’608 patent, “and that the Sapien 3 is not a staple article or commodity of commerce suitable for substantial noninfringing use.” The Boston Scientific patent-in-suit is U.S. Patent Number 8,992,608. The Edwards patents-
The case is *Boston Scientific SciMed Inc. v. Edwards Lifesciences Corp.*, (case number 16-00275), in the U.S. District Court for the District of Delaware.

**BIOTECH CO. SAID TO BE RESPONSIBLE FOR $3.6 MILLION ARBITRATION’S JUDGMENT**

A trading firm has asked a New York federal court to enforce a $3.6 million international arbitration judgment against a biotechnology company that reneged on a financial arrangement. In February 2017, Three Brothers Trading LLC and Generex Biotechnology Corp. signed a contract agreeing that the trading firm would provide referral services to Generex, which wanted to secure financing for its business, according to the petition to confirm the arbitration award.

The petition states that, instead of providing a retainer fee to Three Brothers Trading, pursuant to the agreement Generex agreed to a 60-day “no shop” exclusivity provision, which gave Three Brothers Trading the exclusive right to secure financing for Generex during the exclusivity period, which ran from Feb. 8 to April 9, 2017. The petition states further:

The contract included an explicit remedy for breach of the exclusivity provision: In the event that Generex secured any financing from an investor not referred by [Three Brothers Trading] during the exclusivity period, Generex was to compensate [Three Brothers Trading] as if [the trading firm] had sourced the financing.

The parties also agreed to arbitrate any disputes concerning the contract, an avenue that was put to use in November 2017 after Generex rejected an investment from an investor Three Brothers Trading presented and instead agreed to enter into a financing agreement with another investor not referred by Three Brothers Trading during the agreed-upon exclusivity period, the petition states.

Following the arbitration process, an arbitrator from the American Arbitration Association said it was “clear Generex breached the agreement” and awarded Three Brothers Trading $210,000 in “liquidated damages and the economic value today of 84,000 warrants convertible to [Generex’s] stock exercisable at $2.50 per share as of September 24, 2018.” In total, the arbitrator awarded Three Brothers Trading $3,651,213. The petition states:

The arbitrator also concluded that [Three Brothers Trading] was ‘the prevailing party entitled to legal fees in the amount of $93,304.06, plus costs of $12,392.50,’ and directed Generex to reimburse [Three Brothers Trading] $3,312.50 for fees and expenses associated with the arbitration.

The case is *Three Brothers Trading LLC v. Generex Biotechnology Corp.*, (case number 1:18-cv-11585) in U.S. District Court for the Southern District of New York.

Source: Law360.com

**XI. AN UPDATE ON SECURITIES INSURANCE AND FINANCE LITIGATION**

**$250 MILLION STATE FARM SETTLEMENT IS APPROVED**

An Illinois federal judge has given final approval to a $250 million settlement in a class action accusing State Farm of using campaign donations to buy an Illinois Supreme Court justice’s vote. An objector to the settlement has said she will likely appeal. At a hearing in an Illinois federal court, U.S. District Judge David Herndon granted final approval to the settlement and approximately $90 million in fees and expenses for the 10 firms and lawyers that represented the class of nearly 5 million State Farm policyholders.

This has been a very lengthy battle. In fact, the ruling comes after 20 years of litigation between the class and State Farm, spread out between two separate suits. The litigation began with a class action accusing State Farm of using $250 million to settle the suit. Judge Herndon granted preliminary approval from the bench that day. Only one person, Lisa Marlow, objected to the settlement.

The policyholders are represented by Robert A. Clifford and Kristofer S. Riddle of Clifford Law Offices PC; Elizabeth J. Cabraser, Robert J. Nelson and Kevin R. Budner of Lieff Cabraser Heimann & Bernstein LLP; Brent W. Landau and Jeannine M. Kenney of Hausfeld LLP; Erwin S. Chemerinsky of the University of California School of Law; John W. Barrett of Barrett Law Group PA; Richard Barrett of Law Offices of Richard Barrett PLLC; Jonathan L. Loew and Steven P. Blonder of Much Shelist Denenberg Ament & Rubenstein PC; Patrick W. Pendley of Pendley Baudin & Coffin LLP; Thomas P. Thrash and Marcus N. Bozeman of Thrash Law Firm PA; W. Gordon Ball of Gordon Ball PLLC; and Stephen A. Saltzburg of Stephen A. Saltzburg, Attorney at Law.

The case is *Hale et al. v. State Farm Mutual Automobile Insurance Co. et al.*, (case number 3:12-cv-00660) in the U.S. District Court for the Southern District of Illinois.

Source: Law360.com

**XII. PREMISES LIABILITY UPDATE**

**LIABILITY FOR NEGLIGENT SECURITY**

Negligent security is the basis by which someone injured by a third party tries to hold liable either the owner or tenant of the property where the criminal injury was suffered. There is a duty imposed upon the landowners and possessors of property to offer reasonable security measures to protect their lawful visitors from foreseeable crimes of third parties. In negligent security cases, an assumption is made that the crime could have been prevented or at least made less likely by using appropriate security measures.
In a negligent security action, the Plaintiff needs to show that the owner or tenant failed to exercise reasonable care to discover similar prior criminal activities or failed to give adequate warnings, so visitors could avoid injury. A Plaintiff must show they were lawfully present on Defendant’s property, the Defendant breached their duty to offer reasonable security, the Plaintiff was injured because of third party’s acts that were reasonably foreseeable to the Defendant, the Plaintiff would not have been injured but for the Defendant’s breached duty, and the Plaintiff incurred actual damages.

Foreseeability is a critical issue in negligent security cases. A court will look at whether there were prior, similar crimes in the same location that the owner or possessor knew or should have known about. Additionally, the court may also consider how frequently law enforcement has been called to a property, the nature of past crimes, and the closeness in time of the prior crimes to the injury.

On Oct. 2 of this year, parties in a negligent security shooting at an apartment complex in Atlanta settled for $3 million. The case arose from a fatal shooting at Creekside Forest Apartments on Jan. 6, 2016. Evidence showed that the security gates at the complex were not functional, the guard shack was in shambles and overall the security was lacking. The president of the complex’s security company went as far as to say that if you lived at Creekside Forest, “you’re a sitting duck.”

A former employee of one of the Defendant companies testified by affidavit that the “security guards” at the complex had not been stopping crime, but instead were “taking half of the money that changed hands in drug deals on the property.”

Another, similar situation occurred Nov. 24, again in Atlanta. Mallory Heath, a 33-year-old resident of Post Glen apartments, was robbed and shot while in the breezeway at the complex. The man accosted her, stole her purse and shot her in the leg. Lawyers for Ms. Heath are preparing a negligent security suit. Other residents at the complex said that the security gates for cars to enter the complex are often broken.

Caroline Watkins, another Post Glen resident, lives near the breezeway where the shooting occurred. She stated that the complex’s security is an ongoing issue. The front of the complex has two entry gates: one for residents and one for guests. When the resident gate is not working correctly, management will just leave the guest gate open. “If the gate’s open, anyone could walk in and break in,” she said, adding that the gate was open for most of the Thanksgiving break.

Residential cases like these are common. But negligent security cases arise in many circumstances, from nightclub shootings to assaults in nursing homes. The settlements and verdicts in these cases do more than just compensate those who suffered an injury or tragic loss. They also may spur a community-wide benefit because the results can cause others to examine themselves.

Lawyers in our firm are investigating and litigating numerous negligent security cases. If you have a question about a negligent security case, contact Parker Miller at Parker.Miller@beasleyallen.com or at 800.898.2034. Parker, who is in our Atlanta office, will be glad to talk with you.


Mounting Camp Fire Lawsuits Target PG&E Infrastructure

Californians who lost their homes in the deadliest and costliest wildfire in the state’s history are pursuing claims against Pacific Gas & Electric (PG&E), alleging the utility knows its electrical systems are old and unsafe and that it triggered the Camp Fire that ravaged Butte County in November.

One proposed class action filed Dec. 5 in a California state court claims that faulty and poorly maintained PG&E equipment started the blaze on Nov. 8. The Plaintiffs point to transmission towers owned by PG&E that malfunctioned in the area shortly before the fire broke out.

According to the lawsuit, PG&E continued to allow vegetation in the high-fire risk area to grow too close to electrical poles and lines. Once the fire started, seasonal high winds fueled the flames.

Another lawsuit filed Dec. 6 in San Francisco Superior Court by a group of Camp Fire survivors claims that as strong winds blew through the area, a poorly maintained, uninsulated jumper cable made contact with a PG&E transmission tower, sending “blazing hot molten materials” into the dry vegetation.

The Camp Fire completely destroyed the communities of Paradise and Concow, including five public schools, a hospital, a nursing home, several churches, a shopping center, several restaurants and other businesses, and nearly 14,000 homes. The area looked like a “war zone.” The fire killed 88 people and destroyed more than 19,000 structures before it was fully contained on Nov. 25.

The class action Plaintiffs say that the California Public Utilities Commission and other state agencies have repeatedly pointed to PG&E’s faulty infrastructure as the cause of previous fires and other disasters, including the deadly gas line explosions that leveled parts of San Bruno in September 2010, killing eight people and injuring several others.

People displaced by the October 2017 wildfires that swept through Napa and Sonoma Counties, killing 43 and destroying thousands of homes, businesses and farms, blame downed PG&E power lines that were spotted in at least four Sonoma County locations where some of the heaviest damage occurred.

A pair of other lawsuits, filed Dec. 11 in Butte County Superior Court, accuses PG&E of spending as much as $50 million on advertising to improve its image in the years following the San Bruno Blast and not enough on maintaining and upgrading its infrastructure.

The lawsuit, which claims PG&E is a threat to public safety, seeks an injunction to “halt PG&E’s false advertising” that claims to place “the safety of its customers and operations first.” Frank Pitre, a lawyer representing some of the Butte County fire victims, told the San Francisco Chronicle:

“We’re using the injunction because we need to send a message to those people who are in charge of the decision-making that they have to start now redirecting money to safety as opposed to talking about it.

Sources: Law360, San Francisco Chronicle, Fox40, RightingInjustice

Hotel Employee Filmed Woman in the Shower and Then Extorted Her

A Chicago woman has filed a $100 million lawsuit against Hilton Worldwide, alleging that one of the hotel conglomerate’s employees filmed her in the shower without her knowledge and later attempted to extort her over the footage. The plaintiff is accusing the hotel chain of
negligence, saying it allowed the suspect access to her personal information.

The woman, who wishes to remain anonymous, told “Good Morning America” the hidden-camera recording took place during her July 2015 stay at the Hampton Inn and Suites in Albany. However, the woman says she wasn’t aware of the tape’s existence until September of this year when she received an email with a link to a porn site.

The same day, the woman received another email from the same address demanding she provide more nude footage of herself if she didn’t want the video published along with her name and job information. She told GMA:

My initial reaction was, ‘Your life is absolutely ruined, people are going to see this, they are going to see you naked and they are going to assume things.’

When the woman didn’t comply, the video was circulated to some of her colleagues along with a new demand to her: $2,000 up front and $1,000 a month for the following year. The woman stated:

It was just absolutely traumatizing because these are people I went to law school with. They are friends, they are coworkers. And they were sent a link to what looks like an email I sent.

It has been reported that other women may have had the same experience as did the Plaintiff in this case at the same hotel. However, that is yet to be confirmed. However, the hotel has to have gotten the message that this sort of thing should never happen.

Source: USA Today

XIII.
TRANSPORTATION LITIGATION

Beasley Allen Reaches Confidential Settlement In Tractor Trailer Injury Case

Margaret Freeman was driving her Jeep Wrangler in Madison County, Alabama. It was a beautiful day and traffic was moving smoothly on Interstate 565. She was traveling with a friend and obeying all traffic laws when unexpectedly a tractor trailer truck shot across the highway and hit her vehicle hid on. The truck never slowed down and never attempted to avoid hitting her vehicle. She was fortunate that the impact was indirect and she wasn’t killed; however, the injuries she sustained were severe nonetheless.

The driver of the tractor trailer had no excuse for why he lost control of his vehicle and drove through the interstate into oncoming traffic. He was seen by multiple paramedics and EMTs and at no point told anyone he passed out or had a medical event. Nine hours later, at the suggestion of his insurance company representative, he was driven to the hospital by the insurance company employee where he tells the hospital that he passed out at the wheel. The hospital diagnosed the driver with a possible syncope event with unknown etiology, but did not do any testing, nor does the doctor consider that he may have fallen asleep. There is no objective evidence that he experienced a medical event.

Chris Glover, a lawyer in our firm, took the case and our investigators went to work. Their investigation revealed that there was substantial evidence that the driver fell asleep while driving. The driver suffered from severe obstructive sleep apnea. His daytime sleepiness was so severe that he had complained of that fact 25 times in the three months leading up to the accident. The driver had even experienced a sleep related driving incident shortly before the crash. He testified that one of the times he got sleepy was when he didn’t sleep well because his refrigerator unit on his truck wasn’t operating when he stopped for rest. The night before the crash his refrigerator unit was not working. The key testimony came from two motorists who saw this driver nodding off at the wheel in the miles leading up to this crash.

The circumstances of the crash reflect that it was the prototypical sleep-related incident. There are numerous articles on the characteristics of crashes that occur when drivers fall asleep. This incident fit square within those criteria even down to the time of day it occurred. Trucking companies and their insurers claiming that drivers experience medically related events to avoid liability is getting far too common. Many times, as was the case here, these incidents are caused by driver fatigue, distraction or inattention.

Chris Glover, who heads up our Atlanta office, and his staff worked this case up. Chris says he was humbled to have the opportunity to help this client. He says that he is convinced that this incident would have been avoided if the driver had simply pulled over prior to falling asleep.

Settlement Is Reached For Man Injured By Pizza Delivery Driver

Joseph Workman, who was injured when a Papa John’s delivery driver turned left across two lanes of travel in front of him, has settled his lawsuit. Mr. Workman was driving his motorcycle on a public street in Selma, Alabama, at the time of the incident. The impact sent him over the delivery car’s hood, fracturing the scaphoid bone in his wrist.

Mr. Workman had open reduction internal fixation surgery, in which two screws were inserted into his wrist to hold the bone in place for it to heal. Although the bone healed, complications from surgery led to a follow-up surgery to remove the screws.

Mr. Workman brought claims of negligence and wantonness in his lawsuit against Papa John’s and the driver. There was also a claim for negligent hiring, training, and supervision in the complaint against Papa John’s. Papa John’s defended the case and claimed that because the light on the motorcycle was out, the delivery driver couldn’t see the motorcycle when she pulled out in front of him.

Warner Hornsby, a lawyer in our Personal Injury & Products Liability Section, represented Mr. Workman. Warren was able to reach a confidential settlement on Mr. Workman’s behalf that will help him get his life back together as he recovers from his injuries. Warner says it was his privilege to help him during this trying time in his life.

Fatal Southwest Flight 1380 Was Year Isn’t The Making

Southwest Airlines Flight 1380 departed New York’s LaGuardia Airport April 17, and was bound for Love Field in Dallas, Texas. Approximately 20 minutes into the flight a fan blade of one of the Boeing 757-200 jet’s engines broke off and caused the engine to explode. Shrapnel from the engine broke through the encasement, creating an contained engine failure and cracking a passenger’s window. The cracked window led to a violent cabin decompression and a passenger was partially sucked out of the window. Bank executive and mother of two from Albuquerque, New Mexico, 43-year-old Jennifer Riordan, was the passenger and she
later died from her injuries. As discussed in this Report previously, Ms. Riordan was the first passenger fatality on a U.S. air carrier in nearly a decade and the first for Southwest in its 51-year history.

NTSB holds hearing

The investigation into what caused the fan blade to break is still ongoing but to better understand what caused the series of tragic events, the National Transportation Safety Board (NTSB), which is charged with investigating such incidents, held a hearing last month, according to the Washington Post. It questioned other federal officials from the Federal Aviation Administration (FAA), the agency that regulates aviation in the U.S., along with Southwest representatives about the design and testing of the engine, and what steps have been taken following the fatal flight. New details about the harrowing flight were revealed during the hearing.

• Those on the flight reported a loud boom that was followed by strong vibrations and the aircraft rolled 41 degrees before the pilots could regain control.

• The loss of cabin pressure was so great that it was hard to hear and difficult for flight attendants to reach the pilots by intercom.

• Flight attendants checked on passengers, row by row, and discovered Riordan was still strapped to her seat but her upper torso, arms and head were outside the window, USA Today reported. Two female flight attendants struggled to get her back in the cabin and were assisted by two male passengers. Flight attendants and an EMT and nurse who were on board began CPR and other life-saving measures for Riordan.

• Eight other passengers were injured including at least one of the men who helped pull Riordan back in the window.

• NTSB investigators found evidence of metal fatigue in the broken fan blade and determined the fatigue likely began around the time of its last rigorous inspection in 2012.

Fatal incident prompts changes in inspection processes

Flight 1380’s aircraft had been inspected just two days before the fatal flight yet the last time it received a thorough inspection was six years ago. At the time, the inspection process used on the plane met the FAA requirements. But since that time, experts have determined that the process, which used fluorescent dye to highlight flaws, could not detect the microscopic fractures that were already beginning.

Within days after Flight 1380 CFM International, the engine’s maker advised inspectors to use newer, more effective processes for finding microscopic cracks earlier in a component’s life in its Service Bulletin 72-1033. The FAA followed with an Airworthiness Directive (AD) requiring inspectors to use more modern processes including:

• Ultrasonic Testing—In this process, high-frequency sound waves are used to test the thickness of materials, such as metal used in aircraft components, and represent the properties of the item being tested and detect anomalies.

• Eddy Current—The process involves alternating electrical currents passed through a coil thereby producing a magnetic field, which induces current flow that travels in closed loops called eddy currents. Eddy currents create their own magnetic field that can be used to test materials for flaws.

During the November hearing, investigators leaned heavily upon FAA regulators for failing to issue a similar AD demanding more effective inspection processes immediately following an incident in August 2016 that was very similar to Flight 1380, as described previously in this Report.

The flight, also a Southwest Airlines flight, was forced into an emergency landing in Pensacola, Florida, after an uncontested engine failure started a fire beneath the right wing. Debris from a broken fan blade slashed through the fuselage, wing and tail, forcing the cabin to lose pressure.

FAA experts explained that they had never witnessed such an incident at the time and believed the Pensacola incident was an anomaly. The agency took corrective action over the aircraft’s unsafe condition but believed it had time to address the issue more broadly. It opted to begin the normal, yet slower, process for new regulations, one that includes a public comment period.

Southwest Flight 1380 also prompts changes in frequency of inspections

The NTSB's findings of metal fatigue also prompted the FAA to order airlines to inspect fan blades on aircraft with similar engines immediately and, moving forward, more frequent inspections were ordered.

Federal safety officials explained that one potential cause for the faulty engine is the frequent takeoffs and landings performed by discount air carriers like Southwest, according to Popular Mechanics. The extra cycles create more wear and tear on the engines. And, because the powerful engines have a vacuum effect, the more takeoffs and landings also increase the amount of debris taken in off the tarmac by the engines. The debris wears on the engine’s components, and one metallurgist explained to the Philly Inquirer that maintenance technicians will clean the blades by blasting away the grit, but some pieces can get lodged in the metal contaminating the area and possibly causing a crack like the one discovered in Flight 1380’s aircraft.

The FAA’s AD that was based on CFM International’s Service Bulletin required inspections on all CFM 56-7B-series engines with 20,000 or greater cycles and future inspections should be conducted at intervals not to exceed 3,000 engine cycles.

FAA’s funding conundrum

An additional complication is the federal budget and what that means to the FAA’s future, including security issues such as inspections and airport security. The FAA is one of several federal agencies facing a shutdown if lawmakers and the White House cannot reach agreement on seven spending bills with looming expiration dates, Politico reported. One of the key parts of the impasse is the Administration’s politically inspired demands for a border wall. The FAA was shut down briefly earlier in 2018 and because certain agencies and programs are exempt from shutdowns, funding has been diverted to support them including border patrol activities. Meanwhile, passenger safety and the safety of all of us on the ground hangs in the balance.

Mike Andrews, a lawyer in our Personal Injury & Products liability Section, handles aviation litigation for the firm. If you have any questions or have a potential aviation case, contact Mike. He will be glad to help you. Mike can be reached at 800-898-2034 or by email Mike.Andrews@beasleyallen.com.

Sources: Jere Beasley Report (August 2018), Washington Post, USA Today, Jere Beasley Report (November 2018), Popular Mechanics, Philly Inquirer, Politico
XIV.
TOXIC TORT LITIGATION CONCERNS

CANADA’S ASBESTOS BAN NOW IN EFFECT

Canada’s ban on the manufacture, import, export, sale and use of asbestos and asbestos-containing products went into effect on Dec. 30. The new regulations were proposed by the Canadian federal government in January 2018. Canada joins more than 60 other countries around the world in banning the mineral.

For decades, asbestos was widely used in construction, shipbuilding, and friction materials due to its durability and fire resistance. But asbestos fibers are microscopic and can become airborne. If inhaled, asbestos can lead to mesothelioma, a rare form of cancer that develops in the lining that surrounds the lungs, abdomen, chest, or testicles. It can take up to 50 years for mesothelioma to develop, at which point the diagnosis is typically dire, with most patients dying within a year or two.

The serious health risks related to asbestos exposure led dozens of countries to ban its use. In the 1980s and 1990s, the United States and Canada fell short of banning asbestos, instead restricting its use.

In 2016, after years of pressure from health experts and family members of asbestos victims, Canada agreed to ban the carcinogenic mineral. Corporations continued to argue that asbestos was safe if proper precautions were used but, ultimately, the scientific evidence won out. Last fall, the Canadian federal government finally agreed to enforce new regulations to do away with the manufacture, import, export, sale and use of the toxic mineral.

The U.S., however, has taken a different stand under the Trump administration. The Environmental Protection Agency (EPA) has released a Significant New Use Rule (SNUR) for evaluating the risk of sub-EPA has released a Significant New Use Stand under the Trump administration. export, sale and use of the toxic mineral. The serious health risks related to asbestos exposure led dozens of countries to ban its use. In the 1980s and 1990s, the United States and Canada fell short of banning asbestos, instead restricting its use. In 2016, after years of pressure from health experts and family members of asbestos victims, Canada agreed to ban the carcinogenic mineral. Corporations continued to argue that asbestos was safe if proper precautions were used but, ultimately, the scientific evidence won out. Last fall, the Canadian federal government finally agreed to enforce new regulations to do away with the manufacture, import, export, sale and use of the toxic mineral.

The serious health risks related to asbestos exposure led dozens of countries to ban its use. In the 1980s and 1990s, the United States and Canada fell short of banning asbestos, instead restricting its use. In 2016, after years of pressure from health experts and family members of asbestos victims, Canada agreed to ban the carcinogenic mineral. Corporations continued to argue that asbestos was safe if proper precautions were used but, ultimately, the scientific evidence won out. Last fall, the Canadian federal government finally agreed to enforce new regulations to do away with the manufacture, import, export, sale and use of the toxic mineral.

The serious health risks related to asbestos exposure led dozens of countries to ban its use. In the 1980s and 1990s, the United States and Canada fell short of banning asbestos, instead restricting its use. In 2016, after years of pressure from health experts and family members of asbestos victims, Canada agreed to ban the carcinogenic mineral. Corporations continued to argue that asbestos was safe if proper precautions were used but, ultimately, the scientific evidence won out. Last fall, the Canadian federal government finally agreed to enforce new regulations to do away with the manufacture, import, export, sale and use of the toxic mineral.

The serious health risks related to asbestos exposure led dozens of countries to ban its use. In the 1980s and 1990s, the United States and Canada fell short of banning asbestos, instead restricting its use. In 2016, after years of pressure from health experts and family members of asbestos victims, Canada agreed to ban the carcinogenic mineral. Corporations continued to argue that asbestos was safe if proper precautions were used but, ultimately, the scientific evidence won out. Last fall, the Canadian federal government finally agreed to enforce new regulations to do away with the manufacture, import, export, sale and use of the toxic mineral.

The serious health risks related to asbestos exposure led dozens of countries to ban its use. In the 1980s and 1990s, the United States and Canada fell short of banning asbestos, instead restricting its use. In 2016, after years of pressure from health experts and family members of asbestos victims, Canada agreed to ban the carcinogenic mineral. Corporations continued to argue that asbestos was safe if proper precautions were used but, ultimately, the scientific evidence won out. Last fall, the Canadian federal government finally agreed to enforce new regulations to do away with the manufacture, import, export, sale and use of the toxic mineral.
for Monsanto, “What you’re seeing here are some cherry-picked things that can be made to look bad.” Plaintiffs in the Roundup MDL call this nonsense, and argue that the newly released documents show that a debate outside Monsanto about the relative safety of glyphosate and Roundup (which contains other chemicals in addition to glyphosate) was also taking place inside the company.

Other emails establish that, internally, Monsanto employees had questions about Roundup’s safety. One Monsanto scientist wrote in a 2001 email, “If somebody came to me and said they wanted to test Roundup I know how I would react—with serious concern.” Monsanto’s lead toxicologist, Donna Farmer, wrote in a 2009 email that she “cannot say that Roundup does not cause cancer,” because “[w]e [Monsanto] have not done the carcinogenicity studies with Roundup.”

While the Environmental Protection Agency (EPA) should have required or conducted appropriate tests regarding Roundup’s safety, documents establish that the EPA simply declared Roundup safe for use in reliance upon research provided by Monsanto. That research evaluated just one of Roundup’s many chemical ingredients in isolation instead of the entire product formulation as a whole. In other words, the EPA neglected its duty to conduct a neutral and unbiased inquiry into Roundup’s safety profile, to Monsanto’s benefit.

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


STUDY LINKS PFC EXPOSURE TO MALE REPRODUCTIVE ISSUES

A new study published in the Journal of Clinical Endocrinology and Metabolism found that the perfluorinated chemicals PFOS and PFOA cause a range of problems with the male reproductive system. The research was conducted in Veneto, Italy where the drinking water has been contaminated by the industrial use of PFCs. Researchers compared male high school students in Veneto who were exposed to the chemicals to those who weren’t and found the exposed group had lower sperm counts, lower sperm mobility and a reduction in “ano-genital distance” which is a measure of reproductive health.

Although the study was small, comparing just 212 exposed young men with 171 controls, the research has international implications due to the widespread use of these chemicals in a variety of items including food wrapping paper, the textile industry, and in firefighting foam. The findings of the study provide a potential explanation as to why a recent study found that sperm counts in the United States, Australia, Europe and New Zealand have fallen more than 50 percent between 1973 and 2011.

This latest discovery adds to the increasing list of potential health effects posed by long-term exposure to PFOA and PFOS. These include testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, high cholesterol and pregnancy-induced hypertensions. As a result, individuals and water systems across the country have been filing suit to ensure their drinking water is decontaminated.

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

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

Source: The Intercept

ENVIRONMENTAL ASBESTOS EMISSIONS

Recently, a California appeals court unanimously revived a lawsuit against two former asbestos manufacturers finding the companies owed a duty of care extending beyond the premises of their facilities. The suit alleged a man, Dean Trapp, developed mesothelioma stemming from airborne exposure to asbestos from the plants that were located several miles away from his home. The plants, local California companies CertainTeed Corp and Calaveras Asbestos, were involved in the production of asbestos cement pipes.

CertainTeed manufactured the pipes during the 1960s until the late 1990s and Calaveras supplied asbestos to CertainTeed from 1976 to 1986. Mr. Trapp, who eventually died of mesothelioma, lived and worked between four and seven miles of the Santa Clara CertainTeed plant for the entirety of his life. While Mr. Trapp never used any of the products or entered the plants, the court concluded that Plaintiff’s allegation of the plants’ specific fibers causing Mr. Trapp’s mesothelioma “was not unprovable.”

The Santa Clara Superior Court originally granted the defendant’s motion for summary judgement in 2016; however, the 6th District California Court of Appeal reversed the grant in November. When discussing Plaintiff’s cause of action for strict liability, the court concluded that the companies participated in the stream of commerce “leading to injury from the allegedly defective product, asbestos.” The District Judge further found the companies should have foreseen the possibility of airborne asbestos fibers traveling to nearby areas.

If you would like more information about this case, or you have any questions concerning asbestos related illnesses, you can contact Sharon Zinns or Ashtyne Traylor, lawyers in our firm’s Toxic Torts Section. Sharon is in our Atlanta office and Ashtyne is in the Montgomery office. They can be reached at 800-898-2034 and by email at Sharon.Zinns@beasleyallen.com or Ashtyne.Traylor@beasleyallen.com.

Sources: Beverly Trapp et al. v. CertainTeed Corp, 2018 WL 6075234.

RAISING AWARENESS OF NALOXONE

An overdose of opioids causes respiratory depression that can lead to hypoxia and, all too often, death. Naloxone (also commonly known as Narcan) is effective in reversing opioid overdoses and is increasingly being delivered and utilized in non-hospital settings by emergency personnel. There is also a current movement, led by the U.S. Surgeon General, to dispense naloxone to the public to those who take opioids or family and friends of opioid patients or addicts.

Paramedics have carried naloxone for many years. As the opioid crisis has grown, police departments have begun equipping their officers with naloxone to reverse the effects of opioid overdoses.
Law enforcement departments in at least 28 states are allowed or required to carry naloxone to respond quickly to opioid overdoses. It is somewhat shocking, and a demonstration of how bad the crisis has gotten, that the Surgeon General is now advising that pharmacies provide naloxone to the general public, but it is important to note that this precaution can save lives.

Naloxone is not itself a controlled substance. It is very effective in reversing opioid overdoses, and recent studies have indicated that administration by laypersons is effective in avoiding death. Naloxone for non-medical personnel is available in nasal spray and autoinjector format, so that it is easy for a layperson to use, with a little training. Narcan, the nasal spray version of naloxone, can be had for as little as $75 for a two-pack.

Naloxone itself is considered a safe medication. In 2015, there were no reported fatalities causes by naloxone alone. But those addicted to opioids may be averse to having Naloxone on hand. When naloxone is administered to patients who are opioid-dependent or acutely intoxicated with opioids, it can rapidly trigger acute withdrawal syndrome, the symptoms of which range from mild behavioral disturbances to reports of cardiovascular instability and pulmonary edema. However, these effects are rarely life-threatening.

It is important to recognize the symptoms of opioid overdose. Signs of opioid overdose include slowed breathing, blue or purplish lips or fingernails, limpness, vomiting or gurgling, and being unresponsive.

Sources: Journal of Therapeutic Advances in Drug Safety, webmd.com

DETROIT DOCTORS INVOLVED IN OPIOID SCHEME MADE HUNDREDS OF MILLIONS

In what federal prosecutors are calling one of the largest health care scams in U.S. history, six doctors from Detroit, Michigan have been charged with running a $500-million opioid scheme. According to the indictment, the five Defendants cheated Medicare and Medicaid out of nearly $500 million by illegally prescribing more than 13 million doses of prescription pain pills to patients. This is just the latest unfortunate incident involving doctors manipulating the public health system and unsuspecting patients for profitable gain.

The Detroit scheme, which prosecutors say had been ongoing since 2013, involved the doctors initially getting their patients hooked on pain pills and then forcing them to undergo painful procedures for the patients to receive more of the addicting substances. The indictment states that among the painkillers prescribed were Oxycontin, Percocet, Opana, Vicodin and Dilaudid.

On a national level, the effects of the opioid epidemic are startling. A study published in the journal JAMA Network Open suggests opioid abuse in the U.S. is now responsible for 20 percent of deaths among young adults—up from just 4 percent in 2001—a far greater pace than any other age group. Comparatively, one in every 65 adults in the U.S. suffered deaths associated with opioids in 2016—a 292 percent increase since 2001. Due to the continued deterioration of the addiction crisis nationwide, the researchers concluded the U.S. lost a total of 1,681,359 years of life in 2016 alone. According to the U.S. Centers for Disease Control and Prevention (CDC), opioid overdose deaths are a major contributing factor to life expectancy in the U.S. declining two years in a row.

But loss of life isn’t the only toll the opioid crisis takes on communities. The CDC estimates the opioid epidemic costs the U.S. about $78.5 billion a year in health care, lost productivity, addiction treatment, and criminal justice involvement.

CHEMOURS SIGNS PROPOSED CONSENT ORDER IN NORTH CAROLINA

The State of North Carolina filed suit in September 2017 against The Chemours Company FC, LLC (Chemours) for the unlawful releases of “GenX” or “C3 Dimer Acid” from its manufacturing processes at the Fayetteville Works Facility (Facility). Chemours was formed by E.I. du Pont de Nemours and Company (DuPont) which transferred ownership of the Facility to Chemours in 2015. Chemours continued to release hundreds of thousands of pounds of GenX contaminating the air, surface water and the groundwater of the North Carolina Facility, including the Cape Fear River.

GenX is a toxic chemical that the U.S. Environmental Protection Agency (EPA) has recognized may present an unreasonable risk of injury to human health and the environment. It has been found to cause kidney, liver, pancreas and testicular cancer in animals. In August 2018, the Cape Fear River Watch (CFRW) followed the above referenced suit by filing a new complaint against Chemours in the Eastern District of North Carolina for the widespread pollution. The CFRW sought an injunction that would prevent Chemours from discharging into the Cape Fear River and require it to control 99 percent of its emissions.

On Nov. 21, 2018, Chemours, the Department of Environmental Quality (DEQ) and the CFRW signed a proposed consent order hoping to settle the pending claims. The order requires Chemours to pay $12 million in civil penalties and $1 million for the costs incurred from the investigation. Furthermore, Chemours will be required to follow monitoring measures, provide permanent drinking water supplies to those whose wells have tested positive for GenX and eliminate at least 99 percent of GenX air emissions. The CFRW has agreed to dismiss its suit against Chemours and to join the State’s case in order to enforce the terms of the order.

Before it can be given final approval, the consent order must undergo a public comment period. The Cape Fear Public Utility Authority (CFPUA) and the New Hanover County Commissioner are opposed to the signing of the order due to the fact that it addresses the concerns for communities in Bladen County but fails to provide any relief to the citizens of New Hanover County. The public comment period was to remain open until Dec. 21.

Due to the holidays, information was unavailable at press as to what has transpired. If you need more information contact Megan Robinson, a lawyer in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Megan.Robinson@beasleyallen.com.

Sources: Star News, Delaware Online, southernenvironment.org, WECT

UPDATE ON NURSING HOME LITIGATION

BEASLEY ALLEN REPRESENTS THE FAMILY OF AN ALABAMA WOMAN WHO DIED FROM A NURSING HOME CHOKING INCIDENT

Swallowing food can be difficult for some nursing home residents. The reasons for this usually stem from a resident’s medical condition. Parkinson’s and Alzheimer’s disease, other neurological conditions, or reduced saliva production due to aging or medication are common

JereBeasleyReport.com
health problem that cause a resident to be at higher risk for choking.

Choking is a preventable type of nursing home injury. Nursing home residents should never choke in nursing homes. However, according to medical studies, choking deaths appear to be on the rise in nursing homes and now are the fourth leading cause of death among nursing home residents.

Nursing homes exist to provide skilled nursing care to elderly and disabled residents. As a business, quality care should be their basic product and mission. Because the risk of choking is a common issue with nursing home residents, it is critical that nursing homes monitor residents during meal times and while taking medications to prevent choking. Nursing homes that do not enforce dietary restrictions or fail to monitor residents while eating or taking medications are putting their residents at risk of serious injury or death.

Lawyers in our firm are fighting to protect the safety and rights of nursing home residents by representing the injured in litigation to hold facilities accountable for their acts of abuse and neglect. We recently filed a lawsuit on behalf of the family of a Talladega, Alabama lady who died as a result of a choking incident at Talladega Health and Rehabilitation Center.

The complaint, filed by Chris Boutwell, who heads our Nursing Home Litigation Team, in Talladega County, Alabama Circuit Court, alleges that our client suffered from a number of health conditions that required the nursing home to provide specialized attention and care while she was eating. The nursing home failed to take the necessary precautions to prevent our client from choking, including providing adequate supervision and monitoring while she was eating. Because of our client’s choking incident, she developed aspiration pneumonia and acute respiratory distress. She died several days later as a result of her acute respiratory distress.

**Resident At Mobile Long-Term Care Mental Facility Beaten To Death By Employee**

Negligent hiring of staff is one of many types of potential neglect that can occur at nursing homes and other long-term care facilities. Long-term care facilities have a legal and ethical obligation to protect their residents from injury caused by their own employees. Negligent hiring happens when a facility fails to perform its due diligence in such things as verifying qualifications, checking references, or conducting a criminal background screening prior to hiring an employee. “Due Diligence” is the effort made by an ordinarily prudent or reasonable party to avoid harm to another party. Failure to carry out this responsibility in the hiring process or in training may be considered negligence. In the long-term care setting, this failure can have tragic consequences.

For an extreme example of the harm negligent hiring can cause consider the case of Matthew Cox. Matthew, a 21-year-old resident at a state-licensed facility for the mentally ill in Mobile, Alabama, died after he was assaulted by one of the facility’s employees. The employee who recently pleaded not guilty to one charge of murder, allegedly stomped Matthew in his abdominal area causing injuries that ultimately led to his death. An autopsy showed that Matthew died from blunt force trauma.

According to the Alabama Department of Mental Health (ADMH), the facility is one of 20 operated by the New Way Out Corporation, which does business locally as Petway Residential Facilities, Inc. The company is owned and operated by an individual, who has several other registered businesses in the Mobile area. State certification records indicate the facility is managed by a subcontractor doing business as French Residential Facilities, Inc.

ADMH requires service providers who operate these types of facilities to perform background checks on their employees, which has become a point of interest in Matthew’s death because of the employee’s notable criminal history in Mobile County. It does not appear that the facility conducted even a cursory background check on this person, because jail records indicate that between 2010 and 2014, he was arrested for second-degree assault, two counts of domestic violence and theft. Dean Waite, a lawyer with Dean Waite & Associates, who represents the Cox family, says:

> Group homes are entrusted with the care of some of the most vulnerable people in our society. It is incumbent upon us to make sure these group homes are fulfilling their obligations to the residents for whom they are responsible.

This tragic story is but one example of the harm that residents can face when the facility in which they reside fails to meet its obligations to keep its residents safe. Lawyers in our firm is fighting to protect the safety and rights of elderly and infirmed Americans who reside in long-term care facilities across the country.

Sources: AL.com and Lagniappe Weekly

**The Beasley Allen Nursing Home Litigation Team**

Lawyers in our firm continue to fight to protect the safety and well-being of nursing home residents in facilities around the country. Our nursing home lawyers represent the victims or families of those who have suffered death or serious injury because of nursing home negligence, abuse and neglect. The team of lawyers in our firm handle nursing home litigation on a regular and recurring basis. Chris Boutwell heads up the Nursing Home Litigation Team; other members of the team currently are Susan Anderson and Leah Robbins. Handling nursing home litigation requires lawyers and support staff to have specific experience in this type case.

If you have suffered serious injury, a loved one has been catastrophically injured or died, or you have any questions about nursing home abuse and neglect, contact one of the team members at 800-898-2034 or by email at Chris.Boutwell@beasleyallen.com, Susan.Anderson@beasleyallen.com or Leah.Robbins@beasleyallen.com.

**XVI. An Update On Class Action Litigation**

**Class Action Filed Against Nissan For Faulty Brakes**

Lawyers from Beasley Allen have filed a lawsuit in Tennessee on behalf of those who purchased or leased one or more model year 2017-2019 Nissan vehicles equipped with Forward Emergency Braking or Automatic Emergency Braking technology. The class action complaint alleges that each of the class vehicles contains a defective emergency braking system that exposes drivers and passengers to the risk of sudden and unexpected collisions.

As advertised by Nissan, its Automatic Emergency Braking technology uses radar to detect the possibility of a collision with vehicles or pedestrians. In its intended
functionality, the Emergency Braking System will apply an emergency brake, causing the vehicle to decelerate and stop when an imminent collision is detected.

Nissan’s Emergency Braking System is defective and not road-ready. The system suffers from a serious defect when the Emergency Braking System suddenly and unexpectedly engages when no collision is imminent. The Emergency Braking System can also engage when the driver has no intention of stopping the vehicle.

Due to the Emergency Braking defect, owners and lessees of the Class Vehicles have experienced sudden and unexpected braking on railroad tracks, on bridges, in intersections, and in other driving situations, placing them at serious and unreasonable risk of collision.

As shown by the reports of owners and lessees complaining about the Emergency Braking defect to Nissan and Nissan dealers, as well as the multitude of consumer complaints collected by the National Highway Traffic Safety Administration’s (NHTSA) Office of Defects Investigation (ODI), Nissan knew of the Emergency Braking defect prior to the sale or lease of the Class Vehicles. Despite this knowledge, Nissan failed to disclose and actively concealed the Emergency Braking defect from the public and continued to market and advertise the Class Vehicles.

Nissan’s Automatic Emergency Braking is a standard feature on its Rogue, Rogue Sport, Murano, Altima, Maxima, Armada, Pathfinder, Leaf and Sentra vehicles. The case is filed in the Middle District of Tennessee. Clay Barnett, Dee Miles and Chris Baldwin, lawyers in our firm, represent the class Plaintiffs in this case.

If you need additional information, contact Chris Baldwin at 800-898-2034 or by email at Chris.Baldwin@beasleyallen.com.

**WEST VIRGINIA CLASS ACTION FILED ON BEHALF OF BABIES BORN WITH NEONATAL ABSTINENCE SYNDROME**

As we have previously reported, the opioid epidemic has reached the most defenseless and vulnerable of us all: our babies. According to the National Institute on Drug Abuse, every 25 minutes a baby is born addicted to opioids. This addiction to opioids in infants is a condition called Neonatal Abstinence Syndrome (NAS). In the days and weeks after birth, NAS babies suffer many painful symptoms of opioid withdrawals. These symptoms can include tremors, seizures, overactive reflexes, fussiness, excessive or a high-pitched crying, poor feeding, slow weight gain, breathing difficulties, fever, sweating, blotchy skin, trouble sleeping, diarrhea, vomiting, congestion and sneezing. Most babies born addicted to opioids begin to suffer symptoms of opioid withdrawal within 72 hours of birth, but some may not show signs until weeks later.

NAS also increases a baby’s risk of having a low birth weight. This causes these NAS babies to require treatment in a neonatal intensive care unit (NICU) more often. Initial symptoms of NAS can last anywhere from one to six weeks. Due to the length and intensity of treatment required, hospital costs are also greater for NAS babies as well. Post-delivery hospital costs for NAS babies average $66,700, compared to $3,500 for those who were not exposed to opioids.

Long-term, NAS is associated with higher rates of developmental delays that can include hearing or vision impairment, compared to babies of mothers who did not use opioids. Oftentimes, babies born with NAS are forced into foster care. Of the estimated 465,000 babies and children in the country’s foster care program in 2016, 92,000 of them were there due to opioid-related issues, according to the Department of Health and Human Services (HHS). In the South, NAS is three times higher than the national average, according to Dr. Stephen Patrick, a researcher at Children’s Hospital at Vanderbilt University.

A class action complaint requesting class certification for West Virginia’s infants and children who were diagnosed with NAS was recently filed in the United States District Court for the Southern District of West Virginia at Charleston in November of 2018.

The class representative, Jodi Shaffer and Minor R.C., filed this class action because R.C. was diagnosed with opioid-related NAS symptoms at birth in 2010. The complaint notes that new research born out of the opioid epidemic reveals that all children exposed to opioids and other drugs in utero are at a substantially higher risk for ‘lower mental abilities and more signs of attention deficits, and that these effects will persist or worsen through adolescence.’

The complaint notes that ongoing and medical monitoring and treatment of opioid-related NAS-diagnosed children is medically necessary. R.C and the other infants who make up the class have all been diagnosed with a symptomatic syndrome of disease, have a birth mother who received a medical prescription for opiates, and all now desperately require testing, monitoring, intervention, training for caregivers, and referrals for medical, physiological, and behavioral treatment. The goal of the lawsuit is to maximize the development of each exposed child.

Lawyers in our firm are investigating cases on behalf of children who were born with NAS after their mothers were prescribed opioids before or during pregnancy. We are investigating these cases as individual cases, and not as a class action. These cases are better suited as individual lawsuits. That’s because while experiences may be similar, each case involves individual details that distinguish it from the others. If you need more information, contact Melissa Prickett, Liz Eiland or Roger Smith, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@BeasleyAllen.com, Liz. Eiland@beasleyallen.com or Roger.Smith@beasleyallen.com.

**CLASS ACTION SETTLEMENTS OF NOTE**

There have been a number of noteworthy class action settlements recently. We will give a summary of those settlements below.

**$92.5 MILLION SETTLEMENT ENDS $4.4 BILLION STARZ MERGER SUIT**

Vice Chancellor Sam Glasscock has approved the $92.5 million settlement in the stockholder challenge to the $4.4 billion sale of Starz Entertainment LLC to Lions Gate Entertainment Corp. in 2016. The agreement, reached after mediation that began two weeks before trial, settled a more than two-year-old class lawsuit claiming that the merger consideration unfairly converted some Starz voting stock into nonvoting Lions Gate stock, while providing disproportionate benefits to a Starz controlling stockholder who also had a significant stake in Lions Gate. The vice chancellor called it an “excellent result.”

Under the original merger deal, Starz investors received $18 per share plus 0.6784 shares of nonvoting Lion’s Gate stock, in a package valued at $35.52 per share. Meanwhile, controlling investor John C. Malone received $7.21 per share for a different class of stock in Starz and 1.2642 shares of...
Lions Gate stock—half with voting rights.

The suit accused Malone of engineering the deal for his own benefit and alleged that Starz CEO Christopher Albrecht and other board members breached their duty to the company's stockholders, aided and abetted by Malone and Lions Gate. Vice Chancellor Glasscock said before approving the deal: "To me, this is a classic example of the way entrepreneurial attorneys in corporate matters should conduct themselves."

Vice Chancellor Glasscock, who described the case as "strong, very strong, although not foolproof," gave the settlement his approval after declining to take up an investor challenge to plans for distribution of the additional share payments. The Vice Chancellor said that the settlement made provisions for pursuit of funds required to pay stockholders, without closing off other avenues for challenges or appeal for those who object or claim they are harmed by the provisions. He stated:

It's clear to me that there are rather significant issues that arise at the contractual level between record holders, beneficial holders, lenders of shares, short sellers and their purchasers. Those issues may very well be appropriate to address in some forum. I don't think this is that forum.

The Starz shareholders are represented by John C. Kairis and Daniel Berger of Grant & Eisenhofer PA, Robert J. Kriner Jr. and Tiffany J. Cramer of Chimicles & Tikellis LLP, and Mark Lebovitch, Jeroen van Kkwawegen and Alla Zayenchik of Bernstein Litowitz Berger & Grossmann LLP. The case is In re: Starz Stockholder Litigation, (case number 12584) in the Court of Chancery of the State of Delaware.

Source: Law360.com

**Walmart's $65 Million PAGA Seating Settlement Is Approved**

A California federal judge has preliminarily approved Walmart Inc.'s revised $65 million settlement that would resolve a Private Attorneys General Act (PAGA) lawsuit alleging the retail giant violated California's suitable seating statute by failing to provide cashiers with seats. During a hearing in San Jose, California, U.S. District Judge Edward J. Davila preliminarily signed off on the settlement, under which Walmart would pay about $10.7 million to more than 99,000 front-end cashiers who have worked at Walmart since 2008. Judge Davila has set a final approval hearing for March 18.

The California Labor and Workforce Development Agency will receive 75 percent of the $42.8 million net settlement to resolve the PAGA claims. If approved, the settlement would be the largest PAGA settlement in the state's history, according to the motion for preliminary settlement approval. The statute was enacted in 2004 and allows workers to challenge violations of California labor law on the state's behalf. The settlement would also resolve the nine-year-old PAGA lawsuit that named Plaintiffs Kathy Williamson and Nisha Brown filed in June 2009, claiming that Walmart didn't provide seats to its cashiers, in violation of California labor statutes.

In August 2012, Judge Davila certified a class of California Walmart cashiers, which Walmart appealed to the Ninth Circuit. The Ninth Circuit then certified questions regarding the state's suitable seating statute to the California Supreme Court. The state high court clarified the labor statutes and, shortly after, the Ninth Circuit affirmed Judge Davila's class certification ruling. In January of this year, the class filed a motion for summary judgment, while Walmart asked the court to decertify the class. However, before the judge ruled on the motion, the parties agreed to the settlement, which they initially asked Judge Davila to preliminarily approve in late October.

During the October hearing, Judge Davila raised questions regarding a provision in the settlement that would allow Walmart to remove the newly provided seats after two years. At the time, the judge said the provision would give Walmart "total authority" with no oversight.

Subsequently, the parties revised the settlement. The new agreement drops the two-year restriction and adds language letting the company take back the seats if they lead to "increased injuries or accidents" among seated workers or "unduly" interfere with the tasks the workers do while standing, among other things. Walmart can also remove the seating if it harms "the quality and effectiveness of the cashier's overall job performance," or if California scraps its suitable seating law, according to the revised settlement. But if Walmart plans to remove the seats, the company agreed to inform cashiers, the class attorneys and the Labor and Workforce Development Agency ahead of time.

The cashiers are represented by Charles A. Jones of Jones Law Firm and Matthew Righetti of Righetti Glugoski PC. The case is Brown et al. v. Wal-Mart Store Inc., (case number 5:09-cv-03339) in the U.S. District Court for the Northern District of California.

Source: Law360.com

**Consumers To Receive $73 Million In Latest Auto Parts MDL Settlement**

Several auto parts manufacturers have agreed to pay roughly $73 million to settle claims that they colluded to fix prices. This is in the multidistrict litigation (MDL) that grew out of a U.S. Department of Justice (DOJ) antitrust probe. In a series of orders, U.S. District Judge Marianne O. Battani certified classes of consumers who purchased car parts such as bearings, automotive lamps and HID ballasts at what they claim were artificially inflated prices. The judge approved settlements the makers of those products had reached with the consumers. Judge Battani wrote in each order:

The court, after carefully considering all papers filed and proceedings held herein and otherwise being fully informed in the premises, has determined that the settlement should be approved, and that there is no just reason for delay of the entry of this final judgment.

The companies all listed below, all auto parts manufacturers, will pay the amounts set out:

- Toyo Tire & Rubber Co. Ltd. and several affiliates will pay roughly $36 million to classes of consumers who purchased anti-vibrational rubber parts and constant velocity joint boot products.

Source: BeasleyAllen.com
• Stanley Electric Co. Ltd. and affiliates will pay about $15 million to classes of consumer who purchased automotive lamps and HID ballasts.

• SKF USA Inc. will pay $7.6 million.

• NTN Corporation will pay about $6.6 million to a class of consumers who purchased bearings.

• Sanden Automotive Components Corp. will pay $7.6 million to a class of consumers who purchased air-conditioning systems.

In the orders approving the settlements, Judge Battani rejected a number of motions filed by lawyers for the consumers requesting that the Defendants pay their legal bills. The judge released all of the Defendants from being sued for similar claims in the future. He also ordered all of the auto parts makers to refrain from “conduct that constitutes a per se violation of Section 1 of the Sherman Act”—i.e. price-fixing, bid-rigging and so on—for two years.

The judge's orders also require the companies to cooperate with the Plaintiffs—including sharing documents and data and offering witness testimony—in related ongoing litigation and prevents the consumers from using any of the information shared with them for “any purpose inconsistent” with the terms of the settlement agreements.

This round of settlements is the latest in the MDL filed in the aftermath of the DOJ's antitrust investigation into price-fixing and bid-rigging in the auto parts industry, a probe that was launched in 2011 in conjunction with Japanese and European authorities. The DOJ has said its inquiry yielded more than $2.9 billion in fines as of October of that year, the Plaintiffs achieved class certification in March 2017. Scotts appealed the class certification to the Ninth Circuit but was denied in June 2017.

The class is represented by Jason A. Forge, Rachel L. Jensen, Michael Albert and Rachel A. Cocalis of Robbins Geller Rudman & Dowd LLP; Douglas P. Dowd and Alex R. Lumaghi of Dowd & Dowd PC; and John J. Driscoll, Christopher Quinn and Gregory Pals of The Driscoll Firm PC. The case is In re: Morning Song Bird Food Litigation, (case number 3:12-cv-01592) in the U.S. District Court for the Southern District of California.

Source: Law360.com

**$50 Million Settlement Over Defective Scuba Computers**

Two scuba equipment companies have settled a class action filed by divers alleging their depth computers were defective, agreeing to test, repair and replace any defective computers in a settlement valued at about $50 million. The settlement, approved by San Diego Superior Court Judge Kenneth Medel last month, ends three years of litigation between Plaintiffs Ralph A. Huntzinger and Eric Bush and Defendants Finnish company Suunto Oy and Aqua Lung America Inc.

The settlement also ends related suit Huntzinger v. Aqua Lung America Inc. in the Southern District of California, which was put on hold pending the state-level lawsuit. Originally filed in May 2015, the suit alleges that the pressure sensors in certain scuba diving computers manufactured by Suunto and distributed by Aqua Lung were faulty, giving divers incorrect depth readings. The defective computers put divers’ lives at risk. That’s because the divers depend on accurate readings to safely

---

**SCOTTS TO PAY UP TO $85 MILLION OVER PESTICIDE-TAINTED BIRD SEED**

Scotts Miracle-Gro Co. has reached a settlement in a California federal court with a class of consumers who accused the lawn company of knowingly selling bird food laced with toxic pesticides. Scotts will pay up to $85 million, depending on how many class members come forward. The precise size of the payment will depend on the number of claims submitted by the class. Scotts will fully refund money to any class members with valid proof of purchase or retailer records and up to $100 per household for those class members who no longer have a proof of purchase, as long as sufficient money remains in the settlement fund.

Claims will be paid from the settlement fund with priority to those class members who have retailer-identified refunds and proof-of-purchase refunds at the full amount of purchase price. Any leftover money will then be paid to customers who no longer have proof of purchase and to class members seeking additional supplemental refunds. The motion states:

> Without regard to the amount of the settlement fund, all eligible settlement class members receiving retailer-identified refunds and proof of purchase refunds will receive refunds equaling 100% of their purchases.

The class is defined as “all persons who, prior to May 1, 2008, purchased and have not yet received a full refund for, a Scotts Miracle-Gro wild bird food product containing Storicide II, Actellic 5E, or their active ingredients, chlorpyrifos-methyl or pirimiphos-methyl, respectively” and to subclasses for claims in California, Missouri and Minnesota. In June 2012 Laura and Milt Cyphert filed a putative class action seeking refunds for Morning Song Bird Food. Their suit was then consolidated with a similar suit by Ellen Larson and David Kirby in September 2012.

Scotts pled guilty that same year to selling more than 70 million bags of bird seed containing the pesticides and agreed later that year to pay $12.5 million in criminal fines and civil penalties for violating federal pesticide laws. In March 2014, Scotts sold its wild bird food business, and in October of that year, the Plaintiffs moved to certify a nationwide class of consumers who purchased Morning Song Bird Food, the motion says. After a series of oppositions and amendments, the Plaintiffs achieved class certification in March 2017. Scotts appealed the class certification to the Ninth Circuit but was denied in June 2017.

The class is represented by Jason A. Forge, Rachel L. Jensen, Michael Albert and Rachel A. Cocalis of Robbins Geller Rudman & Dowd LLP; Douglas P. Dowd and Alex R. Lumaghi of Dowd & Dowd PC; and John J. Driscoll, Christopher Quinn and Gregory Pals of The Driscoll Firm PC. The case is In re: Morning Song Bird Food Litigation, (case number 3:12-cv-01592) in the U.S. District Court for the Southern District of California.

Source: Law360.com
XVII. THE CONSUMER CORNER

11TH CIRCUIT GIVES GREEN LIGHT TO BCBS ANTITRUST LAWSUITS

A recent 11th U.S. Circuit Court of Appeals ruling means that the antitrust multidistrict litigation (MDL) against Blue Cross Blue Shield insurers can proceed. The Appeals Court upheld a federal judge’s ruling from April that rejected the Defendants’ argument that pro-competitive effects of their scheme would outweigh any harm. The Eleventh Circuit ruling means that the Defendants’ behavior will be analyzed based on the per se legal standard, which, if proven, means the Defendants’ actions alone were illegal and violated the Sherman Antitrust Act.

Judge Proctor’s ruling on the per se standard applying in this case was absolutely correct when he issued his opinion last spring and the Eleventh Circuit just affirmed his ruling. Dee Miles, who heads our firm’s Consumer Fraud & Commercial Litigation Section, says the case will now proceed to the class certification stage. This was a huge ruling in this case.

Certain types of agreements between competitors, such as price-fixing, market allocation, or group boycotts, are viewed as per se unlawful under Section 1 of the Sherman Act. As such, actual harm need not be proven by Plaintiffs because it is presumed to result from the conduct. Other restrictive conduct is analyzed under the rule of reason, which engages in a balancing test to determine if the anti-competitive effects of the conduct outweigh the pro-competitive benefits.

The case involves 36 Blue Cross plans and at the heart of the case is whether an agreement among the different plans not to compete in various markets based on trademark licensing and other business activities is legal. Some of the plans have large overlapping coverage areas, including California, Idaho, New York, Pennsylvania, Washington, and Oregon.

Defendants had argued that the more lenient “rule of reason” standard should apply to their conduct rather than a per se standard. The lower federal court rejected Defendants’ argument and determined that the combination of the agreement not to compete and the size of the territories will be enough to determine if the insurers broke the law, and the Eleventh Circuit upheld that decision by refusing to hear Defendants’ interlocutory appeal.

The ruling in this case is extremely important and it will benefit a huge number of persons and business entities. The case was divided into two tracts, one for providers and one for subscribers, and all cases are consolidated in federal court in Alabama under U.S. District Judge David Proctor. In addition to Dee Miles, Beasley Allen lawyers Archie Grubb, Leslie Pescia and Chris Baldwin were chosen to develop the provider side of the case for trial.

Medical providers claim that Blue Cross is using its size and market power to drive out the competition and keep doctor and other medical organization reimbursements low. Subscribers claim the arrangement could drive up premiums.

This is the largest antitrust case in U.S. history and it could go to trial next summer if Judge Proctor certifies the class. If you need more information contact Leslie Pescia at 800-898-2034 or by email at Leslie.Pescia@beasley-allen.com.

FDA WITHDRAWS PROPOSED RULE ON GENERIC-DRUG WARNING LABELS

The U.S. Food and Drug Administration (FDA) will withdraw a proposed rule that would have allowed generic-drug makers to independently update drug labeling to include new safety information. The FDA says the rule, proposed in 2013, could have increased industry costs that might have been shifted to patients. Nobody should be surprised that the FDA yielded to industry opposition to the rule. Currently, only brand-name drug manufacturers can unilaterally update their labels to include new safety information.

The FDA said it found a number of unintended consequences of finalizing the proposed rule that could have harmed public health. Those include:

- Generic-drug companies don’t usually receive or have all the necessary data to evaluate post-marketing safety information to justify changing drug labels unilaterally.

- Generic drugs could have also had different or additional warnings temporarily on their label, compared to the brand-name drug, because various manufacturers would have information available at different times.

ascend from dives, assess how far down they can go safely, determine how many dives they can make in a day and determine when they can safely fly in a plane afterward.

According to the divers, Suunto and Aqua Lung knew about the problem for years, but concealed the defect and continued to sell the faulty computers. Under the settlement, class members can submit a claim form to have their computers inspected for the depth pressure sensor defect. If a defect is found, the computer will be replaced or repaired at no cost. Any replacement computer will come with an extended five-year warranty for further defects, three years longer than Suunto’s normal warranty.

The settlement also includes a $775,000 reimbursement fund to compensate class members who either destroyed their dive computer, purchased a replacement already or paid out of pocket to repair it. Reimbursement for destroyed or replaced computers is up to 50 percent of the retail price, according to court documents.

Any funds left over after reimbursement will go to fund training and educational courses for class members through the Professional Association of Diving Instructors. In addition, Suunto will create and distribute a video to educate class members and other divers on best practices, identifying pressure sensor failure and what to do if there is a defect. It should be noted that Aqua Lung’s distribution of Suunto dive computers ended several years ago. Aqua Lung will pay nothing in the settlement with the Plaintiffs.

The class is represented by Timothy G. Blood, Paula R. Brown and Jennifer L. Macpherson of Blood Hurst & O’Reardon LLP, William M. Berman of Berman & Riedel LLP and John A. Knox and Douglas A. Hofmann of Williams Kastner & Gibbs PLLC. The case is Huntzinger et al. v. Suunto Oy et al., (case number 37-2018-00027159) in the Superior Court of the State of California, County of San Diego.

Source: Law360.com
• Temporary differences in the labeling could have sunk consumers’ confidence in generic drugs and their equivalents.

• Outdated drug labeling can also lower the use of generic drugs.

The Association for Accessible Medicines, an industry group for generics makers, praised the decision to withdraw the rule. Senior Vice President David Gaugh said in a statement:

The agency correctly recognized the need for consistency and the potential for adverse consequences. The FDA’s action further exemplifies its focus on the best interest of the public’s health and provides patients with the utmost confidence in their health care choices.

The FDA said that according to one rough estimate, there are about 5,600 brand-name drugs that correspond to generics. The FDA said in a statement:

Where there continue to be approved brand versions of these medicines, the FDA can and will work with the brand companies to update labels. But, of these brand medicines that serve as reference drugs, 1,170 have been identified as discontinued or withdrawn by the brand-drug manufacturers for reasons other than safety or effectiveness.

The FDA said that when a brand-drug manufacturer is no longer responsible for updating labels that generic companies can follow, some drug labels, often for older medicines, can become frozen in time. The FDA said further:

But many of these older drugs are still very useful in modern treatment regimens. For example, some of these drugs form the backbone of modern cancer regimens. We may seek additional resources and help from Congress to expand these efforts.

I hope the FDA is withdrawing the proposed rule for the right reason. Based on our involvement with this regulatory agency, however, I am highly suspicious of the FDA’s motivations.

Source: Law360.com

JOHNSON & JOHNSON FACES REMICADE LITIGATION

In addition to the increased heat it has been facing over its talcum powder products and their link to cancer, Johnson & Johnson is also facing several lawsuits due to its alleged antitrust plan to prevent competition with its infliximab drug, Remicade. This drug is used to treat chronic illnesses such as rheumatoid arthritis, Crohn’s disease and ulcerative colitis.

For almost two decades, Remicade was the only infliximab product on the market and was J&J’s top-selling drug, generating approximately $5.7 billion in U.S. sales in 2015 alone. Pfizer Inc. and Merck & Co. began shipping its biosimilar (i.e. generic) version of Remicade at a significant discount from J&J’s price, but have just a 5 percent share of the infliximab market.

The pending suits allege this is due to a tactical plan J&J and its subsidiary Janssen Biotech Inc. have carried out to prevent new entrants to the market and protect its monopoly.

J&J’s “Biosimilar Readiness Plan” involved coercive rebate policies and bundling offers that its competitors could not match, as well as exclusionary contracts with insurers. These exclusionary contracts included agreements under which J&J required insurers to agree that Remicade would be the only infliximab product they would cover and reimburse, effectively preventing patients from switching to other versions—for which they would have to pay out of pocket.

Given that biosimilar versions are not covered by insurance companies, providers have stopped stocking them, making them inaccessible to patients without insurance or whose insurance does not cover infliximab products. As a result of this antitrust conduct, several entities have filed lawsuits against J&J, including a New York grocery union benefits fund, Pfizer, Walgreen Co., Kroger Co., and Rochester Drug Cooperative Inc.

In December, the U.S. District Court for the Eastern District of Pennsylvania largely denied J&J’s motion to dismiss, rejecting J&J’s assertions that direct and indirect Remicade purchasers pursuing a proposed class action have not shown a sufficient antitrust injury or that they have not adequately assessed the drugmaker and subsidiary Janssen of anti-competitive conduct.

The court held in its order that the purchasers’ amended complaints “sufficiently allege antitrust injury” by plausibly con-tending J&J’s “Biosimilar Readiness Plan” headed off competition. The claims of anti-competitive conduct were sufficient, in part, because they contend that J&J’s conduct had the likely effect of substantially lessening competition rather than just disadvantaged rivals.

Ultimately, the judge dismissed only additional claims brought by indirect purchasers accusing J&J of pursuing sham patent infringement litigation and fraudulently obtaining its patents to protect Remicade, as well as state consumer protection claims brought under the laws of New York and Rhode Island. The antitrust claims, as well as state consumer protection claims from other states were left intact.

Beasley Allen lawyers are actively pursuing claims against drug manufacturers for similar fraudulent and anti-competitive conduct. If you have seen such conduct occur, there may be a claim our firm would like to investigate. You can contact Dee Miles, Alison Hawthorne, or Rachel Boyd, lawyers in our Consumer Fraud & Commercial Litigation Section at Dee. Miles@beasleyallen.com; Alison.Hawthorne@beasleyallen.com; or Rachel. Boyd@beasleyallen.com, or call us at 800-898-2034 to discuss further.

Sources: Law360.com

LACK OF OVERSIGHT OF DEFECTIVE WEAPONS

Recently, Bloomberg looked at the issue of who is determining whether guns are defective. Bloomberg posited questions such as: Who determines whether there should be a recall because of defective weapons? The answer is nobody. Some might think the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) oversees weapon defect issues, but it does not.

Every year, thousands upon thousands of people are injured by dangerous products. The Consumer Product Safety Commission (CPSC) is a government agency that monitors a large portion of products sold and distributed in the United States. The CPSC keeps statistics for those who are injured or killed while using products in this county, including things such as toys, amusement rides, All-Terrain Vehicles (ATVs), products that produce carbon monoxide and electricity, fireworks, products sold for use by children and infants, and many others. A link to the statistics can be found at https://cpsc.gov/Research-Statistics/Injury-Statistics.
The CPSC also goes further and investigates those products that fall under its jurisdiction. When a consumer or someone else (such as a forensic medical examiner) notifies the CPSC that a person was injured by a product, the CPSC will investigate the product and, under appropriate circumstances, will even assign an investigator to research the product, contact witnesses, and send a request to the manufacturer to address the injury or death of the person while using the product. The CPSC keeps and maintains the materials from its investigation and can take appropriate measures to have the product removed from the market if the product is deemed unsafe for American consumers.

The National Highway Safety Administration (NHTSA) serves a similar role for vehicles under its jurisdiction, including automobiles, motorcycles, helmets and other products involved in transportation. NHTSA has been instrumental over the last few decades in having major changes made to automobiles, including the addition of seatbelts, airbags, and the like. NHTSA also maintains documentation regarding complaints by consumers about dangerous products and makes this information available to those involved in safety upon an appropriate request. The statistics related to injuries-products under the auspices of NHTSA are reported annually by NHTSA. See, e.g., https://www.nhtsa.gov/research-data.

Another government agency, the Food and Drug Administration (FDA) provides comparable oversight of food and drugs distributed in the United States. The Centers for Disease Control and Prevention (CDC) maintains similar statistics, and includes information pertaining to a host of injuries and deaths by firearms as well. See https://www.cdc.gov/nchs/fastats/injury.htm. The CDC reports, for example, in 2016 there were 38,748 traffic deaths and 38,658 gun-related deaths.

The problem, however, is that while we can make some efforts to determine whether some of the traffic-related deaths were the result of defective automobiles or safety equipment, we cannot make a similar determination, based upon government oversight and investigation, with regard to handguns and weapons.

In the early 1970s, while the other regulatory agencies were being given the power to oversee various products sold and distributed in the United States, efforts to give similar authority to an agency to monitor gun manufacturers was blocked. As a result of this, even if thousands of people are injured or killed by a weapon, the only person or entity that can compel a recall of the defective weapons is the manufacturer.

We have seen this occur with the with Remington Model 700 and Model Seven rifles manufactured between 2004 and 2016 as a result of a defective trigger. Countless reports were made of the weapon discharging, despite the gun safety being in the ON position, and many people were injured and killed. It was only after litigation that efforts were made by Remington to institute a recall of these weapons.

Would the recall have occurred earlier had there been an agency of the government to receive complaints by consumers and with the authority to investigate the complaints? We will never know. But what we would have had would have been an agency that could have compiled this information so that American citizens could research the weapons before making the purchase. Without the oversight, the issue may have never been resolved without litigation, a delayed response that resulted in many more people being injured and killed.

Obviously, the greatest barrier to having a central agency to monitor gun safety in the United States is the Second Amendment, the calling card of many gun owners and the National Rifle Association. While the constitutional barrier may provide some protection, it certainly was never intended to extend as far as it has been imposed to protect gun manufacturers from government oversight.

In the United States, citizens have the constitutional right to travel throughout this country by whatever means they deem appropriate, but that freedom has not protected automobile manufacturers from oversight by NHTSA.

Similarly, we need an agency that can monitor the weapon manufacturers in this country to determine whether injuries and deaths by non-criminal means are the result of a defective weapon. Such an agency would determine whether a recall needs to be instituted with regard to that product.

Bloomberg Businessweek, in its article “How Defective Guns Became The Only Product That Can’t Be Recalled” (by Michael Smith and Polly Mosendz), Feb. 28, 2018, addressed the dangerous and defective Taurus handguns, guns that would discharge without the trigger being pulled. Bloomberg addressed why consumers were not notified sooner about the dangerous Taurus weapons. The authors wrote:

The simple answer is no government entity has the power to police defective firearms or ammunition in America—or even force gunmakers to warn consumers.... If a gunmaker chooses to ignore a safety concern, there’s no one to stop it.

A government agency, similar to NHTSA, CPSC and FDA, could do a great deal of good in monitoring defective weapons in this country. Doing so would not violate Second Amendment protections. Indeed, the Second Amendment provides constitutional protections to the gun owners far more so than the gun manufacturers.

Bloomberg is correct! It is time for some oversight of gun manufacturers to ensure that more people do not die from defective weapons. Until that occurs, sadly, many more will be injured or killed because of unsafe guns. If you need more information, contact Ben Locklar, a lawyer in our firm’s Personal Injury & Products Liability Section, at 800-898-2034 or by email Ben.Locklar@beasleyallen.com.

Sources: AllOutdoor.com, Bloomberg

CHARTER TO PAY $174 MILLION IN SETTLEMENT OF NEW YORK NET SPEED SUIT

Charter Communications Inc. and Spectrum Management Holding Co. have agreed to a $174-million payout in what the New York Attorney General called a record settlement. This ends a suit alleging the companies defrauded customers by promising high-speed internet when they knew they couldn’t deliver. New York Attorney General Barbara D. Underwood said in a statement that the $62.5 million direct refund included in the settlement is believed to be the largest payout to customers by an internet service provider in the country’s history. The Attorney General said:

This settlement should serve as a wake-up call to any company serving New York consumers: fulfill your promises, or pay the price. Not only is this the largest-ever consumer payout by an internet service provider, returning tens of millions of dollars to New Yorkers who were ripped off and providing additional streaming and premium channels as restitution—but it also sets a new

BeasleyAllen.com
standard for how internet providers should fairly market their services.

The settlement brings an end to a suit brought by Underwood’s predecessor, Eric T. Schneiderman, in February 2017 accusing Charter of selling consumers web access by promising faster speeds and greater reliability than it could actually deliver due to outdated hardware and “technological bottlenecks” that were never upgraded. The $62.5 million will go to more than 700,000 customers who were leased an inadequate modem or router. They will each receive either $75 or $150, depending on how long they had the substandard equipment. About 2.2 million subscribers will also receive free streaming services and premium channels, a package valued at more than $100 million, according to the Attorney General’s Office.

In addition to the payouts, Charter must also abide by a set of marketing and business reforms, including ensuring its advertising differentiates between wired and Wi-Fi internet speeds, as Wi-Fi is slower; substantiating its speeds using industry-accepted testing; and discontinuing any speeds it can’t meet. The company also can’t advertise its speeds as “consistent” until it meets Federal Communications Commission (FCC) metrics.

Charter must also provide its customers with equipment that can meet the speeds it advertises, offer to ship or install free replacements of equipment that doesn’t meet the speeds and set rules to keep customers from upgrading their packages without the proper equipment.

Finally, Charter must train its customer service team to educate subscribers on factors that can affect internet speeds and produce a video to the same effect. Washington, D.C.-based consumer rights group Public Knowledge praised the settlement. John Bergmayer, senior counsel at Public Knowledge, said in a statement:

States play an essential role in protecting consumers from fraud and deception, especially in areas where the federal government cannot or will not fulfill that role. Here, New York has stepped up to ensure that broadband consumers actually get the speeds they pay for, and to make whole consumers who were deceived in the past. Other states and other broadband providers should take note.

The New York Attorney General’s Office is represented in-house by Mihir Kshirsagar, among others. The case is The People of the State of New York et al. v. Charter Communications Inc. et al., (case number 450318/2017) in the Supreme Court of the State of New York, County of New York.

Source: Law360.com

XVIII.
RECALLS UPDATE

We are again reporting a large number of safety-related recalls. We have included some of the more significant recalls that were issued in December. 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.

Automobile Recalls

Toyota Motor Engineering & Manufacturing (Toyota) is recalling certain 2002-2005 Lexus SC and Toyota Sequoia, 2003-2005 Toyota Corolla and Tundra, and 2003-2007 Pontiac Vibe vehicles. These vehicles are equipped with certain air bag inflators assembled as part of the passenger frontal air bag modules used as original equipment or replacement equipment. In the event of a crash necessitating deployment of the passenger frontal air bag, these inflators may explode due to propellant degradation. An inflator explosion may result in sharp metal fragments striking the driver or other occupants resulting in serious injury or death.

General Motors LLC (GM) is recalling certain 2019 Chevrolet Silverado 1500 Crew Cab and GMC Sierra 1500 Crew Cab vehicles. The passenger-side frontal air bag module may have been damaged during assembly, possibly resulting in the air bag not inflating properly in the event of a crash. In the event of a crash, an air bag that does not inflate properly can increase the risk of injury.

Kawasaki Motor Corp., U.S.A. (KMC) is recalling certain 2018 Kawasaki Z900, Z900 ABS, and Z900RS vehicles. The rear brake hose and rear wheel rotation sensor wire may have been incorrectly routed, allowing them to contact the rear tire. If the brake hose contacts the rear tire, the hose may be damaged, reducing the braking performance. If the wheel rotation wire gets damaged, the ABS may not function properly. Either condition can increase the risk of a crash.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2018 Volkswagen Golf R vehicles. The fuel hose quick connector may detach from the fuel supply line in the engine bay, resulting in a fuel leak. A fuel leak in the engine compartment can increase the risk of a fire.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2018 Audi TT Roadster, TT Coupe, A3 Sedan and A3 Cabriolet vehicles. The fuel hose quick connector may detach from the fuel supply line in the engine bay, resulting in a fuel leak. A fuel leak in the engine compartment can increase the risk of a fire.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2018 Audi A5 Sportback and 2017-2018 Audi A4 Allroad vehicles. A passenger air bag module mounting screw may not have been sufficiently tightened, possibly affecting the deployment of the air bag in the event of a crash. If the air bag does not deploy correctly in the event of a crash, it can increase the risk of an injury.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2018-2019 Volkswagen Atlas and Tiguan and 2019 Volkswagen Jetta vehicles that do not have keyless entry. The instrument cluster may not provide an audible warning to let the driver know that the key is still in the ignition when the door is open. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 114, “Theft Protection.” If the driver is not notified by an audible noise that the key is left in the ignition, it can increase the risk of vehicle theft or crash.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2007-2012 Audi Q7 and 2009-2012 Audi Q5 vehicles, previously repaired under National Highway Traffic Safety Administration (NHTSA) recall 16V-660. These vehicles were previously repaired with an interim repair of installing butyl tape to the fuel pump flange, until replacement remedy parts became available. The butyl tape may not prevent fuel from leaking. A fuel leak in the presence of an ignition source can increase the risk of a fire.

Honda (American Honda Motor Co.) is recalling certain 2017-2018 Honda Civic Hatchback and Civic Type R vehicles. The
owners guide in these vehicles may not have been included or, if included, the owner’s guide may not have been properly provided required information. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSSS) number 225, “Child Restraint Anchorage Systems.” If the information is missing or improper, it can increase the risk of injury or a crash.

Honda (American Honda Motor Co.) is recalling certain 2019 Honda Ridgeline and Pilot vehicles. The mounting holes for the clip that secures the right center pillar trim panel may be larger than intended. In the event of a crash necessitating right side curtain air bag deployment, the clip may not hold the center pillar trim panel in position and it may potentially interfere with the curtain air bag deployment. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSSS) number 214, “Side Impact Protection,” and 226, “Ejection Mitigation.” In the event of a crash, if the curtain air bag does not deploy as intended, it can increase the risk of injury.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2015-2016 Mercedes-Benz C300, 2017-2019 C300 Cabrio, C300 Coupe, C63 Cabrio, 2015 C63S AMG, 2018-2019 C300, C350e, C63 AMG, C63S AMG Cabrio, 2018 C63 AMG Cabrio, C63 AMG Coupe, C63S AMG Coupe, E300, E400 Cabrio, E400 Coupe, 2019 CLS450, E450 Cabrio, and E450 Coupe rear-wheel drive vehicles. A locknut in the steering rack may break under high load, possibly causing the steering to become stuck in one position. A car that cannot be properly steered has an increased risk of a crash.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2019 Mercedes-Benz E450 4Matic Wagon and E63S AMG Wagon vehicles. The affected vehicles have a tailgate-mounted spoiler that may not be properly attached and therefore could detach while driving. If the tailgate-mounted spoiler detaches while driving, it can become a road hazard, increasing the risk of a crash.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2019 GLC300 vehicles. An internal sensor within the electric power steering unit may fail, deactivating the power steering assist. A loss of electric power steering assist can increase the risk of a crash.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2019 C300 4Matic Cabriolet, C43 AMG Cabriolet, C300 Cabriolet, C300 Coupe, C300 4Matic Coupe, C43 AMG Coupe, E450 Coupe, E53 AMG Cabriolet, S450, S560, E450 Cabriolet, E450 4Matic Cabriolet, E450 4Matic Coupe, E55 AMG Coupe, S450 4Matic, S560 4Matic, S63 AMG and S65 AMG vehicles and Mercedes-Maybach S650 and S560 4 Matic vehicles. A correctly fastened seatbelt may be inaccurately detected as being unfastened, preventing the seat belt pre-tensioners from activating in the event of a crash. If the seat belt tensioning does not activate in the event of a crash, it can increase the risk of injury.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2018 C300 Cabriolet, C300 Coupe, C300 4Matic Cabriolet, C300, C300 4Matic Coupe, C300 4Matic, C43 AMG Cabriolet, C45 AMG Coupe, C63 S AMG Cabriolet, C350e Plug-In Hybrid, C65 AMG Cabriolet, C65 AMG Coupe, C63 S AMG Coupe, C63 AMG, C63 S AMG, 2018-2019 GLC300 4Matic Coupe, GLC300, GLC63 AMG Coupe, GLC300 4Matic, GLC350e Plug-In Hybrid, GLC43 AMG Coupe, GLC43 AMG, GLC63 S AMG Coupe, and GLC63 AMG vehicles equipped with Audio 20 head units and automatic child seat recognition. The status of the passenger side air bag may not display correctly. If the passenger air bag is incorrectly displayed as ‘ON’ when it is not, a front seat passenger may be unaware that the air bag will not deploy in the event of a crash, increasing their risk of injury.

Daimler Vans USA, LLC (DVUSA) is recalling certain 2016-2017 Mercedes-Benz Metris vehicles. The fuel hose in the engine compartment may leak at the lower connecting point of the transition hose, between the underbody fuel line and the Schrader valve and/or where the fuel line connects to the fuel pump. A fuel leak in the presence of an ignition source can increase the risk of a fire.

Yamaha Motor Corporation, USA (Yamaha) is recalling certain 2015-2018 Yamaha YZF-R3 motorcycles. The upper radiator hose may crack resulting in a coolant leak. If coolant leaks onto the rear tire, it can cause a loss of control, increasing the risk of a crash.

Yamaha Motor Corporation, USA (Yamaha) is recalling certain 2015-2016 Yamaha YZF-R3 motorcycles. The shift shaft torsion spring may fracture, giving the shifter a loose feel and affecting the ability to shift gears. Difficulty shifting gears can cause a loss of control and increase the risk of a crash.

Ford Motor Company (Ford) is recalling certain 2016-2018 Ford Focus vehicles equipped with a 1.0L Fox GTDI engine and a 6-speed manual transmission. The clutch may fracture, resulting in damage to the transmission assembly and possibly a transmission fluid leak. A transmission fluid leak in the presence of an ignition source such as hot engine or exhaust components can increase the risk of a fire.

Porsche Cars North America, Inc. (Porsche) is recalling certain 2017 Porsche Cayenne Turbo S, Cayenne Turbo, Cayenne Plug-in Hybrid, Cayenne GTS, Cayenne Plug-in Hybrid Platinum Edition, Macan Turbo and Macan GTS vehicles, 2017-2018 Cayenne S, Macan, Cayenne Platinum Edition and Macan S vehicles and 2018 Cayenne vehicles equipped with the optional ski bag. The ski bag fastening strap may have been sewn with incorrect thread, possibly resulting in the strap seams tearing and the ski bag being unsecured in the event of a crash. If the ski bag detaches during a crash, it can increase the risk of injury.

Porsche Cars North America, Inc. (Porsche) is recalling certain accessory equipment ski bags, part number 958.860.811, sold for use in Cayenne and Macan vehicles. The ski bag fastening strap may have been sewn with incorrect thread, possibly resulting in the strap seams tearing and the ski bag being unsecured in the event of a crash. If the ski bag detaches during a crash, it can increase the risk of injury.

Keystone RV Company (Keystone) is recalling certain 2019 Keystone Cougar, Outback, Passport, Springdale, Bullet and Hideout recreational trailers and 2019 Dutchmen Aerolite and Atlas recreational trailers. The inner hub bearings of the axles may not have been sufficiently greased, which can cause the bearings to overheat and fail. If the bearings overheat, the hub may fail, affecting handling and increasing the risk of a crash.

Champion Bus, Inc. (Champion) is recalling certain 2016-2018 Federal Coach Spirit vehicles. If the observation window that is located above the windshield is hit by road debris, it may shatter, resulting in glass falling into the driver and/or passenger compartment. Glass that falls into the driver or passenger compartment can increase the risk of a crash or an injury.
Porsche Cars North America, Inc. (Porsche) is recalling certain 2018 Porsche Panamera Turbo S Hybrid Executive, Panamera 4 Hybrid, Panamera Turbo S Hybrid, Panamera 4 Hybrid Executive, Panamera 4 Hybrid Sport Turismo, and Panamera Turbo S Hybrid Sport Turismo vehicles. The brake lines installed on the front axle may corrode over time. Corrosion inside the line may affect the front braking performance. Braking ability that is reduced due to a corroded brake line can increase the risk of a crash.

TSE Brakes is recalling certain Air Brake Actuators, part numbers 3030TVW3UL-4201, 3030TLW3OE-4071, 3030TL2-3769 and 20SCLW2. The washers used for mounting the actuators may fracture, allowing the actuators to loosen, potentially reducing the braking ability. A reduction in the braking performance can lengthen the distance needed to stop the vehicle, increasing the risk of a crash.

Ducati North America (Ducati) is recalling certain 2017-2019 Ducati Monster 1200, Monster 821, SuperSport and SuperSport S motorcycles. The shift lever may have been incorrectly assembled, possibly resulting in the shift knob detaching from the lever. If the shift knob detaches, the rider may not be able to shift gears, increasing the risk of a crash.

Ducati North America (Ducati) is recalling certain 2018-2019 Ducati Panigale V4, V4 S, and V4 SP motorcycles. The oil cooler output port may crack, causing an oil leak. An engine oil leak can increase the risk of a crash.

Automobili Lamborghini (Lamborghini) is recalling certain 2011-2014 Galardo Coupe and Gallardo Spyder vehicles. The Engine Control Unit (ECU) software may erase trouble codes after the ignition is turned off, not illuminating warning lamps and preventing drivers from being warned of safety system problems the next time that they are driving. If the warning lamps do not indicate a safety system failure such as an engine or fuel injection system malfunction, continuing to drive the vehicle with a faulty system and no warning can increase the risk of a crash or injury.

Fujian Wanda Automobile Glass Industry (Wanda) is recalling certain aftermarket Replacement Windshields sold for use in 2014-2018 Toyota Highlander vehicles. The windshields have an attached wire harness that water may leak into, possibly causing damage to the vehicle’s Engine Control Module (ECM). The ECM damage may result in the engine stalling, increasing the risk of a crash.

Airstream, Inc. (Airstream) is recalling certain 2019 Airstream Interstate 19 motorhomes. 150 amp fuses may have been used for the coach battery fuses instead of 100 amp fuses, potentially allowing the battery cables to be overloaded. Overloaded battery cables may overheat, increasing the risk of a fire.

Maserati North America, Inc. (Maserati) is recalling certain 2014-2015 Maserati Quattroporte and Ghibli vehicles. During production of the fuel lines, the lines may have been damaged, possibly resulting in a fuel leak. A fuel leak in the presence of an ignition source can increase the risk of a fire.

BMW of North America, LLC (BMW) is recalling one 2019 F850GS motorcycle. The engine connecting rods may not have been installed properly, possibly causing them to become loose and disconnect over time. Loose engine connecting rods can damage the engine, causing a loss of engine power, increasing the risk of a crash.

Chrysler (FCA US LLC) is recalling certain 2019 RAM 1500 trucks. The seat track position sensor on the manually adjusted passenger seats may come loose and out of position, preventing the sensor from detecting if the seat is in the full-forward position. If the sensor cannot identify that the seat is in the full-forward position and adjust the frontal air bag deployment accordingly, there would be an increased risk of a injury in the event of a crash.

Chrysler (FCA US LLC) is recalling certain 2017-2018 Alfa Romeo Giulia vehicles equipped with GME 280HP engines and All Wheel Drive (“AWD”). The brake fluid line may contact a coolant hose clamp, possibly causing brake fluid to leak onto the exhaust. Brake fluid leaking onto the exhaust can increase the risk of a fire.

Irving Shade & Door, Inc. (Irvin) is recalling certain Windshield Motor Shades. The motorized windshield roller shade at the driver’s seating position may unroll without warning while driving. If the windshield roller shade unrolls while driving, it could block the driver’s view, increasing the risk of a crash.

New Flyer of America, Inc. (New Flyer) is recalling certain 2015-2017 New Flyer XD40 and XN60, 2015 XD60 and XDE40 and 2013-2017 XN40 vehicles, equipped with certain Kidde Technologies, Inc. (KTI) KDS-25 fire extinguishers as part of the optional fire suppression system. The actuator of the extinguisher may not function properly, preventing the fire extinguisher from discharging the fire suppression agent in the event of a fire. If the fire suppression system does not work as intended, it can increase the risk of injury in the event of a fire.

Navistar, Inc. (Navistar) is recalling certain 2019 International HV, MV, 2018-2019 HX, LT, RH, LoneStar, ProStar, WorkStar, and 2018 TranStar automated manual transmission vehicles, equipped with certain Eaton ECA heavy-duty truck clutches. An internal component in the clutch assembly may fail, possibly resulting in unintended vehicle movement. Unintended vehicle movement can increase the risk of a crash.

Great Dane Trailers (Great Dane) is recalling certain 2019 Great Dane Freedom Combo Drop Deck Platform trailers. The rear impact guards on these vehicles may be too narrow. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 223, “Rear Impact Guards.” If the rear impact guards do not meet the width requirements, the guards may not prevent a vehicle from going under the trailer in the event of a rear impact, increasing the risk of injury.

Yokohama Tire Corporation (Yokohama) is recalling certain Yokohama RY023 tires, size 295/75R22.5 (14G), that have DOT date code 2318. The rubber compound may be incorrect, possibly resulting in the tread separating from the casing. As such, these tires fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 119, “New Pneumatic Tires-Other than Passenger Cars.” If the tread separates, the driver may experience a loss of control, increasing the risk of a crash.

ARBOC Specialty Vehicles, LLC (ARBOC) is recalling certain 2015-2018 ARBOC Spirit of Freedom, Spirit of Mobility and Spirit of Independence-Pro Master transit buses, equipped with Freedman GO-ES Foldaway Seats, part numbers 43705, 45467, 48923, and 75719. When the back seat cushion is rotated from the stowed position to the upright position, the seat cushion may not remain locked into place when under load, such as in a crash or a sudden stop. As such, these vehicles fail to comply with the require-
ments of Federal Motor Vehicle Safety Standard (FMVSS) number 207, “Seating Systems.” In the event of a crash, if the seat back moves, the seat occupant has an increased risk of injury.

**Gulf Stream Coach, Inc. (Gulf Stream)** is recalling certain 2019 Gulf Stream Vintage Cruiser recreational trailers. The inner hub bearings may not have been sufficiently greased, which can cause the bearings to overheat and fail. If the bearings overheat, the hub may fail, affecting handling and increasing the risk of a crash.

**Ducati North America (Ducati)** is recalling certain 2018-2019 Ducati Panigale V4, V4 S and V4 SP motorcycles. The timing chain tensioner may loosen over time, possibly causing oil to leak from the bottom of the tensioner adjustment bolt. An oil leak can increase the risk of a crash.

**Jayco, Inc. (Jayco)** is recalling certain 2019 Jayco White Hawk, Jay Flight SLX, and Jay Feather travel trailers. The inner wheel hub bearings may not have been sufficiently greased, which can cause the bearings to overheat and fail. If the bearings overheat, the hub may fail, affecting handling and increasing the risk of a crash.

**Horizon Global (Horizon)** is recalling certain Reese Elite Aftermarket Gooseball kits, both the Hi-Rise Ball kit, part number 19315, and the GM Kit, part number 30891, sold for aftermarket installation on Chevrolet and GMC trucks with the factory OEM underbed package. These parts are the connector used in a goose-neck hitch to connect the towing vehicle’s underbed to a trailer. The load dynamics of the underbed in these vehicles may potentially result in the trailer separating from the gooseball. If the trailer separates from the gooseball and the trailer is not using safety chains, the trailer could separate from the vehicle, increasing the risk of a crash.

**Altec Industries, Inc. (Altec)** is recalling certain 2017 Altec AT37, AT41 and AT48 aerial devices. Some of the fasteners that secure the pedestal to the chassis may be missing or may be loose which can cause a loss of stability or separation of the pedestal. A pedestal that is not secure can increase the risk of injury.

**Blue Bird Body Company (Blue Bird)** is recalling certain 2020 Blue Bird All American and 2019-2020 Blue Bird Vision school buses, equipped with certain HSM NextGen 45° 3PT school bus seats, part number GenQ3-45 LH. There may be an insufficient number of bolts attaching the seat to the bus floor, allowing the seat to detach from the bus floor in the event of a crash. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 210, “Seat Belt Assembly Anchorages.” In the event of a crash, if the bus seat detaches from the floor, it can increase the risk of injury.

**Other Consumer Recalls**

**TerraTrike Recalls Adult Tricycles**

WizWheelz Inc., dba TerraTrike, of Grand Rapids, Michigan, has recalled 450 TerraTrike Rambler E.V.O adult tricycles. The torque sensor in the wheel can activate unexpectedly and cause the trike to power forward, posing crash and injury hazards. This recall involves yellow TerraTrike Rambler Electrical Vehicle Option (E.V.O.) recumbent pedal-powered trikes with an electric assist wheel. The trikes have two wheels in the front and one wheel in the back with a large black hub motor. “Terra Trike” is printed on the front of the back rest area. The model name “Rambler E.V.O.” is located on the front outrigger tube that connects to the front left wheel. The serial numbers included in this recall are listed on the company’s website at www.terratrike.com and are located under the main tube on a barcoded sticker near the rear wheel. The serial numbers are also stamped into the head (vertical) tube of the outrigger. The company has received five reports of the torque sensor activating while not pedal- ing. No injuries have been reported.

The bikes were sold at Authorized TerraTrike dealers, independent bicycle dealers and recumbent bicycle specialty stores nationwide and online at www.TerraTrike.com from August 2017 through October 1, 2018, for about $3,500. Consumers should immediately stop using the recalled trike and contact Signature Hardware to receive a full refund. Contact Signature Hardware toll-free at 866-855-2284 from 8 a.m. to 9 p.m. ET Monday through Friday, 8 a.m. to 6 p.m. ET on Saturday, or online at www.signaturehardware.com and click on ‘Product Recall’ for more information.

**White-Rodgers Recalls Thermostats**

White-Rodgers has announced a recall of Emerson-branded SensiWiFi thermostats due to a potential fire hazard. According to the United States Consumer Product Safety Commission (CPSC), contact between the thermostat wires and household line voltage can damage the thermostat, posing a fire hazard. The thermostats have “Emerson” printed on the front and a date code from 1416 to 1536 on the back. The date code represents the manufacture date from the 16th week of 2014 through the 36th week of 2015. The thermostats are...
white in color with an LCD screen. There are three buttons below the thermostat screen; up and down arrow and menu buttons are located to the right of the screen. Recalled thermostats have model numbers 1F86U-42WF or UP500W. A product label containing the model number and date code information is located on the back of the thermostat. The date code is between 1416 and 1536.

According to the CPSC, consumers should immediately check their Sensi thermostat to determine if “Emerson” is printed on the front with one of the above date codes on the back. Then, contact the company to determine if the unit is included in the recall and for instructions on repair and/or replacement. The company has received eight reports of burn damage to the thermostats, involving minor property damage. No injuries have been reported. The thermostats have been sold at Johnstone, Home Depot and Golden State FC stores and heating ventilation and air conditioning (HVAC) equipment distributors nationwide from April 2014 through December 2016 for between $90 and $150.

**Stanley Commercial Hardware Grade 1 Mortise Lever Locks Recalled**

About 13,500 Stanley Commercial Hardware’s grade 1 mortise lever lock QMS/QME 100 Series have been recalled by Stanley Security Solutions, Inc. and Best Access Solutions, Inc., of Indianapolis, Ind. The recalled locksets have Bright Brass, Satin Brass, Oil Rubbed Bronze, Satin Nickel, Bright Chrome or Satin Chrome finish. The locksets were sold in 15 different “functions” or models that can be identified by the three digit number following the QMS/QME series, which is located on the mortise case that is installed in the door cavity. Only mortise locksets with the following model/series numbers are included in the recall. The lockset can fail to open, posing an entrapment hazard and inability to vacate a location in an emergency. The company has received eight reports of lockset latch failures. No injuries have been reported.

The locksets were sold at Newport Distribution, CBS Manhattan, Columbus Door Company and other lock distributors and retailers nationwide, and online at www.grainger.com from December 2013 through June 2018 for between about $450 and $650. Consumers should immediately stop using the recalled locksets and contact the company for instructions on receiving a free replacement lockset. Contact dormakaba USA Inc. toll-free at 855-885-1296 from 8 a.m. to 5 p.m. ET Monday through Friday or www.stanleyhardwarefordoors.com and click on Products, then on Recall for more information.

**Lotus Foods Recalls Ramen Noodle Soup Cups Due To Fire And Burn Hazards**

Lotus Foods Inc., of Richmond, California, has recalled about 239,000 Lotus Foods rice ramen noodle soup cups. The paper soup cup’s labeling incorrectly instructs consumers to use the microwave for cooking, posing fire and burn hazards. The product involves Lotus Foods two ounce ramen noodle soups packaged in paper cups that are not microwave safe. The recalled soup cups contain organic brown rice noodles and were sold in three flavors; red miso rice ramen noodle soup, masala curry rice ramen noodle soup and tom yum rice noodle soup. The UPC code is printed on the back side of the cup to the left of the front panel. Lotus Foods has received 12 reports of the soup cups becoming extremely hot and/or sparking or catching fire during microwaving, including one report of a minor burn. Reported damage has been limited to the noodle cups.

The cups were sold at Whole Foods Market stores and other independent natural and specialty stores nationwide, Safeway stores in Northern California and online at Amazon.com and Lotusfoods.com from August 2018 through November 2018 for about $2.50. Consumers should immediately stop using the recalled soup cups and contact Lotus Foods for a coupon for a replacement product. Contact Lotus Foods toll-free at 866-330-4390 from 9 a.m. to 5 p.m. PT Monday through Friday or online at www.lotusfoods.com and click on the noodle soup cup recall banner or www.lotusfoods.com/noodle-cup-safety-recall/ for more information.

**The Children's Place Recalls Infant Snowsuits**

About 14,900 Infant snowsuits have been recalled by The Children's Place Services Company LLC, of Secaucus, New Jersey. This recall involves girls’ infant snowsuits sold in infant sizes 0 to 18 months. The recalled snowsuits were sold in two styles and three colors/patterns. The style number is printed on a label sewn in to the side seam. The snowsuits are 100 percent polyester and the trim is 95 percent polyester and 5 percent spandex. They have matching print hoods with small ears, detachable mittens and a zipper down the front of the suit covered with a fabric snap flap at the chest. The company has received one report of a metal snap detaching from a snowsuit. No injuries have been reported.

The suits were sold exclusively at The Children’s Place stores nationwide and online at www.childrensplace.com from August 2018 through November 2018 for about $50. Consumers should immediately stop using the recalled snowsuits away from children, stop using them and return them to any The Children’s Place store for a full refund. Online customers will receive return instructions by email from The Children’s Place on obtaining a full refund. Contact The Children's Place toll-free at 877-752-2387 from 9 a.m. to 8 p.m. ET Monday through Friday and between 9 a.m. to 5:30 p.m. ET on Saturdays, or online at www.childrensplace.com and click on “Recall Information” at the bottom of the page for more information. Pictures available here: [https://www.cpsc.gov/Recalls/2019/The-Childrens-Place-Recalls-Infant-Snowsuits-Due-to-Choking-Hazard](https://www.cpsc.gov/Recalls/2019/The-Childrens-Place-Recalls-Infant-Snowsuits-Due-to-Choking-Hazard)

**Dormakaba USA Recalls Stanley Commercial Hardware Locksets**

dormakaba USA of Indianapolis, Indiana, is recalling about 14,300 door locksets sold in the U.S. and Canada. The lockset can fail to open, posing an entrapment hazard and inability to vacate a location in an emergency. The company has received eight reports of lockset latch failures. No injuries have been reported. This recall involves Stanley Commercial Hardware’s grade 1 mortise lever lock QMS/QME 100 Series.

The recalled locksets have Bright Brass, Satin Brass, Oil Rubbed Bronze, Satin Nickel, Bright Chrome or Satin Chrome finish. They were sold in 15 different “functions” or models that can be identified by the three digit number following the QMS/QME series, which is located on the mortise case that is installed in the door cavity.

The locksets, manufactured in Taiwan, were sold at Newport Distribution, CBS Manhattan, Columbus Door Company and other lock distributors and retailers nationwide, and online at www.Grainger.com from December 2013, through June 2018, for between about $450 and $650.
Consumers should immediately stop using the recalled locksets and contact the company for instructions on receiving a free replacement lockset. Consumers may contact dormakaba USA toll-free at (855) 885-1296 from 8 a.m. to 5 p.m. (ET) Monday through Friday or www.hardwarefordoors.com and click on Products for more information.

Once again there have been a large number of recalls since the last issue. While we weren't able to include all of them in this issue, we included those of the highest importance and urgency. If you need more information on any of the recalls listed above, visit our firm's web site at BeasleyAllen.com or our consumer blog at RightingInjustice.com. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall information or to supply us with information on recalls.

XIX.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

MELISSA PRICKETT
Melissa Prickett began her career at the firm in 1996 as a secretary and a few months later she was promoted to the position of legal assistant. While working as a Legal Assistant, Melissa also attended law school at night. She was hired as a lawyer in our Mass Torts Section in 2001. Melissa has previously been involved in several mass torts litigations, including Baycol, hormone therapy, Celebrex/Bextra and hip replacement. She also is currently involved in litigations involving IVC filters and Physiomesh, as well as handling emerging litigation in a number of areas. Since 2010, Melissa has also served as the Director of Operations for Mass Torts. In that role, she oversees all aspects of cases handled in the section from start to finish. Melissa also manages the day-to-day operations for more than 120 lawyers and support staff in the Section. She works closely with lawyers and staff to make sure that all responsibilities are handled in a timely, efficient and accurate manner. Melissa focuses a lot of attention on implementing and improving policies and procedures for the Section. She makes sure the staff members have adequate knowledge and training to handle the tasks assigned to them.

Melissa also works closely with referring lawyers who send cases to the Section. Melissa says her favorite part of her job as Mass Torts Director is working with and getting to know all of the staff.

Melissa graduated from Jones School of Law in 2001. While at Jones, she served as a member of the Law Review Board and was recognized as Outstanding First Year Student. She was active in the Student Bar Association and held the positions of First Year Senator and Vice-President. She also was selected Who’s Who Among Students in American Universities and Colleges. She has been a member of several associations and has served as a guest scoring judge in local moot court competitions. She is a Martindale-Hubbell AV Preeminent Rated attorney, the gold standard in attorney rating based on strong legal ability and high ethical standards.

Melissa is married to Michael Prickett and they have twin sons who are graduating high school this year. In her free time, Melissa says she enjoys spending time with her family, especially attending her sons’ sporting events, which include tennis, golf, football and just about any sport! She is an avid Auburn fan. Melissa also likes reading, photography and traveling. The family’s favorite travel destination is the beach. They also do volunteer work together. The Pricketts are active members of Frazer United Methodist Church.

Melissa has an extremely important role in the Mass Torts Section and as you have seen from all of her responsibilities she stays very busy. Melissa is totally dedicated to the firm, her work and to the clients served by the Mass Torts Section. She does a tremendous job! We are blessed to have Melissa in the firm.

JESSICA STAPP
Jessica Stapp, who joined the firm in August 2010 as a Legal Assistant in the Consumer Fraud & Commercial Litigation Section, is currently working with Ali Hawthorne. Jessica has focused her career at Beasley Allen primarily on complex litigation on a national level including serving as lead legal assistant in the Average Wholesale Price litigation. She is currently lead legal assistant in litigation for multiple states that seek to recover money for reimbursement of unapproved and/or ineffective drugs. Jessica is also working in class action litigation involving consumer fraud within the health care industry.

In 1995, Jessica began her career as a legal assistant and over the years has demonstrated complex case management and administrative responsibilities resulting in numerous verdicts and settlements for clients in many areas of law. The types of cases she has worked on include personal injury, consumer fraud litigation, commercial fraud litigation, antitrust litigation, healthcare litigation, qui tam litigation, and class-action lawsuits.

Jessica is married to Jason Stapp. She has a 21-year-old son, Tray, and a 15-year-old daughter, Haley. Jessica is a member of Coosa Valley Baptist Church.

The Pricketts have a 21-year-old daughter, Haley. Jessica is a member of the Student Bar Association and held the positions of First Year Senator and Vice-President. She also was selected Who’s Who Among Students in American Universities and Colleges. She has been a member of several associations and has served as a guest scoring judge in local moot court competitions. She is a Martindale-Hubbell AV Preeminent Rated attorney, the gold standard in attorney rating based on strong legal ability and high ethical standards.

Jessica is a dedicated employee who works very hard for clients in the areas she is involved with. We are most fortunate to have Jessica with us.

TEMP TEMPLE

Dana Allen Temple, Jr., best known as Temp, joined Beasley Allen six years ago. Currently, Temp is a Staff Assistant in the Mass Torts Section working on the Xarelto litigation. He specializes in medical records, specifically determining which records need to be ordered for each case filed. The process includes gathering various authorizations and ensuring the firm receives all available records that are pertinent to proving the client used Xarelto and their use resulted in injuries or some cases death.

Temp began working at the firm as an intern in what was then the Web Department and has held several different positions over the years. As an assistant in the Accounting Department, Temp helped manage the overflow work including processing disbursement claims during the firm’s massive work on the BP Oil Spill litigation. He assisted Toxic Torts Section lawyers during the litigation. Temp served as the Communications Assistant for the Web Department, which evolved into the Marketing Department. Prior to moving to his current position, Temp also worked as Marketing Project Manager for the newly created Department.

As the youngest of two older half-siblings, Chap Temple and Candice Temple Ewen, who is married to Nick, Temp is now known as “the cool, younger uncle” to Candice and Nick’s four daughters, Brooklyn, Bellamie, Savannah and Carys and son, Kashon. Although they all live in Orange County, California, Temp enjoys any time he can spend with them.
Temp is the son of Lisa Check Temple and the late Dana Temple who passed away on Thanksgiving 2016 from complications resulting from a motorcycle accident. Temp’s family also includes two dogs, Artemis (a 5-year-old Afghan Hound) and Flash (a 13-year-old Border Collie/Bernese Mountain Dog mix) who Temp inherited from his father.

The Montgomery native graduated from Trinity Presbyterian School and attended Belmont University, where he majored in Public Relations and was part of the writing team for the university’s “Bruin Blog.” After accepting a full-time position with the firm, Temp transferred to Huntingdon College where he earned a B.S. degree in Business Administration, graduating in 2016.

Away from the office, Temp enjoys writing, gaming with his friends, kickboxing, hiking along nature trails, finding and listening to new music, watching Alabama Football and frequenting anyplace with good sushi. Temp is a good, hard-working employee who works hard to help Beasley Allen clients obtain justice. We are fortunate to have him with us.

XX.
SPECIAL RECOGNITIONS

BEASLEY ALLEN LAWYERS OF THE YEAR

Each year we select lawyers in their respective sections and one overall that truly shows the work we do, helping those who need it most. This year Chris Glover was selected as the firm’s Litigating Attorney of the Year. This award is presented to the lawyer who demonstrates exceptional professional skill throughout the course of the year. Chris is the Managing Attorney in the Atlanta office. He handles complex product liability cases involving serious injury or death and has handled several cases against manufacturers of light and heavy trucks and automobiles. His work opening and managing the Atlanta office has led to tremendous growth over just a few short years.

In addition to selecting the firm’s Litigating Attorney of the Year we have recognized excellence in our four sections, naming the Lawyer of the Year in each. Honorees for 2018 are:

- Stephanie Monplaisir, Personal Injury and Products Liability Section Lawyer of the Year;
- Andrew Brashier, Consumer Fraud and Commercial Litigation Section Lawyer of the Year;
- Joseph VanZandt, Mass Torts Section Lawyer of the Year;
- Ryan Kral, Toxic Torts Section Lawyer of the Year;

I am blessed to work with each of these outstanding professionals who have committed their working lives to taking good care of our clients. These outstanding lawyers know the value of hard work. We are truly blessed to have them here at the firm and these recognitions are well-deserved.

TOM METHVIN HONORED AS 2018 RECIPIENT OF THE CHAD STEWART AWARD

In 2014, the firm established a new award, the Chad Stewart Award. This honor was created in memory of Beasley Allen lawyer Chad Stewart, who passed away unexpectedly in April of that year at the very young age of 41. In addition to being a dedicated lawyer who worked hard for his clients, Chad truly modeled Jesus 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 task of “helping those who need it most.”

This year, the Chad Stewart Award was presented to the firm's managing attorney, Tom Methvin. Many know Tom for his generosity and community involvement across our city and state.

Since 1998, Tom has been the managing attorney of the Beasley Allen Law Firm. When he became managing attorney, he organized the firm into sections based on case type. This is very common in law firms today but was unusual at that time. It has allowed our lawyers to concentrate in certain areas and to be on the cutting edge in their legal fields. He led Beasley Allen to become a national powerhouse in providing legal advice and representation to victims of wrongdoing.

Tom’s family has served as lawyers, judges and in other elected offices in Alabama for over 200 years. He always knew he wanted to be a lawyer. From a very early age, Tom has had a heart for those whom the Bible calls “the least of these.” Tom’s father was a great influence in this area. Tom says he remembers his father stating, “One of the worst things someone can do is to take advantage of the illiterate, the ignorant or the uneducated.” With that in mind, Tom began his legal career at Beasley Allen representing victims of consumer fraud, many of whom were illiterate or uneducated.

Tom became president of the Alabama State Bar in July 2009, where he served through July 2010. While bar president, Tom focused on Access to Justice and increasing pro bono services to those in need. In 2009, the Montgomery County Bar Association (MCBA) established the Thomas J. Methvin Volunteer Lawyer of the Year Award. The award was named in honor of Tom for his dedication to providing pro bono legal services to the less fortunate in our community and for his leadership and advocacy in this area. It annually recognizes an MCBA lawyer who devotes significant time and energy to providing pro bono service to the less fortunate and providing leadership within the VLP community.

Among his many community service activities, Tom is past president of the Board of Directors for Brantwood Children’s Home, a home for abused and neglected children, and still active in support of the organization and the children it serves. He continues to act as a mentor to a young man who is a former resident of Brantwood Children’s Home. He also serves on the Board of Directors of Children’s Hope ministry in Haiti, which operates a children’s home, a medical clinic and other missionary outreach in that country.

Tom serves on the Cystic Fibrosis Advisory Panel, which helps fight this terrible disease. In 2009, he received the Sheena Diane Ayers Humanitarian Award for his longtime service and support for the Cystic Fibrosis Foundation. In 2014, Tom was selected as the March of Dimes Citizen of the Year. He also is a member of the River Region United Way Tocqueville Society and is a former member of the United Way Campaign Cabinet.

Past recipients of the Chad Stewart Award are Gibson Vance, Leigh O’Dell, Roman Shaul, and Andy Birchfield.

BEASLEY ALLEN HONORED AS MONTGOMERY IMPACT MAKER

Beasley Allen was announced in December as the Large Business category winner of the Montgomery Area Chamber of Com-
merce’s Montgomery Impact Maker Award during the organization’s Annual Meeting. This award was established to honor and recognize member businesses within the community that are making a huge impact in key areas of the City of Montgomery’s image and economy.

For nearly four decades, Beasley Allen has been headquartered in downtown Montgomery, first at its Hull Street location and now in the historic Commerce Street area. We are honored to have been voted an Impact Maker by the Chamber of Commerce membership. Coincidentally, Beasley Allen celebrates 40 years in Montgomery this month.

The award recognizes the firm’s revitalization efforts of downtown Montgomery as well as its contribution to the local economy. For years, Beasley Allen has been fortunate to be part of the revitalization projects in downtown Montgomery and has been delighted to be part of the transformation because it improves the quality of the area where many work and now live, increasing foot traffic and contributing to the local economy. Beasley Allen lawyers in the firm have invested multiple millions of dollars in projects that have helped bring Downtown Montgomery back to life.

Last month, the firm hosted its 12th annual Legal Conference & Expo at the Renaissance Montgomery Hotel & Spa at the Convention Center. The event is the largest of its kind in the state and one of the top five legal conferences in the country. On average, more than 1,500 private practice lawyers across the state register for the event. The conference also hosts a number of the nation’s top legal service providers, exposing the national vendors to the local area. This year’s conference was the largest so far. It is estimated that each conference adds about a million dollars to the local economy and plants seeds for Montgomery to be the potential vacation and meeting destination for others in the future.

Predicated on the principle of “helping those who need it most,” the firm, its attorneys and staff also invest resources in a large number of local charities. The Montgomery Impact Maker award is part of the Montgomery Chamber’s Imagine a Greater Montgomery strategy, an economic development strategy that focuses business, elected and community leaders around a vision of a better, more prosperous Capital City.

**PARKER MILLER SELECTED FOR GTLA’S LEAD CLASS**

Parker Miller, a lawyer in the firm’s Personal Injury & Product Liability Section and a recent Atlanta transplant, by way of the firm’s Montgomery headquarters, was selected for the Georgia Trial Lawyers Association’s 2018-2019 Leadership Education & Advanced Direction (LEAD) Program.

The LEAD program is in its sixth year and serves to train and equip GTLA members who have been identified as potential leaders in the association with the necessary tools to take the next steps in their legal careers, both in and out of the courtroom. Parker was one of only 17 selected following an extensive application review and selection process. More than 60 candidates were submitted for consideration. Applicants must have less than 10 years of legal experience or be 35 years of age or younger.

Since joining the firm in 2008, Parker has established himself as a force in cases of national significance. While working in the firm’s Toxic Torts Section, he maintained a diverse practice and successfully litigated cases on a wide variety of legal topics, including serving as co-lead counsel and Deputy Attorney General for the State of Alabama in the Deepwater Horizon (British Petroleum or BP) Oil Spill litigation. In that case, BP agreed to pay Alabama $2.3 billion in what is considered to be one of the most significant settlements in Alabama’s history. In addition, Transocean agreed to pay the state of Alabama $20 million in that litigation.

Parker was selected to serve as Beasley Allen’s second chair to the oil spill Plaintiffs’ Steering Committee in New Orleans. Ultimately, the Plaintiffs’ Steering Committee reached a landmark, uncapped settlement with BP for private claimants throughout the Gulf of Mexico.

After relocating his law practice to the firm’s Atlanta office earlier this year, Parker has focused on handling products liability and traumatic personal injury claims across the country, especially those related to negligent security and premises liability. He currently serves as an officer of the American Association for Justice’s Products Liability Section.

Parker also maintains a niche practice representing state governors and state attorneys general in nationally significant, high-stakes cases. In addition to his government work in BP, he is currently playing a leadership role in the historic opioid litigation, as he serves as co-lead counsel and Deputy Attorney General for the State of Alabama against Purdue Pharma L.P., Endo Pharmaceuticals, Inc., and McKesson Corporation. Alabama’s case is currently centered in the midst of the historic opioid litigation in Cleveland, Ohio. He is also Beasley Allen’s lead attorney for the State of Georgia in its investigation and evaluation of opioid-related claims.

**GRAHAM ESDALE TO SERVE AS SECRETARY OF THE AMERICAN BOARD OF TRIAL ADVOCATES ALABAMA CHAPTER**

Graham Esdale, a lawyer in the firm’s Personal Injury and Products Liability Section, has been selected to serve as Secretary for the Alabama Chapter of the American Board of Trial Advocates (ABOTA). Graham has served for a number of years as the chapter’s National Board Representative, working as a liaison between the chapter and its parent organization. In this capacity, Graham worked closely with the chapter’s executive board, which helped prepare him for his new role. He will attend the ABOTA annual Leadership Conference in California this month where he will collaborate with his counterparts from across the country to develop the organization’s plan of action for the year. Graham had this to say:

The conference is a great way to relay information from the national organization down to the different chapters and their members. I look forward to bringing new information back to the Alabama Chapter and helping lead the group as it pursues the year’s goals for strengthening and enhancing ABOTA’s mission.

A national organization, ABOTA is comprised of equal numbers of Plaintiff and Defense trial lawyers committed to preserving and promoting the civil jury trial right provided by the U.S. Constitution’s Seventh Amendment. Membership in ABOTA is by invitation only, following a rigorous nomination and voting process. Members must have tried at least 20 civil jury trials to verdict as lead counsel. A key component of ABOTA’s work to uphold the jury system is by educating the American public about the history and value of the right to a trial by jury.

As a Life Fellow and ardent Seventh Amendment advocate, Graham is committed to supporting the organization’s
mission and projects including those programs administered by the ABOTA Foundation.

The ABOTA Foundation is the organization’s nonprofit education affiliate that operates a series of programs designed to enhance civics knowledge for those in the legal profession as well as teachers and young students throughout the U.S. It also works to promote the importance of professional and civil behavior in the practice of law through its Civility Matters program. And, the Foundation’s Save Our Juries public education campaign informs and mobilizes citizens in the fight to save our disappearing Seventh Amendment right.

An award-winning lawyer, Graham focuses his practice on products liability and workplace injuries. Graham joined the firm in 1996 after handling over 150 trials for the Jefferson County, Alabama, District Attorney’s Office and then practicing civil law in Birmingham, Alabama.

After joining our firm, Graham continued his trial work and was one of the first lawyers in the country to file a lawsuit against Toyota in what would become the nationwide and high-profile Sudden Unintended Acceleration (SUA) litigation. He was a member of the trial team that secured a $3 million compensatory damages verdict against Toyota in 2013 in Bookout, et al. v. Toyota. Toyota settled the case before the case went to the punitive damages phase. The case was the first in the nation tried on the theory that Toyota's throttle control software was defective and could cause unintended acceleration. After our case, the massive litigation settled. Among his additional noteworthy cases, Graham obtained a $114.5 million verdict against a bucket truck manufacturer and a $5 million verdict against Alabama Power Company involving an electrical accident.

Graham has been named one of America’s “Best Lawyers” and “Super Lawyers” and was selected as one of the 2014-2015 Lawdragon 500 Leading Lawyers in America. Graham was also named one of America’s Top 100 High Stakes Litigators and received a lifetime achievement award from America’s Top 100 Attorneys.

Sources: American Board of Trial Advocates (ABOTA) and ABOTA Foundation
American Board of Trial Advocates (ABOTA)

**KATIE BRITT CHOSEN AS FIRST WOMAN TO LEAD BUSINESS COUNCIL OF ALABAMA**

The Business Council of Alabama (BCA), one of the state’s most powerful political organizations, has selected Katie Boyd Britt, chief of staff for my longtime friend Sen. Richard Shelby, to be the next BCA president and CEO. Katie will start the job on Jan. 2 and will be the first woman to serve as BCA’s president and CEO. She was an excellent choice to replace Billy Canary at the BCA.

Alabama Power CEO Mark Crosswhite, who chairs the BCA’s executive committee, said in a press release, announcing the appointment:

*As the top staff member for Senator Shelby, she has worked daily with businesses and elected officials from around Alabama and the country. She also has a special ability to work with and unite people from all walks of life. She has all of the tools we were looking for to support the business growth across the state that will drive our economy in the years ahead.*

Katie grew up in Enterprise and served as president of the Student Government Association at the University of Alabama. She earned her law degree from the University of Alabama School of Law. Before becoming chief of staff, she worked in other positions for Sen. Shelby, including serving as his press secretary. Katie previously led state governmental affairs for the Butler Snow law firm in Montgomery and practiced corporate law. She is married to Wesley Britt, who played football at the University of Alabama, and they have two children. The Britt family will live in Montgomery. Katie had this to say:

*My heart is in Alabama. Our state has made significant progress in recent years, and I am honored to have been chosen to lead BCA during this time of growth. I look forward to building on that momentum through collective efforts with our BCA members, elected officials, and business allies across the state—identifying opportunities every day in which we can provide and advance real, tangible solutions.*

I predict that Katie will do an outstanding job in her new role. She is a tremendous talent and will be extremely effective for the BCA. I wish Katie the very best as she starts a new chapter in her life. May God bless her!

**XXI. FAVORITE BIBLE VERSES**

Willa Carpenter, the Human Resources Liaison for the firm, furnished verses for this issue. Willa, who also is our firm’s “unofficial” Chaplin, had this to say:

> As we face the New Year, we leave behind many challenges. Some ended with wonderful results and some not so good. We may have lingering heartaches or glorious memories from this past year. In Phillipians, Paul is telling us that no matter what was handed to us, we as believers must forget what is behind and press forward for the prize (eternal life). We should apprehend (lay hold on) the one who has laid hold on us.

> But he who endures to the end shall be saved. Matthew 24:13

> Brethren, I do not count myself to have apprehended: but one thing I do, forgetting those things which are behind and reaching forward to those things which are abroad, I press toward the goal for the prize of the upward call of God in Christ Jesus. Philippians 3:13-14

Charles Myrick, a Mailroom Clerk with the firm, sent John 1:6-7 in his favorite verse.

> There was a man sent from God, whose name was John. This man came for a witness, to bear witness of the light, that all through Him might believe. Just as John came for a witness of the light (Jesus), as Christians we are to live so that we will be that light. We are to be witness of the life of Christ within us. John 1:6-7

Soo Seok Yang, a lawyer in our firm’s Mass Torts Section, tells about his “October Surprise” and he furnishes several verses for this issue. Soon Soek had this to say:

> By God’s grace, my wife and I found out about her pregnancy of our fifth child at the end of October this year. As it was God’s surprise and the
most precious present, being overjoyed, and at the same time, overwhelmed, we got down on our knees to praise God and pray to Him for His love, mercy and provision. Our four children bad their own nick names while they were in the womb: Bobo (treasure in Chinese) for Abramab, Heemang (hope in Korean) for Johanna; Sarang (love in Korean) for Elijah; and Eunhye (grace in Korean) for Hannab Grace.

Somehow, starting from the day we found out about the pregnancy, God gave us many Bible verses about “faith” through various avenues, so we prayed and decided to call this baby “Mi-Deum” (faith in Korean) until we have a real name. I take it as God’s faithful reminder for us on the importance of having faith in Him. Here are a few verses that we encountered:

“For we walk by faith, not by sight.”
2 Corinthians 5:7

“Consequently, faith comes from hearing the message, and the message is heard through the word about Christ.”
Romans 10:17

“And without faith it is impossible to please God, because anyone who comes to Him must believe that He exists and that He rewards those who earnestly seek Him.”
Hebrews 11:6

“For in the gospel the righteousness of God is revealed—a righteousness that is by faith from first to last, just as it is written: ‘The righteous will live by faith.’”
Romans 1:17

XXXII.
CLOSING OBSERVATIONS

UAB’S CHIEF TRAUMA SURGEON HAS A MESSAGE FOR THE NRA

I want to be very clear even though I am a gun owner—I am not a fan of the NRA, an organization that hides behind the Second Amendment, and conducts a vast money-making operation. In my opinion, the NRA has done great harm to our country. I am including a message written by Abbey Crain a few weeks back that all of us need to read and pass on to others. Ms. Crain, who is a journalist, tells us about Dr. Jeffrey Kerby, who works as doctor at UAB Medical Center.

Dr. Jeffrey Kerby sat down at 9 a.m., patches of blood still clinging to his scrubs. Kerby, director of acute care surgery and chief trauma surgeon at UAB Medical Center, had been working since 7 a.m. the previous morning making rounds, teaching, working on research, but at 5 that afternoon, his real work began. He operated on three gunshot wound patients through the night. One, he presumed, would not make it. They’d been shot in the head. The other two were stable, but not out of the woods. He got out of his last surgery at 7:30 a.m. and at 9 a.m. he finally sat.

Earlier this week, the National Rifle Association drew public controversy when it posted a Tweet, chastising physicians for speaking out about gun violence, admonishing them to “stay in their lane.” But for Dr. Kerby, this is more than his lane. It’s his highway. Someone should tell self-important anti-gun doctors to stay in their lane. Half of the articles in Annals of Internal Medicine are pushing for gun control. Most upsetting, however, the medical community seems to have consulted NO ONE but themselves.

Kerby graduated with a medical degree from the University of Missouri at Kansas City in 1989 and moved to Birmingham to complete his surgical residency. Since then, he’s only left Alabama when he served as an active duty United States Air Force trauma surgeon from 1999 to 2003. Today, he uses techniques he developed tending to high velocity gunshot wounds in war zones all over the world in his practice in Birmingham. Dr. Kerby says:

I’m used to seeing high velocity wounds, but now we’re starting to see those wounds in civilian trauma centers because you’ve got the high velocity rifles the AK-47s the AR-15s. We’re starting to see some of those wounds more frequently.

According to the Center for Disease Control, Alabama has the second highest rate of gun deaths in the country, with 21.4 deaths per 100,000 people. Kerby said the number of gunshot wounds the UAB Trauma Center has doubled in four years. He estimates 750 patients were treated this year for gunshot wounds. “It’s on a linear rise,” Kerby said. “It’s not just blips. It’s becoming a real epidemic.” Kerby shares the sentiments of the American College of Surgeons Committee on Trauma Firearm Strategy Team when it comes to gun violence: the gun violence epidemic is a public health problem that needs to be researched. Dr. Kerby says:

“We’re not anti gun. We know that the 2nd Amendment is very important, especially to our population in Alabama, and across the country. We want to come to the table with all the parties, the NRA, trauma surgeons, public health experts, to try to come up with a solution to the gun violence problem.

The NRA has actively lobbied against gun-violence research in the past, including advocating for the Dickey Amendment in 1996, which cut federal funding for gun violence research by 90 percent. Alabama’s rise in gun violence is on par with the increase of gun violence in the United States as mass shootings make headlines almost daily. According to Gun Violence Archives, a not for profit organization providing public research for gun-related injuries, there have been 307 mass shootings nationwide in 2018, killing 328 and injuring 1,251.

In Alabama 367 people died of gun-related violence in 2018. Kerby said it’s the day to day gunshot wounds that make up a big problem in Birmingham. Right now, he is focused on projects that can get trauma surgeons to patients faster and training civilians to treat gunshot wounds before medical help arrives. He leads “Stop the Bleed” courses in middle and high schools, teaching students and teachers to administer tourniquets. Kerby says:

“It’s a sad statement. We’re taking [kids] innocence away from them. But what I always tell people is, we don’t have to accept what’s going on, but we do have to prepare for it.”
Kerby co-wrote a study examining gun-related deaths and how to prevent them in 2017, by breaking down gun-related deaths based on gun availability, injury and death.

Kerby said there's no individual patient story that has stuck with him more than others. He remembers them all, especially the ones that end with him sitting down with a family member to tell them their loved one didn't make it. Kerby said:

_We carry a lot of emotional baggage. We have to tell those families when they don't make it. We remember those conversations. We remember every one of them. It sticks with you and it takes a toll over time._

Dr. Kerby sat for two hours. And then he stood, white coat covering the blood stain on his scrubs, to do it all over again.

Perhaps the leadership at the NRA should have to spend a few weeks alongside Dr. Kerby. That experience would give them a different perspective on the gun problem in America. It might also be good for the NRA bosses to break the hold Russia appears to have on them. When you reflect on recent events, that connection is very scary.

Source: AL.com

**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

_Kindness is a language which the deaf can hear and the blind can see._

Mark Twain (1835-1910)

_“I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country....corporations have been enthroned and an era of corruption in high places will follow; and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed.”_

U.S. President Abraham Lincoln, Nov. 21, 1864

In his December 1902 State of the Union address, Theodore Roosevelt said of corporations: “We are not hostile to them; we are merely determined that they shall be so handled as to subserve the public good. We draw the line against misconduct, not against wealth.”

_The 'Machine politicians' have shown their colors....I feel sorry for the country however as it shows the power of partisan politicians who think of nothing higher than their own interests, and I feel for your future. We cannot stand so corrupt a government for any great length of time._

Theodore Roosevelt Sr., December 16, 1877

**XXIII. PARTING WORDS**

**MY ONE AND ONLY RETAINER**

Lawyers at Beasley Allen do almost no ‘hourly charge’ work and I am the only lawyer in our firm who has a “retainer client.” I am on retainer by one person and that is the only retainer that I have. Rev. John Ed Mathison pays me $1.10 annually with the 10 cents being interest paid in advance since he is always late with the retainer. I have to admit that my friend John Ed is a very good client even though he is a retired Methodist preacher. I have had only one problem with my client during the years that I have been on retainer. On occasion, John Ed will try to actually join the firm. A few years back, the preacher, with my daughter Julie’s help, moved into my office during the time I was involved in a multi-week trial in St. Louis. However, the best part of the retainer relationship with John Ed is that he prays for his lawyer daily!!!
On January 15, 1979, Jere L. Beasley established a one-lawyer firm in Montgomery, Alabama, which has grown into the firm now known as Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.

Jere has been an advocate for victims of wrongdoing since 1962, when he began his law practice in Tuscaloosa and then his hometown of Clayton, Alabama. He took a brief hiatus from the practice of law to enter the political arena, serving as Lieutenant Governor of the State of Alabama from 1970 through 1978. He was the youngest Lieutenant Governor in the United States at that time. During his tenure he also briefly served as Governor, while Gov. George Wallace recovered from an assassination attempt.

Since returning to his law 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 and Montgomery, and employs more than 250 people, including more than 75 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.