I. CAPITOL OBSERVATIONS

SETTLEMENT REACHED RESOLVING XARELTO MULTIDISTRICT LITIGATION CLAIMS

The makers of the popular blood thinner Xarelto® have reached a $775,000,000 settlement to resolve the litigation filed by patients who suffered a bleeding injury after taking the prescription drug.

According to the agreement announced on March 25 between plaintiff lawyer leadership and Bayer Healthcare and Janssen Pharmaceuticals Inc., a subsidiary of Johnson & Johnson, the settlement is a private agreement intended to resolve the entire litigation including cases in federal and state courts. Andy Birchfield heads up the Mass Torts Section at Beasley Allen. He is co-lead counsel of the Plaintiffs’ Steering Committee for the federal multidistrict litigation. Andy had this to say about the settlement:

This is a fair and just resolution for thousands of consumers who have substantial claims. This was a massive and complex matter and we appreciate the guiding role played by federal judge Eldon E. Fallon who oversaw the federal litigation.

Pursuant to the agreement, a claims administrator and special master will be appointed to manage the claims process and any appeals and will be responsible for determining how funds will be allocated to those who are entitled to payment.

Brian Barr of the Levin Papantonio law firm, who serves with Andy as co-lead counsel of the Plaintiffs’ Steering Committee, added this statement concerning the settlement:

We are pleased that these drug companies have agreed to allow all these Xarelto patients to move their claims forward after years of seeking justice. It may have taken more than four years and six separate trials but litigation like this is an important way for consumers to have a voice in matters of drug safety.

In addition to addressing lawsuits that are already part of the multidistrict litigation, the agreement resolves newly filed claims that meet certain criteria. That includes plaintiffs who had retained a lawyer to investigate Xarelto-related personal injury claims before March 11, 2019, registered their claims by March 28, 2019, and filed a civil action by April 4, 2019. Individuals involved in those lawsuits should contact their personal lawyer to address eligibility questions.

Payments will be substantially reduced for any claimant whose first Xarelto prescription was on or after December 1, 2015, and/or whose first alleged injury from Xarelto occurred on or after March 1, 2016. In addition, payments are subject to a cap for claimants who were hospitalized for two consecutive days or less.

More than 25,000 lawsuits have been filed by Xarelto patients who alleged they suffered injuries such as internal bleeding, stroke and death. The lawsuits claim that the manufacturers downplayed Xarelto’s risks and aggressively marketed the drug as an alternative for warfarin in patients needing blood thinners to avoid dangerous clots. The lawsuits allege that doctors and patients were not fully informed of the risks, which allegedly have resulted in life-threatening complications.

The case is In re: Xarelto (rivaroxaban) Products Liability Litigation, (case number 2:14-md-02592) in the U.S. District Court for the Eastern District of Louisiana.

II. MORE AUTOMOBILE NEWS OF NOTE

BEASLEY ALLEN LAWYERS STILL SEEING RECALLED TAKATA AIRBAGS BY VIRTUALLY ALL MANUFACTURERS INJURING PEOPLE

It has been 15 years since the first Takata airbag exploded, shooting shrapnel throughout the interior of a Honda Accord severely injuring the occupants. Since that time, we have witnessed the largest automotive recall in the history of the world with more than 100 million vehicles recalled worldwide. The scope of this problem is unprecedented. In early March 2019, Honda recalled another 1.2 million vehicles. The most disturbing thing isn’t that they are still recalling vehicles after all these years, but that these are in vehicles that were already recalled. It’s truly shameful that Honda cared so little about the occupants of its vehicles that it replaced a recalled airbag with another defective airbag. This is just another reason why our lawyers continue to see these injuries and deaths.

There have also been criminal convictions and record fines from the National Highway Traffic Safety Administration (NHTSA) for failing to cooperate in the investigation of this deadly defect. All of that is new territory in the automotive

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defect world, but the most interesting and perhaps shocking is the avoidance of the civil justice system that Honda and Takata achieved. Takata did so by declaring bankruptcy and setting up a $120 million claims fund for victims of the deadly defect. The largest user of the airbags, Honda, was able to be included in a bankruptcy court injunction that directed all the claims against the company to a claims fund supervised by court-appointed officials outside the traditional court system.

So far only Honda has taken advantage of the claims fund to avoid the traditional court system and the other manufacturers with Takata airbags can still be brought into court for the injuries that were caused by this dangerous defect.

Lawyers in our firm are handling claims both against Honda and Takata within the claims fund. They are also handling claims against the other manufacturers in the court system. These cases typically involve a recalled airbag that does deploy and causes laceration type injuries due to shrapnel exploding throughout the vehicle when the inflator ruptures. A smaller subset of these cases involves over-aggressive airbags that deploy with such force that the occupants are injured by the airbag itself during the deployment.

If you need more information or would like to talk further about the Takata recall problem, contact Chris Glover, who heads up our Atlanta office, at Chris.Glover@beasleyallen.com or Cole Portis, who heads up our Personal Injury & Products Liability Section, at Cole.Portis@beasleyallen.com

**HYUNDAI AND KIA RECALL**

Korean automakers Hyundai and Kia recently announced that they would cumulatively be recalling more than 600,000 vehicles. While the companies are run as separate business entities, the two manufacturers are subsidiaries of the same corporate parent company and their automobiles share parts and engineering. Notices are expected to reach affected vehicle owners by late March.

Hyundai is recalling approximately 120,000 SUVs. Specifically, Hyundai is recalling 120,000 Hyundai Tucson SUVs from the 2011 to 2013 model years, citing that the vehicles’ oil pans may have been improperly sealed during production. If unremedied, there is a risk that an oil leak could develop, leading to engine damage, engine stalling or, at most severe, a vehicle fire.

Kia is recalling about 505,752 cars, SUVs, and minivans. This includes 378,967 Kia Soul cars, 94,389 Kia Sedona minivans, and 32,396 Kia Sportage SUVs. The Kia Soul recall includes cars from the model years 2012 to 2016. The vehicles’ catalytic converters could be damaged by high exhaust temperatures, resulting in engine damage.

The Kia Sedona recall includes minivans from model years 2015 to 2018. A wiring harness for the vans’ front passenger seats that detects the weight of a person can break if the seat is frequently used, meaning the airbag could deploy in a crash when a child, who normally does not weigh enough to activate an airbag, is seated there.

The Kia Sportage recall includes SUVs from model years 2011 to 2012. These vehicles may have the same oil pan problem as the Hyundai Tucson, mentioned previously, that could lead to a vehicle fire.

The Center for Auto Safety (CAS) believes that these measures may not be enough to appropriately address the scope of the automakers’ vehicle problems. The safety organization has stated that at least 2.9 million Hyundai and Kia vehicles, further including certain Kia Sorento, Kia Optima, Hyundai Santa Fe, and Hyundai Sonata models, need to be recalled to adequately deal with fire risks.

As early as 2016, the organization began receiving complaints of vehicle fires that occurred under otherwise normal driving conditions. Since then, CAS has identified more than 300 complaints filed with federal regulators about non-crash fires in these vehicles.

Hyundai and Kia assert that CAS has overgeneralized the scope and risks associated with the problems. Still, the automakers’ recall announcements come just days after CAS addressed a letter to Congress calling for an investigation. U.S. safety regulators have been investigating Hyundai and Kia engine failures and engine fires since May of 2016. If you need more information, contact Dan Philyaw, a lawyer in our Atlanta office, at 800-898-2034 or by email at Dan.Philyaw@beasleyallen.com.

**ENGINE-DEFECT CLASS ACTION LAWSUIT FILED AGAINST HYUNDAI AND KIA**

A proposed class action lawsuit has been filed against Hyundai Motor Co. and Kia Motor Co. in a Washington federal court. It’s claimed in the complaint that the automakers failed to warn consumers of severe engine defects that caused unexpected stalls and spontaneous fires in three car models. Plaintiffs Linda Short and Olivia Parker said in their complaint that while Hyundai and Kia have recalled more than half a million of the vehicles for defective gasoline direct-injection engines, that action came only after pressure from federal safety investigators and lawmakers. The Plaintiffs said, “Consumers have every reason to suspect that a recall at this late date will not be an adequate solution to the defect.”


The complaint says a programming error in the catalytic converter of affected Souls can cause overheating and severe engine damage, which in turn can cause oil leaks and engine fires. The Plaintiffs also claimed that the engines of affected Tucons and Sportages were made with defective oil seals, again causing oil leaks, engine failures and fires. The Plaintiffs claimed the companies knew or should have known of the defects, saying Kia fixed the programming error in the Soul in 2016 and both companies were aware of numerous reports of defects in the Tucson and Sportage models.

The Plaintiffs said further that the companies did not disclose the defects or begin issuing recalls until January, almost two years after the National Highway Traffic Safety Administration (NHTSA) began investigating reports of engine fires in multiple car models and two months after company executives were asked to attend a Senate Commerce Committee hearing on the issue. It’s alleged in the complaint:

Plaintiffs are skeptical that the proposed recalls can or will actually repair the defects, based both on defendants’ track record of failed recall repairs for similar defects and on the nature of these defects and the proposed repairs.
Even if the defects are repaired, the publicity around the recalls will have reduced the cars’ resale value. Both companies are facing multiple suits alleging engine defects in their vehicles. A proposed class action filed in California in December alleges dangerous engine defects in seven Hyundai and Kia models, including the Soul and the Sportage. Hyundai is also facing a suit in New Jersey federal court claiming it hid piston defects in 2011-2016 Elantra models.

Plaintiffs Short and Parker are represented by Lynn Lincoln Sarko, Gretchen Freeman Cappio and Ryan McDevitt of Keller Rohrback LLP. The case is Short et al. v. Hyundai Motor America Inc. et al., (case number 2:19-cv-318) in the United States District Court for the Western District of Washington.

Source: Law360.com

$33 MILLION JURY VERDICT IN WRONGFUL DEATH LAWSUIT AGAINST GOODYEAR

A Texas jury has returned a $33 million verdict against Goodyear Tire & Rubber Co. in a case that involved a defective tire. The jury found that defective tires made by the company were responsible for a collision that killed Ramiro Munoz, a teacher and city manager for Carrizo Springs, Texas. In its verdict, the jury found Goodyear 90 percent responsible for the collision that led to the death.

A cement truck owned by D.G.J. Transport Inc. and the driver of the vehicle that hit the Munoz vehicle were found liable for the remaining 10 percent.

A cement truck owned by D.G.J. Transport collided with Munoz’s vehicle. It was alleged that the collision was a result of a catastrophic failure of the cement truck’s left front tire, which was manufactured by Goodyear in 2009 at its Danville, Virginia, plant. It was contended that the Danville plant that produced the tire was “notorious” for putting its production speed ahead of safety. John Gsanger of the Ammons Law Firm, one of the lawyers representing Munoz, said:

In our analysis, we found the failed tire’s problems were numerous and included adhesion defects and off-center, wrong-sized steel belts. Tread separation and the loss of vehicular control is the result of boddy manufaturing.

Gsanger added that he and his co-counsel hope the verdict will push Goodyear and other tire manufacturers to keep product safety at a higher priority than profits. Blake Brunkenhoefer of Brunkenhoefer PC, also representing Munoz, said he thought the jury came to a thoughtful and well-reasoned verdict. He added:

Ultimately, it was clear that the tire was terribly defective, the truck driver couldn’t have done much more to avoid a crash with our deceased client and the jury was able to find its way to the core of the case and see past the irrelevant issues.

It should be noted that Goodyear and Munoz’s family reached a confidential settlement before the jury verdict was announced. The Munoz family is represented by John Gsanger with the Ammons Law Firm and Blake Brunkenhoefer of Brunkenhoefer PC. The case is Elvia Munoz et al. v. D.G.J. Transport Inc. et al. (case number 13-06-12006-DCVAJA) in the District Court for the 365th Judicial District, Dimmit County, Texas.

Source: Law360.com

CALIFORNIA APPEALS COURT UPHOLDS $25 MILLION NISSAN VERDICT

A California state appeals court has upheld the $25 million jury verdict in a lawsuit against Nissan North America Inc. The case arose from a traffic accident that killed three people. The automaker’s arguments that a jury erred by placing the blame for the wreck on a braking software defect in one of its SUVs was rejected by the appeals court. A three-judge panel summarily rejected all of Nissan’s arguments attacking the jury verdict and affirmed the lower court’s judgment. The panel said: “Nissan raises several issues concerning the jury’s findings on causation and the statute of limitations. None of the contentions have merit.”

The panel did affirm the trial court’s decision to credit the proceeds of an undisposed settlement between the Plaintiffs and Continental Automotive Systems Inc., toward the total amount Nissan will be required to pay. Continental made the components for the braking system.

Nissan faced claims in the trial from both Solomon Mathenge, whose Infiniti QX56 SUV crashed into a minivan in a Hollywood intersection in 2012 and killed a woman and her two daughters, and by family members of the deceased. As you may recall, Mathenge had been charged with manslaughter after the crash.

However, the charges were dropped after Nissan settled a class action alleging the software braking system in some of its vehicles was prone to sudden failure. An inspection of Mathenge’s QX56 revealed it had suffered the very same software error in the class action settlement.

The family members of the deceased initially sued Mathenge, but later added Nissan as a Defendant and dropped their claims against Mathenge altogether. Those claims were then consolidated with Mathenge’s own claims against the automaker. The hydraulic braking system, known as OHB mode, is an emergency measure that’s triggered by a loss of hydraulic pressure in the brake pedal.


Source: Law360.com

DEFECTIVE NISSAN AIR BAG SEAT SENSORS ALLEGED IN LAWSUIT

Jeffrey W. Dodson, an Illinois resident, the owner of a 2015 Altima, has filed a proposed class action lawsuit accusing Nissan of selling cars whose air bags may fail to deploy because of a faulty computerized sensor that mistakes the front passenger seat as empty or holding a child when in fact the occupant is an adult. It’s alleged in the suit that Nissan recalled vehicles carrying the faulty Occupant Classification System (OCS) in 2014, but failed to properly correct the problem. Another recall followed in 2016 covering all models manufactured since 2013.

The Plaintiff said in his complaint that he brought his 2015 Nissan Altima in to be reprogrammed in 2016, but when he brought the vehicle home, an Occupant Classification System service light continued to appear on his dashboard. The suit alleges that when the Plaintiff contacted the service center about the problem, staff said that was normal.
When the Plaintiff said that answer was “unacceptable,” the service center allegedly said there was nothing more they could do. It is alleged further in the complaint:

Despite many Nissan vehicle owners going through the time-consuming process of bringing their vehicles to a Nissan dealer for service to fix the OCS defect, the defect remained, indicating that those procedures were insufficient to repair the OCS defect. The OCS notification light continues to come on and go off in his 2015 Nissan Altima to date, the driver said in the complaint, often remaining on for long periods of time. Because the car maker says the OCS warning light means the air bag will not deploy in the front seat passenger side in the event of impact, the car is not safe. The named driver and the proposed class he represents have suffered harm in that they paid more money for their cars than they should have, given the defect.

Plaintiff Dodson says that one of the main reasons he chose the 2015 Altima was because it was advertised as safely designed and manufactured. “Safety and quality” were “consistent themes” in Nissan’s advertising, despite the automaker knowingly selling defective air bag deployment sensors that it couldn’t fix.

The suit, which seeks both compensatory and punitive damages, has claims for breach of both written and implied warranty, and violations of the Illinois Consumer Fraud and Deceptive Business Practices Act.

Plaintiff Dodson is represented by David B. Levin of the Law Offices of Todd M. Friedman PC. The case is Jeffrey W. Dodson v. Nissan North America Inc. (case number 4:19-cv-04043) in the U.S. District Court for the Central District of Illinois.

Source: Law360.com

**SEC Says Volkswagen Defrauded Investors During Emissions Scandal**

The U.S. Securities and Exchange Commission (SEC) has sued Volkswagen AG and its former CEO Martin Winterkorn for allegedly defrauding U.S. investors by raising billions of dollars through bonds while failing to disclose that its “clean diesel” vehicles didn’t comply with emissions standards. Volkswagen issued more than $13 billion in bonds and asset-backed securities in the U.S. markets from April 2014 to May 2015, all while senior executives, including Winterkorn, knew that more than 500,000 vehicles in the U.S. were emitting pollutants far beyond federal limits because of the so-called defeat devices installed in the vehicles.

Essentially, U.S. investors were duped into buying the Volkswagen bonds and securities at inflated prices based on the company’s and executives’ statements in bond-offering documents—which conveniently left out Volkswagen’s use of defeat devices in its 2.0-liter and 3.0-liter “clean diesel” vehicles to cheat regulators’ emissions tests. The SEC said in the complaint:

“These investors did not know that VW was lying to consumers to fool them into buying its ‘clean diesel’ cars and lying to government authorities in order to sell cars in the U.S. that did not comply with U.S. emission standards. The entire time, Winterkorn and other senior officials at VW knew the truth: VW’s ‘clean diesel’ engine was a sham.”

The complaint alleges that the scheme came to life in early 2007 when Winterkorn was elevated to CEO and chairman of Volkswagen AG’s board of management. He laid out an aggressive growth strategy for being heavier polluters compared to more powerful and fuel-efficient, but also getting U.S. consumers to more widely understanding that they were buying a safe investment in a world-class company in the world by 2018.”

The SEC says the plan depended on getting U.S. consumers to more widely embrace diesel vehicles—known for being more powerful and fuel-efficient, but also for being heavier polluters compared to gasoline-powered cars.

Volkswagen then began marketing a “clean diesel” engine, the SEC says. It turns out those vehicles were rigged with defeat devices that kept the Volkswagen vehicles’ nitrogen oxide emissions within legal limits during test conditions to fool regulators but allowed emissions to spike during normal driving conditions.

As sales of its “clean diesel” cars skyrocketed, Volkswagen turned to the U.S. markets to generate more money for its growth strategy, even proclaiming in a 2014 annual report that it was “able to exploit [a] favorable pricing situation to its advantage” through the completion of two bond offerings in the U.S. during 2014, according to the SEC. Stephanie Avakian, co-director of the SEC’s division of enforcement, said in a statement:

Issuers availing themselves of American capital markets must provide investors with accurate and complete information. As we allege, Volkswagen bid its decade-long emissions scheme while it was selling billions of dollars of its bonds to investors at inflated prices.

The SEC’s complaint goes after Volkswagen AG, its units Volkswagen Group of America Finance LLC and VW Credit Inc. and Winterkorn for violating the anti-fraud provisions of federal securities laws. It seeks civil penalties, a ban on Winterkorn from serving as an officer or director of a public U.S. company and to recover “ill-gotten gains.”

The U.S. Environmental Protection Agency (EPA) issued a notice of violation in September 2015 and Volkswagen admitted to rigging nearly 600,000 of its model year 2009-2015 vehicles with the defeat devices. The price of its bonds plummeted, the credit ratings on the bonds were cut, the risk of default on the bonds increased and all of the bonds were trading below par value, the SEC said. It’s alleged further:

In the end, U.S. investors purchased billions of dollars of VW debt, with low interest rates, based on their understanding that they were buying a safe investment in a world-class company. Instead, when VW’s decade-long scheme finally came to light, investors were left holding bonds that were far riskier than they were told, thought, or were compensated for.

As part of its 2016 deal with the U.S. government, Volkswagen agreed to pay $4.3 billion in civil and criminal penalties, invest $2 billion in zero emission vehicle technology, spend up to $14 billion to compensate consumers and buy back or fix the approximately $80,000 affected vehicles, and contribute $2.93 billion to an emissions mitigation trust.

As we have previously reported, the automaker is still involved in multiple class actions from drivers, dealerships and stockholders and others that are part of sprawling multidistrict litigation playing out in northern California.
The case is *U.S. Securities and Exchange Commission v. Volkswagen AG et al.*, (case number 3:19-cv-01391) in the U.S. District Court for the Northern District of California.

Source: Law360.com

**SUIT AGAINST VW OVER SHATTERING SUNROOFS MOVES FORWARD**

The proposed class action against Volkswagen alleging it knowingly sold vehicles with spontaneously shattering sunroofs has survived a motion to dismiss. U.S. District Judge Jon S. Tigar said the buyers had provided adequate evidence that the German automaker knew about the defect. The judge had dismissed most of the claims against Volkswagen in May, but gave the Plaintiffs an opportunity to amend the parts of their complaint alleging state consumer protection and fraud claims.

The Plaintiffs are represented by The Law Office of Stephen M. Harris PC. The case is *Deras v. Volkswagen Group of America Inc.*, (case number 3:17-cv-05452) in the U.S. District Court for the Northern District of California.

**III. OPIOID LITIGATION**

**AN UPDATE ON THE OPIOID LITIGATION**

The Opioid multidistrict litigation (MDL) consolidated in Cleveland, Ohio, continues to progress towards its first bellwether trial, which is set to begin later this year. The sheer volume of discovery forced the Court to delay trial dates twice, so our opioid litigation team members are keeping a close eye on rulings issued by Special Master David R. Cohen, who oversees discovery disputes between the parties, and the Court, which may adopt or reject those discovery recommendations.

The Court recently issued an order governing the production of medical claims data in the Track One cases. Defendants have sought this information to analyze the number of patients alleged to have been addicted to opioids and information concerning claims related to that addiction. The Court instructed that the claims be de-identified as to individual information but remain untouched as to medical and pharmacy claims associated with those individuals. Recognizing the potential privacy concerns at issue, the Court’s order also contains several restrictions on the use and disclosure of the claims data.

Another significant development could impact most cases filed within the MDL. Last December, U.S. District Judge Dan Aaron Polster designated the City of Huntington and Cabell County, West Virginia, as “Track Two” cases to further assist the court in assessing the validity of claims outside the State of Ohio. That same order directed the parties to brief the viability of statutory and/or common law public nuisance claims in each State where an MDL Plaintiff is located, so the Court could better understand state specific variations of public nuisance law.

Statutory and common law public nuisance claims are consistently asserted in opioid lawsuits across the country. The gist of the claim is that the unlawful activities of opioid manufacturers and distributors have flooded our communities with these drugs, causing both heartache in the loss of life as well as straining public budgets with increased criminal justice and public health costs incurred to battle the opioid crisis.

Plaintiffs argue that opioid manufacturers falsely marketed their opioids to increase the number of prescriptions written for their pills. Opioid distributors, who ship the pills to pharmacies and other dispensers allegedly failed to report, investigate and halt suspicious orders of opioids to their customers as required by law. These actions combined to fuel the opioid crisis plaguing the country today.

The parties concurrently submitted their briefs in early March. Defendants argued the public nuisance claims were not viable because such claims have historically been limited to claims involving land or property rather than products. They contended that attempts by the Plaintiffs to expand the application of public nuisance law to products had been rejected by courts nationwide and, for states that had not addressed the issue, argued that the MDL court could not expand it under the Erie doctrine. Defendants also claimed that three common elements of public nuisance claims—interference with a public right, proximate causation, and control over the instrumentality of the nuisance—could not be satisfied under the facts of the case.

Plaintiffs countered that a substantial number of states follow the public nuisance definition set forth in the Restatement (Second) of Torts or applied a similar standard in permitting such claims to abate a public nuisance. They mentioned that both Magistrate Judge Ruiz and Judge Polster acknowledged the Defendants’ conduct met the Restatement’s definition because it interfered with the public health, was prescribed by statutes and regulations, and the conduct continued to significantly impact public rights.

Plaintiffs also discussed how common defenses such as the statewide concern doctrine, municipal cost recovery rule/ free public services doctrine, and the economic loss doctrine did not bar the public nuisance claims. Finally, they also noted the numerous decisions nationwide upholding public nuisance claims in other opioid cases and distinguished two decisions, Connecticut and New Jersey, dismissing those claims.

Beasley Allen has partnered with other law firms to represent the States of Alabama and Georgia as well as handling numerous local-government claims against opioid manufacturers and distributors. We are honored to represent these governmental entities and seek compensation for the harms caused by the ongoing opioid epidemic. Our lawyers are also handling claims by individuals.

If you have questions concerning any of the above, contact Ryan Kral, one of the Beasley Allen lawyers involved in the litigation, at 800-898-2034 or by email at Ryan.Kral@beasleyallen.com.

**FDA TO QUESTION PRESCRIBERS ON OPIOID PROMOTION**

The U.S. Food and Drug Administration (FDA) will now survey 2,000 prescribers for insights into drugmakers’ promotional efforts, including opioid promotions that have caused huge problems in this country. The FDA outlined its survey in a 22-page notice. The survey, first proposed one year ago, attracted interest from major players in the pharmaceutical and health insurance industries. The notice said that part of the survey will explore how drugmakers communicate with prescribers about opioids, citing “the critical problem with opioid abuse and addiction in the United States at this time.”

The notice referenced prior studies in 2002 and 2013 that questioned prescribers...
States Most Affected By The Opioid Epidemic

With all of the attention nationwide on the opioid crisis, we felt it necessary to do a recap in this issue of the extent of the problem. More than 72,000 Americans died of drug overdoses in 2017, a 7 percent increase over the prior year. The majority of those overdose deaths, about 59,000, were caused by prescription opioids such as oxycodone, or illicit opioids such as heroin and powdered fentanyl.

A recent study of opioid-related deaths, published by JAMA Network Open, shows that, while the growth of opioid related deaths nationwide is flat, the number of deaths due to opioids in the eastern half of the United States continues to grow. The suspect is heroin laced with illicit fentanyl. Fentanyl is an extremely powerful synthetic opioid; less than a quarter of a milligram, 1/10,000 of the mass of a penny, is lethal.

According to the JAMA Network study, the death rate from synthetic opioids, primarily fentanyl, has doubled every two years since 1999 in 28 states. The effect of opioids is so large that life expectancy in America is actually decreasing, including a decrease of 0.36 years in 2016. The states that sustained the biggest drops in life expectancy were New Hampshire and West Virginia; life expectancy plummeted more than a year in both states.

As incredible as these numbers are, it is possible that the number of opioid-related deaths is even higher than what it is reported. It is likely that many opioid deaths go unreported because the testing for synthetic opioids is not standard, and it necessitates additional testing by a medical examiner. Furthermore, the manner in which drug overdoses are coded on death certificates is a major cause of the underreporting. According to a recently published study, it is possible that 70,000 deaths marked as unspecified between 1999 and 2015 should have been marked as opioid-related deaths.

Source: Law360.com

Purdue Agrees To A $270 Million Settlement In Oklahoma OxyContin Opioid Case

Just as this issue was heading to the printer we learned that Purdue Pharma LP and members of the Sackler family that own the OxyContin maker had reached a $270 million settlement to resolve the lawsuit filed by the state of Oklahoma accusing the company of helping fuel the opioid abuse epidemic. The settlement with Oklahoma Attorney General Mike Hunter is the first to result from the lawsuits accusing Purdue of deceptively marketing painkillers. The settlement came after the defendants’ attempt to delay the trial in the case, which had been set for May 28.

Oklahoma’s lawsuit, filed in 2017, accused Purdue, Johnson & Johnson and Teva Pharmaceutical Industries Ltd of deceptive marketing that played down the risks of addiction associated with opioid pain drugs while overstating their benefits. As I understand it, the settlement covers only Purdue, leaving claims pending against J&J and Teva. Attorney General Hunter announced the settlement during a news conference on March 26. This settlement could have a bearing on other cases pending against Purdue both in the MDL (federal cases) and in cases filed in state courts. We will follow up on this development in our next issue in May.

Source: Reuters

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@beasleyallen.com, Parker.Miller@beasleyallen.com, Ryan.Kral@beasleyallen.com, Rick.Stratton@beasleyallen.com, William.Sutton@beasleyallen.com or Jeff.Price@beasleyallen.com.

IV. THE TALC LITIGATION

An Update On The Talc MDL

In the wake of the Imerys bankruptcy filing, which will be discussed in detail below, the talcum powder litigation presses on in the federal court multidistrict litigation (MDL) in New Jersey. The bankruptcy filing triggered an automatic stay of all claims pending against Defendant Imerys Talc America, Inc., including all such actions in the MDL. Once a process is established in the bankruptcy proceeding, claimants will likely have an opportunity to seek redress through the bankruptcy court for claims against Imerys. The talc litigation against Defendants Johnson & Johnson and Personal Care Products Council (PCPC), as well as other Defendants, is nonetheless proceeding in both federal and state courts.

Despite the sudden shift in the talc litigation as a result of the Imerys bankruptcy, expert discovery in the MDL continues to move forward. As of late February, all parties have submitted their expert reports. In addition, all of Plaintiffs’ experts have been deposed, and the depositions of Defense experts are scheduled to begin March 13 and continue through April 10 of this year.

Once all potential defense experts have been deposed, all parties will be gearing up for a significant hearing—a Daubert hearing. Daubert proceedings are currently scheduled to take place in July 2019 where the court will determine the admissibility of expert witnesses’ testimony and
Congress Learns About The Talc Cancer Risk

The federal government is finally taking action relating to the talc-related cancer problems. The Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) have issued subpoenas in an investigation of asbestos in Johnson & Johnson’s baby powder. In early March, the Personal Care Products Safety Act was introduced by Senators Dianne Feinstein, D-California and Susan Collins, R-Maine. The proposed Safety Act would allow the U.S. Food and Drug Administration (FDA) to review ingredients in personal care products and require safety recalls of products that pose a threat to consumer safety. That will certainly apply to Johnson & Johnson (J&J) and its talc products.

A Congressional sub-committee met on March 12 to examine the risk of cancer from long-term use of talc-containing products, such as J&J’s Baby Powder and Shower to Shower body powder. A recent Reuters investigation into internal documents found that J&J knew for decades that the talc it used in some of its products was contaminated with cancer-causing asbestos. Lawyers on our talc litigation team have had in our possession J&J internal documents received in pretrial discovery showing clearly that the bosses and medical staff at J&J have known since the early 1970s that talc use by women had a significant risk of ovarian cancer.

Beasley Allen lawyers Leigh O’Dell and Ted Meadows sat at the congressional hearing alongside of many victims whose suffering stems from J&J’s baby powder. The hearing was in front of the congressional Subcommittee on Economic and Consumer Policy in Washington, D.C. The subcommittee met to examine health risks linked to carcinogens in consumer products. Specifically, the association between talcum powder products use and ovarian cancer was widely discussed.

The subcommittee heard from scientific experts and others impacted directly or indirectly by ovarian cancer caused by talcum powder product usage. Among the witnesses testifying before the congressional subcommittee was Dr. Anne McTiernan MD, PhD, from the Fred Hutchinson Cancer Research Center. She explained when talc is used in the perineal area, talc can travel to the fallopian tubes and ovaries to cause cancer. Also testifying were Scott Faber, Vice President of Government Affairs, Environmental Working Group and Marvin Salter, whose mother, Jacqueline Salter Fox, died as a result of using J&J’s talcum powder products for decades. Marvin did a tremendous job before the congressional subcommittee.

Marvin told the members of congress that his mother approached her ovarian cancer diagnosis with a positive attitude and a big smile. “She smiled through her surgery, through her chemotherapy, and even the hair loss that it caused,” Marvin said during his testimony. “Her spirit was never broken despite what happened to her body,” he said, fighting tears. “She smiled through it all.” He added:

“When she learned that her daily use of Johnson & Johnson’s talcum powder products for more than 30 years was the cause of her disease, she sought justice. I was not involved in her decision to file a lawsuit, but I supported her fully. She wanted to raise awareness for women about the risk of cancer. Unfortunately, she never made it to her trial.”

Sadly, Jackie Fox, who was a cousin of the legendary Rosa Parks, died in October 2015. Beasley Allen lawyers Ted Meadows, David Dearing, Danielle Mason, Brittany Scott, and this writer represented Ms. Fox’s family. A Missouri jury awarded $72 million in the case in 2016. During the hearing, Marvin explained the dire need for warnings on J&J’s baby powder because many people, like his mother, have no clue the product is harmful. He stated, “Awareness is key. . . and I am thankful we’re bringing light to the subject.”

Additionally, when a member of the congressional subcommittee asked Scott Faber his thoughts on what the subcommittee could do to ensure consumers are protected from carcinogenic and/or potentially hazardous products, he vehemently responded, “if I were in your shoes, I would not wait another day to require a warning on all of these products.” Indeed, this is the same message that Beasley Allen’s talc litigation team has fought hard to bring to the forefront regarding Johnson & Johnson’s baby powder—that at a minimum, consumers should be alerted to the dangerous health risks posed by J&J’s talc-based baby powder products by requiring J&J to place warnings on the products.

Continuing to bring light to the poorly self-regulated cosmetics industry and the grave dangers certain products pose to consumers is crucial in sparking reform. This hearing is the start of what could potentially lead to a full-blown investigation by the entire committee. I believe this involvement by Congress will have a profound impact on how J&J acts in the future. Members of this sub-committee were shocked to learn how J&J had acted in the past and surely they will follow up with more hearings and ultimately take affirmative action. For now, having the knowledge from the studies, internal J&J documents and corporate awareness of a cancer risk that has killed hundreds of innocent women, Congress should want to help solve a most serious problem.

Finally, I don’t believe J&J bosses can run the risk of being hit with several large Plaintiff verdicts and mounting lawsuits alleging its talc causes ovarian cancer and mesothelioma, the primary supplier for Johnson & Johnson’s talc-containing products, Imerys Talc America (as well as two affiliates), filed for bankruptcy in the United States Bankruptcy Court for the District of Delaware in February.

Imerys Talc America and the two other subsidiaries of Paris-based Imerys SA—Imerys Talc Vermont, Inc. and Imerys Talc Canada, Inc.—filed for Chapter 11 protec-
tion citing “significant potential liabilities” of up to $100 million in debt associated with a litany of lawsuits linking talcum powder to ovarian cancer and mesothelioma. As of the time of the bankruptcy filing, Imerys had been named as a defendant in approximately 14,650 lawsuits alleging its talc causes cancer.

Although the full effect of the Imerys bankruptcy remains to be seen, Imerys’ officials have explained their intent to set up a litigation trust to manage talcum powder claims. If a litigation trust is established through the bankruptcy court, litigants would have their claims satisfied through trust assets of which Imerys’ America and Vermont units have reported combined assets of up to $500 million.

The bankruptcy filing triggered an automatic stay of all cases pending against Imerys Talc America, Inc., including all actions in the talcum powder MDL. Despite the stay, Plaintiffs with claims against Imerys are safeguarded from the expiration of statute of limitations while the Imerys bankruptcy proceeding is pending. Plaintiffs will likely have the opportunity to seek redress through the bankruptcy court in the future.

Although the bankruptcy is in the early stages of its formation, an Official Committee of Tort Claimants consisting of 11 members was created on March 5. Many of the members appointed by the bankruptcy trustee to serve on the tort claimants committee are represented by Plaintiffs’ lawyers who brought the largest number of talc lawsuits against Imerys and Johnson & Johnson.

Among those appointed to the committee is Deborah Gianneccini, represented by Ted Meadows from Beasley Allen, who will serve as Co-chair of the Committee. In this position on the committee, Ted says he “will be working to protect the interests of all personal injury claimants.”

Put simply, the committee serves as a personal injury creditor committee tasked with being the voice for and protecting the interests of all tort claimants in this case. The committee has considerable opportunities to help shape crucial aspects of the bankruptcy, including terms of any litigation trust, payment structures and criteria, and establish other necessary protections.

While court proceedings against Imerys have come to a halt as a result of the bankruptcy, Plaintiffs can still proceed against Johnson & Johnson in court regarding their claims that Johnson & Johnson’s talcum powder products cause ovarian cancer and mesothelioma. For more information, contact Melissa Prickett or Brittany Scott at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com or Brittany.Scott@beasleyallen.com.

$29.5 Million Verdict In Latest J&J Talc Trial

A California state jury has found that Johnson & Johnson’s talcum-based baby powder contained cancer-causing asbestos, causing a woman’s mesothelioma, and returned a nearly $29.5 million verdict. The verdict was in favor of Plaintiff Teresa E. Leavitt, with the jury finding that J&J’s baby powder contained asbestos and was a substantial factor in causing the Plaintiff’s cancer.

The jury found that J&J and onetime talc supplier Cyprus Mines Corp. both bore portions of responsibility. The jury unanimously found that J&J failed to adequately warn of a potential risk in the powder. All but one juror said J&J “intentionally” withheld facts germane to the safety of the product. The jurors unanimously found Leavitt would have acted differently had she known those facts. The powder’s “failure to perform safely” was found by the jury to be a “substantial factor” in the plaintiff’s mesothelioma.

J&J was found 78 percent liable, J&J Consumer Inc. 20 percent liable, and Cyprus Mines 2 percent liable. The jury awarded $291,000 to Leavitt for past medical expenses, $1 million for future medical, $1.2 million for loss of earnings, $7 million for past physical pain and mental suffering, and $15 million for future physical pain and mental suffering. It also awarded $2 million to her partner, Dean McElroy, for past loss of love and companionship, and $3 million for future loss of love and companionship.

During the trial, the jury heard that the Plaintiff’s mother used J&J baby powder on her and her sister when they were babies in the 1960s in the Philippines and that she continued to use it after their family moved to the United States in 1968. As a young woman, the Plaintiff also powdered her hair and face with the product, using it as dry shampoo and a foundation for makeup through the 1970s.

The Plaintiff is represented by Joseph D. Satterley of Kazan McClain Satterley & Greenwood and Moshe Maimon of Levy Konigsberg LLP. Cyprus Mines is represented by Samuel D. Jubelirer, Brad Dejardin and Mordecai D. Boone of Dentons US LLP. The case is Leavitt v. Johnson & Johnson, (case number RG17882401) in the Superior Court of the State of California, County of Alameda.

Source: Law360.com

V. PURELY POLITICAL NEWS & VIEWS

TRUMP’S PROPOSED BUDGET WOULD SLASH FUNDING FOR HEALTH CARE AND FOR THE EPA

The Trump administration released its proposed federal budget request for 2020 in mid-March. Not surprisingly, Trump proposes huge increases for defense spending—including his border wall—while asking for massive cuts to government benefits and environmental defense. The massive cuts to health care funding and the environment pose a significant risk to public health and is totally unacceptable.

As reported by The Washington Post, the budget proposal includes:

- Cutting $845 billion from Medicare, which provides health insurance to older Americans, over the next 10 years;
- Cutting $241 billion from Medicaid, which provides medical insurance to low-income Americans, including the elderly, also over the next 10 years;
- A staggering 31 percent reduction in funding to the Environmental Protection Agency (EPA), the largest proposed budget cut;
- An increase of $33 billion for the Department of Defense budget, bringing that agency’s total budget to $718 billion, or 57 percent of the total proposed federal discretionary budget;
- An allocation of $8.6 billion for Trump’s “political project,” a wall along the U.S.-Mexico border, in addition to the $7 billion included in the president’s “national emergency” declaration on immigration. You may recall Mexico was going to pay for the Trump wall, at
least that's what candidate Trump promised; and

- A small bright spot in the proposed budget is a 7.5 percent increase for the Department of Veterans Affairs. This would bring the agency’s budget from $90.2 billion to $97 billion. This would translate to about a 10 percent increase in the agency’s budget earmarked for medical care for veterans, including mental-health services and expanded services for female veterans.

On the health care front, overall, Trump’s proposal would cut $12.4 billion from the Department of Health and Human Services (HHS) budget in the next year, from $99.5 billion in 2019 to $87.1 billion in 2020. A key part of the plan would be to move away from government-run Medicaid to state-run block grants and tying funding to the pace of inflation. However, experts note that health-care spending generally rises faster than the consumer price index, which would quickly leave the vulnerable people who rely on those services in the lurch.

Cuts to HHS also would put the brakes on Medicare spending, despite Trump’s constant promises to protect the funding. Other losers include the National Institutes of Health (12 percent reduction)—with the National Cancer Institute tagged to feel the largest impact of the cut; and the Centers for Disease Control and Prevention (10 percent).

The proposed cuts to EPA funding pose a clear and dangerous threat to public health, weakening the agency’s ability to ensure clean water, clean air, and regulation of dangerous chemicals and materials like asbestos.

This Report has already conveyed this administration’s about-face on the regulation of the carcinogen asbestos, which had been on the Top 10 substances for EPA review under the Toxic Substances Control Act (TSCA). Instead, the EPA, under the direction of former coal-industry lobbyist Andrew Wheeler, enacted the Significant New Use Rule (SNUR) to allow new products containing asbestos to be manufactured on a case-by-case basis. The EPA will no longer consider the effects or presence of substances like asbestos in the air, ground or water when it conducts risk assessments.

This puts the United States on a backward track from the rest of the world. More than 60 countries have banned the mining, import, export, sale and use of asbestos. Instead of continuing the TSCA policy of significantly restricting its use, Trump’s EPA has opened the floodgates to it.

The EPA already accounts for less than 0.2 percent of the federal budget with funding of just $8 billion. The proposed cuts would reduce this funding to $6.1 billion. The cuts would continue to support Trump’s pledge to reduce or eliminate enforcement actions that impact his pet industries such as the fossil fuel industry.

Sources: The Washington Post, The Hill, and Environmental Defense Fund

**THE INFRASTRUCTURE NEEDS IN ALABAMA WILL FINALLY BE MET**

The gas tax bill passed in both the House and Senate with very little opposition. Gov. Kay Ivey and her team did a tremendous job and accomplished something that should have been done in previous administrations. I have not seen anything like this bi-partisan effort in a very long time. Sen. Clyde Chambliss and Rep. Bill Poole handled the legislation for Gov. Ivey and they did excellent work.

President Pro Tem Del Marsh and Speaker Mac McCutcheon provided tremendous leadership and that made a huge difference in the outcome of the legislation. The vote in both the Senate and House was much better than predicted by most of the experts.

The infrastructure needs in Alabama, after years of neglect and delay, are finally being met. This is a prime example of what can happen when Republicans and Democrats put politics aside and do what is right for our state and the people of Alabama.

**MEDICAID EXPANSION IN ALABAMA IS BADLY NEEDED**

I am convinced that Alabama should have expanded its Medicaid program when that opportunity first became available. That didn’t happen and I believe it was a huge mistake. It’s past time for states to step up and take care of their most vulnerable citizens. Thirty-six states have accepted federal support to expand Medicaid, which provides essential health care services to those in need. The expansion would cover people making up to 138 percent of the federal poverty level.

In an editorial, Jim Carnes, the policy director for Alabama Arise, noted that an estimated 300,000 Alabamians are caught in a “coverage gap.” They earn too much to qualify for Medicaid, but not enough to qualify for subsidies for Marketplace coverage under the Affordable Care Act. They are in grave danger of being wiped out financially by one medical emergency.

On a larger scale, Jim points out the failure to expand Medicaid has a significant economic impact on the state, affecting the workforce and infrastructure. He writes:

> Our state is forfeiting hundreds of millions of dollars in annual federal funding to shore up our health care system. This money would support tens of thousands of jobs and stimulate more than $1 billion a year in economic activity. Alabama is weakening its infrastructure—and its future—by leaving health care out of the equation.

Alabama Arise, which is a nonprofit, nonpartisan coalition of congregations, organizations and individuals promoting public policies to improve the lives of low-income Alabamians, breaks down Medicaid expansion by the numbers:

- 223,000 Alabamians are caught in the coverage gap, unable to afford health insurance. Another 120,000 or more are stretching to pay for private or employer-based coverage.
- 13 Alabama hospitals—including seven rural ones—have closed since 2011.
- 88 percent of Alabama’s rural hospitals operate in the red.
- If we expand Medicaid to cover low-income adults, the permanent federal match is 9:1.
- The first four years of federal match would generate $11.4 billion in new economic activity:
  - $6.7 billion in direct federal spending
  - $4.6 billion in indirect economic activity
- Over four years, the enhanced match would free up $316 million in current state spending to address additional unmet health care needs.
Stay tuned!

the turnout will likely be very high. The voter race should always garner. The voter may get the attention that a U.S. Senate get lost in the shuffle. However, this race will be most interesting. Sometimes, in a without reservation that this senate race too early to predict the outcome, I can say running or considering a run. While it's Mo Brooks, U.S. Rep. Bradley Byrne, and full. Thus far Sen. Dell Marsh, U.S. Rep. fact, the GOP field is already getting pretty race. In next year's Senate Race in Alabama

It is certain that Sen. Doug Jones will Medicaides groups—$87.1 million
Mental health & substance abuse—$121.6 million
Corrections—$46.8 million
Public health—$60.6 million

Expansion-related economic activity would generate $446 million in state tax revenues over four years. New local tax revenues would total $270 million over four years.

Net cost to the state would be $168 million in the first year, dropping to about $25 million annually in the following years because of savings and revenues, for a total of $239 million over four years. (This figure does not include local revenue gains.)

It isn't at all difficult to understand that health care is a critical component in whether or not Alabama thrives or flounders. Continuing to turn our back on this funding from the federal government is short-sighted and I believe a big mistake. I encourage Gov. Kay Ivey, who has already shown political courage in passing a badly needed gas tax, to take another step in the right direction and expand Alabama’s Medicaid program. Again, that’s the right thing to do!

Source: Alabama Arise

Next Year’s Senate Race in Alabama

It is certain that Sen. Doug Jones will face a Republican opponent next year. In fact, the GOP field is already getting pretty full. Thus far Sen. Della Marsh, U.S. Rep. Mo Brooks, U.S. Rep. Bradley Byrne, and Roy Moore have said they are either running or considering a run. While it’s too early to predict the outcome, I can say without reservation that this Senate race will be most interesting. Sometimes, in a presidential year, down-the-ballot races get lost in the shuffle. However, this race may get the attention that a U.S. Senate race should always garner. The voter turnout will likely be very high. Stay tuned!

VI.

COURT WATCH

Sandy Hook Parents Can Pursue Suit Against Remington

On Dec. 14, 2012, a 20-year-old man named Adam Lanza opened fire at Sandy Hook Elementary School in Newtown, Connecticut, killing 20 children and six adult staff members. The gun he used was a Bushmaster AR-15 platform rifle, which was manufactured by Bushmaster Firearms and marketed by Remington Arms Company, LLC. Remington and Bushmaster were a part of Freedom Group, a holdings company consisting of firearms and ammunitions manufacturers owned by Cerberus Capital management. After the Sandy Hook shooting, Cerberus sold off its holdings of the Freedom Group and, in 2015, the Freedom Group re-branded itself as Remington Outdoor Company.

In December 2014, the families of nine of the 26 deceased victims filed suit against Remington and Bushmaster, as well as the gun’s distributor, Camfour Holdings LLP, and the retailer, David LaGuercio and his shop, Riverview Sales, Inc., which is now closed. The families’ claims arise from the Connecticut Unfair Trade Practices Act (CUTPA), and are centered on wrongful advertising and marketing practices.

Introducing a somewhat novel theory, the families argued that the marketing practices used to advertise the weapon violated the CUTPA in that the sales of the gun, while lawful, amounted to negligent entrustment, because the weapons were originally designed for military combat. The families also argued that state law fair trade practices acts, like the CUTPA, qualify as exceptions to the Protections of Lawful Commerce in Arms Act (PLCAA), which was passed by Congress in 2005, and generally protects firearms manufacturers and dealers from being held liable when their weapons are used in crimes.

This approach is new; typically, this negligent entrustment claim has been used to hold retailers responsible for selling weapons to their customers who were likely to misuse them. These families argued, however, that the design of the AR-15 platform rifle make the rifle inappropriate for the audience to which it was marketed generally—the untrained civilian population.

The families claimed that Bushmaster highlighted certain militaristic features of the weapon, like it’s deadly power, in an attempt to persuade younger audiences to purchase the firearm. The ads compared the AR-15 platform rifle to “the same matte black, non-reflective finish found on military-type arms,” and described the weapon as “the uncompromising choice when you demand a rifle as mission-adept as you are.” One tagline read: “Forces of opposition bow down. You are single-handedly outnumbered.”

The Bushmaster model XM15-E2S, which was sold to Adam Lanza’s mother, is capable of firing 30 rounds in 10 seconds, at speeds approaching 2,700 mph. “The families’ goal has always been to shed light on Remington’s calculated and profit-driven strategy to expand the AR-15 market and court high-risk users, all at the expense of Americans’ safety,” Josh Koskoff, one of the lawyers for the family, said. He continued, “Today’s decision is a critical step toward achieving that goal.”

Remington, in 2016, filed a Motion to Strike, claiming that the federal PLCAA, and not the CUTPA, governs the sale of the rifle in question, and claiming that the families lacked standing under the CUTPA because they were not in privity with Remington. Superior Court Judge Barbara Bellis granted Remington’s Motion to Strike, holding that the families had failed to sufficiently plead their negligent entrustment claim, and dismissed the suit on the basis that the families were third-party victims who did not have a consumer or commercial relationship with Remington.

In March of 2019, the Connecticut Supreme Court reversed that decision in part. The 4-3 ruling held that the families did have standing to bring a CUTPA claim, and that Connecticut’s Unfair Practices Act does qualify as an exception to the federal PLCAA. The Connecticut Court agreed with the lower Court that the families had failed to sufficiently plead their negligent entrustment claims. The ruling’s decision concerning the PLCAA left the door open for a potential appeal to the United States Supreme Court, should Remington so choose.

The victims’ families are being represented by Joshua Koskoff, Aline Sterling, and Katherine Mesner-Hage of Koskoff Koskoff & Bieder, PC. The case is styled Soto et al. v. Bushmaster Firearms Inter-
MDLS ARE NOW A MAJORITY OF THE ENTIRE FEDERAL CIVIL CASELoad

A recently released study reveals that for the first time multidistrict litigation (MDL) makes up more than half the federal civil caseload. This continues the trend of an increasing concentration of MDLs in federal courts. MDLs accounted for 52 percent of all pending federal civil cases at the end of the last fiscal year. The margin was up from 47 percent in the previous fiscal year.

The survey found that much of the MDL caseload is concentrated among a few dozen large MDLs. Twenty-four large MDLs made up more than 140,000 cases, or 89 percent of all cases across the 248 MDL dockets at the end of last fiscal year. I predict that MDLs will continue to be a major player in the federal judicial system. There can be little doubt that MDLs have a definite role in the judicial system, especially in the area of mass torts litigation.

VII.
THE CORPORATE WORLD

Wells Fargo Agrees To $240 Million Settlement With Investors Over Fake Accounts

In what bank executives say is the largest ever insurer-funded cash settlement in a derivative suit, Wells Fargo has asked U.S. District Judge Jon S. Tigar to approve a $240 million settlement to resolve claims over the bank's fraudulent account scandal.

The Fire & Police Pension Association of Colorado and The City of Birmingham Retirement and Relief System were the case’s co-lead Plaintiffs. The terms of the deal also include a series of remedial measures to be implemented by the bank, including a shake-up of its top-level management and board of directors, and stronger internal controls and risk management systems. Several company officials will receive a reduction in compensation, or be required to forfeit past payment, according to the filing. These remedial measures and “clawbacks” add $80 million on top of the settlement for a total settlement value of $320 million.

The September 2016 suit was filed after the Office of the Comptroller of the Currency, the Consumer Financial Protection Bureau (CFPB) and the Los Angeles City Attorney’s Office ordered San Francisco–based Wells Fargo to pay $185 million to settle claims that the bank’s aggressive cross-selling operation and compensation plans led employees to sign existing customers up for more than 2 million unauthorized deposit and credit accounts. According to a CFPB consent order, approximately 5300 Wells Fargo employees were fired from 2011-2015 leading up to the suit.

Wells Fargo also faced shareholder lawsuits and agreed to a $142 million class action settlement in 2017 with consumers who claimed they were harmed from the unauthorized accounts. Wells Fargo generated by getting hit with unwarranted fees and having their credit scores lowered. A report by Shearman & Sterling LLP commissioned by Wells’ board found the bank had known about problematic sales practices since at least 2002, and highlighted some problems with the board’s oversight.

At press time, we had just learned that Judge Tigar was asking for more information before he could evaluate the settlement and determine the fairness of the payout. I am told that information will be furnished to the court by lawyers for the investors to satisfy the judge.

The investors are represented by Richard M. Heimann, Katherine C. Lubin, Michael K. Sheen, Steven E. Fineman, Daniel P. Chiplock, Nicholas Diamand, Michael J. Miarmi and Sean A. Petterson of Lieff Cabraser Heimann & Bernstein LLP and Maya Saxena, Joseph E. White III, Lester R. Hooker, Adam D. Warden, Dianne M. Anderson, Steven B. Singer, Kyla Grant and Sara DiLeo of Saxena White PA.

The case is In re: Wells Fargo & Co. Shareholder Derivative Litigation (case number 3:16-cv-05541) in the U.S. District Court for the Northern District of California. Source: Law360.com

VIII.
PRODUCT LIABILITY UPDATE

AN UPDATE ON TIRE DEFECTS

Tires are one of the most important component parts on a vehicle. Tires that are too worn or tires that do not have the appropriate amount of air can be dangerous to the operator and others. Most personal motor vehicles have four tires and having just one in an unappreciated condition can cause injury. Drivers have a duty to ensure that the tires on their personal vehicle are filled with air to the appropriate pounds per square inch and to ensure that the wear has not exceed what is safe for use. However, a tire defect is another situation altogether.

Even the most safety-conscious driver can be affected by tire defects despite their effort to avoid tire-related issues. A tire defect can occur in a variety of ways including but not limited to a bad design and poor quality of materials in the manufacturing process. Tires can be defectively designed in numerous ways including sidewall defects and inadequate beading or tread.

It’s a given that poorly designed tires cannot withstand real-world conditions. When defective tires encounter scenarios such as uneven lanes, potholes, debris in the road, and inclement weather, they are not able to serve the intended utility. The effect of which is a blowout. Additionally, tires that have been manufactured with insufficient materials are likely to experience the same effect when met with real-world conditions of the road—blowout.

According to the National Highway Traffic Safety Administration (NHTSA), Americans drive around 3 trillion miles a year. Drivers indisputably rely on their tires to operate as intended and expect to arrive at their destinations safely. NHTSA estimates that there are more than 11,000 tire-related crashes each year, causing over 19,000 injuries and more than 700 deaths. Beasley Allen lawyers have experience handling claims involving defective tires.

If you have questions concerning a matter involving a defective tire or any other automobile defect contact Ben Keen, a lawyer in our Atlanta office, at Ben.Keen@beasleyallen.com or Cole Portis, who heads up our firm’s Personal

BeasleyAllen.com
$38 MILLION GUN DEFECT SETTLEMENT IS APPROVED

A Florida federal judge have given preliminary approval to a $38 million class settlement ending claims that Brazilian gun manufacturer Forjas Taurus SA sold more than a quarter-million revolvers in the U.S. with multiple defects that can allow them to go off when dropped.

Under the terms of the settlement, the U.S. owners of the revolvers will have the opportunity to have them repaired or replaced at the company’s expense, and class counsel will receive up to $5.5 million in fees, according to the order entered by U.S. Magistrate Judge Edwin G. Torres.

The affected models are seven “Rossi” branded .38 Special revolvers and .357 Magnum revolvers made between 2005 and 2017. According to the settlement, about 255,000 of the revolvers were sold in the United States. In the suit, originally filed in 2016, the class members claimed the revolvers had two safety mechanisms that should prevent the guns from going off when dropped: a seat for the revolver’s hammer meant to prevent it from moving if the gun is dropped or struck, and a metal plate meant to prevent the hammer from striking the cartridge unless the trigger is pulled. In the cited models the hammer seat is improperly fitted, which allows the hammer to move without a trigger pull. Some of the models also have a second defect that allows the blocking plate to fall out of position and become stuck, increasing the chance of an accidental discharge.

Under the terms of the settlement, owners of the revolver models can send them to Forjas Taurus at the company’s expense for it to inspect, and then either repair or replace them as appropriate. Owners who submit their revolvers for inspection within a year of the settlement will also receive a $50 “inconvenience payment.” Judge Torres said the total value of the settlement was just under $38 million. A final approval hearing was set for Aug. 27.

This is not the first suit the company has faced over safety defect allegations. In 2016, the company agreed to a $239 million settlement of a class action lawsuit alleging it sold about 1 million pistols in the U.S. with defects that caused them to fire either when dropped or when the user thinks the safety is set.

The class is represented by Brian W. Warwick of Varnell & Warwick PA, Brannon J. Buck of Badham & Buck LLC, Gregory A. Brockwell of Brockwell Smith LLC, Chris Bataille of Flanigan & Bataille, Andrew F. Knopf of Paul Knopf Bigger, and Vincent Swiney of Swiney & Bel- lenger LLC.

The case is Burrow et. al. v. Forjas Taurus SA et al., (case number 16-21606) in the U.S. District Court for the Southern District of Florida. Source: Law360.com

EXPLODING VAPE BATTERY IGNITES FIRE ON DELTA FLIGHT

A quite unsettling incident involving an exploding vape battery has hit the headlines. In February, an exploding vape battery ignited a fire in an overhead bin on a Delta flight bound for Houston. Fortunately for all involved, the Delta flight was still on the tarmac at the time. According to witness accounts, the smell of smoke began to spread throughout the plane while passengers were still boarding. One of the passengers in the smoke-filled cabin managed to video record an airline attendant wielding a fire extinguisher and dousing the burning luggage.

Incidents involving lithium-ion batteries seem to be on the rise. Based on a report by the U.S. Fire Administration, at least 195 vape explosions were reported between 2009 and 2016. A separate study by university researchers, however, concluded that the actual number was much higher. One thing is certain, these vape batteries are exploding and have left complete devastation in their wake. This time no injuries were sustained but past incidents have shown beyond a shadow of a doubt that vape batteries pose significant dangers and not only to those who use them.

If you have any questions on this subject, contact Will Sutton, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at William.Sutton@beasleyallen.com. Source: https://gizmodo.com/delta-flight-delayed-after-vape-battery-reportedly-burns-1832618613

MULTIDISTRICT LITIGATION OVER SHINGLES VACCINE CONTINUES TO GROW

In August 2018, the Judicial Panel on Multidistrict Litigation (JPML) consolidated Zostavax cases in the U.S. District Court for the Eastern District of Pennsylvania. In January 2019, there were 384 cases pending in the multidistrict litigation (MDL). The number of filed Zostavax cases grew to $38 as of March 15, 2019. The MDL does not include the lawsuits brought on behalf of 300 Plaintiffs in California state court and more than 800 Plaintiffs in New Jersey state court.

Zostavax is a live virus vaccine made by Merck and approved by the U.S. Food and Drug Administration (FDA) in 2006. It was the only approved shingles vaccine in the United States until late 2017, which allowed the company to earn a reported $749 million in sales. The vaccine is designed to reduce the risk of herpes zoster, also known as “shingles,” in individuals ages 50 years and older. Zostavax is commonly administered as a one-dose shot and typically recommended for people aged 60 years and older.

Zostavax is a stronger, more potent version of Merck’s chickenpox vaccine called Varivax. Zostavax differs from some vaccines in that it contains a live but weakened form of the actual shingles virus. However, this live dose has increasingly been linked to shingles-related complications, especially in people with weakened immune systems. For instance, many individuals developed shingles, which led to more serious damage to the nervous system, including meningitis, encephalitis, acute disseminated encephalomyelitis (ADEM), and stroke.

The Zostavax litigation is unique because it involves a vaccine. Generally, vaccine-related claims are filed with the Office of Special Masters of the U.S. Court of Federal Claims, also known as “Vaccine Court.” However, in order for the Vaccine Court to hear a claim, the particular vaccine at issue must be listed in the Vaccine Injury Table. Zostavax is not listed. Therefore, Plaintiffs injured by the Zostavax vaccine are able to pursue their...
Judge Campbell stated:

Mulkey case from the bellwether line up, liability evidence as previous bellwhethers. as it presents substantially the same facts try the case would outweigh any benefit dar, stating that the time and expense to bellwether trial, Mulkey November removing the fifth scheduled

States District Judge David G. Campbell. pending in Arizona before Senior United

severe injuries to the Plaintiff. Celect IVC filter was defective and caused verdict in a Cook IVC bellwether trial in 2019, an Indiana jury returned a $3 million Argon Option Elite Filter.

2019. This will be the first trial for the defective Argon Option Elite IVC filter, severely and permanently injured by a Beasley Allen client who was

Cook and Argon. A bellwether trial involving a Beasley Allen client who was severely and permanently injured by a defective Argon Option Elite IVC filter, which is manufactured by Argon Medical, is scheduled to begin in early December 2019. This will be the first trial for the Argon Option Elite Filter.

Readers may remember that in February 2019, an Indiana jury returned a $3 million verdict in a Cook IVC bellwether trial in Indiana, finding the design of the Cook Celect IVC filter was defective and caused severe injuries to the Plaintiff. The Bard IVC Filter MDL is currently pending in Arizona before Senior United States District Judge David G. Campbell. Judge Campbell entered an Order in November removing the fifth scheduled bellwether trial, Mulkey, from the calendar, stating that the time and expense to try the case would outweigh any benefit as it presents substantially the same facts liability evidence as previous bellwhethers.

In his Nov. 8, 2018, order dismissing the Mulkey case from the bellwether line up, Judge Campbell stated:

The primary purposes of this MDL—common discovery and ruling on common issues—have been accomplished. The parties requested that the Court hold bellwether trials to provide insight into how their claims and defenses would be received by juries, with the hope that a global settlement could be achieved before the cases are remanded. See In re Chevron U.S.A., Inc., 109 F.3d 1016, 1019 (5th Cir. 1997); Manual for Complex Litigation, Fourth § 22.315 (Federal Judicial Center 2004). The four bellwether cases resolved to date—Booker, Jones, Kruse, and Hyde—have served this purpose.

The next bellwether in the Bard MDL, Tinlin, is set to begin this May. In an Order entered Feb. 8, 2019, it was indicated that the Plaintiff may be unable to attend her own trial due to health issues, and the parties are to arrange for her to attend remotely. With rumblings of remand, Tinlin is likely to be the final bellwether in the Bard MDL.

Beasley Allen lawyers are actively investigating IVC filter claims and are also heavily involved in the ongoing litigation concerning the defective medical devices. If you or a loved one has been injured by a defective IVC filter, contact Matt Munson or Melissa Prickett, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Matt.Munson@BeasleyAllen.com or Melissa.Prickett@BeasleyAllen.com.

Sources: Case Management Order No. 40, Bard IVC Filters Products Liability Litigation (D. Ariz., Nov. 8, 2018); Case Management Order No. 41, Bard IVC Filters Products Liability Litigation (D. Ariz., Feb. 8, 2019)

FRAUD INVOLVING THE DRUG SUBSYS IS FUELING THE OPIOID EPIDEMIC

Subsys is a fentanyl drug 100 times stronger than morphine, designed to be sprayed under the tongue. Insys Therapeutics, Inc., an Arizona company, manufactures Subsys. The only FDA-approved indication for Subsys is for the management of “breakthrough” pain in cancer patients older than 18 years of age, who have developed a tolerance to other opioid drugs. In 2017, the U.S. government arrested and charged the owner of Insys for an alleged scheme of using bribes and fraud to increase prescriptions of Subsys nationwide. The U.S. government has also charged several Insys executive and management employees in the alleged scheme. The government alleges that the individuals were involved in a conspiracy to bribe certain physicians to promote Subsys through a program that paid physicians to speak to other health care professionals about Subsys through a “speaker’s program” set up by Insys.

Additionally, the government alleges that Insys set up an internal program to defraud insurance companies to obtain prior approval for payment of Subsys. The government also alleges that Insys bribed physicians to prescribe Subsys for “off-label” pain (pain caused by medical conditions other than cancer) to expand the market for Subsys. One prescription tracking service has indicated that approximately 50 percent of Subsys prescriptions were written by pain specialists and most of the rest of the prescriptions were written by a wide range of physicians. According to the prescription tracking service only 1 percent of Subsys prescriptions were written by oncologists (cancer physicians).

Two former Insys executives pleaded guilty to charges brought by the government and have agreed to cooperate in the prosecution of other Insys executives. Several Insys executives, including the owner, are currently being tried on these charges in federal court in Boston. Subsys use can result in addiction to opioids as well as life-threatening respiratory depression. Additionally, accidental ingestion of Subsys by children could cause death.

Beasley Allen lawyers are investigating cases involving an overdose of Subsys or addiction where Subsys was prescribed for non-cancer pain. For more information, contact Liz Eiland or Melissa Prickett, lawyers in our Mass Torts Section, at 800-898-2034, or by email at Liz.Eiland@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

BRISTOL-MYSERS ENDS ABILIFY MDL WITH CONFIDENTIAL SETTLEMENT

Bristol-Myers Squibb Co. and Otsuka Pharmaceutical Co. Ltd. have reached a confidential global settlement with Plaintiffs in multidistrict litigation (MDL) over side effects of their antipsychotic drug Abilify. The agreement settles all cases in the multidistrict litigation pending as of Jan. 28 or in the process of being transferred to the MDL, as well as multicounty litigation in state court in New Jersey, cases in California state court and any other cases pending in federal or state courts that allege injuries as a result of a variety of compulsive behaviors caused by
Abilify. An order was entered by U.S. District Judge M. Casey Rodgers, who is overseeing the MDL.

The companies previously reached settlements on April 30, 2018, with Plaintiffs in three bellwether cases selected by Judge Rodgers. Details of the payments in those settlement agreements were not disclosed. Judge Rodgers set several deadlines, including March 6 for the Plaintiffs to provide the Defense with a list of all eligible claimants and Aug. 30 for a list of all eligible claimants who have met the requirements to move forward or have chosen not to participate in the settlement.

The more than 600 suits in the MDL allege that Abilify—which the U.S. Food and Drug Administration (FDA) has approved to treat schizophrenia, bipolar I disorder and major depressive disorder—caused consumers to exhibit compulsive behaviors, including gambling, shopping, sexual activity and eating. The consumers brought product liability and fraud claims against the companies. Defendants Otsuka Pharmaceutical and Otsuka America Pharmaceutical Inc. developed the drug aripiprazole and Bristol-Meyers Squibb marketed and distributed it as Abilify.

The cases, which were originally filed in 2016, involve consumers from several states, including Arizona, California, Delaware, Florida, New Jersey, New York and Pennsylvania. The New Jersey litigation, which involves about 50 related cases, has been proceeding on a parallel track to the MDL. In January, Judge Rodgers ordered more than 400 Plaintiffs to show why their claims should not be outright dismissed after they failed to submit court-ordered Plaintiff profile forms and supporting documentation.

Co-lead counsel for the Plaintiffs are Kristian Rasmussen of Cory Watson PC; Gary Wilson and Eric M. Lindenfeld of Robins Kaplan LLP; and Bryan F. Aylstock of Aylstock Witkin Kreis & Overholtz PLLC. The case is In re: Abilify (Aripiprazole) Products Liability Litigation, (case number 3:16-md-02734) in the U.S. District Court for the Northern District of Florida.

X. EMPLOYMENT AND FLSA LITIGATION

COMCAST CONTRACTOR TO PAY $7.5 MILLION TO SETTLE LAWSUIT OVER UNPAID OVERTIME

Comcast and a cable installation contractor, O.C. Communications, have agreed to a $7.5 million settlement to resolve a class-action suit filed on behalf of 4,500 technicians who claimed they were coerced into underreporting their work hours. The technicians claimed they faced pressure to underreport how many hours they worked and to fudge meal breaks they didn’t take. The technicians also alleged they were not reimbursed for expenses.

The case was originally filed against O.C. Communications, which does installation work for cable operators, and later added Comcast as a Defendant. The lawsuit claimed the companies violated the federal Fair Labor Standards Act (FLSA) and also California and Washington state labor law, such as not paying technicians for all the hours they worked and failure to compensate the technicians for overtime. Plaintiffs’ lawyers believed that they could prove that the technicians hadn’t been paid for 2.5 hours a day. The settlement agreement says that O.C. Communications will pay the $7.5 million.

Source: Law360.com

XI. PREMISES LIABILITY UPDATE

EXXON TO PAY CAA PENALTY OVER DEADLY TEXAS REFINERY FIRE

ExxonMobil Corp. has reached a settlement with the federal government relating to the 2013 fire at the oil giant’s Beaumont, Texas, refinery that left two dead and 10 injured. The company will pay a $616,000 penalty, which will resolve Clean Air Act (CAA)-related claims.

A complaint and settlement filed simultaneously with the court said that when workers removed the third of four bolts from a “heat exchanger” device, “flammable hydrocarbons” were released in violation of Section 112(r) of the CAA. The cutting torch used for the work ignited the substance, which injured and killed the workers.

Assistant Attorney General Jeffrey Bossert Clark, with the U.S. Department of Justice’s (DOJ) Environmental and Natural Resources Division, said the fire was a “terrible tragedy. He said in a statement:

The settlement sends a clear message to companies handling hazardous substances in their operations that they must take the necessary steps to protect their workers under the environmental laws or face the consequences of vigorous enforcement. Additionally, the relief the United States has secured will aid in protecting a vulnerable surrounding community from future tragic episodes like this one.

In addition to the civil penalty, Exxon will hire an auditor to look at the company’s method for “opening process equipment” at the refinery. It will also purchase a $730,000 vehicle for the Beaumont Fire & Rescue Service designed in part to help with hazardous material responses, according to the DOJ. The complaint said the heat exchanger may not have been properly cleared of flammable substances prior to workers removing the bolts with the cutting torch. Court documents indicate that the risk of fire associated with opening the heat exchangers could have been prevented or mitigated if the correct procedures had been used.

There were also non-essential personnel near the work. If the number of workers nearby would have been restricted, it “could have prevented or mitigated certain injuries to the contract workers.” In 2016, Exxon also agreed to settle claims brought by the families of the two workers killed and others who were injured. The terms of those settlements were confidential.

The federal government is represented by Jeffrey Bossert Clark, Richard Gladstein and Christopher Witwer of the U.S. Department of Justice Environment and Natural Resources Division and Joshua M. Russ and James G. Gillingham of the U.S. Attorney’s Office for the Eastern District of Texas. The case is U.S. v. ExxonMobil Oil Corp., (case number 1:19-cv-00121) in the U.S. District Court for the Eastern District of Texas, Beaumont Division.

Source: Law360.com
XII.
WORKPLACE HAZARDS

WORKPLACE HAZARDS: DEFENSES TO THIRD PARTY CLAIMS

Lawyers at Beasley Allen handle cases quite often stemming from on-the-job injuries. Commonly, the accident or injury will be caused by someone other than the injured worker’s employer. In these situations, we will often file both a workers’ compensation claim, as well as an action against the third party. The most common third-party Defendants are machine manufacturers, or another company with employees working alongside the injured employee. Although each accident and injury is different, the way the cases are defended is nearly identical.

If the injury stems from an employee of one company injuring the employee of another company, you can rest assured the Defendants will build a case around and argue the “loaned servant doctrine.” Essentially, the argument is that due to the nature of the work being done and the close relationship between the companies and co-mingling of employees, the employees of each company are co-employees and therefore workers’ compensation is the only remedy available.

It is important to recognize the loaned servant defense from the outset of the case and build facts that distinguish the work being done by the two companies and the control over the employees.

It is important to distinguish the control over the Plaintiff’s work from the other employer, as well as distinguish who provided the Plaintiff’s tools and payment. If the Defendant’s loaned servant argument and motion for summary judgment on the tort claims are denied, the fallback defense is to blame the Plaintiff for the injury. This tactic will be discussed in more detail in the context of on-the-job product liability defenses.

Our lawyers also commonly handle on-the-job products liability cases. These cases are challenging, yet rewarding. Defendants use the same tactics to defend these cases in nearly every instance as well. You can expect the Defendants to initially blame the Plaintiff for the accident and try to build a case for contributory negligence. Undoubtedly, the Defendants will point to some warning or paragraph from the machine’s user manual that the Plaintiff violated.

It is almost impossible to read a machine’s user or operator manual and not find at least one provision that a Plaintiff violated at the time of an accident. However, this is not an automatic case-killer. All too often, the Plaintiff will not have been given the user or operator’s manual and will not know they are violating any safety considerations or putting themselves in harm’s way. Typically, they are simply operating the machine however they were trained by their employer or co-employees.

Not surprisingly, the next defense strategy in a products case is to blame the employer. The employer is immune from tort claims as the exclusive remedy against them is workers’ compensation. The machine designers will do everything they can to place blame on the employer. Often, they will criticize the employer for not following the user or operator’s manual. The manufacturer will argue it is the responsibility of the employer to hand down the user manual to the employees.

Additionally, the machine manufacturer will blame the employer for improperly training the injured employee. Without fail, the manufacturer will criticize the employer’s safety training and argue improper training was the cause of the accident, not a defect in the machinery. The last fallback defense by the machine designers will be that the operator was not wearing proper personal protective equipment. Knowing how these cases are defended allows the Plaintiff to know what facts need to be built, and what arguments to make to defeat summary judgment. If you need more information on this subject, contact Evan Allen at 800-898-2034 or by email at Evan.Allen@beasleyallen.com.

XIII.
AN UPDATE ON AVIATION LITIGATION

BOEING UNDER CRIMINAL INVESTIGATION AFTER SECOND FATAL CRASH OF 737 MAX 8 JET

The second fatal crash of a Boeing 737 MAX 8 jet within five months has grounded the 737 MAX family of aircraft and raised questions about the jet’s design and a fix for malfunctioning software that was not implemented before the second crash. Every day it becomes more apparent that, when the Federal Aviation Administration (FAA) turned a blind eye to oversight and safety regulation of the new 737 variant, Boeing took full advantage of the situation and hid a deadly defect in its aircraft. As a result, 346 people are dead. Facing the prospect of hundreds of wrongful death lawsuits, Boeing is also now under criminal investigation by the U.S. Department of Transportation’s Office of Inspector General (OIG) in conjunction with the Department of Justice’s (DOJ) Criminal Division.

CRIMINAL PROBE

The DOJ criminal investigation began immediately following the crash of Lion Air flight 610 six months ago in October 2018. As part of the investigation, law enforcement authorities began collecting information about the development of the 737 MAX. The Seattle Times reported that FAA regulators allowed Boeing to conduct much of the plane’s safety assessment, and an analytical report the company created and delivered to the FAA included crucial “flaws.”

When the 737 MAX 8’s development was near completion in 2015, Boeing pressured the FAA to expedite the approval process, according to New York Magazine. Responding to pressure and lobbying from Boeing, the FAA allowed Boeing to “self-certify” portions of the new aircraft design. As a result, Boeing was able to hide defects in the 737 MAX design.

THE DEFECTS

The original 737 design was released in 1967 and has been a money-making aircraft for Boeing for many years. However, facing competition from newer and more efficient designs from aircraft-maker Airbus, and in an effort to salvage dwindling orders for its aircraft, Boeing scrambled to retrofit the old 737 design and rename it the 737 MAX.

Because it was designed in 1967, the original 737 was built low to the ground to allow baggage handlers easy access to the plane’s underbelly luggage compartments, and to allow passengers to board using older stairways. Retrofitting the 737 design to compete with Airbus required Boeing to install larger and more efficient engines. Because it was using the older air-

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craft design, and because the new engines required more ground clearance, Boeing decided move the new 737 MAX engines farther forward on the aircraft. As a result, the wings were also moved slightly farther forward. However, moving the wings and engines forward changed much more than just the 737 MAX ground clearance.

As anyone who has ever folded a paper airplane knows, even small changes in the fold of the paper can have huge consequences on the way the plane flies. The same simple aerodynamic principles apply to large aircraft. The effect of larger and more forward engines dramatically changed the flight characteristics of the new 737 MAX and caused the nose of the plane to have a tendency to pitch up while in flight. Continued, uncontrolled upward pitch will cause an aircraft to lose forward airspeed and eventually stall and crash. Rather than redesign the airframe or correct the pitch problem through proper engineering, Boeing decided to simply patch the deadly flaws with a secret automatic flight-control system it named the Maneuvering Characteristics Augmentation System (MCAS).

The purpose of the MCAS was to automatically adjust the horizontal tail stabilizer and cause the nose to push downward whenever the system sensed the plane was continuing to climb. Significantly, the MCAS was designed to be hidden and separate from the autopilot system. Although the MCAS should have only operated when it sensed an imminent stall, the system is flawed and in fact attempts to push the 737 nose downward when it should not. When pilots react to the sudden downward motion of the aircraft and pull up on the flight controls, the MCAS again falsely senses a nose-up problem and pushes the nose down again. The result of the tug-of-war between the pilot and the flawed MCAS is an undulating porpoise-like flight path which causes the plane to lose altitude and airspeed until it crashes.

Even though Boeing was aware of the problems with its 737 redesign and the flawed MCAS, false data and information about the new system was included in “self-certifying” reports Boeing provided to the FAA. Evidence that Boeing made false statements about the aircraft, withheld information about its systems, or lied to authorities should result in Boeing being charged with fraud and potentially criminal conduct. Pilots and others in the industry believe this may have already occurred.

Following the Lion Air crash, Boeing issued warnings as part of the Operations Manual Bulletin and the FAA followed with Airworthiness Directive 2018-23-51. The warnings were issued to all owners, operators and air carriers using the 737 MAX about the potential for erroneous readings from flight-control software on the aircraft. Boeing claimed its warning reinforced procedures that were included in the aircraft’s flight manual.

However, the three largest pilots’ unions in the U.S., including the Southwest Airlines Pilots Association, the Allied Pilots Association at American Airlines Group Inc. (APA) and the Air Line Pilots Association (representing United Continental Holdings Inc.’s flight crews), along with Lion Air, have refuted Boeing’s assertions about the warning. They claim that Boeing withheld critical information about the new system and that the first time they learned about it was only through warnings issued by Boeing and the FAA following the Lion Air crash.

The discovery prompted the unions and their members to question what other information they have not been privy to about the new 737 models and how they can operate a plane without knowing about all the systems on board.

**SAFETY FEATURES NOT REQUIRED BY REGULATORS**

The investigation into the two back-to-back crashes also revealed that the aircraft was not equipped with two safety features that may have helped the pilots maintain control of the aircraft, The New York Times reported. Rather than making safety standard on its aircraft, Boeing chose to make vital safety equipment optional so it could charge more for the added features.

The “optional” devices included an angle of attack indicator, which displays the readings of the two angle of attack (AOA) sensors. The angle of attack is simply the pitch or angle of the aircraft as it moves forward—too steep of an angle at lower speeds results in loss of lift, stalls and crashes. Although Boeing knew the new 737 design suffered from the pitch-up problem that could cause the plane to stall, it failed to install the angle of attack indicator as standard equipment.

A “disagree light” was the other optional safety feature that, when activated, alerts pilots that readings from the AOA sensors are inconsistent and may not be accurate. In a classic “too little too late” attempt to clean up its mess, Boeing says it will now offer the disagree light as standard equipment on all new 737 MAX planes—assuming anyone really wants to buy a new 737 MAX. Industry experts explained that the features “cost almost nothing for the airlines to install” but Boeing, like other aircraft manufacturers, can charge extra for them and decided to take advantage of the opportunity to further pad its bottom line.

**SOFTWARE FIX KNOWN BUT NOT INSTALLED BEFORE SECOND CRASH**

Further underscoring Boeing’s unconscionable conduct, evidence has emerged that Boeing actually developed a “software patch” for the defective MCAS after the Lion Air crash last year, but failed to implement it in time to prevent the most recent Ethiopian crash. Attempting to shift the blame, Boeing officials said the recent five-week long government shutdown may have stalled their work. The software “fix” is expected to “limit the extent of the flight-control system’s downward push on the plane’s nose.” The MCAS will also be programmed to take data from both AOA sensors, and if the data is inconsistent, the MCAS will be disabled. As a result of the ongoing investigations, the FAA has required Boeing to complete the software fix by the end of March.

This news relating to Boeing’s safety issues is moving at a rapid pace. We will write more on this matter in our next issues. In the meantime, you can get updated information on our firm’s website www.beasleyallen.com. If you need additional information on the above subject, or any other matter dealing with aviation litigation, contact Mike Andrews, a lawyer in our Personal Injury & Products Liability Section, who leads the team of lawyers handling aviation litigation for the firm, at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com.


**AMAZON PRIME PLANE CRASH REIGNITES SAFETY CONCERNS OVER CARGO AIRCRAFT**

In February, the fifth fatal U.S.-registered cargo plane crash in the last 10 years occurred approximately 40 miles southeast of George Bush International Airport in Houston, Texas, killing
all three crew members aboard, Bloomberg News reported. Video from a nearby jail recorded the last few seconds of the fatal flight and Robert Sumwalt, chairman of the National Transportation Safety Board (NTSB), which is investigating the crash, confirmed that the plane was in a steep, nose-down and rapid descent. He said there was no visual evidence that its crew tried to turn or pull the nose up at the last minute. The plane crashed into a marsh near Anahuac and broke into countless pieces.

The tragedy has reignited concerns over the safety of cargo airplanes. The five crashes have claimed the lives of 16 people in the last decade compared to one commercial passenger death on U.S.-registered flights. According to the Air Line Pilots Association (ALPA), cargo airlines’ accident rate is seven times higher than passenger airlines. Experts explain how some of the safety concerns over cargo planes are based on the less stringent oversight and regulations that govern cargo planes compared to those of passenger aircraft.

**PILOTS’ REST REQUIREMENTS**
In 2014, aircraft regulations were implemented to improve safety in U.S. aviation. The stronger regulations were in response to the 2009 Colgan Airlines plane crash in a residential area of Buffalo, New York, that killed 50 people, USA Today reported. The NTSB investigation found that pilot fatigue and the airline’s failure to adequately address the fatigue were key factors in the crash. Of those changes included an increase in the amount of rest time for pilots before they begin work. They must have a minimum of 10 hours of rest. Ideally, this change allows pilots to reach their lodging accommodations and still receive a full eight hours of sleep.

When the changes were proposed, however, the cargo airline industry resisted the changes and lobbied to have cargo carriers left out of the new regulations. The Office of Management and Budget (OMB) sided with the cargo airline industry and created the “Cargo Carve-Out” leaving cargo pilots under the old regulations, which require only eight hours of rest and allow pilots to potentially work 16 hours. An OMB cost-benefit analysis, which primarily considered the number of people killed in air crashes, determined that the loss of life in cargo air crashes was not great enough to heighten the rest requirements.

Cargo pilots argue that because they carry cargo and not passengers fewer people will be at risk of death in a cargo plane crash. Still, there are people—at the least the pilots—and human life remains at stake. The Carve-Out forces cargo pilots to fly despite the shorter time for rest. The NTSB also disagreed with the Carve-Out saying that “many of the fatigue-related accidents that we have investigated over the years involved cargo operators” and that because cargo operations are often carried out at night, interrupting natural sleep patterns, cargo pilots are in greater need of the increased rest time.

**PILOTS UNDER PRESSURE**
The Cargo Carve-Out was a successful victory for cargo airlines’ bottom lines, something that often plays a larger than necessary role in policy and regulatory decisions affecting safety. Another example of the pressure pilots and their profession face was demonstrated when Congressman LaMar Smith (R-Texas) proposed funding a study of single-piloted and computer-piloted operations of cargo airlines. He tacked the proposal on to the FAA’s Reauthorization Bill last summer. However, cargo pilots and their unions fought back forcefully and defeated the measure, according to Forbes.

They described it as an attack on the profession and said that it placed the safety of others at risk as well. Industry insiders explained that while modern automated flight systems can fly aircraft under normal conditions, they cannot do so 100 percent of the time. In times of crises, it is critical to have two pilots working together to overcome challenges that can bring the plane down. Pilots believe this won’t be the last time such a proposal is made.

**ADDITIONAL SAFETY GAPS**
Recognizing the air cargo flights continue to increase and considering their high accident rate compared with passenger flights, aviation and safety experts note additional regulatory areas that provide inadequate protection for cargo flights and further heighten unnecessary safety risks.

- Perimeter security practices. Passenger airlines employ extensive security and screening procedures for employees who will be around passenger termi-
Wrongful Death Lawsuit Filed By Beasley Allen For Family Of Russell County Man

Our firm has filed a lawsuit against Russell County Group Home for the wrongful death of John Wayne Lewis. The employees of Russell County Group Home failed to remove Mr. Lewis from a company van after a September 2018 trip to a location outside of the home. Tragically, Mr. Lewis was left in the van for four hours as temperatures exceeded 90 degrees. As a result of insufficient care, the victim died of hyperthermia. The suit was filed by the John Wayne Lewis Estate. Beasley Allen lawyer Cole Portis, who heads of our firm’s Personal Injury & Products Liability Section, along with Brian Strength of Strength & Connally, LLC in Tuskegee, Alabama, are handling this case. Cole had this to say when filing the suit:

We are repeatedly reminded of the deadly consequences of leaving children and animals in vehicles during warm months. Mr. Lewis and other adults who are unable to care for themselves are not immune to the deadly heat that quickly takes over a vehicle in these conditions. There were several caretakers responsible for the residents on that day. Unfortunately, they did not take the time to go through the van to ensure all passengers were accounted for. Russell County Group Home failed to protect Mr. Lewis by not having a safety plan in place to protect against such occurrences. Group homes, child care facilities, and anyone responsible for the care of a helpless person should be held accountable for such careless behavior.

According to the National Highway Traffic Safety Administration, the temperature in a car can increase 20 degrees Fahrenheit in just 10 minutes. A vehicle can heat up to above 110 degrees on a 60-degree day. On an 80-degree day, temperatures inside a vehicle can reach deadly peaks in 10 minutes. The complaint is filed in the Circuit Court of Russell County, Alabama.

PBM To Blame for Increased Prescription Drug Costs

American consumers pay more for prescription drugs than any country in the world and critics are blaming Pharmacy Benefit Managers (PBMs) for rising drug costs. More than 80 percent of prescription drugs in the United States are purchased through PBMs. For the uniformed, PBMs are the middleman between health benefit plans, drug makers and pharmacies. If a consumer buying a prescription drug has insurance, then a PBM is involved in the transaction. The major PBM players in the United States are Express Scripts, CVS Caremark, and OptumRX—-who reportedly brought in more than $300 billion dollars in revenue last year.

According to the National Community Pharmacists Association, allowing a handful of PBMs to dominate 85 percent of the drug market is highly problematic, resulting in increased drug costs for consumers. Some of the issues include PBMs classifying generic drugs as brands in order to charge higher prices, charging health plans more than the PBM’s reimbursement to pharmacies and pocketing the difference, and promoting drugs based on the rebate the PBM obtains instead of the best interest of the consumer.

Rebates, specifically, are under attack for the way they are driving up drug costs. How do rebates work? In order to include a drug on an insurance plan’s list of covered drugs, called a formulary, PBMs negotiate deals between drug makers and insurance plans where the drug maker will pay the PBM to include the drug on the plan’s formulary. The payments are called “rebates” and they can total millions of dollars.

PBMs prefer drugs that give them the highest rebate, even if there is a cheaper drug that is equally or better suited for the consumer. PBMs claim they pass the rebate money on to the insurers, who say they use the money to lower copays and premiums for consumers. However, the problem is that these rebate deals are secret and we do not actually know how much of the rebate is being used to lower the consumer’s costs versus how much is being pocketed by the PBMs and insurers.

In some instances, rebates can actually increase the drug price because drug makers raise the drug price in order to work in a larger rebate to the PBM. The PBM is happy, the drug is covered on the plan’s formulary, but unfortunately for consumers, drug prices go up.

The absence of strong competition allows PBMs to pocket rebates with no incentive to decrease costs for consumers by passing on the savings. The PBM wins, the drug maker wins, but the consumer loses.

State legislatures and members of Congress are paying attention to the problems with the rebate business. Sen. John Cornyn (R-Texas) and Sen. Catherine Cortez Masto (D-Nev.) of the Senate Finance Committee are discussing legislation to push transparency in the rebate system through reporting requirements. The U.S. Department of Health and Human Services proposed a rule in January effectively targeting backdoor rebates in order to allow the money to be passed on directly to consumers and reflected in what they pay at the pharmacy counter. Additionally, a bill is pending in Pennsylvania where the Pennsylvania Auditor General, Eugene DePasquale, has called for state and federal action to reform the prescription drug rebate system to require that PBMs receive a flat fee rather than a percentage.

The Auditor General explained in a press conference that PBMs make their money by getting a percentage from the cost of drugs so that they have no incentive to put lower-cost drugs on approved lists for insurers. He said: “Rebates never reach the hands or the wallets of consumers or the independent community pharmacies who fill their prescriptions.”

Critics of PBMs are tired of their exploitation of the lack of transparency and competition, which has ultimately led to reduced choices for consumers and increased costs of prescription drugs. Beasley Allen lawyers welcome the opportunity to investigate potential PBM misconduct and other pharmaceutical litigation of which you may be aware. If you have any questions about our firm’s health care fraud practice, contact Ali Hawthorne, a lawyer in our Consumer Health Care Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com.

Sources: National Community Pharmacists Association; PBS; and The Times
Members of the U.S. Senate Finance Committee grilled leaders of the world’s largest pharmaceutical companies recently about the staggering high prices of their drugs. Several Senators threatened to have Congress step in if the executives fail to take the lead in reducing drug costs.

To say that the public is very upset over high drug prices is a gross understatement.

Executives from AbbVie Inc., AstraZeneca PLC, Bristol-Myers Squibb Co., Johnson & Johnson, Merck & Co., Pfizer Inc., and Sanofi fielded questions during the hearing from both Democrats and Republicans frustrated that so many Americans are struggling to pay for much-needed medications while drug companies are pocketing millions and even billions.

Sen. Johnny Isakson of Georgia, who has Parkinson’s disease, was quick to express frustration with drug prices, even billions.

Sen. Ron Wyden of Oregon, the committee’s ranking member, pointed out that the United States pays more for its medications than any other country in the world. Richard Gonzales, CEO of AbbVie, conceded that Americans pay more than Europeans for his company’s arthritis drug Humira, which has raked in $18.4 billion in revenues.

Sen. Debbie Stabenow of Michigan kept Gonzalez on the hot seat about Humira, which increased in price from $19,000 a year in 2012 to $38,000 a year in 2018. “If Humira were a standalone company, it would be larger than many Fortune 500 conglomerates such as General Mills, Halliburton or Xerox,” she said.

While both Democrats and Republicans expressed frustration with drug prices, they don’t necessarily agree on how to resolve the problem. Democrats want Medicare to leverage its purchasing power by negotiating prices directly with the drug industry. Republicans disagree. It is impossible to justify drugs being provided by the federal government under Medicare with no ability to negotiate prices with the powerful drug companies.

The drug companies offer some ideas, such as allowing patients to share in rebates when they buy their medications; limiting the cost-sharing and copays for Medicare beneficiaries in the Part D prescription program, and promoting lower-cost generics and biosimilar competition.

Apparently, at the end of the day, however, very little was accomplished in the hearing beyond the airing of grievances. “What people are going to take away from this hearing,” Sen. Wyden said near the close of the meeting “[is that] no firm commitments have been made to lower list prices.” This battle should continue and the American people must demand “action” and not just “political talk” on this issue.

Sources: Law360.com and Associated Press

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**Vanguard Healthcare Settles Federal Fraud Case**

Brentwood-based Vanguard Healthcare and its namesake parent company have agreed to pay more than $18 million to resolve a federal lawsuit brought by the United States and the State of Tennessee accusing the senior nursing facility provider of submitting false claims to Medicare and Medicaid at five different facilities.

According to a news release from the U.S. Attorney General’s office for the Middle District of Tennessee, Vanguard Healthcare, along with several related Vanguard companies that have reorganized in bankruptcy, have agreed to pay more than $5.1 million toward the settlement. In addition, two Vanguard entities that are liquidating in bankruptcy have agreed to pay $13.5 million in allowed claims in bankruptcy proceedings by the Vanguard entities, the settlement agreement, approved by U.S. District Court Judge Terrance Berg (who is sitting by special designation), also resolves claims brought by federal officials against Vanguard’s majority owner and CEO, William Orand, and its namesake parent company have agreed to pay $250,000 as part of this settlement.

Federal prosecutors said Vanguard Health was submitting false claims to government insurance programs for nursing home services that were severely sub-standard or nonexistent. They said the five facilities involved failed to administer medications as prescribed, failed to provide standard infection control, failed to provide wound care as ordered, failed to take prophylactic measures to prevent pressure ulcers, used unnecessary physical restraint on residents and failed to meet basic nutrition and hygiene requirements of residents, to name a few. The lawsuit further alleged that the Defendants were responsible for the submission of hundreds of pre-admission forms by these facilities to TennCare, the state’s Medicaid program, that contained forged nurse or physician signatures.

Due to the filing of bankruptcy proceedings by the Vanguard entities, the United States anticipates that the total government recovery in this case will ultimately exceed $6 million. U.S. Attorney Don Cochran, in the release, stated:

Simply stated, our elderly and vulnerable citizens who can’t care for themselves deserve far better treatment than what they were subjected to by Vanguard. The substandard care that many of these facilities’ residents endured while the companies were raiding the public coffers is deplorable. This settlement holds them accountable and the ensuing Corporate Integrity Agreement should ensure that this conduct is not repeated going forward.

Vanguard is a holding company that owns a chain of subsidiary skilled nursing facilities, including Boulevard Terrace Rehabilitation and Nursing Center in Murfreesboro, Glen Oaks Health and Rehabilitation in Shelbyville and Manchester Health Care Center in Manchester. Vanguard previously operated three additional facilities in Tennessee, including Crestview Health and Rehabilitation in Nashville, Imperial Gardens Health and Rehabilitation in Madison, and Poplar Point Health and Rehabilitation in Memphis.

Source: Nashvillepost.com

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**TOXIC TORT LITIGATION CONCERNS**

**Important Ruling In Asbestos Litigation**

The U.S. Supreme Court issued its decision last month in *Air & Liquid Systems v. DeVries*. Authored by Justice Kavanaugh, the Opinion held that Maritime law does not recognize the so-called “bare metal defense” in asbestos litigation. The previ-
For several decades, the military relied heavily on asbestos-containing products. The Navy, however, used more than any other military branch because the material was very effective at fireproofing ship components. Asbestos materials were routinely used as gaskets or valve packing on board the ships, primarily in boiler and engine rooms. Navy veterans have a heightened risk of developing mesothelioma considering the enclosed nature of the ships and shipyard environments in which they were stationed. Due to poor ventilation, veterans that slept or worked below deck have the highest risk for developing mesothelioma.

The Navy has known about the deadly risks of asbestos exposure since 1939 but did not cease using asbestos materials in its vessels until the 1970s. Even then, it continued to use the contaminated vessels for several years, leading to additional veteran exposure again when the ships were repaired.

Navy veterans were heavily exposed to asbestos on land as well when military vessels were taken to shipyards to be overhauled. During overhaul and decommissioning processes, asbestos particles were disturbed and released into the air where they could remain airborne for hours. In 2011, the U.S. Environmental Protection Agency cited a residential subdivision in Oregon for asbestos contamination. The subdivision was the site of a Navy base in World War II.

Mesothelioma is a terminal cancer that is caused by exposure to asbestos, with a latency period of 20 to 50 years. It is a particularly dangerous disease because symptoms do not appear until it has progressed to an advanced stage. Therefore, it is imperative that exposed veterans receive regular medical examinations to detect asbestos-related diseases as early as possible. The Asbestos Medical Surveillance Program (AMSP) was launched in the 1970s; it monitors the health of veterans and service members who were exposed to asbestos.

If you have any questions, contact Sharon Zinns, a lawyer in our Toxic Torts Section who is in our Atlanta office, at 800-898-2034 or by email at Sharon.Zinns@beasleyallen.com.

Source: https://www.asbestos.com/navy/

NO GROUNDS FOR PREEMPTION IN BENZENE AML CASE

Plaintiff David Sparrow filed suit against Radiator Specialty (Radiator) in the Pennsylvania Court of Common Pleas for Philadelphia County after he developed Acute Myeloid Leukemia (AML) from his exposure to Radiator’s Liquid Wrench product. Mr. Sparrow was exposed to Radiator’s benzene-containing product during his employment both at a Shell service station and also while he was employed as a union plumber. AML is an aggressive form of blood cancer, and it is the type of leukemia most strongly associated with exposure to benzene.

Radiator’s motion for summary judgment has been denied. In its motion, Radiator argued that Mr. Sparrow’s claims were warning claims and thus were preempted by the Federal Hazardous Substance Act (FHSA). Under FHSA, any state or common law claim that seeks to impose more stringent labeling requirements than those established by the Act are preempted. The Pennsylvania court, however,
was unpersuaded and denied Radiator’s motion as moot.

As we have previously reported, benzene is a clear, highly flammable liquid with a sweet, gassy smell. It occurs naturally in petroleum, and it is used as an organic solvent to make a variety of other chemicals and various plastics. It is also used in the manufacturing of some types of rubbers, varnishes, lacquers, lubricants, dyes, detergents, drugs and pesticides. Because benzene comes from petroleum, benzene is often found in oil-based paints, various degreasers, thinners, solvents and fuels—including diesel, gasoline and kerosene. Persons working closely with benzene or benzene-containing products can be put at serious risk because their exposure can occur at much higher levels and for longer periods of time. The medical literature indicates that benzene causes multiple forms of leukemia and lymphoma.

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

Source: HarrisMartin Publishing

Roundup MDL Bellwether Trial Underway

A California jury has held that Roundup was a “substantial factor” in causing Plaintiff Edwin Hardeman to develop non-Hodgkin’s lymphoma. The March 19 verdict marked the end of Phase One of the first bellwether trial in the Roundup multidistrict litigation (MDL) currently underway before U.S. District Judge Vince Chhabria of the Northern District of California. In January 2018, Judge Chhabria bifurcated the trial into two phases, the first solely addressing the question of causation (ie. whether Roundup had caused Mr. Hardeman’s cancer). Phase Two of the trial will address the question of Monsanto’s liability for Mr. Hardeman’s cancer diagnosis and any potential damages.

Plaintiff Edwin Hardeman claims to have developed non-Hodgkin’s lymphoma (NHL) from extensive exposure to Monsanto Co.’s Roundup weed killer. Over a period of 26 years, Mr. Hardeman sprayed his property with approximately 6,000 gallons of Roundup. Importantly, the facts of this case differ from the state case in which Bayer AG, Monsanto’s parent company, took a $289 million hit. The Plaintiff in the state case developed NHL after using a Monsanto herbicide as a school groundkeeper for many years, and his prognosis was fatal. Mr. Hardeman’s use of Roundup was personal, and his cancer is currently in remission.

In the second half of the case, Mr. Hardeman’s counsel will seek to convince the jury that Monsanto knew about the health hazards posed by exposure to Roundup and failed to warn him. This means that the jury will now hear evidence that Monsanto has spent years attempting to mislead scientists and the general public about Roundup’s safety, evidence that was barred from presentation during the first phase of the trial. As a bellwether trial for the more than 760 cases pending in the Roundup MDL, the outcome of Phase Two will have important implications for the perceived strength of the remaining cases.

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

Source: Law.com

EPA Releases Action Plan For PFAS

In response to the public outcry over the widespread contamination of per- and polyfluoroalkyl substances (PFAS), the U.S. Environmental Protection Agency (EPA) has released its highly anticipated PFAS Action Plan. The Plan outlines the short-term actions, long-term actions, and potential regulatory approaches the agency is taking to address the crisis that impacts hundreds of water systems nationwide that serve 15 million Americans across 27 states. The Plan identified the following priority actions it seeks to address:

- Propose a national drinking water regulatory determination for PFOA and PFOS;
- Initiate the regulatory process for listing these chemicals as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA);
- Develop interim cleanup recommendations to address groundwater contaminated with PFOA and PFOS;
- Finalize draft toxicity assessments for additional chemicals such as Gen-X and other short-chain PFCs; and
- Review the chemical properties of emerging PFCs to assess the risk posed by these chemicals.

Short-term actions are currently taking place or should be completed within two years. They include improving testing methods to detect a broader category of PFAS in addition to PFOA and PFOS, specifically Gen-X chemicals and other short-chain PFCs. Other goals include conducting additional research to identify the most robust treatment technologies and partnering with local entities to identify sources of contamination and hold those responsible parties accountable.

The long-term actions seek to evaluate the potential regulation of PFAS under a variety of laws, broadening the scope of future testing, refining the collection and inventory of data, and better understanding the atmospheric transport and ecological risk PFAS pose to the environment. These plans are expected to be completed in the next three years.

Many hoped the Plan would recommend regulatory limits for exposure to PFOA and PFOS since these chemicals are known to cause certain adverse health effects and, as a result, have spawned litigation across the country. Instead, the EPA expects to propose a regulatory determination for these chemicals under the Safe Drinking Water Act for public comment sometime in 2019. In the meantime, the EPA will continue to monitor occurrence data, recent health effects data, and additional information solicited from the public.

However, the Plan does propose to include PFAS in nationwide drinking water monitoring under the next Unregulated Contaminant Monitoring Program. This is a significant development because new monitoring methods will be used to detect PFAS at lower minimum reporting levels than previous sampling. As a result, we will have a better idea on the full extent of contamination posed by these chemicals.

The EPA will also consider listing PFAS in the Toxics Release Inventory, which should aid it in identifying sources of contamination. Regarding remediation, PFOA and PFOS will be added to the list of hazardous chemicals under CERCLA’s Superfund law, which requires responsible
parties to pay for the cleanup costs when the chemicals present an imminent and substantial danger to public health. The agency will begin issuing recommendations for interim groundwater cleanup of contaminated sites.

Hopefully, the EPA accomplishes the goals set forth in its Action Plan. PFOS and PFOA, as well as their replacement chemicals, pose a significant risk to millions of Americans nationwide. Unfortunately, those impacted by these chemicals have had to file lawsuits against polluters seeking compensation for the installation of filtration systems capable of removing these contaminants or switching water sources altogether.

Our lawyers, along with Roger H. Bedford, a very good lawyer from Russellville, Alabama, are honored to represent 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 on this subject, contact Rhon Jones, Rick Stratton or Ryan Kral, lawyers in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com, or Ryan.Kral@beasleyallen.com.

GRAND CANYON TOURISTS EXPOSED TO URANIUM ORE

In March 2018, numerous buckets filled with uranium ore were discovered in a closet at the Grand Canyon National Park museum. The buckets of ore had remained hidden in one of the exhibit rooms for almost 20 years. Investigators are still unsure how no one seemed to know how the uranium sat unnoticed for all that time and so close to the patrons passing by the exhibits. During that time, thousands of people who visited the exhibit could have faced exposure to radiation levels above the permitted amounts designated by the Nuclear Regulatory Commission (NRC). Even more concerning, children may have been exposed to roughly 1,400 times the safe radiation dosage allowed by the NRC.

The discovery prompted the Park Service to test levels of radiation in the surrounding area. The Park Service and NRC have made it clear that only those in relatively close proximity would be at risk. Radiation levels from direct contact with the ore were twice the safe annual dosage allowed by the NRC, but readings taken just a few feet away from the ore showed no trace levels of radiation.

Several factors are weighed to determine possible severity of exposure. In relation to the proximity of the individual to the uranium, the NRC considers the length of exposure and the amount of shielding that an individual has on their body. This investigation is ongoing. One of the biggest challenges faced is determining who all was exposed over the course of 20 years’ time.

Source: https://www.livescience.com/84824-grand-canyon-uranium-probably-fine.html

XVI. UPDATE ON NURSING HOME LITIGATION

SHEDDING LIGHT ON RESIDENT-TO-RESIDENT ABUSE IN NURSING HOMES

BY: CHRIS BOUTWELL

Nursing homes are required to keep their residents safe. This includes keeping residents safe from emotional and physical abuse from anyone—including nursing home staff or other residents. Unfortunately, resident-to-resident abuse is an underrecognized and undiscussed problem in nursing homes.

A large-scale study conducted by Cornell University found that of the nursing home residents studied, nearly 20 percent were involved in some form of aggressive encounter with one or more fellow nursing home residents. The study focused on encounters or mistreatment between residents where one resident suffered physical or psychological distress as a result of the actions of the other. In the study, mistreatment ranged from verbal to physical violence, aggression, and general unwanted encounters. Seventy-five percent of these encounters were verbal in nature and the remaining 25 percent of encounters were physical.

While the fact that resident-on-resident abuse does occur in nursing homes does not come as a surprise to experts, the prevalence of these types of incidents is alarming. Creating a better environment in nursing homes that prevents resident-on-resident abuse starts with understanding why these incidents occur. Elderly people with cognitive degenerative disorders can be easily aggravated by certain environmental triggers. These triggers include lighting, noise or large crowds and can send dementia patients into violent or distressed states. This creates an overall environment that causes unpredictable behaviors among patients that often result in violent outbursts or mistreatment toward others.

Lawyers on our firm’s Nursing Home Litigation team recently filed a lawsuit on behalf of a Jefferson County man who was assaulted by another inmate at a nursing home facility in Birmingham, Alabama. Our client suffered from confusion, dementia, and poor eyesight. Because the nursing home staff failed to properly monitor our client and recognize signs of his confusion, he was assaulted by another resident and suffered painful injuries. This lawsuit is pending in the Circuit Court of Jefferson County, Alabama.

Source: nursinghomeabuse.org

SETTLEMENTS IN MASSACHUSETTS NURSING HOMES’ DEATH CASES

Massachusetts Attorney General Maura Healey has announced settlements with seven nursing homes to resolve claims of systemic failures that led to five residents’ deaths and several injuries. The settlements impose fines on the nursing homes ranging from $30,000 to $200,000. Five of the facilities will be required to upgrade staff training and policies, conduct annual audits of their progress, and report that progress to the attorney general’s office for three years. One company, Synergy Health Centers, has been banned from operating any taxpayer-funded nursing homes in Massachusetts for seven years.

The nursing homes cited by the attorney general, some of which have been sued or are facing lawsuits from families whose relatives died in the incidents, will not face prosecution by the state, pursuant to terms of the settlements. The attorney general’s office said it weighed the evidence and determined civil enforcement was the best way to improve safety and
quality in these nursing homes. Attorney General Healey said at a press conference:

Our resolutions cannot change what happened or ease the suffering of families, but we can help ensure these failures don’t happen again. While our settlements focus on seven facilities, we are also sending a clear message about the standards of care we expect of all facilities in our state.

The failures identified by the attorney general’s office include allegations of staff ignoring serious injuries that led to two residents bleeding to death. They also include a fatal medication error, failure to treat residents with histories of substance abuse, and allowing a resident with a history of wandering to escape from a locked, supposedly secure unit.

The company, facing legal actions and mounting bills, was placed under court-ordered receivership last year, with the receiver selling off most of its nursing homes. The settlements with Synergy include cases against two of its facilities: Woodbriar Health Center in Wilmington and Braemoor Health Center in Brockton, which has since closed.

Source: Boston Globe

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 handles 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, or 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.

XVII. AN UPDATE ON CLASS ACTION LITIGATION

There have been several significant settlements in March in class action litigation. I will include a brief summary of three of the cases.

LUMBER LIQUIDATORS PAYS $33 MILLION IN SEC SECURITIES CASES

Lumber Liquidators agreed to a $33 million settlement with federal prosecutors and the U.S. Securities and Exchange Commission (SEC) to resolve claims that the company lied to investors about its compliance with formaldehyde regulations in relation to laminate wood flooring imported from China. Lumber Liquidators entered into a deferred prosecution agreement stemming from a criminal complaint, which charged the Toano, Virginia-headquartered company with securities fraud.

The federal court case is USA v. Lumber Liquidators Holdings Inc., (case number 3:19-cr-00052) in the U.S. District Court for the Eastern District of Virginia, and the administrative proceeding is In the Matter of Lumber Liquidators Holdings Inc., (file number 3-19104) before the U.S. Securities and Exchange Commission.

$50 MILLION WENDY’S DATA BREACH SETTLEMENT GETS INITIAL APPROVAL

A Pennsylvania federal judge has given preliminary approval to a $50 million settlement requiring Wendy’s Co. to pay back a class of financial institutions for reimbursements they made to customers of the fast-food chain whose credit and debit card information was stolen in a data breach. The settlement, which must earn final approval following a hearing in November, would end litigation accusing Wendy’s of negligently storing customers’ payment card information, leading to thefts of the data over a five-month period ending in March 2016.

The financial institutions, led by First Choice Federal Credit Union, filed suit against Wendy’s in April 2016 seeking compensation for expenses they incurred after being forced to reimburse customers for fraudulent transactions in the wake of the restaurant chain’s data breach. The financial institutions said hackers installed malware that gave them access to credit and debit card information collected from customers who made purchases at the fast-food chain.

Customers began complaining of unauthorized transactions on their cards in January 2016, the institutions said, and the information may have been used in connection with millions of purchases. The financial institutions accused Wendy’s of failing to keep pace with security measures adopted by retailers and restaurants in recent years to protect against data theft, including the use of so-called EMV chips that create unique codes for each transaction that cannot be used again in the event the electronic transaction data is stolen. In addition to monetary relief to the financial institutions, Wendy’s also agreed as part of the settlement to put in place “reasonable safeguards to manage its data and security risks.”

The case is First Choice Federal Credit Union et al. v. The Wendy’s Co. et al., (case number 2:16-cv-00506) before the U.S. District Court for the Western District of Pennsylvania.

$165 MILLION NOVASTAR SETTLEMENT GETS APPROVAL

“A Law360 (March 11, 2019, 9:31 PM EDT)

A Manhattan federal judge has given final approval to a $165 million settlement between underwriters of the failed subprime lender NovaStar and hundreds of investors, rejecting objections from the Federal Housing Finance Agency (FHFA) and Freddie Mac that they should not be included in the class. Arguments by the FHFA and Freddie Mac, formally known as the Federal Home Loan Mortgage Corp., that she could not restrict their
right to sue under the settlement were rejected by the judge.

The settlement resolves claims from investors, including union pension funds, who alleged that Deutsche Bank Securities Inc., RBS Securities Inc. and Wachovia Capital Markets LLC, now Wells Fargo Advisors LLC, lied in offering documents on securities issued by NovaStar Mortgage Inc. The case was filed in 2008, in the midst of the financial crisis. The Plaintiffs said that when the bulk of the mortgages underlying those securities went into default, the investors lost significant amounts of money.

The case is New Jersey Carpenters Health Fund v. Royal Bank of Scotland Group PLC et al., (case number 1:08-cv-05310) in the U.S. District Court for the Southern District of New York.

$100 Million Settlement Reached In Swift Drivers’ Wage Class Suit

Shipping company Swift Transportation Co. Inc. has agreed to pay $100 million to about 20,000 drivers to settle a suit alleging that it makes its workers faux “owner-operators” to avoid federal and state wage laws. Swift and the drivers filed joint motions asking an Arizona federal court to certify the proposed class and collective action and give preliminary approval to the settlement. The settlement would pay class members by estimating the value of their claims and—if the sum tops the value of the settlement fund minus fees, expenses, service awards to named Plaintiffs and administrative costs—discounting their damages on a pro-rated basis. The five named Plaintiffs would get service awards of up to $50,000 each.

The suit, which dealt with independent contractor misclassification, filed in December 2009, alleged that Swift misclassified its drivers as independent contractors and paid them below the federal minimum wage after making them lease and maintain their trucks and pay for gas, tolls, insurance and other costs. The suit also included claims for violations of state wage, contract and forced labor laws. Swift sought to send the workers’ claims to solo arbitration per its arbitration agreements barring them from suing in court.

The settlement also includes nonmonetary benefits for workers, including protections should they default on payments for trucks they lease through a company the workers say is a Swift affiliate. And the $100 million pool covers claims only from before Swift’s September 2018 merger with Knight Transportation, leaving the door open for more damages for claims arising post-merger.

The case is Virginia Van Dusen et al. v. Swift Transportation Co. Inc. et al., (case number 2:10-cv-00899) before the U.S. District Court for the District of Arizona.

XVIII. THE CONSUMER CORNER

Rights Can Be Lost When You Click ‘I Agree’

For most consumers, checking the ubiquitous terms and agreement box in order to access content on the internet is an instinctive and immediate action not subject to the same due diligence reserved for signing a traditional contract. What right giving that consent deprives a consumer of is often not understood or revealed until it’s too late. But the fact that tech companies present nonnegotiable, purposefully oblique and presumably ignored terms and conditions to consumers in exchange for access to the company’s services is neither neoteric nor novel and is largely unquestioned.

The companies’ claims autonomous and unregulated operation created by their terms is essential to both administer and innovate their services is predictable and largely unchallenged.

Least of all, consumers have come to expect that terms and conditions contain an arbitration clause empowered by federal law and deployed against consumers to avert litigation related to rights the Company violated. The banality of these statements and implicit acceptance of these practices obscure the insidious threat tech companies’ current practices present to consumers and privacy.

Two popular but otherwise unrelated news commentaries recently circulated around outlets and social media collaboratively articulate how tech companies’ practices threaten the safety of consumer data and demonstrate its consequential nature.

First, Georgia high school teacher Donelan Andrews’ heartening anecdote of being awarded $10,000 from a Florida based insurance company after closely reading the “fine print” of a travel insurance policy she had purchased lays the foundation. Buried on the last page of the policy was a reward offered to anyone dedicated to reading the contract in its entirety, with instructions on how to collect the prize.

The national attention devoted to the insurance company’s stunt underscores that consumers recognize such generosity by a company is atypical. More importantly, the stunt demonstrates companies presume consumers disregard the substance of terms and conditions they consent to. Applied to convenient click-through consent forms ubiquitous in the tech industry, Companies’ presumption consumers are ignorant of what they’ve consented is incontrovertible.

The second article, an editorial written and published by The New York Times titled “How Silicon Valley Puts the ‘Con’ in Consent” weighs the impact of consumers signing away their privacy rights to big internet companies through the “the legal fiction of consent.” The article suggests the validity of Consumers’ consent to Tech Companies’ pervasive and protracted terms and conditions by willful, yet ignorant clicking should be reappraised against the reality that such an agreement is requisite to facilitating modern life.

Such appraisal is currently impracticable considering the dearth of regulation and internet privacy legislation at both state and federal levels, but change is imminent. Congressional investigations into incidents like the Equifax data breach where personal data for millions of Americans was stolen clearly illustrate the lack of protections for consumers on the
federal level. The investigations of data breach incidents further revealed the extreme degree companies who perform and rely on data collection as a business model disregard their obligations to the protect the consumer self-identified in their terms and conditions.

Hearings held during the investigation exposed how violations of consumers’ privacy and data breaches are essentially self-reported by the Company, meaning the extent of the damage is likely modulated as inconsequential if reported or even discovered at all. The risks to the consumer by way of their data’s vulnerability is enhanced by the lack of consequences levied against companies who fail to protect and/or abuse it.

Congress is in the process of organizing panels to develop internet privacy legislation that enhances consumer protections and confronts the practice of habitually forcing consumers to choose between competing self-interests. The effort is in response to the U.S. Government Accountability Office’s report released mid-February that recommended the immediate inquiry into protecting consumer’s privacy by establishing what a modern consumer’s rights are. Privacy activists are tandemly advocating for such legislation with Congressional adoption of privacy rights to be weaponized in forcing changes in corporate data-handling practices.

At the state level, many state legislatures are currently developing their own consumer privacy protection laws following California’s lead in enacting the California Consumer Privacy Act (CCPA). These state protections most likely would be significantly more restrictive of tech industry practices relative to any federal regulation that may be enacted.

Understanding regulation in some form is imminent inevitably and alarmed by California’s CCPA setting precedent, the tech industry is well underway in advocating for federal regulation with flexible and voluntary standards that preempt stronger privacy laws enacted at the state level in order to preserve as much of their autonomy and power as possible.

Consumers should be able to control what personal data a company may collect, should expect that companies will respect consumers’ consent to transparent and obvious terms when collecting and using their data, and that if companies don’t respect consumers, there is accountability.

Current proposals for state and privacy laws address massive data breaches and their known consequences will improve the protections of consumers, especially when considering the process is developing with bipartisan support and is generally popular among consumers.

But any new right federal privacy laws purports to provide will always be undermined by the inability to enforce it as a corollary of federally protected forced-arbitration. Until both federal and state legislatures acknowledge the negative impact of forced-arbitration clauses in consumer contracts, consumer protection will continue to rely on voluntary compliance and self-reporting that’s proven to be ineffectual. Consumers will remain vulnerable until we recognize the power and necessity of the Courts.

If you need more information or have questions, contact Lauren Miles, a lawyer in our Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Lauren.Miles@beasleyallen.com.

**JURY AWARDS $12 MILLION IN CASE AGAINST MOBILE FUNERAL HOME**

A jury in Mobile County, Alabama, has awarded $12 million to Shelly Hood, the daughter of a woman whose cremated remains were lost by a funeral home. The jury verdict came nearly eight years after the death of the Plaintiff’s mother. Pine Crest Funeral Home in Mobile lost the remains of Cecille Howard Taylor Gardner at some time after she died on March 24, 2011. The Plaintiff first inquired about the remains in October 2015 and was repeatedly told by management they would be found.

In December 2016, the general manager of the company finally told the Plaintiff that the remains had not been located and no record existed of where they might be. The Plaintiff filed suit in March 2017. The jury found in favor of the Plaintiff on four of the six counts, including negligence and breach of contract.

Pine Crest Funeral Home is owned by Service Corporation International (SCI), a leading provider of death care services and products in North America. SCI has approximately 24,000 employees and operates more than 2,000 funeral homes and cemeteries.

The family was represented by Donald Knowlton and Mike Roberts with the Gadsden firm of Cusimano, Roberts & Mills and Jeff Hester, a lawyer from Pelham, Alabama. They did an outstanding job in this case.

Source: AL.com

**LAWSUIT BY DOG OWNERS SAYS DIAMOND PET FOODS’ PUPPY FORMULA IS TOXIC**

Illinois residents Constance Jackson and Gwen Kaszynski, two dog owners, have filed a proposed class action lawsuit against Diamond Pet Foods Inc., in Illinois federal court, alleging that some of the company’s dry dog food and puppy formula tested positive for arsenic, lead, pesticides and other toxic materials even though they are advertised as “natural” and “pure.” The Plaintiffs told the court that the packaging on Diamond’s “Taste of the Wild” branded dog food is misleading, as it doesn’t disclose the heavy metals, BPA, pesticides and other contaminants they found in that product line. They allege:

Defendants’ statements that, among other representations, the contaminated dog foods are natural, pure, and offer the ‘best nutrition available today’ that ‘nature intended’ are untrue or misleading, as failing to disclose the presence of BPA or pesticides in the dog food.

The Plaintiffs alleged that one of the products under the microscope—a boar-based dog formula—has more lead than most of the homes in Flint, Michigan, the site of a water crisis in which lead leached into thousands of residents’ drinking water. They said further that the venison and salmon dry dog foods in the “Taste of the Wild” product line came back positive for a cocktail of toxic materials—arsenic, BPA, cadmium, mercury, lead, pesticides as well as industrial chemical acrylamide—while the puppy formula tested positive for arsenic, cadmium, lead and a small amount of mercury.

Plaintiffs Jackson and Kaszynski said these products are often used as the main source of food for dogs and are advertised as such, which makes the questionable content all the more dangerous. The Plaintiffs said:

Defendants knew or should have been aware that a consumer would be feeding the contaminated dog foods to his or her dog multiple times each day, making it the main,
if not only, source of food. This leads to repeated exposure of the heavy metals, pesticides, acrylamide, BPA, and/or unnatural or other ingredients that do not conform to the labels to the family's pet.

The Plaintiffs seek to lead a national class, an Illinois class as well as a class of states that have similar consumer fraud laws, which they said are California, Florida, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York and Washington.

Plaintiffs Jackson and Kaszynski are represented by Lite DePalma Greenberg LLC, Lockridge Grindal Nauen PLLP, Kohn Swift & Graf PC, Robbins Arroyo LLP and Gustafson Gluck PLLC. The case is Jackson v. Schell & Kampeter, Inc. d/b/a Diamond Pet Foods et al., (case number 1:19-cv-01459) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

XIX.
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 March. If more information is needed on any of the recalls, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue.

Automobile Recalls

HONDA AND ACURA RECALLS 1.2 MILLION VEHICLES WITH TAKATA AIRBAGS FOR SECOND TIME

Honda Motor Co. has recalled about 1.2 million Honda and Acura vehicles in North America to replace defective driver’s side airbags made by Takata. Of the 23 total deaths worldwide linked to faulty Takata airbags, 21 have occurred in Honda vehicles.

The National Highway Traffic Safety Administration (NHTSA) said the recall covers 1.1 million U.S. vehicles and is to replace inflators received “either as a permanent Takata airbag inflator recall replacement or as a service part installed following a crash or problem with the airbag itself.” Another 100,000 vehicles are being recalled in Canada, Mexico and Central America.


The total number of recalled inflators is now about 21 million in about 12.9 million Honda and Acura vehicles that have been subject to recall for replacing Takata front airbag inflators in the United States. Automakers in the United States repaired more than 7.2 million defective Takata airbag inflators in 2018, as companies have ramped up efforts to track down parts in need of replacement.


Hyundai And Kia Recall Over Half Million Vehicles—Hyundai and Kia have added more than 500,000 vehicles to an ongoing recall due to increased risk of engine failures and fires. The Kia Soul, years 2012-2016, was the most affected vehicle, with 380,000 recalled, the website reported. In a letter to Kia, the National Highway Traffic Safety Administration wrote: “Kia Motors America (Kia) is recalling certain 2012-2016 Kia Soul vehicles equipped with 1.6L Gasoline Direct Injection (GDI) engines. High exhaust gas temperatures may damage the catalytic converter, possibly resulting in abnormal engine combustion and damage to one or more of the engine’s pistons and possible piston connecting rod failure. Consequence: Piston damage may result in an engine stall, increasing the risk of crash. A broken connecting rod may puncture the engine block allowing engine oil to escape. The leaking oil may contact the exhaust, increasing the risk of a fire.” Owners should contact Kia customer service at 800-333-4542. Kia's number for this recall is SC176. Owners may also contact the National Highway Traffic Safety Administration Vehicle Safety Hotline at 888-327-4236 or go to www. safercar.gov.

Ford Motor Company (Ford) is recalling certain 2017-2019 Lincoln Continental vehicles. The door latch that is not fully engaged may result in a door latch not fully engaging. A door latch that is not fully engaged may result in a door opening while driving, increasing the risk of injury.

Ford Motor Company (Ford) is recalling certain 2019 Ford Mustang, Lincoln Nautilus, and Lincoln Navigator vehicles. At vehicle start-up, the Instrument Panel Cluster Assembly (IPC) may not function, showing a blank display. As a result, these vehicles fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) number 101, “Controls and Displays.” A blank instrument cluster will not show important information like vehicle speed, fuel or temperature level, or safety system warnings. Driving with an inoperative cluster can increase the risk of a crash.

Subaru of America, Inc. (Subaru) is recalling certain 2014-2016 Forester, 2008-2016 Impreza sedans, 2012-2016 Impreza station wagons, 2008-2014 WRX sedans (including STI), and 2013-2017 Crosstrek vehicles. Exposure to certain contaminants may cause the brake light switch to malfunction, preventing the brake lights from illuminating and also preventing keyless ignition vehicles from starting and CVT/automatic transmissions from being able to be shifted out of Park. Brake lights that do not illuminate properly will not alert other drivers that the vehicle is slowing or stopping, increasing the risk of crash.
Ford Motor Company (Ford) is recalling certain 2019 Ranger vehicles equipped with 10-speed automatic transmissions. In some of these vehicles, the transmission shift lever can be moved from the “Park” position without the key in the starting system and without depressing the brake pedal. As a result, these vehicles fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) number 110, “Tire Selection and Package.” Additionally, these vehicles fail to comply with the requirements of 49 CFR Part 571, “Motor Vehicle Safety Standards.” If the vehicle is moved from the “Park” position without the key in the starting system, it may unexpectedly move. Unintentional vehicle movement can increase the risk of injury or crash.

Chrysler (FCA US LLC) is recalling certain 2018 Chrysler Pacifica and Pacifica hybrid vehicles. The right front lower control arm may separate from the steering knuckle. A control arm separation could increase the risk of a crash.

Ferrari North America, Inc. (Ferrari) is recalling certain 2017 LaFerrari Aperta, 2018-2019 488 GTB, GTC4Lusso T, GTC4Lusso, 488 Spider, 812 Superfast, and 2019 488 Pista vehicles. The fuel vapor separator may crack and allow fuel to leak. A fuel leak in the presence of an ignition source may increase the risk of fire.

Ferrari North America, Inc. (Ferrari) is recalling certain 2017-2019 GTC4Lusso and 2018-2019 GTC4Lusso T vehicles. Tension on the door lock mechanism may result in the vehicle’s door being unable to be opened by using the external door handle. If a door cannot be opened with the external handle in the case of an emergency, it can increase the risk of injury for the driver or passengers.

Isuzu Technical Center of America, Inc. (Isuzu) is recalling certain 2019 Isuzu NPR-HD, NPR-XD, NQR, NRR, Chevrolet 4500HD, 4500XD, 5500HD, and 5500XD. The odometer accurately measures the distance traveled in miles, but erroneously indicates that they are kilometers in the LCD display instead of miles. An incorrect odometer reading could lead to an unintended delay in critical safety related maintenance, potentially impairing the safe operation of the vehicle and increasing the risk of a crash.

Hickory Springs Manufacturing Company (HSM) is recalling certain FB11-39 DRW restraining barriers. In a hard braking situation or vehicle crash event, the barrier may not properly restrain an unbelted seat occupant. As a result, these barriers fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 222, “School Bus Passenger Seating and Crash Protection.” Failure to properly restrain an unbelted seat occupant can increase the risk of injury.

General Motors, LLC (GM) is recalling certain 2016-2018 GMC Sierra 3500 and Chevrolet Silverado 3500 trucks equipped with gasoline engines and dual fuel tanks. The fuel-level sensor in the front tank may stick in a low-level position, allowing the rear tank to overfill the front tank. If the front tank overfills, the excess pressure may cause the front tank to expand and contact the driveshaft, possibly resulting in a hole in the tank. The hole will leak fuel, which in the presence of an ignition source can increase the risk of a fire.

General Motors LLC (GM) is recalling certain 2016-2018 Cadillac CTS, and 2017 Cadillac ATS, Chevrolet Camaro, and Chevrolet Corvette vehicles. The electric power steering (EPS) assist system may fail. Loss of power steering assist would require a higher steering effort, especially at lower speeds, which may increase the risk of a crash.

Subaru of America, Inc. (Subaru) is recalling certain 2019 Forester and Crosstrek vehicles. A connector inside the Electronic Power Steering (EPS) unit may short circuit resulting in a loss of electric power steering assistance. Loss of power steering assist would require higher steering effort, increasing the risk of a crash.

Aisin World Corp. of America (Aisin AW) is recalling certain Transmission Control Modules (TCM), part numbers PSPD189E1, PEFB189E1B, PAG609E1A, PEFB189E1A, PEFB189E1C, 50052911, PEFB189E1D, 50053305, and 50054938 sold for use in 2016-2019 Mazda Miata MX-5 and 2017-2019 Fiat 124 vehicles equipped with automatic transmissions. Due to incorrect programming of the Transmission Control Module (TCM), certain conditions may cause the vehicle to unexpectedly downshift and abruptly decelerate. If a vehicle downshifts unexpectedly, the driver may lose control of the vehicle, increasing the risk of a crash.

Chrysler (FCA US LLC) is recalling certain 2018-2019 Fiat Spider 124 vehicles equipped with automatic transmissions. Due to incorrect programming of the Transmission Control Module (TCM), certain conditions may cause the vehicle to unexpectedly downshift and abruptly decelerate. If a downshift occurs, the vehicle will suddenly decrease speed, increasing the risk of a crash.

Daimler Trucks North America LLC (DTNA) is recalling certain 2018-2020 Freightliner Cascadia vehicles equipped with an optional steering wheel air bag. The driver’s frontal air bag may deploy unexpectedly. If the driver’s frontal air bag deploys unexpectedly, it can increase the risk of a crash.

ASA Electronics, LLC. (ASA) is recalling certain Voyager monitors used to display the back-up camera image. The affected monitors may revert back to the factory default settings, which may cause the camera image to be reversed. The driver may inadvertently turn the wrong direction to avoid an object behind the vehicle, increasing the risk of a crash.

Blue Bird Company (Blue Bird) is recalling one 2019 Blue Bird Vision bus equipped with a Ricon S-Series Titanium Wheelchair lift. The wheelchair lift position aligning input cam may fail while the lift is in use, allowing the platform to travel higher than the vehicle’s floor height. As such, this vehicle fails to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 403, “Platform Lift Systems.” If the wheelchair lift platform raises above the height of the vehicle floor, the wheelchair user could fall forwards toward the vehicle, increasing their risk of injury.

Forest River, Inc. (Forest River) is recalling certain 2019 Forest River Wildwood recreational trailers. The Federal Placards indicates an incorrect front tire pressure of 110 PSI. The correct PSI of the front, rear and spare tires is 80 PSI. As such, these vehicles fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) number 110, “Tire Selection and Rims.” Additionally, these vehicles fail to comply with the requirements of 49 CFR Part 567, “Certification.” Overinflating a tire may result in tire failure, increasing the risk of a crash.

Forest River, Inc. (Forest River) is recalling certain 2019 Forest River Columbus recreational trailers, equipped with MORryde Rubber Pin Boxes. The pin box mounting bolts may have been insufficiently tightened, possibly resulting in the trailer separating from the tow vehicle. A separation of the trailer can increase the risk of a crash.

Forest River, Inc. (Forest River) is recalling certain 2019 Cherokee recreational trailers. The Federal Placards indicate incorrect tire size information of...
ST205/75R15, when the vehicles are actually equipped with ST225/75R15 tires. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 110, “Tire Selection and Rims.” Additionally, these vehicles fail to comply with the requirements of 49 CFR Part 567, “Certification.” The incorrect information may cause an operator to install a tire that is insufficient for the vehicle, increasing the risk of crash.

**Forest River, Inc. (Forest River)** is recalling certain 2018-2019 Rockwood and Flagstaff recreational trailers. The bunk bed door latch fasteners that secure the bunk bed door closed may fail, allowing the door to open while moving. If the exterior bunk bed door opens unexpectedly while the trailer is being towed, it can increase the risk of a crash.

**Forest River, Inc. (Forest River)** is recalling certain 2019 Flagstaff and Rockwood recreational trailers. The breakaway safety switch may be improperly wired, and as a result, the trailer brakes will not apply in the event that the trailer disconnects from the tow vehicle. The trailer’s inability to apply the brakes in the event of a separation can increase the risk of crash.

**KTM North America, Inc. (KTM)** is recalling certain 2015-2016 1290 Super Adventure motorcycles. Fuel may leak from the fuel tank cover mounting insert area. A fuel leak in the presence of an ignition source can increase the risk of a fire.

**Kawasaki Motors Corp., U.S.A. (Kawasaki)** is recalling certain 2019 Z900 ABS, Z900 RS ABS & Z900 RS CAFE ABS motorcycles. The ABS hydraulic unit (ABS unit) may have been contaminated with debris during the manufacturing process, possibly resulting in the front or rear wheel locking up when braking while riding. If the front or rear wheel locks up while braking, there would be an increased risk of a crash.

**Indian Motorcycle Company (Indian)** is recalling certain accessory brake levers, part number 2883795-658, sold for use on Scout and Scout bobber motorcycles. The accessory brake lever adjustment screw may have been set incorrectly, causing unintentional front brake application. The accessory brake lever may apply the front brake, increasing the application while riding until the front wheel locks up, increasing the risk of a crash.

**Mazda North American Operations (Mazda)** is recalling certain 2016-2019 MX-5 (Miata) vehicles with automatic transmissions. Due to incorrect programming of the Transmission Control Module (TCM), certain conditions may cause the vehicle to unexpectedly downshift and abruptly decelerate. If the vehicle abruptly downshifts, the driver may lose control of the vehicle, increasing the risk of a crash.

**OTHER CONSUMER RECALLS**

**Shearwater Recalls Diving Transmitters**

About 900 Shearwater yellow diving pressure transmitters have been recalled by Pelagic Pressure Systems, of San Leandro, California. The transmitters can fail to signal the tank pressure due to interference while using two transmitters in the same dive. This poses a drowning hazard to divers. This recall involves Shearwater yellow pressure diving transmitters. The transmitters provide a tank pressure reading for scuba divers. The transmitter is yellow, with a cylindrical shape and measures 3 inches in length. “FCC ID: MH8A” is printed on the end of the transmitter. Part number 13009 or 13009-01 is printed on the cardboard packaging along with an eight-digit serial number starting in FK or BM etched on the side. The company has received one report of loss of communication using the transmitter during a dive.

The transmitters were sold at Dive Right In Scuba and Online Scuba stores nationwide and online at www.divegearexpress.com and www.shearwater.com from June 2017 through November 2018 for about $350. Consumers should immediately stop using the recalled transmitters and contact the company to arrange a free repair or exchange of the transmitter. Contact Shearwater Research toll free at 888-875-9745 from 9 a.m. to 5 p.m. PT Monday through Friday, email at info@shearwater.com or online at www.shearwater.com and click on Community for more information.

**JumpSport Recalls Mini Trampolines**

About 11,300 JumpSport® half-fold fitness mini-trampolines have been recalled by JumpSport Inc., of Campbell, California. The folding trampoline’s frame can forcefully hit the user, posing an injury hazard. This recall involves folding JumpSport mini trampolines. The recalled fitness trampoline models have a hinged, round metal frame with a black fabric jumping surface suspended by bungee cords. Some models were sold with accessories, such as a handlebar or workout videos. The model number is printed on a label on the upper portion of one of the trampoline legs. “JumpSport” and “Fitness Trampoline” are printed on the black fabric jumping surface. JumpSport has received nine reports of injuries involving contact with the frame, including cuts, bruises, and dental/facial injuries.

The recalled trampolines were sold at Amazon.com, Costco.com, JumpSport.com and other websites and specialty fitness equipment stores nationwide from January 2011 through November 2018 for between $250 and $500. Consumers should immediately stop using the recalled trampolines and visit JumpSport’s website to download a new instructional manual and warning materials. If the trampoline is set up, consumers should not try to fold it until they have reviewed the new instructions and warnings. New instructions are also available directly from JumpSport. Contact JumpSport toll-free at 855-782-9980 from 9 a.m. to 6 p.m. ET Monday through Friday, email at recall@jumpsport.com or online at www.jumpsport.com and click on “Recalls” for more information or to request a copy by mail. Pictures available here: https://www.cpsc.gov/Recalls/2019/JumpSport-Recalls-Mini-Trampolines-Due-to-Injury-Hazard-New-Instructions-and-Warning-Labels-Provided

**D&D Futon Furniture Recalls Sleeper Chair Folding Foam Beds**

D&D Futon Furniture, of South El Monte, California, has recalled 800 Sleeper Chair Folding Foam Beds. The mattress fails to meet the mandatory federal flammability standard for mattresses, posing a fire hazard. This recall involves the gray D&D Futon Furniture Sleeper Chair Folding Foam Bed which can be used as a chair or bed and were sold in 24, 32, 36, and 48 inches wide sizes. The sleeper chair is 6 inches high when configured as a mattress.

The mattresses were sold at Amazon.com and Ebay.com from January 2018 through October 2018 for between $102 and $165. Consumers should immediately stop using the recalled mattresses and
Pillsbury Flour Recalled After Salmonella Traces Found

The makers of Pillsbury Unbleached All-Purpose Flour have instituted a recall of more than 12,000 cases, citing a risk they may be contaminated with salmonella after traces of the bacteria were found in one bag. The recall covers two lots of the five-pound flour bags, with best if used by dates of April 19, 2020, and April 20, 2020, and lot codes 8292 and 8293, according to a Friday announcement on Hometown Food Company’s website. So far, there have not been any reports of illness related to the voluntary recall, according to the announcement.

The U.S. Food and Drug Administration (FDA) announced the recall on its social media accounts Monday, but has not issued a formal alert on its website. The bags included in the recall were sent to a “limited number of retailers and distributors nationwide,” according to the announcement. Customers are advised to throw out any of the recalled products or return them to stores, and to seek medical attention if they display symptoms of salmonella including diarrhea, fever, abdominal pain and vomiting. The company is offering replacement coupons for customers affected by the recall.

An FDA spokesperson said this is a class 2 recall with no confirmed illnesses, adding that salmonella strains aren’t all the same. The agency deferred further comment, saying Hometown Food discovered it and issued the recall, and therefore could speak to how it was discovered. This recall is the second so far this year for flour with potential salmonella contamination. In January, the FDA issued a recall for five-pound bags of Gold Medal Unbleached Flour made by General Mills after salmonella was discovered in a sample of one bag. That recall also concerned bags with a best if used by date of April 20, 2020. Representatives for Hometown Food Company could not immediately be reached for comment at press time.

As you can see, there have been a large number of recalls since the last issue. We included most of them in this issue. Those we felt to be of the highest importance and urgency are included. If you need more information on any of the recalls listed above, visit our firm’s web site at BeasleyAllen.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.

XX.
FIRM ACTIVITIES

Beasley Allen Employee Spotlights

BRUCE HUGGINS

Beasley Allen’s Chief Investigator, Bruce Huggins, will mark his 31st anniversary with the firm this month. At the time Bruce joined the firm as an investigator in 1988, there were fewer than 20 employees at the South Hull Street location. Bruce has not only worked cases, but he is intimately involved with reviewing all investigative requests, maintaining and updating vehicle litigation inventories and assigning incoming cases. It is with regret that I announce that Bruce plans to retire from the firm next month.

Prior to joining Beasley Allen, Bruce graduated from Auburn University at Montgomery in 1977 with a B.S. degree in Criminal Justice; minoring in Psychology and Sociology. He went on to work with the Montgomery County Sheriff’s Office where he was a Homicide Investigator for 11 years. He is the 1983 recipient of the Law Enforcement Officer of the Year. Bruce is also a 1987 graduate of the prestigious FBI National Academy in Quantico, Virginia.

Bruce has been married to his high school sweetheart, Cindy, for 42 years. Cindy is a Registered Nurse and is currently employed at Baptist Joint Center. She has worked in many other health care capacities during her nursing career. Together, Bruce and Cindy are proud parents of two children, Amanda and Daniel. Amanda is also an accomplished Registered Nurse and resides in West Hollywood, California. She enjoys snow skiing and traveling. Daniel is the Applications Division Manager with Ingenuity, Inc. in Birmingham, Alabama. He and his wife, Maridi, have two beautiful daughters, Mary McKinnon and Adeline.

In his spare time, Bruce finds time to regularly work out. He is also a “huge” Alabama fan and an avid golfer. Trips to the beach and mountains are on the top of Bruce’s travel list and he says he enjoys relaxing by “an outdoor fire on a crisp fall or spring evening.” He and Cindy like to visit with their children as much as they can and make frequent trips to California and Birmingham. I hear that their granddaughters, whom Bruce has nicknamed “Boo-Boo” and “Lu-Lu,” have stolen their hearts and they both enjoy spending time with them and watching them grow up.

Bruce says he is very proud of his time at Beasley Allen. He states that he has truly been able to “Help Those Who Need it Most.” Bruce had this to say:

I have been very blessed to have worked with Mr. Beasley. He has always treated me as family. This firm has the best attorneys and support staff in the legal profession. While I am sad to be retiring and will miss many people that I have grown up and grown older with at Beasley Allen, I have been fortunate to learn many life lessons and hope that while retired, I will continue to be watchful for and compassionate about people who need help.

Bruce has been the firm’s only Chief Investigator. He has done amazing work in a most challenging position. Beasley Allen has been privileged to have him with us for so many years. Bruce will be missed!

PARKER MILLER

Parker Miller joined the firm in 2008 and is a principal in our firm’s Atlanta Office. Parker is in our Personal Injury & Products Liability Section. He has represented families in a wide variety of catastrophic injury and death cases. Parker has also represented governments, large and small businesses, universities, farmers, and fishermen in significant economic damage cases.
Currently, Parker represents survivors and their families in a wide range of catastrophic injury and death cases. These include premises liability cases where a property owner failed to ensure the safety of guests, resulting in severe injury or death. Parker is also investigating and/or litigating significant product liability cases in a number of states on behalf of families.

Parker also handles commercial vehicle crash cases. He recently secured a seven-figure settlement for the victims of a tragic commercial vehicle crash. Further, Parker maintains a niche practice representing state governors and state attorneys general in nationally significant, high-profile cases. Over his career, Parker has served four attorneys general and three governors. Currently, Parker serves as co-lead counsel and deputy attorney general for the State of Alabama in its opioid lawsuit and is our firm’s lead counsel to Georgia’s attorney general in the Georgia opioid litigation. He has been busy helping the states prepare for trials.

The culmination of several influences, including his desire to help people and advocate on their behalf, were key to Parker’s choosing to practice law. He understands the importance of the trust people place in him to help them solve their problems and he doesn’t take their trust for granted. Parker says:

The tougher the problems and the higher the stakes, the more I really enjoy it, and the more I appreciate the trust someone else gives me—whether it is my firm for trusting that I can handle a big case or task, a judge that trusts me in an argument, or a client that has come to me in their darkest hour. Trust is so important because it is the greatest compliment someone can pay you.

Parker says he is passionate about practicing law because of the heavy focus on communication. He says further:

I love communicating with people and believe my rural roots shaped my candid and direct approach that my clients appreciate. While large corporate interests are well represented, individual consumers struggle to make their voices heard in the legal system. This realization helped me ultimately decide to use my skillset in the practice of law. I have gotten to know so many people along the way who would give the world to just have a voice.

These same aspects of practicing law are also what Parker continues to enjoy the most about his profession. He said he enjoys being in the trenches with his client and working as a team to reach the best possible result. Parker explained that he likes helping his clients understand the process and encouraging them, especially during the most difficult times of their case. “The cases we handle are complex and can be extremely taxing on a client. It is important to keep everyone steady and on point,” Parker says.

Parker, a husband and the father of two, graduated high school with honors from Marengo Academy in 2001 and obtained a Bachelor of Science in Business Administration from Auburn University in 2005. Parker received his law degree from Faulkner University’s Thomas Goode Jones School of Law in 2008. While attending law school, he was on the Dean’s List and studied international law abroad in conjunction with Tulane University at the Universiteit van Amsterdam. Parker is married to the former Ashley Brownsberger of Tampa Bay, Florida, and the family attends Cathedral of Christ the King in Atlanta.

Parker was selected in 2012 and 2014 as BeasleyAllen’s Toxic Torts Section Lawyer of the Year and has been designated as a Super Lawyer Rising Star since 2014. He was chosen as a Law360 Rising Star in 2014 and 2016 and has been named to the National Trial Lawyers Top 40 Under 40 list. Parker says that a combination of high character, strong passion and talent help set BeasleyAllen apart from other law firms. He says:

The character here is second to none and it is a precondition to everything else. From our receptionists to our top partners, people at this firm are passionate about what we do and it shows.

Parker is a hard working lawyer who is dedicated to the firm’s mission. We are blessed to have Parker in our firm.

STEPHANIE MONPLAISIR

Stephanie Monplaisir, who is marking her eighth anniversary with the firm this month, is a principal in the Personal Injury & Products Liability Section where she handles complex litigation and appellate proceedings. When she talks about her journey to becoming a lawyer Stephanie says, “I did not choose the law. It chose me.”

Stephanie explained that from a young age she felt a profound calling to protect and advocate for others. She followed this calling right after graduating from Troy University. Armed with undergraduate degrees in Psychology and Political Science, Stephanie worked as a counselor with the Federal Emergency Management Agency (FEMA) and it was through this experience she got the nudge she needed to go to law school. She explains that while working with people whose lives were devastated by tornadoes in Enterprise, Alabama, she also saw so much injustice that could not be remedied with supplies or counseling. The injustice was systemic and cyclical in impoverished communities and while she saw the need to change the system, she felt powerless. That was when Stephanie says she decided a law degree would enable her to help others more effectively.

Stephanie has successfully argued and tried cases in state and federal courts and been a member of the trial team in several notable cases. She has helped secure more than $180 million in verdicts and settlements. The passion to help others and give a voice to those who can’t advocate for themselves is evident in Stephanie’s law practice. I will mention two cases that Stephanie was involved in as a member of the litigation team.

Most recently, Stephanie was part of the team that secured a $151 million verdict for Travaris “Tre” Smith who was left paralyzed after the 1998 Ford Explorer he was riding in crashed and rolled over. The jury agreed with Tre in finding that Ford failed to meet its own safety guidelines for the Explorer’s rollover resistance requirement and attempted to cover up the vehicle’s defective design.

Stephanie also helped secure an $18.79 million verdict in Colin Lacy v. Empire Truck Sales. Colin, our client, was paralyzed as the result of a mechanic shop’s grossly negligent maintenance of his 18-wheeler. Stephanie says:

Practicing law is much like putting the pieces of a puzzle together, except you must first track down all the pieces and then
connect them using the law: There is nothing more exhilarating than seeing the final picture come together in a brief or at trial. But, my favorite thing about practicing law is the impact one case can make in the life of your client, or in the safety of an entire industry.

Stephanie recalled working on a case that involved a man, the firm’s client, who contracted HIV through surgery. He received a blood transfusion with blood that was contaminated with HIV. She explained how the case clearly demonstrated the importance of holding bad corporate actors accountable. Stephanie said:

After rendering a verdict in favor of our client, the jury sent a strong message to that blood center by writing on the back of the verdict form, ‘We, the jurors, request that [the blood center] improve their questionnaire and screening procedure and screener training to reduce the risk of this happening again.’ The client appreciated this gesture more than the verdict itself. The pieces of that case came together perfectly and sent a strong message to blood centers that lax screening procedure will not be tolerated. That is what practicing law is all about.

Stephanie says the opportunity to pursue these types of cases reflects the firm’s motto that was established when the firm was created 40 years ago and persists today. She says she appreciates how the firm’s leadership remains committed to “helping those who need it most.” Stephanie adds: “this is reflected in every person hired to work at Beasley Allen and in every case we take on.”

Away from the office and outside of the courtroom, Stephanie is equally passionate about helping others. She is President of the Alabama Head Injury Foundation’s Montgomery Chapter and for the second consecutive year she lends her expertise to the Alabama State Bar’s Montgomery Chapter and for the second year she lends her expertise as a member of the Alabama State Bar’s Lawyer University Task Force. The group works to educate Alabama lawyers on growing legal trends. Stephanie is also a member of the Montgomery County Bar Association, the Attorneys Information Exchange Group, the Alabama Association for Justice and the American Association for Justice.

Stephanie and her husband, David, are members of Frazer United Methodist Church. They enjoy spending time with their children, family and friends. Stephanie does a tremendous job for our firm. She is totally dedicated to the people we represent. We are blessed to have Stephanie at Beasley Allen.

**JENNY MANIFOLD CHOU**

Jenny Chou joined the firm in 2018 and is the Executive Assistant to Tom Methvin, the firm’s Managing Attorney. Jenny’s position allows her to interact with people from all over the firm. She says this is what she enjoys most about her job.

Before joining the BA Family, Jenny owned a home décor and bridal registry store in Decatur, Alabama. For eight years, her store, (Sam Frank & Moore) was an outlet for her to express her creativity and desire for helping others fulfill their dreams. In 2013, Jenny and her family moved to Montgomery. At that time, Jenny was the Director of Operations at Century Church in Pike Road, Alabama. This position was instrumental in the launch of this new church, and she worked directly with the Pastor to assist with the many needs of starting a new church and building relationships within the community.

Jenny attended Auburn University where she earned a degree in Fashion Merchandising, Design and Production Management and minored in Business. It was during her college internship that Jenny began to build the foundation for her career. She was asked to begin a women’s section in a clothing store in Huntsville. During this time, Jenny says she gained the knowledge of starting something from the ground up. This experience prepared her for her first job and ultimately the position that she now holds at the firm.

The Decatur, Alabama, native is married to Marvin, whom she met while in sixth grade. Jenny and Marvin have been married for 12 years and have two children, Jake and Rhys. Jake is 14 years old and is an avid soccer and football player. Rhys is 11 years old and when she’s not at school, you can find her at the gym with her competition cheer squad. Both children attend The Montgomery Academy. Jenny also has two very energetic dogs, Tucker and Hope, who are well loved and a very important part of their family. Jenny and her family are also active members at First Baptist Church in Montgomery, Alabama.

While away from the office, Jenny enjoys spending time with her family, whether it be watching her son play sports, her daughter competing in cheer competitions, or cheering on the Auburn Tigers at home football games. Although most of Jenny’s free time involves sports, she also thoroughly enjoys traveling with her family anywhere tropical. Although Jenny is very passionate about many things, she has great enthusiasm for health and wellness.

Jenny is a hard worker and definitely is an tremendous asset to the firm. Beasley Allen is blessed to have her with the firm.

**VICTOR COYLE**

Victor Coyle, a Network Administrator in the firm’s Information Technology Department, will celebrate his 21st anniversary with Beasley Allen in May. Victor began his career at Beasley Allen as a mailman when he graduated from high school and later became a runner. Victor now maintains the firm’s virtual server environment as well as ensuring that all network infrastructure is running properly. While Victor spends a great deal of time troubleshooting technical problems for the firm, he finds the most satisfaction when he can resolve difficult issues, especially those that he’s worked long hours to solve.

Born in Spain, Victor now resides in Prattville with his dog, “Cowboy,” who is an active 8-year-old Boxer. Cowboy can perform many tricks and is an expert frisbee fetcher. Victor also has one brother who lives in Virginia with his wife and two boys who are 9 and 6 years old. Although many miles separate them, Victor enjoys visiting with them when he is able.

Victor is a 2003 graduate of Auburn University at Montgomery where he earned a degree in Marketing. He then furthered his studies and earned a Master’s in Business Administration. When Victor is not at work, you can find him working in his yard or in his pool. One interesting fact that most do not know about Victor is that he can speak Thai fluently.

Victor is a totally dedicated and hard-working employee. His work at the firm is critically important and he definitely is an asset to Beasley Allen. Victor does a tremendous job in every respect. We are blessed to have Victor with us.
XXI.
SPECIAL RECOGNITIONS

PROFESSOR PHIL RAWLS AT AUBURN UNIVERSITY

Phil Rawls, who had an outstanding career as a journalist in Alabama, is now an Auburn University Journalism Professor. In my opinion, Phil was one of the best reporters around during his time in the profession. While at Associated Press, Phil covered everything that was newsworthy. However, he concentrated primarily on politics and government. While he was well-respected, Phil was also feared by those in the political world and for good reason. He was a very good reporter. However, there was never any doubt about Phil being fair in his reporting. He was and that can’t be disputed.

Recently, I read an excellent article about Phil in the Auburn Plainsman. One quote in the excellent piece really got my attention. Phil was quoted in the article, saying:

“I learned the best piece of advice as a journalist from my very first boss. Write every story as if the first person you are going to run into the next morning at the coffee shop will be the person you wrote about, that way you will always do your best to be fair. I think that still applies.

Phil’s reporting reflected that he followed his boss’ advice throughout his illustrious career. The students who are learning their “trade” from Phil Rawls are truly blessed.

XXII.
FAVORITE BIBLE VERSES

Andrew Brashier is leaving our firm to go into fulltime ministry. He sent in the following message and verse. As he leaves Beasley Allen, Andrew had this to say:

“My favorite verse since I was a teenager are the following words of Christ that have pierced my soul since I first read them: “For what does it profit a man to gain the whole world and forfeit his soul?” Mark 8:36. These words of Christ have forever been seared in my mind as a reminder that life is not about money, power, or self-gain, but is about losing ourselves to His will. Namely, this is serving our neighbors by showing our love through acts of service, which demonstrate the faith we have in trusting—truly trusting—that our Creator has redeemed us to serve others.

Many have asked why I am going into the ministry. It is not because formal ministry is “more holy” but due to a call placed on my heart. It was an irresistible call and one I was not looking for but no matter who we are, or where we are, we are called to serve others as we are and in our careers. It is our vocation to be fathers, mothers, husbands, wives, employees, and ultimately Christ-bearers to all we encounter. I urge the reader to understand that it is not a higher calling to go into the ministry as we are all ministers in our own locations to each and every one we encounter each and every day. Look around you. The people you work with, befriend, and love are those whom you minister to and to whom minister to you. They bear the image of God and as C.S. Lewis so eloquently put:

“There are no ordinary people. You have never talked to a mere mortal. Nations, cultures, arts, civilizations—these are mortal, and their life is to ours as the life of a gnat. But it is immortals whom we joke with, work with, marry, snub and exploit—immortal horrors or everlasting splendors.” C.S. Lewis “The Weight of Glory”

Treasure those immortal souls who are around you and protect your own soul by selflessly serving them. Serve others by relinquishing the burdens of this world and casting your trust on the One who created the world, Jesus the Christ. God bless you all in your own ministries wherever you are.

Angie Taylor, a legal secretary in our firm, sent in the following scriptures for this issue.

He says, “Be still, and know that I am God: I will be exalted among the nations, I will be exalted in the earth. Psalm 46:10

That day when evening came, he said to his disciples, “Let us go over to the other side.” Leaving the crowd behind, they took him along, just as he was, in the boat. There were also other boats with him. A furious squall came up, and the waves broke over the boat, so that it was nearly swamped. Jesus was in the stern, sleeping on a cushion. The disciples woke him and said to him, “Teacher, don’t you care if we drown?” He got up, rebuked the wind and said to the waves, “Quiet! Be still!” Then the wind died down and it was completely calm. He said to his disciples, “Why are you so afraid? Do you still have no faith?” They were terrified and asked each other, “Who is this? Even the wind and the waves obey him! Mark 4:35-41

Angie had this to say:

These two scriptures have been my lifeline for the last two years. When in the midst of a storm, or multiple storms, my Heavenly Father tells me to be still. This is not easy for me to do. What do I do to stay still? I pray, I ask others to pray, I talk with Abba, I ask for divine understanding, I read God’s Word, I serve others, but the most important thing I do—is remind myself that God loves me, God is for me, God is in control no matter what happens, and that God will be exalted and glorified. I only need to have faith in God and obey Him when He tells me to “be still.”

Sandra Jones, a clerical assistant with the firm, supplied a verse for this issue.

Create in me a pure heart, O God, and renew a steadfast spirit within me. Psalm 51:10

Sandra says:

Recently in one of my darkest hours, I had to turn to God with all of my heart, soul, and strength—and to realize that He wanted a pure heart from me and a steadfast spirit. To lay aside fear and to trust in Him. He desires a pure (clean) heart that is
lawyers and support staff are working on the areas of litigation set out below. The primary lawyer contact will be listed for each type case.

**Personal Injury & Product Liability**—Lawyers in the Section continue to focus on accident cases involving automobiles, heavy equipment and consumer products. Some of the auto cases involve single-vehicle crashes, while others involve multiple-vehicle accidents. The lawyers would like to review any case involving catastrophic injury or death. Contact Cole Portis at Cole.Portis@beasleyallen.com or Greg Allen at Greg.Allen@beasleyallen.com

**Takata Airbag Recall**—The largest automotive recall in history centers on the defective Takata airbags found in millions of vehicles manufactured by Honda, BMW, Chrysler, Daimler Trucks, Ford, General Motors, Mazda, Mitsubishi, Nissan, Subaru, and Toyota. The defect results in shrapnel-like metal shards and airbag components being propelled throughout the vehicle interior. This frequently results in lacerations and blunt force trauma that can cause injury or death. Our lawyers would like to review any claim of injury or death. Contact Chris Glover at Chris.Glover@beasleyallen.com

**Honda Airbag Cases**—The Section is also handling Honda airbag cases with smaller injuries that normally would not qualify for claims under our usual review process, even an injury that does not appear to be permanent or life-threatening. Contact Chris Glover or Cole Portis at Chris.Glover@beasleyallen.com or Cole.Portis@beasleyallen.com.

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

**On-the-job Product Liability**—Many times product liability claims arise from worker’s compensation claims. After our lawyers investigate the circumstances that caused the injuries, many times they discover a defective machine may be the cause of the injuries. Contact Kendall Dunson or Evan Allen at Kendall.Dunson@beasleyallen.com or Evan.Allen@beasleyallen.com.

**Truck Accidents**—There are significant differences between handling an interstate trucking case and other car wreck cases. It is imperative to have knowledge of the Federal Motor Carrier Safety Regulations, technology, business practices, insurance coverages, and to have the ability to discover written and electronic records. Expert testimony is of utmost importance. Accidents involving semi-trucks and passenger vehicles often result in serious injuries and wrongful death. Trucking companies and their insurance companies almost always quickly send accident investigators to the scene of a truck accident to begin working to limit their liability in these situations. Our lawyers, staff and in-house accident investigators immediately begin the important task of documenting and preserving the evidence. Our lawyers would like to review any case involving catastrophic injury or death. Contact Chris Glover or Mike Crow at Chris.Glover@beasleyallen.com or Mike.Crow@beasleyallen.com.

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

**Aviation Accidents**—Aviation litigation can be extremely complex and often involves determining the respective liability of manufacturers, maintainers, retrofitters, dispatchers, pilots and others. In some circumstances, the age of the aircraft involved can limit or completely preclude an injured party from compensation. Soaring through the sky hundreds of miles an hour, thousands of feet above the ground in an airplane or helicopter leaves little room for error. One small mechanical problem, misjudgment or faulty response in the air can spell disaster for
air passengers and even unsuspecting people on the ground. The Section is handling cases involving all types of aircraft, military and civilian. Contact Mike Andrews at Mike.Andrews@beasleyallen.com.

Premises Liability—In premises liability claims, patrons of establishments are often injured because the premises, for some reason, was unsafe. Premises liability claims can take many forms, including when severe injury or death results when a building or structure collapses, merchandise falls, during swimming pool accidents, due to poor lighting, falling debris, unsecured fixtures and furniture that falls or tips over, unsecure drainage that creates drowning or fall hazards, slippery surfaces, and inadequate maintenance. Beasley Allen lawyers have successfully handled a number of premises liability cases, and they would like to investigate any cases where severe injury or death results. Contact Mike Crow at Mike.Crow@beasleyallen.com.

Negligent Security—Under the law, owners of establishments owe a duty to patrons and guests to ensure that the premises are reasonably safe and secure from anticipated dangers. These cases normally take the form of shootings, fights, stabbings, or other physical violence (including sexual assault) where severe injury or death occurs due to the establishment owner's failure to take reasonable safety measures. When this occurs, the establishment owner, as well as those contractors charged with security, may be held responsible for the injuries suffered by individuals or groups of individuals on the premises. While the laws vary from state to state, our firm is actively investigating and litigating these cases where severe injury or death results. Contact Parker Miller at Parker.Miller@beasleyallen.com.

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

The Mass Torts Section

The Mass Torts Section is handling a number of cases involving pharmaceuticals and medical devices. Currently, there are 39 lawyers and 85 support staff in the Section. Melissa Prickett, a lawyer, serves as the Section Administrator. The lawyers and support staff are working in the areas of litigation set out below. The contact lawyer will be supplied in each case.

Talcum powder and ovarian cancer—As many as 2,200 cases of ovarian cancer diagnosed each year may have been caused by regular use of talcum powder. Talc is a mineral made up of various elements including magnesium, silicon and oxygen. Talc is ground to make talcum powder, which is used to absorb moisture and is widely available in various products including baby powder and adult products including body and facial powder. Talc products used regularly in the genital area increase the risk of ovarian cancer. In February 2016, a jury found Johnson & Johnson knew of the cancer risks associated with its talc products but failed to warn consumers, and awarded the family of our client $72 million. She died of ovarian cancer after using J&J talc-containing products for more than 30 years. Contact Ted Meadows or Melissa Prickett at Ted.Meadows@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Opioids—Opioid abuse has reached epidemic proportions in the United States. According to the Department of Health & Human Services, 12.5 million people misused prescription opioids and 35,091 Americans died from opioid overdose in 2015 alone. These medications provide important pain relief for many. However, over the years, drug companies inflated the effectiveness of delayed-release medications like OxyContin and downplayed their addictive properties, creating conditions ripe for abuse. We are investigating cases involving opioid-related deaths and overdose requiring hospitalization, as well as cases involving treatment for addiction to prescription opioids. Contact Melissa Prickett, Roger Smith or Liz Eiland at Melissa.Prickett@beasleyallen.com, Roger. Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

Opioids and Infants—The opioid epidemic has also taken its toll on the most vulnerable among us. According to the National Institute on Drug Abuse, every 25 minutes, a baby is born addicted to opioids—a condition called Neonatal Abstinence Syndrome (NAS). Babies with NAS suffer painful symptoms of opioid withdrawal in the hours and days after they are born and are more likely to suffer long-term complications like developmental delays and hearing or vision impairment, compared to babies born to mothers who did not use opioids. We are investigating cases on behalf of children who were born with NAS after their mothers were prescribed opioids before or during pregnancy. Contact Melissa Prickett, Roger Smith or Liz Eiland at melissa.prickett@beasleyallen.com, roger.smith@beasleyallen.com or liz.eiland@beasleyallen.com.

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

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

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

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

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

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

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

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

The Consumer Fraud & Commercial Litigation Section has 14 lawyers and 21 support staff. Michelle Fulmer is the Section Administrator. Lawyers and support staff in the Section are working on the litigation cases set out below. The primary lawyer contact will be supplied for each type case.

State and Municipalities Litigation—Our firm has represented numerous states throughout the country. These cases have been handled through the attorneys general and have involved various civil actions. Many times, individuals are barred from bringing a consumer fraud type claim, but the state government is not. We recently concluded litigation in seven of eight states for a recovery dealing with Medicaid fraud. In addition, we are representing five states in related pharmaceutical pricing litigation. For more information, contact Dee Miles or Alison.
Health Care Fraud—Lawyers in the Section are looking into cases of fraud within the health care industry. These may include cases dealing with pricing, off-label prescriptions, or other health care abuse. Contact Alison Hawthorne at Alison.Hawthorne@beasleyallen.com or Dee Miles at Dee.Miles@beasleyallen.com.

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

Sexual Harassment—Sexual harassment is outlawed by Title VII of the Civil Rights Act of 1964 because it is a form of discrimination, as explained by the Equal Employment Opportunity Commission (EEOC). The agency states: “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.” We are looking at any claim involving extreme sexual harassment or sexual assault. Contact Larry Golston, Leon Hampton or Lauren Miles at Larry.Golston@beasleyallen.com, Leon.Hampton@beasleyallen.com, or Lauren.Miles@beasleyallen.com.

Life Insurance Fraud—We have uncovered alleged fraudulent accounting practices by life insurance companies concerning premium increases. The accounting method may result in the policyholder being charged excessive insurance premiums. A client that has a life insurance policy and has been notified of a substantial increase in premium payments, or if they have been told their policy’s “cost of insurance” has increased, may have a valuable legal claim that our firm would like to investigate. Contact Dee Miles, Rachel Boyd or Paul Evans at Dee.Miles@beasleyallen.com, Rachel.Boyd@beasleyallen.com or Paul.Evans@beasleyallen.com.

Property Insurance Fraud—Insurance companies nationwide are unjustly depreciating labor costs on adjusted property claims (roof or fence damage for example). The depreciation of labor costs is contrary to many insurance policy forms and leads to policyholders either being undercompensated for their claims or not compensated at all as they fail to meet their deductible once labor costs are depreciated. If you have had an insurance claim on your property in the past six years then we would like to review the adjuster’s estimate and your homeowner’s or manufactured home policy as you may have a case. Contact Dee Miles, Rachel Boyd or Paul Evans at Paul.Evans@beasleyallen.com, Rachel.boyd@beasleyallen.com or Dee.Miles@beasleyallen.com.

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

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

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

Employment Law—We are handling employment cases. Situations that may be addressed in this area include minimum wage and overtime pay, unfair labor practices, all types of discrimination, employee benefits, and whistleblower claims. Contact Larry Golston, Leon Hampton or Lauren Miles. Larry.Golston@beasleyallen.com, Leon.Hampton@beasleyallen.com, or Lauren.Miles@beasleyallen.com.

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

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

The Toxic Torts Section has a number of ongoing projects at present. Currently, the Section has 13 lawyers and 16 support staff. Sandra Walters is the Section Administrator. Lawyers and support staff are working on the areas of litigation set out below. The primary contact lawyer for each type case will be listed.

**State and Municipalities Litigation**—Our firm is representing the States of Alabama and Georgia in the opioid litigation. We also represent states and certain local governments in environmental or toxic exposure claims. Many times, individuals are either barred from bringing an environmental claim or it is not a practical solution. These types of government cases may involve issues of environmental catastrophe, or some other type of pollution. One of the most notable cases handled by Beasley Allen on behalf of states for environmental issues is the BP Oil Spill litigation. For more information, contact Rhon Jones at Rhon.Jones@beasleyallen.com.

**Opioids**—Beasley Allen is representing Alabama and Georgia against both manufacturers and distributors of opioids for increased costs related to the opioid epidemic. These lawsuits allege the crisis was created by the pharmaceutical industry, which instead of investigating suspicious orders of prescription opiates, turned a blind eye in favor of making a profit. They intentionally misled doctors and the public about the risks of these dangerous drugs, and state governments are left struggling to cope with the consequences. Contact Rhon Jones or Ryan Kral at Rhon.Jones@beasleyallen.com or Ryan.Kral@beasleyallen.com.

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

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

**Roundup / glyphosate**—Roundup is the most widely used herbicide in the world and the second most used weed killer for home and garden, government, industry, and commerce. It was introduced commercially by Monsanto Company in 1974 and is used by landscapers, farmers, groundskeepers, and commercial gardeners. The primary ingredient in Roundup is glyphosate, a chemical that kills weeds by blocking proteins essential to plant growth. It has been linked to a type of cancer called non-Hodgkin lymphoma. We are investigating cases involving non-Hodgkin lymphoma related to the commercial application of Roundup / glyphosate. Contact John Tomlinson or Grant Cofer at John.Tomlinson@beasleyallen.com or Grant.Cofer@beasleyallen.com.

**E-cigarette Explosions**—Lawyers in the Section are investigating cases involving severe injuries caused by exploding e-cigarette devices and exploding e-cigarette batteries. These explosions have been linked to faulty e-cigarette products, defective lithium-ion batteries, and insufficient warnings for users. These cases involve personal injury including serious burn injuries. Please contact our Toxic Torts section for assistance with cases you may have involving these devices. Contact Will Sutton at William.Sutton@beasleyallen.com.

**Conclusion**

If you have any difficulty reaching any of the lawyers listed above as the primary contact for a specific case, you can contact one of our Section Head Administrators and she will put you in touch with a lawyer working on the drug or medical device you are asking about. As stated above, the Section Administrators, who do a tremendous job for the firm, are: Melissa Prickett, Mass Torts Section; Sloan Downes, Personal Injury & Products Liability Section; Michelle Fulmer, Consumer Fraud & Commercial Litigation Section and Sandra Walters, Toxic Torts Section. They can be reached at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com, Sloan.Downes@beasleyallen.com, Michelle.Fulmer@beasleyallen.com or Sandra.Walters@beasleyallen.com.
XXIV.
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

XXV.
PARTING WORDS

We live in a troubled world and in a country that is badly divided. There can be little doubt about that assessment. Clearly, there is too much political activity in our Nation’s Capital being motivated by “hating” some person, some group or some thing. We badly need unity instead of division and love for our neighbors rather than hate. It’s become obvious that politics is not the answer to our problems and neither are the politicians. So where does the answer lie?

The answer is pretty simple and that is, we need a spiritual revival in America. While the churches should lead this revival, it can start with each one of us. We can get our hearts right and that would be a very good beginning.

I believe the message in 2 Chronicles 7:14 is one that should be the motivation for the badly needed revival. My prayer is for a spiritual revival in America that will affect all of our people!
On January 7, 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 more than 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 285 people, including more than 85 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.