I. CAPITOL OBSERVATIONS

THE 13TH ANNUAL BEASLY ALLEN CONFERENCE

Beasley Allen hosted our 13th annual Legal Conference & Expo at the Renaissance Montgomery Hotel & Spa at the Convention Center on Thursday, Nov. 14. This conference welcomes all Alabama lawyers in private practice. Attendees received updates on cases Beasley Allen lawyers have successfully litigated over the past year as well as up-and-coming litigation. The case-review-themed approach reinforces takeaways for conference participants.

This year’s “trial track” was a fascinating and informative examination of the Boeing 737 MAX litigation. Two separate Boeing 737 Max crashes, one involving Lion Air and the other Ethiopian Airlines, killed 346 people in a span of less than five months. The Lion Air crash occurred in October 2018 and the Ethiopian Airlines crash occurred in March 2019. Beasley Allen lawyer Mike Andrews, who focuses much of his practice on aviation litigation, is representing families of those killed in the Ethiopian Airlines crash.

Program speakers on Boeing included Mike’s co-counsel, Leah Chege, from Birmingham, Alabama, and leading aviation accident investigator Tony James, who investigated the 9/11 plane crash in Pennsylvania. Attendees also heard from David Mwashi, the brother of a woman killed on the Ethiopian Airlines crash, and viewed a video provided by her two daughters, reflecting on life without their mom.

In addition to the Boeing 737 MAX investigation the conference covered emerging areas of litigation and practice areas crucial to a trial lawyers’ success. Practice areas included Product Liability, Business Litigation, Consumer Fraud, Toxic Torts, Medical Device and Drug litigation as well as Legal Ethics.

The event is the largest of its kind in the state and one of the top five legal conferences in the country. It offers eight hours of free Continuing Legal Education (CLE) credits certified by the Alabama State Bar.

We consider it a distinct pleasure to offer the continuing legal education event for fellow Alabama lawyers each year. Not only are we able to share our firm’s experiences and successes but we able to network and build relationships to encourage growth for the profession. Each year our goal is to offer fresh insights for the Alabama legal community with a focus on case and trial preparation as well as legal marketing tips for private practice lawyers.

Trial lawyers and the judicial system play a critically important role in protecting the public from corporate wrongdoing and abuse. Additional special guest speakers included United States Senator Doug Jones, Alabama Supreme Court Associate Justice Sarah Stewart, Retirement Systems of Alabama CEO Dr. David Bronner and Alabama State Bar General Counsel Roman Shaul. Dr. Bronner has always been one of the most requested speeches by conference attendees. I really wish all Americans could have heard David discuss local, national and international issues of concern.

Attendees also had a chance to meet with the nation’s top legal service providers along with this year’s platinum sponsors, Veritext Reporting, Jackson Thornton Valuation and Litigation Consulting Group, and Baker Reporting. Representatives from other legal and community groups, including the Alabama State Bar and the Alabama Association for Justice, were available to offer attendees information about how their organizations assist Alabama lawyers.

Dawn Hathcock, Senior Vice President for the Montgomery Area Chamber of Commerce, had this to say:

“It is always an honor to welcome lawyers from across Alabama to Montgomery for the Beasley Allen Legal Conference. The Beasley Allen Legal Conference draws around 1,500 lawyers from all over the state and each guest has an opportunity to see Montgomery as a vacation or meeting destination. In addition to those who return to our great city the state’s largest legal conference a huge economic impact in the River Region, estimated to be roughly a million dollars.

All of us at Beasley Allen look forward to next year’s conference. If you have any questions or suggestions, contact Helen Taylor or Wendi Lewis at 800-898-2034 or by email at Helen.Taylor@beasleyallen.com or Wendi.Lewis@beasleyallen.com.

II. AN UPDATE ON THE TALC LITIGATION

AN UPDATE ON THE TALC LITIGATION

Beasley Allen lawyers will be in St. Louis, Missouri, this month for another trial in Missouri state court. Our Plaintiff, Vickie Forrest, was diagnosed with stage 2 ovarian cancer in 2012. Ms. Forrest, a resident of St. Louis, began using baby powder at age 15 and continued to use baby powder for decades.

IN THIS ISSUE

I. Capitol Observations .................. 2
II. An Update On The Talc Litigation. .. 2
III. Update On The Boeing Litigation .... 4
IV. An Update On The Opioid Litigation .. 5
V. Drug Manufacturers Fraud Litigation .. 6
VI. An Update On The Whistleblower Litigation ............. 7
VII. Product Liability Update .......... 12
VIII. Mass Torts Update ................. 14
IX. An Update On The Vaping Litigation . 16
X. An Update On Securities, Insurance and Finance Litigation . 18
XI. Employment and FLSA Litigation ... 20
XII. Workplace Hazards ............... 20
XIII. Transportation Litigation ........ 21
XIV. Toxic Torts Litigation .......... 22
XV. An Update On The Roundup Litigation. 23
XVI. Update On Nursing Home Litigation ... 23
XVII. An Update On Class Action Litigation ... 24
XVIII. The Consumer Corner .......... 26
XIX. Current Case Activity At Beasley Allen . 27
XX. Resources To Help Your Law Practice. 31
XXI. Practice Tips Of The Month For Trial Lawyers .......... 32
XXII. Recalls Update .................. 33
XXIII. Firm Activities ................ 36
XXIV. Special Recognitions .......... 37
XXV. Favorite Bible Verses .......... 38
XXVI. Closing Observations .......... 38
XXVII. Parting Words ................ 39

BeasleyAllen.com
Johnson & Johnson (J&J) has been in the news for recalling more than 30,000 bottles of baby powder due to asbestos contamination. In response, retailers including Walmart, Target, CVS and Rite Aid pulled all 22-ounce bottles from their shelves. Our lawyers are seeking more information about the asbestos results and testing.

J&J will continue to face thousands of talcum powder lawsuits in state courts across the country, as well as in the multi-district litigation (MDL) in New Jersey Federal Court. Our lawyers look forward to the opportunity to get back in the courtroom and continue to seek justice for Ms. Forrest and the thousands of other women who have been diagnosed with ovarian cancer after using J&J talc-based body powders. For additional information on these cases, contact Ted Meadows, Leigh O’Dell or Brittany Scott at 800-898-2034 or by email at Ted.Meadows@beasleyallen.com, Leigh.Odell@beasleyallen.com or Brittany.Scott@beasleyallen.com.

J&J Recalls Baby Powder But Maintains Its Product Is Safe

The safety controversy surrounding Johnson & Johnson’s (J&J) talc-based baby powder continues. In December 2018, investigative reporting by The New York Times and Reuters revealed that for decades J&J covered up the presence of asbestos (a known carcinogen) in some samples of its talc-based baby powder products. The reports spurred investigations by the Justice Department (DOJ) and the Securities and Exchange Commission (SEC). The company has faced ongoing lawsuits brought by people who contended these products caused their cancers, including many who had mesothelioma and ovarian cancer.

J&J, which has spent years insisting that its baby powder is safe, on Oct. 18 recalled 33,000 bottles of the product after the Food and Drug Administration (FDA) discovered evidence of asbestos, a known carcinogen, in one of the bottles. The recall came after months of denial from the company about the presence of the cancer-causing substance in its talc-based products.

The recall, the first time J&J has pulled baby powder from store shelves over asbestos concerns, undercuts its defense against a swarm of allegations that its talc-based products caused cancer. It comes as the company, which reaches into the lives of millions of people through brands such as Tylenol, Band-Aid and Rogaine and reported nearly $82 billion in sales last year, is entangled in numerous legal battles over the safety of its products.

David Noll, a law professor at Rutgers University, says the decision to pull the baby powder, sourced from China and distributed last year, is a “whopper” for a company as dependent on consumer trust as Johnson & Johnson. Professor Noll said:

I can't imagine an attorney for Johnson & Johnson standing up in front of a jury now and saying with a straight face that the product is safe. If people come to associate the company’s signature product with deadly diseases, there will be huge spillover effects for its ability to market other products.

Nevertheless, J&J repeated its longstanding defense against cancer claims, saying that “thousands of tests over the past 40 years repeatedly confirm that its consumer talc products do not contain asbestos.” The company questioned the testing process, saying in a statement that it is working with the FDA to “determine the integrity of the tested sample and the validity of the test results.”

J&J disclosed earlier this year that it was being investigated by the DOJ and SEC over concerns about possible asbestos contamination of its talc-based products. J&J in spite of overwhelming evidence to the company, still its talc product is safe.

In challenging the FDA’s finding, however, the health care giant is casting doubt on one of its own experts. The private Maryland lab that found asbestos in Baby Powder under a contract with the FDA is run by a paid expert witness for J&J. Andreas Saldivar, laboratory director of AMA Analytical Services Inc., has served as a paid litigation expert on several occasions for J&J since 2017 in its defense against Plaintiffs’ claims that asbestos in talc caused their cancers.

Saldivar testified in a May 2018 deposition that testing he did in 2010 for the FDA showed no evidence of asbestos in J&J’s Baby Powder, hoping to bolster the company’s argument that its iconic brand is safe. Saldivar’s lab began testing cosmetic talc products for the FDA again this year. In September, the lab found asbestos in an unmarked sample that the FDA later identified as Johnson’s Baby Powder. Saldivar’s finding for the FDA will be detrimental to J&J’s defense in upcoming court battles.

J&J currently faces lawsuits from more than 16,000 people alleging that asbestos in its powders caused cancer. If you need more information, contact Ashtyne Traylor or Sharon Zinns at 800-898-2034 or by email at Ashtyne.Traylor@beasleyallen.com or Sharon.Zinns@beasleyallen.com.

Bausch Pulled Talc From Its Body Powder Months Before J&J Recall

Bausch Health Cos. Inc., maker of Shower to Shower powder, has done what Johnson & Johnson (J&J) should have done a long time ago. This move came as a number of retailers were taking recalled talc-based baby powder from their shelves over reports of asbestos contamination. It’s highly significant that Bausch actually removed talc from its product altogether. The company said it reformulated the product last year to replace talc with corn starch as the active ingredient. The last lot of Bausch’s talc product was distributed in February. Lainie Keller, a company spokeswoman, made a most interesting statement relating to the removal, saying:

Bausch Health changed formulations for Shower to Shover to keep the product in line with market trends and customer preferences. This formula change was not made due to any safety concerns.

Shower to Shower used to be made by J&J. Valeant Pharmaceuticals Inc., Bausch’s predecessor, bought the rights to the product in 2012 for $150 million. Both J&J and Bausch have been accused in lawsuits of hiding evidence that their talc-based products are laced with asbestos, which can cause cancer. Both companies have consistently denied their powders contain the carcinogen. Ted Meadows, who along with Leigh O’Dell from our firm, is leading the talc litigation, says:

While choosing to not inform consumers of the reformulation of a former J&J product, at least the new seller of Shower to Shover has made a responsible decision to remove talc from the product. Thus far, J&J has refused to take a similar step to protect the public and stop the production of talc-based Baby Powder.

Bausch’s claim that removing talc from Shower to Shower had nothing to do with “safety” is very hard to believe. However, in any event, the company finally did the right thing. But obviously that was only because of the ongoing litigation.

Source: Bloomberg

JereBeasleyReport.com
III. UPDATE ON THE BOEING LITIGATION

SAFETY SHOULD BE A TOP PRIORITY AT BOEING

On the one-year anniversary of the first deadly Boeing 737 MAX crash, Lion Air flight 610, the plane maker’s CEO, Dennis Muilenberg, spent two days on Capitol Hill answering lawmakers’ questions. He appeared before the U.S. Senate and House transportation committees. Muilenberg’s audience included family members devastated by the loss of their loved ones who were aboard Boeing’s two defective 737 MAX aircraft that killed them. Mike Andrews from Beasley Allen attended one of those hearings on behalf of the firm’s clients whose family members perished in the Ethiopian Airlines flight 302 crash.

Despite difficult questions posed by lawmakers, Muilenberg consistently dodged the full extent of his and Boeing’s accountability. While he paid lip service to crash victims’ families, frequently expressing thoughts of sympathy, he also revealed glimpses of the greed and “win-at-all-costs” internal corporate culture he has helped foster. That corporate mindset has undoubtedly put company profits ahead of the safety of the flying public.

During a particularly heated exchange with a lawmaker, Muilenberg even admitted, “We don’t ‘sell’ safety; that’s not our business model.” It was one of the very few statements of seeming candor by the CEO.

Muilenberg also admitted, reluctantly, that Boeing violated its own principles and safety requirements and was less than transparent throughout the development and certification process, including with federal regulators at the Federal Aviation Administration (FAA).

Lawmakers expressed significant concern during their questioning over the degradation of the FAA’s oversight, and rightly so. Last year, just weeks before the Lion Air crash, Congress passed the FAA’s Reauthorization Act. Several of the Act’s provisions shifted authority over aviation safety away from the agency, handing it over to industry giants such as Boeing. The Act reinforced the self-certification process that ultimately placed the two defective aircraft in the skies. The process was the result of significant lobbying dollars proudly expended by Boeing and other industry giants to reduce government oversight, particularly regarding aviation safety.

When lawmakers questioned Muilenberg about the obviously flawed regulatory framework, which was used to approve the latest iteration of the 737 and its now infamous MCAS, the CEO didn’t have “specific recommendations” for improving the framework. In fact, he defended the process and erroneously claimed it was a factor in improving aviation safety in the U.S. This couldn’t be further from the truth and the 737 MAX tragedies are unmistakable examples of what happens when appropriate oversight and accountability are ignored.

While no new information was revealed during the hearings, Muilenberg’s testimony, or lack thereof, was eye opening. It is incumbent on lawmakers to answer the wake-up call these tragedies have given the U.S. aviation industry and those charged with overseeing consumer safety.

Safety should be a top priority at Boeing. Based on what we have learned, combined with what came from Muilenberg, that doesn’t appear to be the case. Hopefully, the Boeing litigation will bring about meaningful changes at Boeing and at all others in the industry as well as at the FAA.

If you need any information about the Boeing Litigation contact Mike Andrews at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com.

SEVERAL FAMILIES SETTLE WITH BOEING OVER LION AIR CRASH

An Illinois federal judge has approved nine confidential settlements in a consolidated case against Boeing over the October 2018 Lion Air crash that killed all 189 passengers on board. U.S District Judge Thomas Durkin said that while he would dismiss the now-settled lawsuits with prejudice, he is retaining jurisdiction over the cases until the settlements are completed. This includes resolving any enforcement issues and lien adjudications. There may also be approvals that become necessary.

Nearly 50 more lawsuits related to the crash of Flight 610 remain pending before Judge Durkin. In January, Judge Durkin began accepting the reassignment of related cases and took in another 25 cases in April for the consolidated suit.

Several families of the Ethiopian Air victims have filed suits against Boeing as well, claiming the company knew its plane had a defect, but kept it from regulators and pilots in a desire to put profit before safety.

Those who reached settlements with Boeing over the crash in Indonesia include the families of victims Tri Haska Hafidzi, Firmansyah Akbar, Achmad Sukron Hadi, Kenzo Cannavaro, Liany Lie, I Gusti Ayu Ngurah Metta Kurnia, Muas Efendi, Muhammad Jufri and Pratimo Wira Dewanto. These families are represented by Floyd Wisner of the Wisner Law Firm PC, located in Geneva, Illinois.

The case is In re: Lion Air Flight JT 610 Crash, (case number 1:18-cv-07686) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

FAA EXPANDS BOEING 737 NG CRACK INSPECTIONS

The Federal Aviation Administration (FAA) is expanding inspections of the Boeing 737 NG for structural cracks after four airplanes were found to have cracks outside the initial inspection area. In September the FAA announced that it was checking for cracks on the part that attaches the wing to the body of the plane. This came after reports that cracking in this area was found on a number of Boeing 737-800 models. The FAA said on Nov. 12 it is now expanding the inspection to cover the area around eight fasteners “to adequately address the unsafe condition.” The agency said in a notice posted on the National Register:

The FAA is issuing this [airworthiness directive] because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

The FAA said the inspection covers about 1,911 airplanes registered in the U.S. This is not good news for Boeing, which has been in hot water with federal regulators and lawmakers over the 737 MAX, which is still grounded globally.

Boeing said it will design a new engine covering and retrofit it on thousands of 737 NG passenger planes to prevent a re-occurrence of the deadly accident aboard a Southwest Airlines flight last year. That accident occurred on Southwest flight 1380 from New York's LaGuardia Airport to Dallas Love Field in April 2018 when a cracked fan blade detached and broke part of the engine casing. The fragment struck and broke a window, causing the flight to rapidly depressurize.

Passenger Jennifer Riordan, a 43-year-old mother of two and Wells Fargo executive from Albuquerque, was partially pulled through the broken window and died in the accident. The plane diverted and landed safely in Philadelphia.
On Nov. 19, the National Transportation Safety Board (NTSB) recommended that Boeing redesign the engine covering on its 737 NG jets to prevent it from striking the plane in the event that a fan blade detaches in the future.

Sources: Law360.com, RightingInjustice.com, Dallas News and Boeing

IV. AN UPDATE ON THE OPIOID LITIGATION

OPIOID MDL UPDATE

Lawyers in the opioid multidistrict litigation (MDL) debated in a hearing on Nov. 6 over future bellwether trials, a showdown that will closely follow settlements that canceled the MDL’s first trial. The MDL began almost two years ago and covers more than 2,600 cities and counties that blame drug manufacturers, distributors and pharmacies for an epidemic of painkiller addiction.

The $48 billion settlement proposed by four states’ attorneys general and several of the MDL Defendants fell like a lead balloon almost immediately after it was proposed. It was announced after the bellwether trial was called off when the two counties appointed to test the legal waters in the litigation instead settled with most of the Defendants. The four-state proposal is considered insufficient to even begin to address the harms caused by the opioid Defendants. The proposed settlement purported to be valued at $48 billion, but $23 billion of the total is the donations of drugs many governments can’t use because of preexisting contracts. The $18 billion in cash was to pay for abatement costs and payments would be strung out over 18 years.

At the hearing held to decide on how to proceed with the next bellwether trial, Judge Dan Polster, the Ohio federal judge supervising the MDL, warned lawyers for local governments and drug companies that he would unilaterally select future bellwether trials unless they quickly did so themselves. He kept his word!

After the first scheduled opioid bellwether trial settled mere hours before it was set to begin, Judge Polster has set his eye towards scheduling the next bellwether trials. After the Plaintiff’s Executive Committee and the Defendants failed to come to an agreement over which trials should be next, and how they would be tried, Judge Polster decided the issue for them, ultimately coming down largely on the Plaintiff’s side.

Judge Polster has appointed Cuyahoga and Summit as bellwether for claims against Pharmacy Defendants to be tried before him in October 2020. Claims brought by the County and City of San Francisco; City of Chicago; Cabell County, West Virginia; Monroe County, Michigan; Broward County, Florida and the Cherokee Nation Native American Tribe will all be recommended for remand to their home districts for trial, in order to expedite the bellwether process.

AN UPDATE ON THE ALABAMA AND GEORGIA OPIOID LITIGATIONS

The State of Alabama’s claims against Opioid Manufacturer Endo Pharmaceuticals and Wholesale Drug Distributor McKesson survived the Defendants’ motions to dismiss, allowing the State’s case to move forward towards its July 2020 trial date. Judge Gaines’ order allowed all of the state’s claims to stand. The motion was argued on behalf of the state by Rhon Jones, Josh Hayes, and Bob Prince. The State of Alabama is represented by Attorney General Steve Marshall, Assistant Attorney General Michael Dean, Assistant Attorney General Win Sinclair; Beasley Allen lawyers Rhon Jones, Rick Stratton, Parker Miller, Jeff Price, and Tucker Osborne; and Josh Hayes and Robert Prince of Prince Glover Hayes.

The State of Georgia’s claims have also survived motions to dismiss. After the ruling, Gwinnett County Superior Court Judge Randy Rich set a trial date in January of 2022. The State of Georgia is pursuing claims against four pharmaceutical wholesale distributors—McKesson, Cardinal Health, AmerisourceBergen, and JM Smith Drug—and four pharmaceutical manufacturer groups—Endo, Mallinckrodt, Allergan, and Teva—for their role in causing the opioid crisis.

The State of Georgia is represented by Attorney General Chris Carr; Deputy Attorney General Anne Infinger, Assistant Attorney General Christine Hom; Beasley Allen lawyers Parker Miller, Rhon Jones, Rick Stratton, and Jeff Price; Lance Cooper and Pat Dawson of The Cooper Firm; Jimmy Franklin and Rebecca Harris of Franklin Law LLC; Roy Barnes, John Salter, John Bevis, and John Bartholomew of Barnes Law Group.

NEW YORK TRIAL AGAINST OPIOID MAKERS SCHEDULED FOR JANUARY

The Opioid suit brought by the New York attorney general and two Long Island counties is set for trial in January 2020. This will be the second state court trial over the epidemic. Suffolk County Supreme Court Judge Jerry Garguilo said the trial will start Jan. 20 and would involve the claims by the state’s Attorney General and Nassau and Suffolk counties against the drug makers, distributors and pharmacies that allegedly fueled the opioid crisis. The trial will be split into two parts, with the first phase to decide on issues of liability and the second on damages.

Judge Garguilo noted the parties had been on the cusp of trial on Oct. 21 in the multidistrict litigation in Ohio federal court when the $260 million settlement was announced. He suggested the parties would be hard-pressed to explain why they wouldn’t be ready to go to trial on issues of liability in his court. Judge Garguilo said:

A trial limited to the issues of liability may have the effect of eliminating the veritable tsunami of discovery-related practice concerning damages. It is the discovery issues related to damages placed before this court, causing the special masters and support staff to expend countless hours.

If the parties don’t settle before the January trial date, this would be the second state trial in the U.S. over claims that drug companies fueled the opioid crisis. As reported, an Oklahoma state judge in August ruled that Johnson & Johnson created a public nuisance in the state by exaggerating the benefits of narcotic painkillers and downplaying their addiction risks, ordering the company to pay $572 million. New York Attorney General Letitia James said in a statement:

After all these years of death and destruction, come January, the actions of the manufacturers and distributors of these deadly drugs will be presented in open court and laid bare for the American people. We are committed to holding those responsible for a role in the opioid crisis accountable and will not stop fighting for justice for victims.

The state’s claims against Purdue Pharma and its owners, the Sackler family, are in New York bankruptcy court. Last month the judge overseeing that case issued a preliminary injunction putting thousands of suits against Purdue on hold until April 8.
That ruling doesn’t affect cases against other defendants.

Purdue filed for Chapter 11 protection Sept. 15, shortly after it reached a tentative settlement with states in which about 2,000 suits would be dropped in exchange for the Sackler family giving up its stake in the company. Judge Garguilo said he would honor any stay from the bankruptcy court, although he anticipates lawyers may ask the bankruptcy court for relief from the stay for the purpose of hearing motions on summary judgment and participating in the trial.

The state of New York is represented by David Nachman, John Oleske, Christopher Leung, Sara Mark, Elizabeth Chesler, Carol Hunt, Diane Johnston, Michael Reisman, Jennifer Simovitch, Paulina Stamatelos, Lawrence Reina, Conor Duffy, David Payne, Cory Nugent and Lisa Landau of the New York Attorney General’s Office. The counties are represented by Simmons Hanly Conroy LLC and Napoli Shkolnik PLLC.

The case is In Re Opioid Litigation, (case number 40000/2017) in the Supreme Court of New York, Suffolk County.

Source: Law360.com

THE $572 MILLION OPIOID JUDGMENT IN OKLAHOMA CUT TO $465 MILLION

Judge Thad Balkman has reduced the $572 million judgment against Johnson & Johnson (J&J) to $465 million. This came after the judge acknowledged an arithmetic error. The nearly 20% reduction came in a final judgment from Judge Thad Balkman, who in August ordered J&J to pay $572 million for its role in fostering opioid addiction among Oklahoma residents. The judge conceded that he had made a major math mistake. "I acknowledge the computing error contained in my Aug. 26 judgment," Judge Balkman said at a court hearing.

The error occurred in a section of the original judgment that allocated funding for treatment and evaluation of babies whose mothers used narcotic painkillers while pregnant. Judge Balkman originally earmarked $107,683,000 to address neonatal abstinence syndrome, but he later acknowledged that the number contained three unwarranted zeroes, reducing it to $107,683.

Alex Gerszewski, a spokesperson for Oklahoma Attorney General Mike Hunter, said by email that state lawyers were reviewing the final judgment. As reported, Oklahoma’s case also targeted Purdue Pharma LP and Teva Pharmaceuticals, which settled before trial for $270 million and $85 million, respectively.

THE BEASLEY ALLEN OPIOID LITIGATION TEAM

The opioid litigation, as all can readily see, is changing daily and I am sure the public is having difficulty keeping up. Because of the enormity of the opioid litigation, and the obvious need that existed, our firm put together an “Opioid Litigation Team,” which includes these lawyers: Rhon Jones, Parker Miller, Roger Smith, Ryan Kral, Rick Stratton, Will Sutton and Jeff Price. This team of lawyers represents the State of Alabama, the State of Georgia, numerous local governments, other entities, individual claims on behalf of victims and in the multidistrict litigation (MDL). 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, Roger.Smith@beasleyallen.com, Ryan.Kral@beasleyallen.com, Rick.Stratton@beasleyallen.com, William.Sutton@beasleyallen.com or Jeff.Price@beasleyallen.com.

V. DRUG MANUFACTURERS FRAUD LITIGATION

$700 MILLION MULTI-STATE SETTLEMENT OVER PRESCRIPTION DRUG SUBOXONE

A coalition of state attorneys general has settled claims against drug distributor Reckitt Benckiser Group for $700 million. The multi-state investigation accused the company of improperly marketing Suboxone, which is a drug that helps recovering opioid addicts reduce their withdrawal symptoms.

The coalition of states claimed that Reckitt Benckiser engaged in improper marketing of Suboxone by knowingly promoting the drug to doctors and causing them to prescribe Suboxone to patients for uses that were unsafe, ineffective and medically unnecessary.

As a result, Reckitt Benckiser has been accused of causing false claims to be submitted to the government for Medicaid beneficiaries that were prescribed Suboxone, resulting in improper expenditures of state Medicaid funds. The company was also accused of making false claims about Suboxone Sublingual Film, which is another form of the drug. The active ingredient in Suboxone is buprenorphine, which is an opioid.

Suboxone was approved by the Food and Drug Administration (FDA) to suppress opioid withdrawal symptoms. According to the New York Office of the Attorney General, from 2010 through 2014, Reckitt Benckiser marketed Suboxone to doctors who were writing prescriptions to patients without any counseling or psychosocial support, such that the prescriptions were either not safe, effective, or otherwise inappropriate for the patient.

The multistate investigation included allegations that Reckitt Benckiser submitted a petition to the FDA fraudulently claiming that it had discontinued manufacturing and selling Suboxone Sublingual Tablet “due to safety concerns” about the tablet formulation of the drug, and even actively took steps to fraudulently delay the entry of generic competition for various forms of Suboxone in order to illegally control pricing of Suboxone—including pricing to government health care programs. The multistate investigation also alleged that Reckitt Benckiser marketed Suboxone Sublingual Film based on false and misleading claims that it was less subject to diversion and abuse than other buprenorphine products and that it was less susceptible to accidental exposure to children than Suboxone Sublingual Tablets.

The multi-state investigation and settlement negotiations were led by the National Association of Medicaid Fraud Control Units, with representatives from several state attorneys general offices including California, Indiana, New York, Ohio, Virginia and Washington.

Lawyers in Beasley Allen’s Consumer Fraud & Commercial Litigation Section have represented clients, including at least 11 states through their attorney general’s office, in various health care and pharmaceutical litigation. Beasley Allen lawyers welcome the opportunity to investigate potential anticompetitive conduct, fraud, and other unfair and deceptive practices 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 the Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com. Ali has been heavily involved in drug and health care litigation that included fraud and deception practices.

Sources: Press Releases from the Attorney General Offices of New York and Ohio

Source: Law360.com
Sanofi PAYS $315 MILLION TO SETTLE CLAIMS IT DELAYED LEMTRADA TO AVOID INVESTOR PAYOUTS

Sanofi will pay $315 million in settlements in the Lemtrada litigation. The company has been battling claims that it dragged its feet on multiple sclerosis (MS) drug candidate Lemtrada, acquired in its Genzyme buyout, to avoid follow-up payments to investors.

Former Genzyme shareholders sued Sanofi in 2015 alleging the company dragged its feet on Lemtrada to avoid payouts tied to its development and approval. Set up as contingent value rights as part of its Genzyme buy, the payouts weren’t supposed to figure into Sanofi’s decision-making as it advanced the drug. But that’s just what management did, investors claimed. The suit claimed:

Sanofi took those potential milestone payments into account in evaluating Lemtrada’s profitability, embarked on a slow path to FDA approval and departed from its own drug-commercialization patterns and those of others in the industry.

Originally, the former Genzyme shareholders said the delays cost them $708 million. Sanofi picked up Genzyme in 2011 for $20 billion in one of biopharma’s most successful buyouts of the last decade. These days, Genzyme drugs are chipping in growth at the drugmaker as other areas of its business struggle. Lemtrada won approval in November 2014 and is operating in an increasingly crowded MS field. Sales for the drug peaked in 2017 at €474 million ($528 million). Last year, the drug generated €402 million ($448 million).

Source: Fiercepharma.com

VI. AN UPDATE ON THE WHISTLEBLOWER LITIGATION

FCA ESCOBAR UPDATE

We have written in previous issues about the U.S. Supreme Court’s Escobar decision. After that decision, courts continue to struggle with interpreting the ruling in False Claims Act (FCA) cases. The Escobar court ruled that the “implied certification” doctrine could be used to support FCA claims. The Supreme Court specified that the implied false certification theory of liability required that a claim not merely request payment, but also make “specific representations about the goods or services provided.” A Defendant’s failure to disclose material requirements, according to Escobar, makes those representations “misleading half-truths.” Lower courts have since adopted a variety of interpretations, under different factual scenarios, of what is considered to be “material to payment.”

The issue continues to emerge in FCA cases due to the Supreme Court refusing to clarify the standard. The following are some of the most recent court decisions touching on both materiality and the two-part test.

CIMINO V. INTERNATIONAL BUSINESS MACHINE CORP.

A relator alleged that IBM misled the Internal Revenue Service (IRS) into signing a software licensing deal based on a falsified audit of the agency’s software use. However, the IRS’ decision to continue to make payments on that deal was “strong evidence” the IRS did not view those allegations as material.

BALER V. WALGREEN CO.

The federal and state government of Illinois alleged Walgreens automatically refilled prescriptions at an Illinois pharmacy in violation of state Medicaid rules. However, they failed to show “specific misrepresentation” that led to any claim being “misleading half-truth.” The court ruled “fulfilling a prescription was not enough to count as a specific representation.”

MARSTELLER V. TILTON

In a whistleblower suit, MD Helicopters was accused of conspiring with an Army employee to obtain contracts and then overcharge the Army. In ruling against materiality, the judge adopted the “holistic” standard toward materiality as opposed to a “more explicit standard that continued payment demonstrates immateriality.”

LEWIS V. HONOLULU COMMUNITY ACTION PROGRAM, INC.

A school readiness services provider in Hawaii was accused of using “ghost children” to “increase enrollment levels and maintain eligibility for the federal Head Start program.” Since no evidence was shown the provider had made any specific claim for payment, the judge ruled there could be no implied false certification either.

ARMSTRONG V. ANDOVER SUBACUTE AND REHAB CENTER SERVICES ONE INC.

New Jersey federal judge Susan D. Wigenton applied a “heightened” materiality standard in a case involving long-term care facilities and doctors billing Medicare and Medicaid for services that actually were not being provided for, and she found the relator had met that heightened standard. The relator identified “federal laws and regulations requiring patient visits from doctors at certain minimum intervals,” specifying that they are a “core component” of Medicaid requirements.

U.S. V. STROCK

“The government failed to show that the owner of a construction company, accused of recruiting a veteran to act as a figurehead owner to win federal contracts set aside for service-disabled veteran-owned small businesses, knew that the business’ failure to meet SDVOSB requirements was material to paying the company’s claims.” This was “fatal” to the case, according to New York federal judge Frank P. Geraci Jr.

LONGO V. WHEELING HOSPITAL INC.

In a case involving hospital managers accused of hiring doctors at inflated salaries to increase referrals to the hospital—a violation of the Stark Law and the Anti-Kickback Statute—a West Virginia federal court rejected the Defendants’ argument that continued payments to a hospital despite the government’s “actual knowledge” that requirements had been violated proved the violations weren’t material.

RAFFINGTON V. BON SECOURS HEALTH SYSTEM INC.

New York federal magistrate judge Gabriel W. Gorenstein held that the relator met the materiality standard in a case accusing a long-term home health care provider of overbilling Medicare and Medicaid. It was enough to show that an alleged failure to take “reasonable measures” to maximize Medicare payments for dual Medicare-Medicaid eligible patients, instead of billing everything to Medicaid, was material.
**MacDowell v. Synnex Corp.**

The government’s lack of intervention in a case “accusing a supplier of selling electric power supply products containing Chinese-made parts that don’t not comply with the Trade Agreement Acts” was found to weigh toward a lack of materiality. However, there was no indication the government had actual knowledge of alleged TAA violations and continued to pay anyway.

**Fadlalla v. DynCorp International LLC**

This case involved allegations that a DynCorp-AECOM joint venture lied about being the true employer of workers under a U.S. Army translation services contracts “in order to falsely claim it had met subcontracting requirements.” The court ruled in favor of materiality, rejecting the defendants “restrictive view” of materiality, which would require a fraudulent claim to go to the “essence of the bargain” between the government.

**Dahlstrom v. Sauk-Suiattle Indian Tribe of Washington**

There was no evidence that tribal officials made any claims with “specific representations” or failed to disclose material noncompliance when officials accused tribal health executives of “using federal funds to buy land intended for residential care programs for children, then dropping those programs after the purchase.”

**Buth v. Walmart Inc.**

Walmart was alleged to have “violated federal and state standards by converting customers’ 30-day prescriptions into 90-day prescriptions without consent.” The court ruled the conversions were not material to payment because the government was told it was paying for 90-day supplies of medication, so there was no misrepresentation.

**Tra v. Fesen**

A Kansas federal judge ruled the “government was able to show why claims that an oncology clinic used medically unnecessary or unreasonable drugs on Medicare and Tricare patients were material,” saying the government explicitly stated those programs only pay medically necessary claims.

**Prose v. Molina Healthcare of Illinois Inc.**

An Illinois federal court ruled that conclusory allegations the government would have stopped Medicaid payments had it known skilled nursing facilities didn’t provide services from ‘board-certified physicians’ was the “type of argument specifically rejected under Escobar’s heightened materiality standard.”

**Lillie v. Mantech International Corp.**

A federal contractor claimed he was fired for reporting that he was given access to another contractor’s files working at the same federal facility in a California FCA case. However, there was no evidence that unauthorized access to those files was material to the government’s payment of funds.

**Thornton v. National Compounding Co. Inc.**

In a FCA suit alleging a “scheme to pay kickbacks to induce medically unnecessary prescriptions for compounded drugs paid for by the government, the government claimed that providers have been previously suspended for the payment of kickbacks.” The Florida federal court stated that allegation made it “common sense” that an AKS violation is material.

Hopefully, the Supreme Court will bring clarity to the confusion created by the Escobar decision. Fraud by all too many industries in this country against U.S. taxpayers continues to be a huge problem. Beasley Allen has increased its whistleblower practice for this very reason. The whistleblower team continues to pursue cases throughout the country involving fraud on the government.

Source: Law360.com

**CFTC Whistleblower Program Has Paid More Than $100 Million Since 2010**

The Commodities Futures Trading Commission (CFTC), an independent agency of the federal government established under the Commodity Exchange Act (CEA) in 1974, regulates U.S. derivatives markets. The most common transactions covered are futures, swaps, and certain kinds of options. Among those, people are most familiar with futures, which are agreements to purchase an asset (i.e. oil, wheat, gold, currency, etc.) at some time in the future, for an agreed price. As with securities markets, the vast amounts of money invested in commodities markets makes them attractive targets for “fraudsters.” One of the CFTC’s primary purposes is to protect market participants from fraud.

When the Dodd-Frank Wall Street Reform and Consumer Protection Act was passed in 2010, it amended the CEA to create the CFTC whistleblower program. The program provides incentives and anti-retaliation protections for whistleblowers who report fraudulent conduct in commodities markets. In FY 2019, the CFTC paid more than $15 million to whistleblowers, which brings the total paid up to approximately $100 million since the program’s inception. The CFTC actions associated with those awards have resulted in sanctions orders totaling more than $800 million. Over time, the CFTC has expanded its whistleblower program. The first award was not paid until 2014. For 2019, the CFTC has stated that 40% of its investigations now involve whistleblowers.

Awards are available from the CFTC when information provided by the whistleblower results in the collection of monetary sanctions of more than $1 million. The whistleblower must voluntarily provide original information (not already known to the CFTC) about violations of the CEA that leads to either a judicial or administrative action brought by the CFTC or another agency, that results in a settlement or judgement in favor of the agency. Once a recovery is made by the agency, the whistleblower is eligible to receive between 10% and 30% of the monetary sanctions collected.

One aspect of the CFTC whistleblower program that is not known to many is that a whistleblower does not have to be an “insider” to have the original information required to obtain an award. Awards are also available for persons who provide analysis to the CFTC that leads to a successful action. One such award was originally announced by the CFTC in March 2019 and mentioned again in the 2019 Annual Report.

An individual whistleblower in that case was awarded more than $2 million for information that led to a CFTC action and a related action brought by another federal regulator. The release notes that the whistleblower provided “critical information through independent analysis of market data.”

Another individual whistleblower was awarded approximately $7 million for reporting misconduct to the CFTC. The Commission noted that not all of the whistleblower’s information was accurate, but that it still led to the opening of an investigation that resulted in a successful enforcement action.
Whether an insider or a market analyst, coming forward as a whistleblower can be intimidating. The law places particular requirements on the person, and on the information provided, to entitle the whistleblower to the award. Furthermore, if a whistleblower wishes to make a claim for award anonymously, the law mandates that they must have representation.

If you are aware of fraud being committed in commodities markets, you could be rewarded for reporting the fraud to the CFTC. If you have any questions about whether you qualify as a whistleblower, contact a lawyer at Beasley Allen for a free and confidential evaluation of your claim. A lawyer on our Whistleblower Litigation Team will be glad to discuss any potential whistleblower claim with you either in person or by phone.

**FCA SETTLEMENTS OF NOTE**

There has been a tremendous amount of activity in the whistleblower litigation since our last issue. The following are settlements in this litigation that were significant.

**SANFORD HEALTH ENTITIES TO PAY $20.25 MILLION TO SETTLE FALSE CLAIMS ACT**

The Department of Justice (DOJ) has announced that hospital entities Sanford Health, Sanford Medical Center, and Sanford Clinic (collectively, Sanford), of Sioux Falls, South Dakota, have agreed to pay $20.25 million to resolve False Claims Act allegations that they knowingly submitted false claims to federal health care programs resulting from violations of the Anti-Kickback Statute and medically unnecessary spinal surgeries. The Statute prohibits offering, paying, soliciting, or receiving remuneration to induce referrals of items or services covered by Medicare, Medicaid, and other federally funded programs. The DOJ announced the settlement. Assistant Attorney General Jody Hunt of the Department of Justice’s Civil Division said:

Kickback schemes and other improper financial incentives create inherent conflicts of interest and warp the medical decision-making process. This office will continue to aggressively pursue anyone who colludes to violate federal law and compromise the integrity of our health care system.

Contemporaneous with the civil settlement, Sanford entered into a Corporate Integrity Agreement (CIA) with the Department of Health and Human Services Office of Inspector General. The CIA requires, among other things, that Sanford maintain a compliance program, implement a risk assessment program, and hire an Independent Review Organization to review Medicare and Medicaid claims at Sanford Medical Center. It also increases individual accountability by requiring compliance-related certifications from Sanford Medical Center’s board of directors and key executives. Curt L. Muller, Special Agent in Charge, Office of Inspector General at the U.S. Department of Health and Human Services (HHS-OIG), said:

More than six years ago the Department of Health and Human Services Office of the Inspector General warned in a fraud alert that PODs were inherently suspect under the Anti-Kickback Statute. Unfortunately, these distributors remain questionable. Patients in government health care programs rightly expect that surgeries are medically indicated, not performed to increase provider profits. The settlement resolves allegations originally brought in a lawsuit filed by Drs. Carl Dustin Bechtold and Bryan Wellman, surgeons at Sanford, under the whistleblower, or qui tam, provision of the False Claims Act, which allows private parties to bring suit on behalf of the government and to share in any recovery. The whistleblowers will receive $3.4 million of the settlement proceeds.

The settlement was the result of an investigation by the Department of Justice’s Civil Division, the U.S. Attorney’s Office for the District of South Dakota, and HHS-OIG. As part of the settlement, Sanford has agreed to cooperate with the Department of Justice in litigation related to alleged co-Defendants, and the hospital system has taken various remedial steps, including terminating the employment of the neurosurgeon in question and prohibiting all Sanford physicians from profiting from their use of medical devices at Sanford.

The lawsuit is captioned United States ex rel. Bechtold, et al. v. Asfora, et al. (No. 4:16-cv-04115-LLP) (D.S.D.). The claims resolved by the settlement are allegations only, and there has been no determination of liability.

Source: DOJ Website

**PHARMA SUPPLIER REACHES $22 MILLION SETTLEMENT WITH DOJ OVER INFLATED PRICES**

Pharmaceutical supplier Fagron Holding USA LLC has agreed to pay $22 million to settle two whistleblower suits alleging its subsidiaries inflated average wholesale prices for compound prescription ingredients. Fagron subsidiary Freedom Pharmaceuticals Inc. was accused of orchestrating the pricing scheme, which also caused pharmacies that purchased the compound ingredients to submit false prescription claims to federal health care programs, according to prosecutors.
The settlement with the U.S. Department of Justice (DOJ) resolves those allegations, as well as allegations that another Fagron subsidiary, Pharmacy Services Inc., “submitted fraudulent compound prescription claims to federal health care programs, used sham insurance programs to manipulate pricing, paid kickbacks to physicians for bogus consulting agreements, and illegally waived copays,” according to the government’s statement announcing the settlement. The whistleblowers in the suits, which were filed in Texas federal court and Florida federal court, will receive a combined total of $3.75 million plus interest, the DOJ said.

According to the government’s statement, suppliers like Freedom sell ingredients or chemicals to compounding pharmacies, which then prepare and fill compound prescriptions for patients requiring specially made drugs. Freedom knew compound prescription reimbursement under certain federal programs—the TRICARE Program for the U.S. Department of Defense and the U.S. Department of Labor’s Office of Workers’ Compensation Program—was partly based on its average wholesale prices, prosecutors said. The DOJ said:

Freedom knowingly inflated the AWPs for its ingredients in order to increase the reimbursement that its pharmacy customers received from federal health care programs for using Freedom’s ingredients.

In one example included in the statement, Freedom set an average wholesale price for the ingredient Fluticasone propionate at $3,500 per gram, but the DOJ said the ingredient usually sold for $160 per gram. The scheme enabled pharmacies to bill federal programs thousands of dollars per prescription for some of their formulations, prosecutors said.

U.S. Attorney Maria Chapa Lopez of Florida’s Middle District said in the statement that “[d]eficiency and avarice have no place in our health care system. She stated: “Taxpayers expect that the programs they fund be administered according to the law and utilized for the purposes that they were intended.”

The government is represented by Jody Hunt of the U.S. Department of Justice’s Civil Division. The cases are U.S. ex rel. Hueseman v. PSI, et al., in the U.S. District Court for the Western District of Texas, and U.S. ex rel. Sten v. Midwest Compounders, et al., in the U.S. District Court for the Middle District of Florida.

Source: Law360.com

**TENET SETTLES OKLAHOMA HOSPITAL KICKBACK CASE FOR $68 MILLION**

Tenet Healthcare Corp. has disclosed in a quarterly filing with the U.S. Securities and Exchange Commission (SEC) that it had reached an agreement in principle with the U.S. Justice Department (DOJ) to resolve claims first raised in a whistleblower lawsuit in 2016.

Tenet has agreed in principle to pay the federal government about $66 million to settle a whistleblower lawsuit alleging it billed public programs for services provided by physicians who had improper financial relationships with an Oklahoma hospital partly owned by Tenet.

The lawsuit, filed under the False Claims Act (FCA) in 2016 and unsealed last year, alleges violations of the False Claims Act, the Anti-Kickback Statute, the Stark law and the Oklahoma False Claims Act.

Tenet said it had established a reserve of $68 million for the matter. It anticipated the agreement could be completed as early as the first quarter of 2020. The company said it is involved in “continuing efforts to come to a final resolution,” which would remain subject to negotiation and approval by the Justice Department and the HHS Office of the Inspector General.

The lawsuit, originally filed in federal court in Oklahoma in May 2016, alleged unlawful conduct by and a conspiracy among a group of Oklahoma orthopedic surgeons, the surgical hospital they created—the Oklahoma Center for Orthopaedic and Multispecialty Surgery in Oklahoma City—and USPI, a Tenet-owned unit that owns a stake in the hospital along with a health care system and physicians.

Clinic administrator Wayne Allison claimed the Defendants engaged in kickbacks, unlawful compensation and unearned reimbursements. Tenet said it learned the health system was a Defendant in the suit when the court unsealed the complaint in May 2018 and the Justice Department declined to intervene. Tenet asked a judge to dismiss the case in October 2018, but the court has not yet ruled on those motions.

Tenet said the case was stayed until November to give the parties time to finalize the settlement. In 2016, Tenet agreed to pay $514 million to settle a whistleblower case claiming two of its former subsidiaries defrauded Medicare by using referral contracts for translation services to draw pregnant patients to two hospitals in Georgia.

Source: Reuters and Modernhealthcare.com

**NEW YORK HEALTHCARE NETWORK PAYS $12.3 MILLION TO SETTLE FALSE MEDICARE BILLING CLAIMS**

As a result of a lawsuit brought under the Federal False Claims Act (FCA) by three whistleblowers, one of the New York area’s largest health care providers—Northwell Health, Inc. whose subsidiary includes Lenox Hill Hospital—has agreed to pay $12.3 million to resolve claims that it engaged in false or fraudulent billing to the Federal Medicare system. Northwell operates 23 hospitals and 700 outpatient centers.

The settlement covers three alleged schemes involving Urologist David B. Samadi:

- Northwell over-compensated Dr. Samadi in order to secure hospital referrals in alleged violation of the Physician Self-Referral Law (the “Stark Act”);
- Northwell billed Medicare for surgeries where Dr. Samadi violated billing procedures governing overlapping surgeries; and
- Northwell billed for procedures that were not medically necessary to perform in an operating room.

The Physician Self-Referral Law, 42 U.S.C. §1395nn, prohibits physicians from referring patients to receive “designated health services” payable by Medicare or Medicaid from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies.

According to a settlement agreement executed in United States of America ex rel. George Markelson, et. al. v. David B. Samadi, M.D. and Northwell Health, Inc. et al., ‘Defendants’
practices resulted in the submission of several million dollars of inappropriate claims to Medicare.”

The settlement also states that, “when portions of an endoscopic surgery in OR 21 overlapped with a surgery in OR 25, Samadi was not present in OR 21 throughout the entire period of time the scope was inserted to the time the scope was removed.” The settlement agreement also states that, “Samadi would freeze or pause the robotic equipment in OR 25 and leave the patient under the care of the anesthesiologist, operating room staff, and, in some instances, a urology resident.”

Relators were represented by the Jacob D. Fuchsberg Law Firm, LLP, and by Gutman, Buschner & Brooks, PLLC.

Source: Gutman, Buschner & Brooks PLLC

DOJ Continues Its FCA Dismissal Crusade

The U.S. Department of Justice (DOJ) continues its controversial crusade against the False Claims Act (FCA) litigation. A series of recent court decisions have allowed the DOJ to dismiss whistleblower FCA cases. That is not good news for U.S. taxpayers. When you consider how rampant and widespread fraud is today against the U.S. government, the DOJ’s action is clearly suspect.

There were three decisions last month by federal judges in California, Pennsylvania and Washington State in which DOJ motions to dismiss fraud claims targeting AstraZeneca PLC, Gilead Sciences Inc. and a UnitedHealth Group Inc. unit were granted despite opposition from FCA whistleblowers.

The DOJ sought to dismiss the three cases in accordance with its so-called Granston memo, a January 2018 directive aimed at weeding out FCA suits that conflict with government prerogatives.

The DOJ’s new posture has not gone unnoticed by members of Congress. Sen. Chuck Grassley, R-Iowa, one of the FCA’s most prominent proponents, wrote to Attorney General William Barr recently and complained that the Granston memo motions could “undermine the purpose of the False Claims Act by discouraging whistleblowers and dismissing potentially serious fraud on the taxpayers.”

Frequently, the DOJ isn’t derailing suits at the same time it declines to intervene in FCA cases. Instead, the government is often moving to dismiss cases months or even years after telling whistleblowers that it wouldn’t join their cases. The whistleblowers were led to believe they could proceed with those cases by themselves. Going solo, without government help, is an expensive and risky endeavor for whistleblowers. The prospect of government lawyers suddenly seeking dismissal is not good news for whistleblowers or for the taxpayers who are being cheated by corporate America.

In any event, the existing split and the pending appeals create the real possibility that the Supreme Court—which has heard an FCA case almost every term in recent years—will sooner or later face calls to decide what standards apply to DOJ dismissals.

Source: Law360.com

FREMMER RAYTHEON WORKER AWARDED $1 MILLION IN WHISTLEBLOWER SUIT

A Colorado federal jury has awarded more than $1 million to a former Raytheon Co. engineer who said the defense contracting behemoth wrongly reassigned him after he reported problems with tests being run for a U.S. military contract to develop satellite navigation technology. Bruce Casias will get $43,000 in back pay in addition to $1 million in noneconomic damages. The jury found that Raytheon had effectively demoted the engineer in violation of the Defense Contractor Whistleblower Protection Act.

Casias sued the Waltham, Massachusetts-based corporation in November 2017, alleging he was booted from his role as a manager and given a “dead-end reassignment” after calling attention to what he saw as “unethical” and “fraudulent” reporting on the status of testing for an Air Force-funded project related to GPS technology.

Casias said he was pressured to change data to include false information that made it seem as though Raytheon was meeting the requirements of its contract when it was not. The former engineer said he brought up the issue in November 2015 at a meeting with project leaders, but the leaders “did not make any attempt” to correct the fraudulent information.

Raytheon pulled Casias from his post as a manager on the GPS project in May 2016, saying he had made mistakes with the testing procedures. But Casias contended that action was intended to retaliate against him and make him a “scapegoat for management’s illegal actions.” The day after Casias was notified of his reassignment, he filed an internal ethics complaint with Raytheon denouncing the alleged misconduct. The engineer left the company about two months later, on July 22, 2016.

Casias is represented by the Law Office of Ralph G. Torres. The case is Bruce Casias v. Raytheon Co., (case number 1:17-cv-02635) in the U.S. District Court for the District of Colorado.

Source: Law360.com

THE BEASLY ALLEN WHISTLEBLOWER LITIGATION TEAM

Fraud against the federal government continues to be a huge problem, involving many industries in this country. Our firm is heavily involved in the whistleblower litigation. Beasley Allen lawyers Lance Gould, Larry Golston, Paul Evans, Leslie Pescia, Leon Hampton, Tyner Helms and Lauren Miles are working in this area of law known as “qui tam” cases. They make up the Whistleblower Litigation Team.

As we have consistently stated, whistleblowers are the key to exposing corporate wrongdoing and government fraud. A person who has first-hand knowledge of fraud or other wrongdoing may have a whistleblower case. Before you report suspected fraud or other wrongdoing—before you “blow the whistle”—it is important to make sure you have a valid claim and that you are prepared for what lies ahead. Beasley Allen has an experienced group of lawyers dedicated to handling whistleblower cases.

If you are aware of fraud being committed against the federal or state governments, you could be rewarded for reporting the fraud. If you have any questions about whether you qualify as a whistleblower, contact a lawyer at Beasley Allen for a free and confidential evaluation of your claim.

A lawyer on our Whistleblower Litigation Team will be glad to discuss any potential whistleblower claim with you either in person or by phone. You can reach these lawyers by phone at 800-898-2034 or by email at Larry.Golston@beasleyallen.com, Lance.Gould@beasleyallen.com, Paul.Evans@beasleyallen.com, Leslie.Pescia@beasleyallen.com, Leon.Hampton@beasleyallen.com, Tyner.Helms@beasleyallen.com and Lauren.Miles@beasleyallen.com.

Source: Law360.com
The U. S. Supreme Court rejected a bid by Remington on Nov. 12 to review a ruling by Connecticut state courts that allowed the families of Sandy Hook shooting victims to sue the gunmaker. While the high court did not give its reasoning for rejecting the petition for certiorari, the denial will allow the case against Remington Arms Co. LLC to go forward. This is a huge victory for gun-violence victims.

Joshua D. Koskoff of Koskoff Koskoff & Bieder PC, who represents the families, said in a statement:

The families are grateful that the Supreme Court upheld precedent and denied Remington’s latest attempt to avoid accountability. We are ready to resume discovery and proceed toward trial in order to shed light on Remington’s profit-driven strategy to expand the AR-15 market and court high-risk users at the expense of Americans’ safety.

The suit was brought by the families of nine of the 26 deceased victims and one survivor of the Newtown shooting. They claim Remington advertised the Bushmaster AR-15 rifle to civilians as a means to carry out military-style combat missions against their enemies, in violation of the Connecticut Unfair Trade Practices Act (CUTPA), which doesn’t allow advertising to promote violent or criminal behavior.

The Connecticut Supreme Court in March ruled 4-3 that Remington can be sued under the CUTPA by the victims’ families over how it marketed the rifle that was used in the 2012 massacre. Remington asked the U.S. Supreme Court to review the ruling in August, saying the decision could unleash a flood of suits against gunmakers. In October, the families urged the high court to allow the case to continue.

Although this statute requires that renters and lessors from U-Drive-It entities must furnish their own insurance, it does not exempt U-Drive-It entities from their duty under O.C.G.A §53-34-4 as owners of motor vehicles to obtain insurance as well. The State of Georgia mandates the preservation of the vehicle and inspection of the vehicle before the entity repairs the subject vehicle and places it back on the roadway. Finding direct negligence against a U-Drive-It can be quite burdensome but yield a high reward for the client’s family.

If you need more information, or if you have a case dealing with a U-Drive-It entity, contact Ben Keen or Cole Portis at 800-898-2034 or by email at Ben.Keen@beasleyallen.com or Cole.Portis@beasleyallen.com.

However, U-Drive-It accidents are often accompanied by death due the use of a large moving trucks by individual(s) who are not trained nor equipped to drive a much larger vehicle. Most frequently this is the result of a driver who has built up too much speed and is now unable to slow and stop their U-Drive-It rental moving truck before colliding into the back of another. In this instance, assuming the collision is fatal, a combined $50,000 is simply insufficient.

Beasley Allen lawyers have come to find that the U-Drive-It entities often have more comprehensive coverage; however, this coverage may be attacked in the presence of direct negligence on the part of the U-Drive-It entity. One example of showing direct negligence is proving that the U-Drive-It entity rented their vehicle to an individual without a valid driver’s license. Ordinary citizens have the ability to check on the validity of a driver’s license. As such, a U-Drive-It entity has a duty to do so before renting a vehicle for profit to an unfit lessee.

Another way of finding direct negligence on the part of the U-Drive-It entity is the rental of a vehicle that it failed to maintain, thus causing the accident. A direct negligence action for the failure to maintain a vehicle mandates the preservation of the vehicle and inspection of the vehicle before the entity repairs the subject vehicle and places it back on the roadway. Finding direct negligence against a U-Drive-It can be quite burdensome but yield a high reward for the client’s family.

If you have more information, or if you have a case dealing with a U-Drive-It entity, contact Ben Keen or Cole Portis at 800-898-2034 or by email at Ben.Keen@beasleyallen.com or Cole.Portis@beasleyallen.com.

The Automotive “Firewall” Is Not What It Used To Be

Deaths from automobile fires constitute the largest number of U.S. fire deaths outside of residences and rank overall among the top scenarios involving consumer products. Of the 1.6 million fires reported each year in the USA, one out of five (300,000) are vehicle fires. Less than 10% of vehicle fires are caused by collisons, but escape is more difficult in these situations, and collisions account for the overwhelming majority (60% to 75%) of vehicle fire fatalities.

Vehicle fires cause some 3,000 injuries and claim some 500 lives per year in the USA, about two thirds of which are due to front impact, side impact, or rollover. The rapid progression of fire and incapacitation...
of passengers were contributing factors in two thirds of vehicle fire deaths. It has been suggested that the number of fatalities attributed to motor vehicle fires is a gross underestimate because of ambiguous reporting methods, but there is no doubt that motor vehicles are a major component of the fire death problem.

Given the fact that motor vehicles cause a large number of fire deaths compared to those from mattresses or upholstered furniture, it is surprising that vehicles are not facing comparable regulatory scrutiny, either in the U.S. or elsewhere. In order to avoid a massive recall, General Motors (GM) entered into a consent agreement with the Department of Transportation (DOT) where it agreed to conduct 11 automobile fire tests.

The GM tests were analyzed to determine the effect of materials of construction on passenger survivability in a post-crash vehicle fire. The authors concluded from the test reports that in front end collisions where fire originates in the engine compartment, flames penetrate the vehicle interior within 10-20 minutes. Once flames penetrate the passenger compartment they spread quickly, resulting in occupant death in 1-3 minutes.

Henry Ford saw the value of protecting his equipment and protecting his driver when he invented the first automotive firewall. It was born of necessity. There was no way he could sell cars if the motor should catch fire and the driver or passenger was burned. Ford also envisioned the ability to drive the car without smoke, fumes and gases overwhelming the driver.

When the first “firewall” was invented, it was simple, it was clean, and it worked. It worked so well that other manufacturers of cars, trucks and buses adopted the idea and the “automotive firewall” became a house-hold name. This was almost 50 years before there were structural building or computer firewalls!

The following question was asked of 100 mechanics as part of a case study: What is the metal plate called that separates the driver from the engine compartment? All 100 mechanics called the metal plate a “firewall.” A random survey of 100 middle aged men were asked the same question. Ninety five percent called it a firewall and 5% did not know the name but mentioned that it was supposed to stop a fire.

The auto manufacturers no longer call the firewall a firewall. They now refer to it as a dash panel and claim its design intent is not to stop or slow fire spread from the engine compartment.

There are no Federal Motor Vehicle Safety standards regarding the performance of the automotive firewall. There are no minimum standards for “firestop-

More Than 100,000 Dangerously Defective Airbags Remain Unrepaired In Mississippi

It was reported last month that more than 100,000 Mississippi residents are driving recalled vehicles with dangerously defective airbags that could blast sharp metal fragments at drivers and passengers upon deployment, resulting in serious injury or death, even in a minor crash.

According to the U.S. Department of Transportation (DOT) National Highway Traffic Safety Administration (NHTSA), the ongoing, urgent Takata airbag recall—the largest and most complex safety recall in U.S. history—affects tens of millions of vehicles from 19 vehicle manufacturers and more than 200 models and model years. At least 16 Americans have been killed, and more than 300 individuals have suffered serious injuries allegedly caused by these defective airbags.

As of October 2019, of the approximately 400,000 vehicles on the road in Mississippi that were initially identified as containing these dangerously defective airbags, more than 100,000—or about 43%—remain un repaired in around 100,000 vehicles, even after dozens of outreach attempts by vehicle manufacturers.

Mississippi residents can find out whether their vehicle has a recalled airbag at AirbagRecall.com. If they do, they should contact any of their vehicle manufacturer’s nearby dealerships to schedule a free recall repair. This safety recall is particularly urgent for drivers of older affected vehicles in Mississippi because prolonged exposure to high heat and humidity over time makes the defect even worse, increasing the potential for serious injury or death.

While the recall affects vehicles made by 19 different vehicle manufacturers, certain 2001-2003 Hondas and Acuras as well as certain 2006 Ford Ranger trucks and Mazda B-Series trucks are considered higher risk. NHTSA urges consumers not to drive these vehicles unless they are going straight to a dealer to have them repaired immediately.

In Mississippi, more than 350 unrepaired airbags fall into the higher risk, “Do Not Drive” category. The specific “Do Not Drive” models are listed below:

- 2001-2002 Honda Civic
- 2001-2002 Honda Accord
- 2002-2003 Acura TL
- 2002 Honda CR-V
- 2002 Honda Odyssey
- 2003 Acura CL
- 2003 Honda Pilot
- Certain 2006 Ford Ranger
- Certain 2006 Mazda B-Series

Mississippi residents who may be waiting for replacement parts for their vehicle, or...
who are not affected by the current recall, are also encouraged to call their vehicle manufacturer and confirm that their contact information is up to date so they receive recall-related updates going forward. NHTSA Acting Administrator James Owens said:

_These airbags are dangerous and potentially deadly. If your vehicle is under recall, you should contact your dealer for a free repair. It could save your life or the life of someone you love._

Airbag Recall is a program supported by community organizations, public interest groups, private companies, elected officials, faith communities and other concerned parties to raise consumer awareness about the ongoing urgent airbag safety recall. Participants are committed to educating individuals about the risks associated with defective airbags, helping affected drivers schedule free repairs and accelerating recall completion rates. To determine if your car has a defective airbag, visit [www.AirbagRecall.com](http://www.AirbagRecall.com) and enter your vehicle identification number (VIN).

Source: PRNewswire

**GM Not Liable for Punitive Damages in Ignition Switch Cases**

A federal appeals court has ruled that General Motors (GM) is not liable for punitive damages over accidents that occurred after the automaker's 2009 bankruptcy and involved vehicles it produced earlier, including vehicles with faulty ignition switches. The 2nd U.S. Circuit Court of Appeals in Manhattan said on Nov. 20 that GM did not agree to contractually assume liability for punitive damages as part of its federally backed Chapter 11 reorganization.

GM filed for bankruptcy in June 2009, and its best assets were transferred to a new Detroit-based company with the same name. The other assets and many liabilities stayed with “Old GM,” which is also known as Motors Liquidation Co. The appeals court decision may help GM reduce its ultimate exposure in nationwide litigation over defective ignition switches in several Chevrolet, Pontiac and Saturn models. It is also a huge defeat for drivers involved in post-bankruptcy accidents. The ignition switch defect could cause engine stalls and keep airbags from deploying and has been linked to 124 deaths.

Circuit Judge Dennis Jacobs said GM's agreement to acquire assets “free and clear” of most liabilities excused it from punitive damages claims for Old GM's conduct. He also noted that the judge who oversaw the bankruptcy concluded that the new company could not be liable for claims that the “deeply insolvent” Old GM would never have paid. The appellate decision upheld a May 2018 ruling by U.S. District Judge Jesse Furman in Manhattan, who oversees the ignition switch litigation. Drivers have sought a variety of damages in that litigation, including for declining resale values.

GM has recalled more than 2.6 million vehicles since 2014 over ignition switch problems. The automaker has also paid more than $2.6 billion in related penalties and settlements, including $900 million to settle a U.S. Department of Justice criminal case. None of this would have happened, nor would that have been an MDL, had it not been for the Melton family represented by Lance Cooper and lawyers from Beasley Allen. Lance discovered the ignition switch defect, and together, our firms were able to secure information and important documents relating to the defect that led to the MDL and other litigation involving the defective ignition switch.

Source: [Reuters](https://www.reuters.com/article/us-gm-punitive-damages-idUSKCN1QH0U9)

**VIII. MASS TORTS UPDATE**

**JURY AWARDED NEARLY $34 MILLION TO WOMAN INJURED BY IVC FILTER**

After hearing two and a half weeks of testimony, a Philadelphia jury found that Plaintiff Tracy Reed-Brown was injured by Rex Medical LP’s defective Option inferior vena cava (IVC) filter. The jury awarded $3.4 million in compensatory damages and $30.3 million in punitive damages to Ms. Reed-Brown.

The Option filter was designed to be removable. Ms. Reed-Brown had an Option filter placed in September 2010 to prevent blood clots from traveling from her legs and into her lungs. Six years later, Ms. Reed-Brown landed back in the hospital after the filter perforated her inferior vena cava and punctured her pancreas, aorta and renal vein. Ms. Reed-Brown underwent a three-hour surgery in January 2017 to try to remove the device; however, doctors were unable to do so, and it remains lodged in her body.

During the trial, jurors heard that Rex Medical manipulated the clinical trial data to get FDA approval. When doctors in the clinical trial reported that their patients experienced complications due to defective products, representatives from Rex worked to convince them to withdraw and amend those opinions.

This is the fourth time a jury has found that defective IVC filters injured patients. Previous juries have returned verdicts of $1.4 million and $3 million against Cook medical, and $3.6 million against Bard, relating to similar products.

Beasley Allen lawyers continue to investigate cases involving people injured by IVC filters. For more information, contact Melissa Prickett at 800-898-2034 or Melissa.Prickett@beasleyallen.com.

Source: [Law360.com](https://www.law360.com)

**COLOPLAST SETS ASIDE $60 MILLION FOR SURGICAL MESH LITIGATION SETTLEMENT AND COSTS**

Coloplast has set aside another $60 million for settlements and costs related to existing personal injury suits in the U.S. The litigation involves the use of transvaginal surgical mesh products. Coloplast A/S said in its statement that a full-year earnings before interest and taxes had been impacted by the additional 400 million Danish krone ($59.3 million) set aside for the litigation.

In April, Boston Scientific Corp. and Coloplast—the only two remaining manufacturers of surgical mesh meant for the transvaginal repair of pelvic organ prolapse—were ordered by the U.S. Food and Drug Administration (FDA) to stop selling those mesh products in the U.S. The order stemmed from the agency’s reclassification of the devices as high-risk in 2016, which required their manufacturers to submit premarket approval applications to continue marketing them in the U.S., according to the FDA.

Ultimately, the FDA found that the manufacturers had failed to give an “adequate assessment” of their devices’ long-term safety, or show they had an “acceptable long-term benefit” as compared to native tissue repair, which doesn’t use mesh, in their applications. The FDA said all other mesh products meant for the transvaginal repair of pelvic organ prolapse were removed from the market in 2018 when their manufacturers declined to submit premarket approval applications.

Source: [Law360.com](https://www.law360.com)

**ZANTAC SUED OVER CANCER LINK**

For nearly four decades, tens of millions of consumers have used Zantac as an antacid to help treat symptoms of acid reflux.

Source: [Reuters](https://www.reuters.com/article/us-pharma-zantac-suit-idUSKCN1QH0U9)

Source: [Law360.com](https://www.law360.com)

Source: [BeasleyAllen.com](https://www.beasleyallen.com)

---

BeasleyAllen.com
reflux. However, the public is now learning that studies have long shown that Zantac is linked to cancer in animals and humans. In October, the first lawsuit was filed against Pfizer Inc., Sanofi US Services Inc. and other drugmakers alleging that Zantac caused the Plaintiff to develop bladder cancer.

Zantac, also known as ranitidine, produces N-Nitrosodimethylamine (NDMA) when it is broken down during digestion. NDMA is a classified as a probable human carcinogen, linked to many types of cancer in animals and humans. The FDA’s maximum allowable amount of NDMA is 96 nanograms, while a single dose of Zantac can produce more than 2.5 million nanograms, according to recently filed lawsuits. To understand the severity of this exposure, the levels of NDMA found in one 150mg dose of Zantac are equivalent to smoking approximately 6,200 cigarettes. As early as 1981, the manufacturers knew that Zantac could produce high levels of NDMA. However, according to the lawsuit, these companies hid these risks from the FDA and the public for more than 30 years. In the meantime, Zantac became one of the best-selling prescription medications of all time, generating billions of dollars in sales and exposing tens of millions of consumers to high amounts of NDMA.

As a result, the FDA recently issued a warning about NDMA found in Zantac. Novartis, another manufacturer of Zantac, voluntarily halted the sale of its version of Zantac in the U.S. because of NDMA found in the drug. Major retailers including CVS, Walmart, Walgreens, and Rite Aid have also taken the medicines off their shelves.

Lawyers at Beasley Allen are currently investigating claims of those who have used Zantac and have subsequently been diagnosed with cancer. For more information, contact Melissa Prickett or Matt Munson at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com or Matt.Munson@beasleyallen.com. Sources: Law360.com, CNBC.com, and FDA.gov

BLOOD PRESSURE MEDICINE LOSARTAN RECALL EXPANDED DUE TO POTENTIAL CARCINOGEN

We previously reported that earlier this year, the FDA issued a voluntary national recall of certain Losartan products. According to Torrent Pharmaceuticals Ltd., the company that makes the blood pressure medication, “[t]he recall is due to the detection of trace amounts of an unexpected impurity found in an active pharmaceutical ingredient (API) manufactured by Hetero Labs Limited.” The original recall applied to only a few lots of the medications.

Since the initial recall in January 2019, the recall has been expanded five times. Most recently, the recall was expanded to include an additional 3 lots of Losartan Potassium Tablets USP and 2 lots of Losartan Potassium/Hydrochlorothiazide Tablets, USP on September 23, 2019.

NMBA is a known animal carcinogen and potential human carcinogen. Exposure to large amounts of NMBA has been linked to the development of certain types of cancer in rat studies. Currently, Torrent reports that it has not encountered any reports of adverse events related to this recall. You can read the full recall announcement on FDA.gov here, where there is a list of the impacted lots.

Currently, the FDA says that those who use the drug “...should continue taking their medication, as the risk of harm to the patient’s health may be higher if the treatment is stopped immediately without any alternative treatment.” They also recommend these patients be sure to talk to their pharmacist or doctor to learn about other treatment options prior to returning to the medication.

In March, Camber Pharmaceuticals Inc. also voluntarily issued a recall of 87 lots of losartan tablets in the United States that were manufactured by Hetero Labs Ltd. in India due to the detection of the same NMBA impurity. Source: Law360.com, Forbes.com and cardiovascularbusiness.com

NOVARTIS UNDER FIRE FOR MULTIPLE REPORTING FAILURES

In late October, the U.S. Food and Drug Administration (FDA) placed a partial hold on a Novartis trial involving its gene therapy, Zolgensma. Novartis has been testing stronger doses of the therapy delivered via spinal infusion in a primate study. Novartis learned in March that the results of the primate study indicated possible risks of nerve damage or loss, but did not report these findings to the FDA until the last half of October. According to Novartis, it intended to include the findings in its September update to the FDA, but that “a mistake was made” by the company.

Novartis has been under scrutiny since August for failing to tell the FDA about a separate data manipulation issue with earlier Zolgensma clinical trials. The FDA has said that it will investigate and “use its full authorities to take action, if appropriate, which may include civil or criminal penalties.”

The FDA approved Zolgensma on May 24, 2019, for the treatment of children younger than 2 with spinal muscular atrophy (SMA) with bi-allelic mutations in the survival motor neuron 1 (SMN1) gene. Zolgensma is an adeno-associated virus (AAV) vector-based gene therapy, given via intravenous (IV) infusion. It is designed to deliver a normal copy of the gene encoding the SMN protein in patients with SMA.

Spinal muscular atrophy (SMA) with bi-allelic mutations in the SMN1 gene is a serious autosomal recessive neurodegenerative disorder. Infantile SMA occurs in approximately 1 in 10,000 live births, with a prevalence of about 1-2 per 100,000. Babies born with SMA have problems with motor function and have difficulty holding their head up, sucking, and breathing. Symptoms appear within the first 6 months. The prognosis for these children is poor, with few surviving past early childhood.

The importance of innovative gene therapies like Zolgensma cannot be understated. Zolgensma delivered via IV infusion, as originally indicated, has had remarkable results, giving hope to parents and children suffering from this rare condition. However, because treatments like Zolgensma are designed for the most vulnerable among us, we need to be sure that the companies behind them are playing by the rules and looking out for the best interests of their patients.

Sources: Reuters, FDA.gov and Raps.org

PENNSYLVANIA COURT REOPENS TIME FOR “THOUSANDS” OF RISPERDAL SUITS

The Supreme Court of Pennsylvania has reopened the door for thousands of mass tort cases against Janssen Pharmaceuticals Inc. On Nov. 20 the court threw out two dates by which lower courts said patients should have known the potential link between the antipsychotic drug Risperdal and abnormal breast growth in children. In a split court, the six-justice majority said a Philadelphia court and an intermediate appellate court erred in ruling that either a 2006 label change or a flurry of ads, journal articles and media reports suggesting a link between Risperdal and gynecomasia would have been sufficient for laypeople to start connecting their injuries to the drug. That would have started the two-year statute of limitations and potentially barred up to 20% of the cases that had been consolidated in the Philadelphia mass tort.

In the consolidated appeal, Pennsylvania’s highest court said the Philadelphia Court of Common Pleas and the Superior Court were wrong to grant Johnson &
IX.
AN UPDATE ON THE VAPING LITIGATION

JUUL LABS HAS BEEN IN THE NEWS AND VERY LITTLE IS GOOD NEWS

Juul Labs, Inc. continues to make headlines and to face legal challenges related to its Juul vaping devices. In the month of October, Juul was hit with the first wrongful death lawsuit, pulled most flavors from the U.S. market, and faces a new wrongful termination suit alleging Juul concealed 1 million contaminated Juul pods.

On Oct. 15, the family of an 18-year-old brought a wrongful death lawsuit in California federal court alleging that their son suffered a Juul-related death. Juul will definitely be exposed to similar wrongful-death actions. According to the Centers for Disease Control and Prevention (CDC), as of Nov. 20, 2,290 individuals have been diagnosed with “EVALI” (e-cigarette or vaping product use-associated lung injury), and 47 have died. More than half of these individuals are younger than 25, according to the CDC.

On Oct. 16, Florida Attorney General Ashley Moody announced an investigation into the sales tactics used by Juul and 21 other vaping companies doing business in Florida. According to the Attorney General, the investigation will look into Juul’s marketing practices to determine if it “intentionally targeted minors.”

On Oct. 17, the following day, Juul finally decided to make an important change by pulling most flavors from the United States market. This decision comes on the heels of Juul’s recent decision to suspend marketing campaigns. The Juul spokesperson said:

We need to urgently address under-age use of vapor products and earn the trust of regulators, policymakers and other stakeholders. That is why we are focusing on taking aggressive actions to reduce youth usage of our products.

Juul’s statement about earning the “trust” of policymakers likely relates to several states that have either taken action to ban flavored vape liquids due to an epidemic of vaping product use-associated lung injury), or have launched investigations into the company’s conduct.

In early November, Juul announced that it was stopping sales of its mint-flavored pods. The decision was made after the release of studies that found the majority of teen vapers consumed flavors—with fruit, menthol or mint, and candy—the most commonly reported varieties.

Juul was hit with another bombshell in late October, when former Juul executive, Siddharth Breja, filed suit in federal court claiming he was fired after he told Juul’s former CEO Kevin Burns and others that a recent batch of mint-flavored liquid was contaminated. According to Breja’s complaint, at least 1 million Juul pods were contaminated, and Juul’s management ignored his plea to recall the pods and threatened him if he went public with the information.

When Breja took this information to Juul’s former CEO, the CEO responded by saying it doesn’t matter because their customers were “drunk and vaping like mo-fos,” he claims. It’s alleged in the complaint that when Breja took this information to Juul’s CFO, Timothy Danaher, Danaher responded by saying that Breja “should remember his loyalty to Juul” and think about the “significant personal wealth” he would lose if he went public about the tainted Juul pods. The next week, according to Breja, he was suddenly fired.

Federal lawmakers are now demanding that Juul turn over documents and information about reports that the company knowingly distributed 1 million contaminated nicotine pods. The House Subcommittee on Economic and Consumer Policy wants Juul to produce information on its internal investigation of the tainted pods as well as all related documents involving the firing of Breja, the former Juul executive. Rep. Raja Krishnamoorthi, D-III., said in a statement:

These allegations raise concerns due to the current outbreak of e-cigarette-related lung illness for which the cause remains unknown by the Centers for Disease Control and Prevention. Our country is in the midst of a youth e-cigarette use epidemic, meaning that any contaminated pods would disproportionately put children at risk.

The panel also wants information about Juul’s testing policies and product quality standards. Lawmakers sent a similar letter to Juul supplier Alternative Ingredients Inc., asking for documents about any potentially contaminated products it supplied to the e-cigarette maker.

DOUBLE LUNG TRANSPLANT FOR TEEN VAPER

Dr. Hassan Nemeh, the surgeon who led the team that performed the first double lung transplant on a vaping patient in the United States, said last month that the damage to the previously healthy teen’s organs was unparalleled. “What I saw in his lungs is like nothing I’ve seen before, and I’ve been doing lung transplants for 20 years,” Dr. Nemeh, the Surgical Director of Thoracic Organ Transplant at Henry Ford Hospital, said at a press conference last month, according to The New York Times. He added: “This is an evil I haven’t faced before.”

Dr. Nemeh and his team of surgeons performed the surgery in October at the Henry Ford Hospital in Detroit, Michigan. From all accounts, this was the “first double lung transplant in the United States for a patient whose lungs were irreparably damaged from vaping.” Dr. Nemeh said that the
17-year-old anonymous patient faced “imminent death” had he not received the double transplant. Dr. Nemeh is urging parents and teens to take note of the dangers that vaping poses. Dr. Nemeh said in a news release from the hospital:

“This is a preventable tragedy. And we have so much respect for this family for allowing us to share their pain to prevent the same from happening to others. The damage that these vapes do to people's lungs is irreversible. Please think of that—and tell your children to think of that.

The family of the patient also released a statement, saying that they hope others can learn from their story that the “horrible life-threatening effects of vaping are very real.” The family added in the statement that their son quickly went from a “perfectly healthy 16-year old athlete” who enjoyed sailing and playing video games “to waking up intubated and with two new lungs, facing a long and painful recovery process as he struggles to regain his strength and mobility, which has been severely impacted.” The patient was hospitalized at St. John Hospital on Sept. 5 after showing symptoms of what appeared to be pneumonia, the hospital said, but his ability to breathe continued to get worse and worse, and doctors had to intubate him a week later, on Sept. 12.

The youngster was then transferred to the Children’s Hospital of Michigan and connected to an ECMO (Extracorporeal membrane oxygenation) device, which provides support to the lungs. The machine was keeping him alive at this point. Still, the patient continued to worsen and his doctors at CHM sought to get him a lung transplant. Henry Ford Hospital said in its release:

The lung damage due to vaping was so severe—and he was so close to death—that be immediately shot to the top of the transplant waiting list, which ultimately led to the successful transplant on Oct. 15, 2019.

The patient “is doing as well as can be expected and has a very good prognosis,” the release said. He was taken off the ventilator on Oct. 27 and is starting to work on walking again. But the release said it's a long road ahead to recovery, which will take months.

The milestone transplant comes as concern within the medical community over the dangers of vaping continues to rise. “Vaping has become an epidemic among youth in the United States,” said Dr. Lisa Allenspach, pulmonologist and the Medical Director of Henry Ford’s Lung Transplant Program. Dr. Allenspach said:

A recent survey of over 10,000 U.S. high school and middle school students showed 28% of high school students and 11% of middle school students self-reported ongoing use of e-cigarettes, most frequently flavored varieties. We are just beginning to see the enormous health consequence jeopardizing the youth in our country.

The reporting of this story should get the attention of every American. The vaping epidemic is one of the most serious health-related issues facing our country in years.

Source: People.com

VAPING-RELATED LUNG INJURIES TOP 2,000

The US Centers for Disease Control and Prevention (CDC) has reported there are now over 2,000 cases of lung injury linked to vaping. The vaping injuries have been reported in 49 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, with at least 25 states and the District of Columbia having reported deaths.

THC has been present in most of the samples of vaping products that the U.S. Food and Drug Administration (FDA) has tested so far, and most of the patients who have gotten sick said they had used THC-containing products in the past. Among the 867 patients for whom the agency has information about what they vaped, about 86% said they used THC products, about 64% said they used nicotine products when they vaped; only 11% said they used nicotine exclusively, as of Oct. 15.

In the wake of these injuries, some states and cities have placed limits on sales of vaping products. Massachusetts temporarily banned all vaping products. New York and Michigan have banned flavored products. San Francisco banned the sale of vaping products earlier this summer. Some of these actions are now being challenged in court. Some stores, including Walgreens and Walmart, have also stopped selling vaping products.

Tests of lung samples taken from 29 patients with vaping-related lung injuries suggest all contained vitamin E acetate, a discovery U.S. officials described as a “breakthrough” in the investigation of the nationwide outbreak. The discovery of vitamin E acetate in lung samples offers the milestone transplant comes as concern within the medical community over the dangers of vaping continues to rise. “Vaping has become an epidemic among youth in the United States,” said Dr. Lisa Allenspach, pulmonologist and the Medical Director of Henry Ford’s Lung Transplant Program. Dr. Allenspach said:

A recent survey of over 10,000 U.S. high school and middle school students showed 28% of high school students and 11% of middle school students self-reported ongoing use of e-cigarettes, most frequently flavored varieties. We are just beginning to see the enormous health consequence jeopardizing the youth in our country.

The reporting of this story should get the attention of every American. The vaping epidemic is one of the most serious health-related issues facing our country in years.

Source: People.com

VAPING-RELATED LUNG INJURIES TOP 2,000

The US Centers for Disease Control and Prevention (CDC) has reported there are now over 2,000 cases of lung injury linked to vaping. The vaping injuries have been reported in 49 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands, with at least 25 states and the District of Columbia having reported deaths.

THC has been present in most of the samples of vaping products that the U.S. Food and Drug Administration (FDA) has tested so far, and most of the patients who have gotten sick said they had used THC-containing products in the past. Among the 867 patients for whom the agency has information about what they vaped, about 86% said they used THC products, about 64% said they used nicotine products when they vaped; only 11% said they used nicotine exclusively, as of Oct. 15.

In the wake of these injuries, some states and cities have placed limits on sales of vaping products. Massachusetts temporarily banned all vaping products. New York and Michigan have banned flavored products. San Francisco banned the sale of vaping products earlier this summer. Some of these actions are now being challenged in court. Some stores, including Walgreens and Walmart, have also stopped selling vaping products.

Tests of lung samples taken from 29 patients with vaping-related lung injuries suggest all contained vitamin E acetate, a discovery U.S. officials described as a “breakthrough” in the investigation of the nationwide outbreak. The discovery of vitamin E acetate in lung samples offers the first direct evidence of a link with the substance and vaping-related lung injuries. The substance has also been identified in tests by U.S. and state officials of product samples collected from patients with the vaping injury.

Dr. Anne Schuchet, principal deputy director of the CDC, called vitamin E acetate “a very strong culprit of concern” and referred to the discovery as “a breakthrough” in the investigation. She cautioned that more work is needed to definitively declare it a cause and said studies may identify other potential causes of the injuries as well.

Vitamin E acetate is believed to be used as a cutting agent in illicit products containing THC—the component of marijuana that gets people high. Although the substance was detected in all 29 of the lung samples, which came from patients in several different states, more testing is needed to establish a causal link between exposure and injury. Dr. Schuchet said, adding that “many substances are still under investigation.”

CDC recommends that you do not use any vaping products containing THC and to not use any modified products or products off the street

NEW YORK SUES JUUL FOR DECEPTIVE MARKETING PRACTICES

New York Attorney General Letitia James has filed a lawsuit against vaping giant JUUL in Manhattan Supreme Court alleging the company “took a page from Big Tobacco’s playbook” to lure youth into using its nicotine-containing vape products, creating a public health crisis in the state.

The lawsuit claims the company used deceptive business practices to target teens with sleek product designs and flavored e-liquids like Crème Brûlée and Fruit Medley, advertised on social media using celebrities and influences that teens want to emulate, and never disclosed that the products contained nicotine, a highly addictive chemical. According to the lawsuit:

Not only did JUUL mislead consumers about the nicotine content and addictive nature of its products, it also misrepresented its products as a safe alternative to traditional cigarettes, when in fact, JUUL products deliver nicotine in a manner that makes them more addictive than traditional cigarettes.

Vaping is seen by public health officials as a gateway to tobacco. Smoking tobacco is the leading cause of preventable death and is responsible for more than 480,000 deaths each year, according to the Centers for Disease Control and Prevention (CDC).
The lawsuit states that JUUL created a new generation of teen nicotine addicts and put countless New Yorkers—many of whom are teens—at risk for a life-threatening vape-related lung injury. As of Nov. 20, the CDC has identified 2,290 cases of vape-related lung injury in the United States and two U.S. territories, including 47 deaths. Many of those sickened by vaping have been hospitalized, treated in the ICU, and required respiratory support.

Source: New York Post

X.
AN UPDATE ON SECURITIES, INSURANCE AND FINANCE LITIGATION

A LOOK AT ANTITRUST AND BIG TECH LITIGATION

Although antitrust headlines have followed around some of the tech industry’s biggest companies for years, antitrust inquiries into these companies in the United States have peaked within the past several months. In June, the House Antitrust Subcommittee announced a bipartisan investigation into competition and “abusive conduct” in the tech industry; in July the Department of Justice (DOJ) publicly announced its antitrust probe into “market-leading online platforms;” and Facebook also confirmed that it is under investigation by DOJ, setting off a wave of detailed records, and a coalition of attorneys general launched an investigation into Google and Facebook.

Recently, DOJ’s top antitrust enforcer, Makan Delrahim, warned tech giants that amassing vast quantities of consumers’ data could create competition concerns in the eyes of federal regulators. Without commenting on any specific companies, Delrahim said collecting data is not by itself anti-competitive; rather, it is about what is done with that data. Delrahim told a conference hosted by a tech lobbying group that DOJ is “studying the ways market power can manifest in industries where data plays a key role.” He stressed people’s private information had become the lucrative “oil” for the digital age—and its misuse could threaten to harm consumers and corporate competitors. Delrahim further noted, “Diminished quality is also a type of harm to competition. As an example, privacy can be an important dimension of quality. By protecting competition, we can have an impact on privacy and data protection.”

These latest warnings and investigations are a familiar refrain in Europe, where antitrust regulators have probed and penalized tech giants for wielding their massive stores of data in anti-competitive ways. Regulators in Germany became the first to use antitrust regulations to impose privacy controls earlier this year by imposing restrictions in the way Facebook uses data, calling it an abuse of market power. Among those restrictions is a requirement that Facebook only integrate data from disparate sources, such as WhatsApp, Instagram, the core app, and other Web activities, if users opt-in. Facebook appealed the ruling. A German regional court granted an injunction to Facebook in late August; the regulator said it planned to file an appeal of the lower court’s ruling with the Federal Court of Justice, Germany’s highest court.

As these investigations move forward around the world, especially in the United States, and as big tech companies continue to grow, antitrust law has the potential to move forward and grow as well. In particular, antitrust law has the potential to play a larger role with respect to consumer protection, cyber security, and privacy concerns than it has in the past. As Delrahim noted, “Although privacy fits primarily within the realm of consumer protection law, it would be a grave mistake to believe that privacy concerns can never play a role in antitrust analysis.”

Beasley Allen lawyers are currently handling several antitrust matters and are looking forward to the future of antitrust law as it continues to protect consumers from any anticompetitive conduct in the tech industry. If you are interested in discussing any antitrust cases, or need more information, contact Beasley Allen lawyers Dee Miles or Leslie Pescia, lawyers in our firm’s Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Dee.Miles@beasleyallen.com or Leslie.Pescia@beasleyallen.com.

Sources: Washington Post, Ars Technica and Reuters
Of the mutual funds selected for MAAP, more than 50% were BMO Asset proprietary funds. These earned additional fees for BMO Asset, lowered BMO Financial's transaction costs, generated extra fees for BMO Financial, but returned less for clients than lower-cost options. This is a classic example of a conflict of interest where BMO had a duty to inform the client that the company had an interest directly adverse to the client's. BMO Financial never disclosed this to its clients.

The Cease and Desist Order issued by the SEC finds that the two BMO firms engaged in a “transaction, practice, or course of business which operates as a fraud or deceit” upon their clients. It further found that the BMO firms failed “to adopt and implement written policies and procedures reasonably designed to prevent violation” of securities laws.

In today's world of investing it is easy to assume that your financial advisor is managing your savings and retirement for your maximum benefit, but this is not always the case. The growth of mutual funds and flat management fees reduce the likelihood of account churning to generate commissions, but it also makes detecting fraud more difficult. That is why it is vital for investors to stay informed about their accounts. The best way to do this is to regularly check and see what is in your portfolio, and to ask questions of your advisor to make sure that your money is working for you, not for someone else. If you find that your investments are set up for maximum fee generation at the expense of your returns, note that federal and state securities laws give investors the right to recover such losses in court.

If you need more information, contact James Eubank, a lawyer in our firm's Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at James.Eubank@beasleyallen.com.

The U.S. Supreme Court heard oral argument on Nov. 5 in Retirement Plans Committee of IBM v. Jander, a case asking the Court to reconcile the competing obligations that the securities laws and the Employee Retirement Income Security Act of 1974 (ERISA) impose on the fiduciaries of employee stock ownership plans (ESOPs). Specifically, the question at the heart of this case is what a fiduciary of an ESOP should do if the fiduciary learns of inside information suggesting that the value of the corporation's stock is likely to decline.

If the information is material, securities laws will inevitably force the disclosure of such information. However, in many cases, securities laws will not compel immediate disclosure. On the other hand, the insider's position as a fiduciary gives the insider an obligation to act for the benefit of the employees whose pensions are being invested in the company's stock.

In this role, the insider fiduciary may stop buying the stock, or start selling it. But such action might cause the market to infer that the fiduciary has information adverse to the company. Such action might also violate the securities laws to trade on the information without first disclosing it to the market. Conversely, if the fiduciaries disclose the information to the market, the price of the stock will inevitably fall, which will harm the employees already invested in it.

In a prior case, Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409 (2014), participants in a Fifth Third Bancorp ESOP brought a class action against Fifth Third and various of its officers under ERISA, alleging that the Defendants were plan fiduciaries who breached their duty of prudence by continuing to buy and hold employer's stock when they knew or should have known that the stock was overvalued and excessively risky. The Court held that ESOP fiduciaries could have liability only if the employees could establish that a prudent fiduciary would have been forced to conclude that disclosure of the insider information was better for the plan than continued inaction.

As a result, ordinarily insider fiduciaries have responded by taking no action at all until other circumstances lead to disclosure of the information. However, the lower court in Jander decided that the Plaintiffs had met the Dudenhoeffer standard based on allegations that earlier disclosure is almost always better for existing investors than later disclosure. The Court granted review to decide whether those allegations—which could be made routinely in this type of case—satisfy the Dudenhoeffer test.

It was reported that during oral argument, it did not seem that the justices have yet settled on a consensus resolution to this case. At least a few of the justices, including Justice Sonia Sotomayor and Justice Stephen Breyer, seemed predisposed to believe that the allegations are adequate. For example, Justice Sotomayor stated that she could see that a trial might "be a battle of competing experts," but thought that assessing the validity of a "well-founded economic theory" should be "a matter of fact for the jury."

Other justices, however, were more skeptical that the allegations were sufficient. Justice Samuel Alito asked whether "it is workable, practical, to require an insider fiduciary to determine whether the disclosure of inside information to the public at a particular point in time will do more harm than good?" The justice continued that it seemed "in that situation, the fiduciary has to make a very complicated calculation." Justice Brent Kavanaugh also raised the problem of how fiduciaries should respond if disclosure might help one class of beneficiaries, but harm another.

Throughout the argument, a major theme was how to respond to the fiduciaries' argument that the justices should adopt a bright-line rule under which insider fiduciaries would have no separate responsibility under ERISA—i.e. they would be immune from liability so long as they made any disclosures required by the securities laws. Justices Sotomayor, Breyer, and Ruth Bader Ginsburg seemed strongly disinclined to address this argument, as it was not included in the papers seeking review before the Court and was first raised in the fiduciaries' brief on the merits. Justice Neil Gorsuch, however, found this argument meritorious, asking at one point why "wouldn't the securities law be a really good place to start and maybe finish in assessing what those long-term overall health of the corporation interests might be?"

One way employers and fiduciaries might avoid this potential dilemma that is confining the responsibilities of the fiduciaries was highlighted in a comment by Justice Gorsuch early in the argument. These cases arise primarily because of the routine practice of using insiders as fiduciaries of these plans. Justice Gorsuch acknowledged this commonplace decision, but stated:

"I'm less clear why this Court should be in the business of accommodating that decision... An outsider might in these circumstances be able to make a reasoned judgment of some kind about whether to sell or buy or act differently in a way that an insider is... disabled from doing."

This is an extremely important case. Beasley Allen lawyers will continue following and updating you on the Court's decision in this case. In addition, our lawyers are investigating and pursuing retirees' claims for pension mismanagement against several large corporations. For more information, contact James Eubank or Rachel Boyd, lawyers in our Consumer Fraud & Commercial Litigation Section, at 800-898-
XI. EMPLOYMENT AND FLSA LITIGATION

**Dollar Tree Workers Forced To Pursue Wage Violation Claims In Arbitration**

A California federal judge ruled that about two-thirds of a certified worker class can only pursue their claims in individual arbitrations. U.S. District Judge Morrison England granted Dollar Tree’s motion to compel arbitration of claims of 1,600 workers who are part of a class action accusing the company of improper timekeeping practices. The workers being forced to pursue their claims in individual arbitrations all signed arbitration agreements containing class action waivers after Oct. 6, 2014, which is the date when the company made arbitration agreements mandatory for new hires.

Plaintiffs’ complaint alleged a range of California labor law violations related to the company’s timekeeping practices, including that class members weren’t afforded proper meal breaks and rest periods. In late 2017, Judge England certified the class which included all current and former Dollar Tree employees in California over a four-year period. However, the judge’s recent order tweaked the definition of the class to exclude those who signed an arbitration agreement after Oct. 6, 2014. If the 1,600 workers choose to pursue their claims, they will not be allowed a jury trial, but instead will have to endure the expensive and slow process of arbitration.

This case demonstrates the oppressiveness of mandatory forced arbitration in the workplace. Forcing an employee to sign away their right to trial by jury, a constitutional right afforded to all Americans, in order to be employed is just flat wrong. Obviously, this scenario does not present an equal bargaining power transaction, but the law in it’s current state is allowing this scenario to exist in the workforce. We are hopeful that Congress will soon find a path to correct this law and prohibit mandatory forced arbitration in employment contracts as well as consumer transaction.

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

XII. WORKPLACE HAZARDS

**Seven Most Common Workplace Safety Hazards**

The National Safety Council is a non-profit, non-governmental organization that serves to promote general health and safety. Its mission is to eliminate preventable deaths at work, in homes and communities, and on the road through leadership, research, education, and advocacy. The National Safety Council employs a team of consultants who travel to worksites around the country to conduct safety audits. Of all the safety concerns they encounter on the job, there are seven hazards that they see time and time again.

The most common hazard, and often the most fatal based on the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) statistics, is working from heights. According to the Bureau of Labor Statistics, the most common OSHA violations cited are standards related to scaffolding and ladders. Too often, employers do not provide fall protection in situations where it is necessary. Similarly, employers often do not adequately train employees on the proper use of fall protection devices.

The second most common on-the-job hazard the National Safety Council finds in its audits is poor housekeeping. This is a broad term that encompasses many different scenarios, but the common theme is a hazard caused by poor maintenance or allowing clutter to obstruct safety features. Common examples of poor housekeeping would be product or clutter blocking fire exits, goods stacked too high on warehouse racks, or leaks or spills that could cause slip hazards. The Safety Council recommends implementing clean-up programs at the end of every shift or work week to address housekeeping matters to maintain a safe work environment.

The third most common on-the-job safety hazard the Safety Council finds is improper extension cords. The auditors frequently find extension cords “daisy chained” together. This is when multiple extension cords or power strips are linked together. This can cause electrical and fire hazards. Moreover, extension cords are not to be used on a permanent basis in the industrial setting. Extension cords are a temporary solution and OSHA may cite employers who use extension cords on a permanent basis. Finally, extension cords can create trip hazards. If extension cords are routinely used, the employer should drop the temporary fix and hire an electrician to install a permanent line and outlet.

The fourth most common on-the-job hazard the Safety Council finds is forklift-related hazards. Forklift safety and training has received more scrutiny in recent years. Most employers now require forklift operators to go through training to receive a “license” to operate forklifts. However, the Safety Council still routinely finds forklift-related hazards. Oftentimes these hazards are associated with working too quickly or overloading the forklift to meet production. Additionally, the Council routinely sees forklift maintenance and daily inspections being overlooked. As with any motorized vehicle, safety is of utmost importance. Especially given that forklifts are often used in and around other employees working in the facility. It is imperative that employers have a safety program in place and enforce rules to ensure employees follow the program.

The fifth most common on-the-job hazard the Safety Council finds is improper lockout tag out procedures. Like forklift operation, most employers have taken a more serious approach toward lock out tag out procedures. The issue is typically not with having lock out tag out procedures, it is with proper implementation and continuous use of the procedures. Employers not only need to have a written lock out tag out procedure, but all employees must be given locks, trained on the procedures, and punished if the rules are not always followed.

The sixth most common hazard the Council sees in its audits is chemical hazards. Often chemicals are used in the industrial setting for one application, and then set aside. These chemicals, when stored for future use, can sometimes degrade or become unstable over time. When an employer purchases a chemical, it needs to have a control system to plan its storage and monitor its shelf life. Additionally, storage and disposal of chemicals can pose environmental hazards.

Finally, the seventh most common hazard the Safety Council encounters is confined spaces. Confined space environments are some of the most dangerous workplaces for employees. Confined spaces are not designed for continuous occupancy and are difficult to exit in the event of an emergency. People working in confined spaces face hazards that can be life threatening, including toxic substances, electro-
cutions, explosions, and asphyxiation. Examples of common confined spaces are tanks, pits, silos, sewers, tunnels and wells. Many confined spaces contain a harmful atmosphere due to dangerous vapors, flammable gases, reduced oxygen levels or stored substances that can collapse or engulf a person. As with any potentially hazardous work environment, it is essential for workers to identify confined spaces, and assess the risk of performing work inside. As is so often the case, hazardous work environments can be mitigated through a proper hazard analysis. It is imperative that employers educate their employees about the hazards associated with confined spaces, formulate a plan to mitigate those hazards, and always follow all protocols and procedures.

If you need more information, contact Evan Allen, a lawyer in our Personal Injury & Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com. Evan handles work-related litigation for the firm.

Source: https://www.safetyandhealthmagazine.com/articles/14054-common-workplace-safety-hazards

XIII. TRANSPORTATION LITIGATION

AUTONOMOUS COMMERCIAL VEHICLES IN ALABAMA

During the 2019 Alabama Legislative Session, Governor Kay Ivey signed into law one of the nation’s first Autonomous Commercial Vehicle Statutes. Senate Bill 47, which became law on June 10, applies to the operation of autonomous commercial vehicles operated by “automated driving systems” as well as “teleoperations systems.” The new law allows for the operation of commercial vehicles in Alabama that are operated by computer systems that drive a commercial vehicle regardless of whether there is a person or driver physically in the vehicle.

The statute defines an “automated commercial motor vehicle” as one that is equipped with an “automated driving system.” Such a system is defined as “the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis regardless of whether it is limited to a specific operational design domain.” Separately, the statute defines a “teleoperation system” as the “hardware and software installed on a commercial vehicle that allow a remote drive to operate the motor vehicle.” The law specifically includes requirements for both an “automated commercial motor vehicle” and a commercial motor vehicle equipped with a “teleoperations system.”

A “teleoperational system” is one that would have a human driver of the vehicle located at a remote operation station driving the truck in real time similar to the way in which the military operates unmanned drones. In other words, there would be a person actually operating the commercial vehicle but from a remote location.

The new law, whether referencing “automated commercial motor vehicles” or commercial motor vehicles equipped with a “teleoperation system,” requires that any such vehicle be certified in accordance with Federal Motor Vehicle Safety Standards just like a regularly operated commercial truck. In either case the automated commercial vehicle must be able achieve a safe operational condition in the event that a failure occurs in the automated operational system. In other words, in the event of a system failure, the system should be able to put the commercial vehicle in a mode that does not pose a safety risk to others.

Additionally, under either autonomous system for a commercial vehicle, the statute requires the vehicle be covered with not less than two million dollars ($2,000,000) in liability insurance coverage. This provision ensures that if someone is injured by one of the automated systems, there will be funds available for compensation.

Additionally, the statute retains all common law and product liability causes of action against the owner of such vehicles as well as any actual operator, manufacturer, supplier, or retailer of the automated systems in the event that there is a failure of the system that causes a wreck or damages. With regard to the “teleoperation system” the statute also provides a means by which the remote driver can be charged under the Alabama Criminal Code and extradited to Alabama in the event of any criminal violations.

As autonomous vehicles become more prevalent on the roadways, it should be expected to see additional statutes enacted in order to accommodate or regulate this rapidly changing area of technology and vehicle operation. The Alabama Legislative Joint Committee on Self-Driving Vehicles led by committee chairman Senator Tom Whatley will work to formulate plans on how to transition public safety and self-driving vehicles into everyday life.

If you need additional information, contact Ben Baker, a lawyer in our Personal Injury & Products Liability Section, at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

$8 MILLION VERDICT IN MOTORCYCLE CRASH

A Georgia jury awarded $8 million to a motorcyclist who was seriously injured when a dump truck hit an orange construction barrel, which ricocheted into his path and caused him to lose control of his bike on Interstate 75. The Clayton County jury returned the verdict in favor of Ronnie Stevens, who sustained a fractured wrist and a shattered ankle in the crash. The jury found that JRK Trucking Inc. of Jonesboro, Georgia, and its driver, Donald Parks, were responsible for the crash. The Plaintiff, Stevens, now 41, was riding his Harley-Davidson Street Glide southbound on I-75 on Oct. 12, 2015, when a dump truck driven by Parks attempted to move into a closed lane of travel in order to go into a construction site in the median of the highway and negligently struck an orange construction barrel.

At the time of the crash, Stevens was a chief petty officer in the U.S. Navy. He was forced to retire seven years early because of his injuries. Stevens was no longer able to complete the 1.5-mile run portion of the Navy’s physical readiness test as a result of his shattered ankle. The police originally listed the case as a “John Doe” crash because the dump truck fled the scene. Discovery conducted during litigation with all of the general contractors working on the construction project revealed the names of the driver and trucking company. They were then added to the suit.

JRK Trucking is no longer in business, according to its website. While the jurors were deliberating, the trucking company and driver reached a “high-low agreement” with the Plaintiff that guaranteed a payment to Stevens regardless of the verdict. Pursuant to that agreement there will be no appeal allowed. Payment to the Plaintiff was guaranteed at the top end of the agreement as to the amount.

Eric Rogers, of the law firm Fried Rogers Goldberg, located in Atlanta, represented the Plaintiff in this case.

JereBeasleyReport.com
**PFAS WATER CONTAMINATION IN CALIFORNIA**

California is the latest state to discover significant contamination from Per- and Polyfluoroalkyl Substances (PFAS) in drinking wells throughout the state in both densely populated cities and rural areas. Nearly 300 of the 600 wells tested revealed pockets of contamination from these chemicals, which have been used for decades in manufacturing and household goods to impart stain, soil, and water resistance to various products.

An analysis by the *Los Angeles Times* found that PFAS were detected in 86 water systems that serve up to 9 million Californians. However, only a small fraction of California’s thousands of drinking water wells and hundreds of systems were tested in this initial study. Officials said they plan to expand testing to more sites, but they have not committed to statewide testing, like what Michigan and New Jersey have.

Exposure to PFAS has been linked to kidney and testicular cancer, as well as high cholesterol and thyroid disease. Women and young children are thought to be the most vulnerable to the chemicals, which can affect reproductive and developmental health.

The chemicals were developed in the 1940s and used in countless household products, from Teflon cookware and Scotchgard to waterproof clothing and food packaging. They were also a key ingredient in firefighting foam used on military bases and, as a result, have become a major source of groundwater pollution. Scientists have called them “forever chemicals” because they persist indefinitely and accumulate in the human body.

Earlier this year, California issued the nation’s strictest guidelines against PFOA and PFOS which are the two most prominent PFAS chemicals. The States’ notification levels of 5.1 ppt for PFOA and 6.5 ppt for PFOS, which are well below the EPA’s current combined lifetime health advisory level of 70 ppt, require an impacted water system to notify customers of their presence and take appropriate remedial action. Although the notification levels are nonregulatory and are precautionary measures, California also announced it began the process of establishing firm regulatory standards for maximum contaminant levels found in drinking water.

Some utilities treated the water to remove most of the chemicals, while others have started blending contaminated water with other sources to lower their concentration. Still others have closed wells or put them on emergency-use-only status. For example, the city of Anaheim shut down three of its drinking water wells so far this year in response to elevated levels of the chemicals. In Orange County, where testing ordered by the state found PFAS chemicals in 10 different water systems, four groundwater wells with elevated levels of the chemicals have been shut down.

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. Lawyers in our firm, along with Roger H. Bedford of Roger Bedford & Associates, are proud to represent the water systems in Gadsden and Centre, Alabama. We allege in these cases 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 PF contamination cases. If you have any questions about this subject, contact Rhon Jones, Rick Stratton or Ryan Kral, lawyers in our firm’s Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com, or Ryan.Kral@beasleyallen.com.

**KEYTRUDA TRIAL YIELDS DISAPPOINTING RESULTS**

Researchers at the European Thoracic Oncology Platform (ETOP) didn’t get the results they hoped for after a recently completed phase 3 trial for mesothelioma treatment. The randomized trial compared two different treatments involving pembrolizumab, or Keytruda, with standard chemotherapy for patients with progressive malignant pleural mesothelioma. Results from phase 2 trials were promising, but results from the phase 3 clinical trial comparing Keytruda to standard chemotherapy shows the immunotherapy drug still has a long way to go as a viable treatment option for malignant pleural mesothelioma.

The goal of this phase 3 trial, called PROMISE-meso, was to improve the performance of single-agent immunotherapy as a second-line treatment for patients who did not have success with the first round of standard chemotherapy drugs.

The ETOP presented its findings in late September in Barcelona at the annual European Society for Medical Oncology (ESMO) Congress. Lead study author Sanjay Popat, Ph.D., announced Keytruda didn’t change disease outcomes in any study subjects. Keytruda didn’t delay the progression of mesothelioma or improve patient survival. There were no significant differences between patients who received either Keytruda or standard chemotherapy.

The standard treatment for mesothelioma patients is a combination of Alimta (pemetrexed) and platinum-based chemotherapy drugs (cisplatin or carboplatin).

PROMISE-meso was the first randomized trial that compared progression-free survival between an immunotherapy drug and first-line chemotherapy for malignant mesothelioma patients.

The FDA has previously approved Keytruda as a treatment for several advanced cancers like non-small cell lung cancer, but not mesothelioma. Malignant mesothelioma tumors consist of cells that often contain high levels of PD-L1, a type of protein found in the body’s immune cells. Researchers tried to use Keytruda to block the PD-1 and PD-L1 pathway, which would allow the patient’s immune system to recognize and attack mesothelioma cells. Trial participants were eligible for Keytruda after showing signs of high levels of PD-L1, though Keytruda worked better in patients with low levels of PD-L1.

Trial participants consisted of advanced mesothelioma patients who previously failed to show improvement after receiving platinum-based chemotherapy. Their disease progression must have been measurable, based on available tumor tissue samples. The trial consisted of 144 randomized mesothelioma patients. Participants received either Keytruda or a standard chemotherapy drug, gemcitabine or vinorelbine. Participants in the control group who received standard chemotherapy were able to switch to Keytruda if their mesothelioma progressed, or spread, during the trial.

In 22% of patients, Keytruda reduced tumor size compared to just 6% of patients receiving the other chemotherapy drugs. While patients showed some response to Keytruda—nearly four times more than chemotherapy—the drug did not delay tumor growth or improve survival. The median overall survival for Keytruda was 10.7 months. The median overall survival for chemotherapy was 11.7 months.

PROMISE-meso and other clinical trials involving immunotherapy drugs have shown short-lived results, meaning patients seemed to respond well at first, but it didn’t last. While PROMISE-meso did not bring positive results, researchers now have a
XV.
AN UPDATE ON THE ROUNDPUP LITIGATION

NEXT ROUNDPUP BELLWETHER TRIAL TO BEGIN FEBRUARY 24, 2020

Following a request from the parties for deadline extensions, the U.S. District Judge presiding over all federal Roundup cases has agreed to delay several important Roundup case deadlines in the bellwether process and delayed the start of the next federal trial date to Feb. 24, 2020.

Bayer and its Monsanto subsidiary currently face more than 18,400 claims filed nationwide, each involving similar allegations that exposure to Roundup caused non-Hodgkin’s lymphoma and other cancers. Plaintiffs are pursuing damages from the manufacturer for failing to warn about known cancer risks associated with the glyphosate-based weed killer.

At least 1,300 of the Roundup claims pend in the federal court system, where the cases have been centralized before U.S. District Judge Vince Chhabria in the U.S. District Court for the Northern District of California, as part of a multidistrict litigation (MDL).

Following an $80 million award in the first federal claim to go before a jury in March 2019, Judge Chhabria set up a bellwether process where two “waves” of cases originally filed in certain states are being prepared for trial and eventual remand back to different U.S. District Courts if the parties fail to reach a settlement or resolution for the litigation.

As part of a first wave of cases being prepared for remand, which includes claims originally filed in California and Nebraska districts, the deadline for the close of fact discovery has been extended by five weeks, to Sept. 20, with Plaintiffs’ expert reports now due by Oct. 4 and Monsanto’s expert reports due Oct. 25. The close of expert discovery in this first wave of cases has been pushed back to Nov. 20, with any potential Daubert hearing before remand now set for Jan. 29, 2020, instead of early December 2019.

For the second wave of cases, which includes claims originally filed in Illinois and North Carolina districts, all fact discovery will now be completed by March 27, 2020, and the close of expert discovery was pushed back to June 5, 2020, with any potential Daubert hearings before remand delayed about 90 days, to Sept. 9, 2020.

The early bellwether trials will be closely watched to help gauge how juries are likely to respond to certain evidence and testimony that is likely to be repeated throughout the litigation.

Following massive verdicts in each of the early claims that have gone to trial so far, including one federal bellwether trial and two California state court cases, Bayer has faced substantial pressure to negotiate Roundup settlements, to avoid the need for additional bellwether trials or the remand of claims for trial in various different states. Judge Chhabria has ordered the parties to participate in a mediation process with Ken Feinberg, one of the best in the business, who has guided some of the largest settlements in high-profile litigation in recent years. Those included funds to pay claims related to the BP oil spill, the Volkswagen emissions scandal, the General Motors ignition switch recall, the Sept. 11 Victim Compensation Fund, and numerous others.

MOVEMENT TO BAN GLYPHOSATE CONTINUES

Glyphosate, the chemical used in the weed killer Roundup, has been at the center of various lawsuits around the country. Glyphosate has been labeled as a probable carcinogen by the World Health Organization (WHO). The makers of the weed killer, Monsanto / Bayer, have claimed that their product is safe, though many cities across the country have banned the chemical.

In the wake of the announcement by the WHO and the number of lawsuits, many major cities, including Seattle, have taken a defensive stance against Roundup. Seattle now uses Roundup only as a last resort on weeds that cannot be tamed and that are required by the state to be removed. However, they are not alone. Portland, Maine; Austin, Miami, and Los Angeles are among other cities that have banned or restricted glyphosate. Boston avoids using glyphosate on an unofficial basis, and New York City may ban Roundup in the future.

The movement to ban glyphosate has garnered international support. Thailand’s Ministry of Agriculture has enacted a ban on agricultural chemicals that include glyphosate, joining neighbor Vietnam. Austria, Malawi, Saudi Arabia, Bermuda, and ten Canadian provinces have restricted or banned glyphosate. France and Germany (Bayer’s home country) have plans to phase out the product by 2022 and 2023, respectively.

While federal regulators in the U.S. have not taken a stance against Bayer, municipal and county governments continue to pursue glyphosate bans or restrictions of their own. If you need more information, contact John Tomlinson at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com.

ROUNDUP LITIGATION TEAM

Beasley Allen lawyers are currently representing hundreds of clients who have been exposed to Roundup and developed non-Hodgkin’s lymphoma. Our Roundup Litigation Team would welcome the opportunity to speak with you regarding a potential claim. For more information, contact one of the members of the Roundup Litigation Team: John Tomlinson (who heads up the team), Michael Dunphy, Danielle Ingram or Rhon Jones, all lawyers in our Toxic Torts Section, at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com, Michael.Dunphy@beasleyallen.com, Danielle.Ingram@beasleyallen.com or Rhon.Jones@beasleyallen.com.

XVI. UPDATE ON NURSING HOME LITIGATION

NURSING HOME UPDATE

The Georgia Court of Appeals has upheld a verdict against Lowndes County Health Services, LLC. Lowndes County, which does business as Heritage Health Care at Holly Hill, was found party at fault in the death of Holly Hill resident Bobby Copeland. Mr. Copeland was a 71-year-old resident at Holly Hill who suffered cardiac arrest as a result of acute respiratory distress syndrome, caused by an untreated
and undiagnosed bowel obstruction that resulted in vomiting and aspiration. The bowel obstruction developed while Mr. Copeland was a resident of Holly Hill. Symptoms appeared at least as early as Oct. 25, 2012. A licensed practical nurse asked whether Mr. Copeland could be sent to the emergency room and was told no by a facility physician's assistant. The resident was seen again by two registered nurses on Oct. 26, 2012, but was not taken to the hospital for hours after. Mr. Copeland unfortunately died of acute respiratory distress syndrome due to the aspiration of fecal matter 12 hours after arriving at the hospital.

The lawsuit against Holly Hill included claims for ordinary negligence and violation of the standard of care. The trial was conducted from Jan. 16, 2018, to Jan. 25, 2018. The jury awarded $7,621,200 in damages, including 20% fault to Holly Hill. The Court of Appeals upheld that verdict on Oct. 10, 2019. The law firm of Connor & Connor, with offices in Georgia and South Carolina, tried the case, with John Hadden of the Hadden Law Firm assisting on the appeal.

AN UNDERCOVER INVESTIGATION OF GEORGIA NURSING HOMES

The Atlanta Journal Constitution (AJC) has conducted an undercover investigation of Georgia nursing homes. This investigation revealed what lawyers in our firm see regularly in nursing home litigation—that despite being paid thousands of dollars every month to care for residents, nursing home facilities often provide deplorable care. The AJC investigative team found cases where resident emergency calls went unanswered for hours, and where residents with dementia were able to get out of the facility unnoticed.

As our lawyers see all too often, the AJC team found cases where residents fell repeatedly, resulting in broken bones. They also found cases of caregiver abuse—where caregivers physically abused and sexually abused residents in their care. They found instances where caregivers belittled residents for moving slowly or wetting their beds.

The investigation revealed more than 600 allegations of neglect, and 90 allegations of abuse in the last four years in the state.

As our lawyers have seen in cases Beasley Allen has brought and is bringing on behalf of nursing home residents and their family, nursing home facilities are regularly understaffed. Understaffing leads to cutting corners, which harms the residents who pay for proper care. When a nursing home is understaffed, residents fall getting out of bed after nursing home staff ignore their call buttons.

When a nursing home is understaffed, the overworked staff miss symptoms of serious medical conditions, or fail to follow care plans, such as care plans requiring turning and repositioning. The failure to turn and reposition a resident puts that resident at risk of developing bed sores, or pressure sores as they are also known. Understaffing also allows both physical and sexual abuse of nursing home residents to go unnoticed.

Nursing home understaffing is a very serious concern. If you or one of your loved ones has been injured in a nursing home that appears to be understaffed, contact Alyssa Baskam at 800-898-2034 or by email at Alyssa.Baskam@beasleyallen.com.

NURSING HOME LITIGATION TEAM

Alyssa Baskam, who is in our Atlanta office, heads the firm’s Nursing Home Litigation Team. Currently, Susan Anderson also serves on the team. In order to properly handle nursing home litigation, lawyers and support staff must have specific experience and expertise in this type case.

Alyssa, who became a trial lawyer so she could help people get through unimaginable hardships, is dedicated to representing the elderly and infirm who can’t fight back when they suffer at the hands of inadequate care and deficient inpatient facilities. If you have a case involving abuse or neglect at a nursing home or other inpatient facility, Alyssa would like to talk with you about working together on the case. You can contact Alyssa or Susan at 800-898-2034 or by email at Alyssa.Baskam@beasleyallen.com or Susan.Anderson@beasleyallen.com.

$42 MILLION GM OIL-GUZZLING ENGINE SETTLEMENT IS APPROVED

A Florida federal judge has approved a $42 million settlement to resolve three suits alleging that General Motors (GM) sold defective, oil-guzzling engines while approving $5.4 million in fees and costs for the class’ attorneys. U.S. District Judge Robin L. Rosenberg wrote that the settlement was fair and adequate in light of the difficulties class members would have faced proving their cases in court, particularly as one of the three suits had already been partially dismissed in California.

The settlement covers three related suits filed in Florida, California and Illinois, which alleged that the 2.4-liter Ecotec engines in 2010-2013 Equinox and Terrain SUVs are defectively designed and have piston rings that wear out too quickly and allow oil to flow into the engines’ combustion chamber, consuming the oil at a higher rate and causing engine damage or failure.

Under the terms of the settlement, first proposed in April, GM agrees to reopen “special coverage adjustment” programs it previously paid to cover post-warranty repairs to the piston assemblies for 2010, 2011 and 2012 Equinox and Terrain models and to reimburse owners for out-of-pocket expenses for repairs and car rentals related to the defect, according to case documents. The program will also be expanded to cover 2013 models produced before a midyear design modification under the settlement.

The settlement grants a new 120-day period in which owners of the 2010-2013 model year class vehicles can submit claims for reimbursement and repairs, with no cap on how much a class member can claim in repairs and rental car expenses.

Judge Rosenberg has held off on approving the settlement in October, asking for a “more robust” proposed order stating explicitly that the settlement covers costly engine replacements.

The settlement has been revised to make clear that class members “who suffered the greatest damage” by needing to replace engines are covered by the settlement agreement, with an updated class notice as well. In addition, Judge Rosenberg wrote

CLASS ACTION SETTLEMENTS OF NOTE

Once again there has been lots of activity in class action litigation since our last issue. There have been quite a few significant settlements. Those below are some of these settlements.

XVII. AN UPDATE ON CLASS ACTION LITIGATION
the new notice clarifies that the settlement includes any necessary repairs, not just piston replacement. Each of the class representatives will receive a service award of $4,500 for representing the class, from a fund separated from the money available to class members as part of the settlement agreement.

While a small percentage of class members objected, saying that the settlement does not account for every harm alleged in the complaint, Judge Rosenberg concluded that the settlement is fair, reasonable and adequate, noting that the Plaintiffs were unlikely to succeed on the merits if the case went to trial, based on the dismissal of several claims from the California case, and that the overall recovery that class members would stand to see from a trial verdict was low.

The class is represented by Rachel Soffin, Gregory F. Coleman, Adam A. Edwards and Mark E. Silvey of Greg Coleman Law PC, Robert Ahdoot of Ahdoot & Wolfson PC and Daniel K. Bryson and J. Hunter Bryson of Whitefield Bryson & Mason LLP.

The cases are Berman v. General Motors LLC, (case number 2:18-cv-14371) in the U.S. District Court for the Southern District of Florida; Hindsman et al. v. General Motors LLC, (case number 3:17-cv-05337) in the U.S. District Court for the Northern District of California; and Sanchez et al. v. General Motors LLC, (case number 1:18-cv-02536) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

**Allergan To Pay $750 Million To Settle Lawsuit Over Its Namenda ‘Hard Switch’ Campaign**

Allergan has reached a $750 million settlement in a class-action suit that accused it of blocking generic competition to its older Alzheimer’s drug Namenda through forced switching to a newer, more expensive version. Allergan settled with a group of direct purchasers of Namenda in a case that had been set for trial on Oct. 28.

Allergan unit Forest Laboratories orchestrated what’s known as a “hard switch” or “product hopping.” Forest, led at the time by Allergan CEO Brent Saunders, had planned to pull Namenda off the market ahead of its patent expiration to force patients to switch to Namenda XR, its newer, extended-release version.

The purchasers sued Forest after the tactic drew some unwelcome attention from then-New York Attorney General Eric Schneiderman. The Attorney General sued the company in 2014 after the forced-switching plan went public, saying the tactic was illegal under antitrust law. Allergan, then known as Actavis, bought Forest in July 2014.

Allergan had settled with New York state in late 2015. It agreed to pay $172,000 in litigation expenses and follow a court ruling that had stopped the company from forcing the switch.

Meanwhile, the group of direct purchasers of Namenda and Namenda XR had argued that they paid too much for the drugs because Allergan’s tactics delayed cheap generics. In September 2016, a federal judge in the U.S. District Court for the Southern District of New York allowed the lawsuit to move forward Allergan’s request for summary judgement was denied, setting the stage for a trial.

Namenda isn’t the only “hard switch” generic pay-for-delay suit Allergan has faced. In August, the company agreed to pay nearly $2.75 million to three union-sponsored health benefit plans to settle a lawsuit that alleged it prevented generic competition by taking its ulcerative colitis drug Asacol off the market in favor of its delayed-release version.

Source: Law360.com

**Bank of America To Settle Countrywide Appraisal Suit**

Bank of America Corp. has a tentative agreement to settle consolidated class action litigation from home mortgage accusers accusing it, Countrywide Financial Corp. and others of engaging in a fraudulent real estate appraisal scheme in the 2000s. In a joint notice submitted to a California federal court, lawyers for both sides said they have signed off on a “memorandum of understanding” to settle the case’s racketeering and other claims and expect to have a finished settlement agreement within 30 days. The details of the settlement have not been disclosed, but the agreement will be submitted to the court for preliminary approval.

The settlement would resolve the litigation on a classwide basis, ending a case that dates back as far as 2013. It has been alleged that Countrywide, which Bank of America bought in 2008, and an affiliated appraisal vendor schemed in the years leading up to the financial crisis to generate bogus, inflated appraisals in order to close as many home loans as possible. U.S. District Judge Christina Snyder was scheduled to hold hearings in late November on summary judgment and class decertification bids entered in September by the Defendants, a group that includes Bank of America, the now-defunct Countrywide, and LandSafe Inc., the appraisal vendor allegedly in on the scheme.

Those motions followed months of discovery after the Ninth Circuit rejected their request for an immediate appeal of Judge Snyder’s decision last year to certify two borrower classes in the case, one based on a Texas law claim for unjust enrichment and the other based on a nationwide claim asserted under the Racketeer Influenced and Corrupt Organizations (RICO) Act, which provides for triple damages. The two classes cover 2.4 million appraisals conducted by more than 22,000 appraisers.

The Plaintiffs are represented by Christopher R. Pitoun, Steve W. Berman and Thomas E. Loeser of Hagens Berman Sobol Shapiro LLP and Daniel Alberstone, Roland Tellis, Mark Piñero, Evan Zucker and Elizabeth Smiley of Baron & Budd PC. The cases are Waldrup v. Countrywide Financial Corp. et al., (case number 2:13-cv-08855) and Williams et al. v. Countrywide Financial Corp. et al., (case number 2:16-cv-04166) both in the U.S. District Court for the Central District of California.

Source: Law360.com

**Miller Law Firm Will Lead Ford Fuel Economy MDL**

A Michigan federal judge has appointed a lawyer from The Miller Law Firm PC as interim lead counsel for drivers in the multidistrict litigation contending that Ford Motor Co. overinflated the miles-per-gallon fuel economy ratings for certain trucks. U.S. District Judge Sean F. Cox, in a brief order, appointed E. Powell Miller to the lead position, saying that after reviewing 10 motions filed earlier in the week, he
In one of the most comprehensive investigations into housing discrimination since the enactment of the Fair Housing Act of 1968, Newsday found widespread evidence of unequal treatment of minority homebuyers. The investigation’s findings are the result of “paired-testing”—a method used by the federal government to measure the extent of discrimination in housing. The investigation’s paired testing involved two undercover testers—one Caucasian and one Hispanic—who separately solicited a real estate agent’s assistance in buying houses.

Newsday conducted 86 paired tests in areas stretching from the New York City line to the Hamptons and from Long Island Sound to the South Shore. Thirty-nine of the tests paired African American and Caucasian testers, 31 matched Hispanic and Caucasian testers and 16 paired Asian and Caucasian testers. In 40% of the tests performed, evidence suggested that real estate brokers subjected minority testers to disparate treatment when compared to Caucasian testers. African American testers experienced disparate treatment 49% of the time compared with 39% for Hispanic and 19% for Asian testers. In seven of Newsday’s tests—8% of the total—agents accommodated Caucasian testers while imposing more stringent conditions on minorities that amounted to the denial of services for minority testers.

Further, in seven cases real estate agents refused to provide house listings or home testers unless they met certain financial qualifications that weren’t imposed on counterparts. In 24% of cases agents directed Caucasians and minorities to differing communities through house listings that essentially steered the buyers based on race or ethnicity. For example, one real estate agent told an African American customer a neighborhood known to have gang activity had some of the “nicest people” in order to persuade the customer to consider the neighborhood. In contrast, the real estate agent emailed the paired Caucasian about the same neighborhood and said, “please kindly do some research on the gang related events in that area for safety.”

If you need more information, contact Larry Golston, a lawyer in our firm, at 800-898-2034 or by email at Larry.Golston@beasleyallen.com.

Source: Newsday.com

XVIII.
THE CONSUMER CORNER

UNDERCOVER INVESTIGATION FINDS DISCRIMINATION IN HOUSING

A three-year investigation has uncovered widespread evidence of discrimination by real estate agents in Long Island, New York. In one of the most comprehensive investigations into housing discrimination since the enactment of the Fair Housing Act of 1968, Newsday found widespread evidence of unequal treatment of minority homebuyers. The investigation’s findings are the result of “paired-testing”—a method used by the federal government to measure the extent of discrimination in housing. The investigation’s paired testing involved two undercover testers—one Caucasian and one Hispanic—who separately solicited a real estate agent’s assistance in buying houses.

Newsday conducted 86 paired tests in areas stretching from the New York City line to the Hamptons and from Long Island Sound to the South Shore. Thirty-nine of the tests paired African American and Caucasian testers, 31 matched Hispanic and Caucasian testers and 16 paired Asian and Caucasian testers. In 40% of the tests performed, evidence suggested that real estate brokers subjected minority testers to disparate treatment when compared to Caucasian testers. African American testers experienced disparate treatment 49% of the time compared with 39% for Hispanic and 19% for Asian testers. In seven of Newsday’s tests—8% of the total—agents accommodated Caucasian testers while imposing more stringent conditions on minorities that amounted to the denial of services for minority testers.

Further, in seven cases real estate agents refused to provide house listings or home testers unless they met certain financial qualifications that weren’t imposed on counterparts. In 24% of cases agents directed Caucasians and minorities to differing communities through house listings that essentially steered the buyers based on race or ethnicity. For example, one real estate agent told an African American customer a neighborhood known to have gang activity had some of the “nicest people” in order to persuade the customer to consider the neighborhood. In contrast, the real estate agent emailed the paired Caucasian about the same neighborhood and said, “please kindly do some research on the gang related events in that area for safety.”

If you need more information, contact Larry Golston, a lawyer in our firm, at 800-898-2034 or by email at Larry.Golston@beasleyallen.com.

Source: Newsday.com
The seriousness of the vape-related lung injury outbreak was just emerging Sept. 11, when President Donald Trump said he would outline a plan to ban the sale of most flavored vaping products including mint and menthol flavors. Most Americans believed Trump and welcomed this good news. “We can’t have our kids be so affected,” Trump said at the time. But that good news didn’t last very long.

It appears Trump let lobbyists and his own political advisors, who warned him that taking such a bold move against the vape industry might result in political repercussions, change his mind. When questioned about his pledge to place sweeping restrictions on vape products, Trump told The Washington Post he is still investigating the issue. So much for a badly needed ban!

Since Trump’s initial announcement of a ban, several states had taken measures into their own hands calling for bans on flavored vape products, only to be met with resistance from the tobacco lobby.

White House officials had hoped to announce a ban in October of flavored vaping products and pods—excluding menthol. But vape companies and Big Tobacco pushed back, saying doing so would impede adults who use their products. This prompted a “tweet” from Trump, who said on Nov. 11 that he would be “meeting with representatives of the vaping industry, together with medical professionals and individual state representatives, to come up with an acceptable solution to the vaping and e-cigarette dilemma.” Lobbyists for the industry, including tobacco companies, won a huge battle.

As we have reported, the number of people using vaping products has skyrocketed in recent years, especially among teenagers and young adults. This has raised public health concerns as many e-liquids contain as much nicotine as a pack of cigarettes. Most Americans know nicotine is highly addictive.

Vaping products have also been linked to a life-threatening lung injury. As of Nov. 20, there have been 2,290 cases of “e-cigarette, or vaping, product use associated lung injury” or EVALI, reported to the Centers for Disease Control and Prevention (CDC) from 49 states (all but Alaska), the District of Columbia, and two U.S. territories (Puerto Rico and the U.S. Virgin Islands), and 47 deaths from 24 states and the District of Columbia.

Beasley Allen lawyers Joseph VanZandt and Sydney Everett are handling cases involving injuries related to vaping. They are looking at cases involving adolescent addiction and injuries including seizures, strokes, lung problems, and cardiovascular problems related to the use of JUUL vaping devices.

XIX. CURRENT CASE ACTIVITY AT BEASLEY ALLEN

The following is the December update on the types of cases that Beasley Allen lawyers are currently working on. The firm operates in four separate Sections with each Section focusing on a specific area of litigation. The four Sections are Personal Injury & Products Liability, headed by Cole Portis; Mass Torts, headed by Andy Birchfield; Toxic Torts, headed by Rhon Jones; and Consumer Fraud & Commercial Litigation, headed by Dee Miles. Information on the current litigation will be set out below for each Section.

PERSONAL INJURY & PRODUCTS LIABILITY SECTION

The personal Injury & Products Liability Section is handling cases in a number of areas. Currently, the Section has 18 lawyers and 31 support staff. Sloan Downes is the Section Director. The 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. Following is the list of current activity in the Section.

Boeing Litigation—Lawyers in the Section, led by Mike Andrews, are investigating and filing suits arising out of the two crashes involving Boeing planes that have received tremendous public interest and concern. The first suit was filed on June 13. Mike is handling the litigation and has filed several other lawsuits. Others are being prepared for filing. Contact: Mike. Andrews@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. We are handling cases involving all types of aircraft, military and civilian. Contact: Mike.Andrews@beasleyallen.com or Cole.Portis@beasleyallen.com.

Product Liability—We continue to focus on accident cases involving automobiles, heavy equipment and consumer products. Some of these auto cases involve single-vehicle crashes, while others involve multiple-vehicle accidents. We would like to review any case involving catastrophic injury or death. Contact: Cole.Portis@beasleyallen.com, Greg.Allen@beasleyallen.com, Ben.Baker@beasleyallen.com, Chris. Glover@beasleyallen.com, Mike.Andrews@beasleyallen.com, Graham.Esdale@beasleyallen.com, Labarron.Boone@beasleyallen.com or Rob.Register@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. We would like to review any case involving catastrophic injury or death. Contact: Chris. Glover@beasleyallen.com, Mike.Crow@beasleyallen.com, Dan.Phylyaw@beasleyallen.com or Donovan.Potter@beasleyallen.com.

**Heavy Truck Product Liability Claims—**

Tractor trailer and other heavy trucks are not required to contain many of the same protections for occupants as smaller passenger cars. They can contain dangerous defects putting the truck driver or passengers at risk of serious injury or death. These trucks many times have particularly weak roofs that crush in rollovers. The passenger compartments are often not protected by effective cab guards, and this allows loads to shift into the truck cab. We would like to review any case involving catastrophic injury or death. Contact: Ben.Baker@beasleyallen.com or Greg.Allen@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 degrade. When a tire is defective, potentially serious problems like detrends 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@beasleyallen.com or Labarron.Boone@beasleyallen.com.

**On-the-job Product Liability—**

Many times product claims arise from worker’s compensation claims. After we investigate the circumstances that caused the injuries, many times we discover a defective machine may be the cause of the injuries. Contact: Kendall.Dunson@beasleyallen.com or Evan.Allen@beasleyallen.com.

**Premises Liability—**

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 has successfully handled a number of premises liability cases, and we would like to investigate any cases where severe injury or death results. Contact: Mike. Crow@beasleyallen.com, Ben.Locklar@beasleyallen.com, Warner.Hornsby@beasleyallen.com, or Ben.Keen@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, stabblings, 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@beasleyallen.com, Rob.Register@beasleyallen.com or Donovan.Potter@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: Alyssa.Baskam@beasleyallen.com.

**The Mass Torts Section**

The Mass Torts Section is handling a number of cases involving pharmaceuticals and medical devices. Currently, there are 32 lawyers and 87 support staff in the Section. Melissa Prickett, a lawyer, serves as the Section Director. The lawyers and support staff are working in the areas of litigation set out below. The contact lawyer will be supplied in each case. The following are the current areas of litigation in the Section.

**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 of up 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. This case was the start of the litigation that followed. Ted Meadows heads up our talc litigation team handling individual claims. Leigh O’Dell heads up the team of lawyers handling the talc multidistrict litigation (MDL). Contact: Ted. Meadows@beasleyallen.com, Leigh.Odell@beasleyallen.com, or Melissa.Prickett@beasleyallen.com.

**JUUL vaping devices—**

The use of JUUL and other vaping devices has reached epidemic levels, especially among teenagers and young adults. JUUL and other vape device manufacturers fueled this epidemic by targeting and deceiving youth and adolescents with misleading social media marketing and sweet, fruit-flavored pods containing high levels of nicotine. Use of these products has been associated with numerous adverse health effects, such as seizures, nicotine addiction, nicotine poisoning, breathing problems, behavioral and psychological problems, and other serious health conditions. Contact: Joseph.Vanzandt@beasleyallen.com, Sydney.Everett@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, meaning surgeons can handle and apply the cement earlier than with low- or medium-viscosity cements. Although HVC, even when used in combination with 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: Chad.Cook@beasleyallen.com, Ryan.Duplechin@beasleyallen.com.
Zantac and cancer risk—For nearly four decades, tens of millions of consumers have used Zantac as an antacid to help treat symptoms of acid reflux. However, the public is now learning that studies have long shown that Zantac is linked to cancer in animals and humans. Lawyers at Beasley Allen are currently investigating claims of those who have used Zantac and have subsequently been diagnosed with cancer. Contact: Melissa.Prickett@beasleyallen.com or Matt.Munson@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@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-Magnum hip replacement systems, which have not been recalled. Reported problems include pain, swelling and problems walking. Contact: Navan.Ward@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

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

Physiomesh—Intended for hernia repair, Physiomesh is a flexible polypropylene mesh designed to reinforce the abdominal wall, preventing future hernias from occurring. Though there are several types of hernias, most occur when an organ or tissue protrudes through a weak spot in abdominal muscles. The condition often requires surgery where mesh, like Physiomesh, which is intended for laparoscopic use, is used to fill in a hole in the abdominal muscle or laid over or under it to prevent any further protrusions. Independent studies have found Physiomesh to lead to high rates of complications including hernia 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@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 33,091 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@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@beasleyallen.com, Roger.Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

CONSUMER FRAUD & COMMERCIAL LITIGATION SECTION

The Consumer Fraud & Commercial Litigation Section has 14 lawyers and 20 support staff. Michelle Fulmer is the Section Director. Lawyers and support staff in the Section are working on the litigation areas 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@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

False Claims Act / Whistleblower—We 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: Dee.Miles@beasleyallen.com, Larry.Golston@beasleyallen.com, Leslie.Pescia@beasleyallen.com or Tyner.Helms@beasleyallen.com.

**Pension Plan Litigation (ERISA)**—Many large corporations are improperly funding their Employee Benefit plans and / or transferring these Pension Plans to other entities that cannot properly fund the plans. The result is that employees’ life savings for retirement is either lost, compromised or reduced substantially. These transfers and inadequate funding measures are all designed to increase earnings for the corporations at the expense of its employees. Our firm is committed to pursuing the preservation of employee benefits / retirement by challenging these abuses through ERISA litigation and class actions. For more information contact Dec.Miles@beasleyallen.com, James.Eubank@beasleyallen.com or Rachel.Boyd@beasleyallen.com.

**Auto Defect Class Actions**—We 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. 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: Clay.Barnett@beasleyallen.com, Dec.Miles@beasleyallen.com, Leslie.Pescia@beasleyallen.com or Chris.Baldwin@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: Dec.Miles@beasleyallen.com, Rachel.Boyd@beasleyallen.com, or Paul.Evans@beasleyallen.com.

**Property Insurance Fraud**—Insurance companies nationwide are unjustly deprecating 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: Dec.Miles@beasleyallen.com, Rachel.Boyd@beasleyallen.com or Paul.Evans@beasleyallen.com.

**Supplemental Disability Insurance Denial**—We 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@beasleyallen.com, Rachel.Boyd@beasleyallen.com, James.Eubank@beasleyallen.com or Paul.Evans@beasleyallen.com.

**Health Care Fraud**—We 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@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@beasleyallen.com.

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

**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@beasleyallen.com, Alison.Hawthorne@beasleyallen.com or Leslie.Pescia@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 defines sexual harassment as “[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@beasleyallen.com, Lauren.Miles@beasleyallen.com or Leon.Hampton@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@beasleyallen.com, Lauren.Miles@beasleyallen.com or Leon.Hampton@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@beasleyallen.com, Larry.Golston@beasleyallen.com, Lauren.Miles@beasleyallen.com.

**Tobacco Torts Section**

The Tobacco Torts Section has a number of ongoing projects at present. Currently, the Section has 10 lawyers and 27 support staff. Tracie Harrison is the Section Director. 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.
Roundup / glyphosate—Roundup is the most widely used herbicide in the world and the second-most used weed killer for home and garden, government and 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@beasleyallen.com, Danielle.Ingram@beasleyallen.com, Michael.Dunphy@beasleyallen.com or Rhon.Jones@beasleyallen.com.

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@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@beasleyallen.com, Jeff.Price@beasleyallen.com or Rick.Stratton@beasleyallen.com.

Mesothelioma and asbestos-related diseases—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@beasleyallen.com, Ashlyne.Taylor@beasleyallen.com, or Rhon.Jones@beasleyallen.com.

Defective 3M Earplugs—Beasley Allen lawyers are investigating claims related to defective combat earplugs manufactured by Minnesota-based 3M Company. The earplugs were issued to thousands of military personnel serving in combat in Iraq and Afghanistan and used in training exercises in the United States. Numerous soldiers are now complaining of permanent hearing loss related to the defective ear plugs. Other soldiers have complained of tinnitus, commonly referred to as “ringing” in the ears. The dual-sided earplugs allegedly were improperly designed and manufactured so that the earplugs did not fit snugly in the wearer’s ear canal. Contact: Rhon.Jones@beasleyallen.com, William.Sutton@beasleyallen.com or Danielle.Ingram@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@beasleyallen.com.

PFC Contamination in Water Systems—In May 2016, the U.S. Environmental Protection Agency (EPA) issued new lifetime health exposure guidelines for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) in the water supply. After the EPA issued the new exposure limits, Beasley Allen filed suit for two water systems impacted in Alabama. The EPA advisory focused on PFOA and PFOS, man-made chemical compounds that are used in the manufacture of non-stick, stain-resistant, and water-proofing coatings on fabric, cookware, firefighting foam, and a variety of other consumer products. Contact: Ryan.Kral@beasleyallen.com or Rhon.Jones@beasleyallen.com.

E-cigarette Explosions—We 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: William.Sutton@beasleyallen.com.

You should have no difficulty in getting through to a lawyer in our firm on a specific case. However, if you do have difficulty reaching any of the lawyers listed above as the primary contact for a specific case, you can contact one of our four Section Directors and she will put you in touch with a lawyer in her Section who is working on the specific case you are asking about.

The Section Directors do a tremendous job for our firm. They are Melissa Prickett, Mass Torts Section; Sloan Downes, Personal Injury & Products Liability Section; Michelle Fulmer, Consumer Fraud & Commercial Litigation Section; and Tracie Harrison, 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; and Tracie.Harrison@beasleyallen.com.

XX.
Resources to Help Your Law Practice

Beasley Allen has been recognized as one of the country’s leading law firms involved in complex civil litigation, representing only claimants. We are both honored and humbled to have received that recognition. By choice, our firm does no defense work. Beasley Allen has truly been blessed and we understand the importance of sharing resources and teaming with peers in our profession. The firm is committed to investing in resources, including books authored by our lawyers, to help our fellow lawyers. For those who may be looking to work with Beasley Allen, or simply are seeking information that will help their law firm with a case, the following are among our most popular resources. The names of the books and the authors are set out below.
AVIATION LITIGATION & ACCIDENT INVESTIGATION

Beasley Allen lawyer Mike Andrews discusses the complexities of aviation crash investigation and litigation. The veteran litigator offers an overview to the practitioner of the more glaring and important issues to be aware of early in the litigation based on years of handling aviation cases. He provides basic instruction on investigating an accident, preserving evidence, and insight into legal issues associated with aviation claims while weaving in anecdotal instances of military and civilian crashes.

TIRE LITIGATION: A PRIMER

Although tire failures, blowouts and detreads are foreseeable and preventable events, all too often consumers are unaware of the potential dangers from defective, old or degraded tires. Beasley Allen lawyer Ben Baker provides lawyers guidance on evaluating tire litigation and underscores the importance of inspecting the tires of all vehicles involved in a crash.

NURSING HOME ABUSE & NEGLECT BROCHURE

Long-term care facilities, including nursing homes, are rife with abuse and neglect and alarmingly high rates of underreporting. To assist families and lawyers pursuing justice for victims, Beasley Allen has prepared a brochure with information to help identify the signs of abuse and neglect, and advice about how to file a claim.

CO-COUNSEL E-NEWSLETTER

Beasley Allen also sends out a Co-Counsel E-Newsletter, which is specifically tailored with lawyers in mind. It is emailed bi-monthly to subscribers. Co-Counsel provides updates about the different cases the firm is handling, highlights key victories achieved for our clients, and keeps readers informed about the latest resources offered by the firm.

THE JERE BEASLEY REPORT

We also consider The Jere Beasley Report to be a service to lawyers as well as the general public. We provide the Report at no cost monthly, both in print form and online. You can get it online by going to https://www.beasleyallen.com/publishing/jere-beasley-report/.

You can reach Beasley Allen lawyers in the four sections of our firm by phone toll free at 800-898-2034 to discuss any cases of interest or to get more information about the resources available to help lawyers in their law practice. To obtain copies of any of our publications, visit our website at beasleyallen.com/publishing.

XXI. PRACTICE TIPS OF THE MONTH FOR TRIAL LAWYERS

Andy Birchfield and Rhon Jones furnished trial practice trips for this issue. Andy, who heads up our Mass Torts Section, has some good advice for lawyers who try cases before a jury. Andy, a tremendous trial lawyer, has been involved in a number of highly significant litigation efforts, including the massive Vioxx MDL litigation. Currently, he is involved in the JUUL litigation and is winding up the MDL Xarelto $775 million settlement. Andy supplied the following trial tip.

EFFECTIVELY TELL YOUR CLIENT’S STORY

As trial lawyers, we have the privilege of representing people who have been injured or killed as a result of the wrongful and egregious conduct of big corporations. The simple human perspective and life experiences of the Plaintiff can provide connective points with jurors. When telling your client’s story, incorporate a theme using key words, illustrations or phrases that help paint a picture for the jury. You should immediately set the scene, present compelling witnesses and paint a vivid picture of what occurred and how that should be remedied. Jurors take their responsibility very seriously when confronted with bad corporate conduct and will respond to a compelling narrative.

As section head of our firm’s Mass Torts Section, I lead a team of lawyers and we exclusively litigate pharmaceutical, medical device and consumer product cases where the evidence can become complicated and voluminous. As lawyers, it’s up to us as the Plaintiff’s advocate to simplify our client’s story and present a strong opening statement that the jury can easily digest and understand. Many trials involving mass torts are in an MDL [multidistrict litigation] setting. Most MDL trial teams employ focus groups to better understand the most advantageous way to present the case to juries.

The use of a focus group is a great way to identify the core messages of your case. Focus groups can also show you the biases, prejudices and pitfalls that may affect your fact pattern and case theme. A focus group can often identify a problematic issue that you originally perceived as benign. Listening to a discussion from a focus group can provide valuable information about how the case is viewed, the effectiveness of your witnesses and how certain issues are perceived by jurors. This feedback will allow you to adjust how you communicate in the future on these concepts. Ultimately, they can help you to focus on the merits of the case, eliminate any distractions and deliver the most concise and effective message on behalf of your client.

Rhon, who heads up our Toxic Torts Section, is an excellent trial lawyer. Currently he is leading up the firm’s involvement in the Opioid litigation. Previously, Rhon led the state of Alabama’s BP litigation efforts. Rhon furnished a trial tip for this issue.

BE YOURSELF

When I came to Beasley Allen 25 years ago, within the first month I was in the courtroom trying cases with Jere Beasley and Tom Methvin. I was young and had never seen anything like the trial skills of Jere and Tom. I was a bit wide-eyed and didn’t have time to think about what a fantastic opportunity this was, so I just went into the courtroom and did my small part. As I tried more cases with them during my first year or two, it was obvious to me that Jere was the best trial lawyer I had ever seen and was likely the best trial lawyer in the country. He was absolutely amazing.

His talent and humility led me to a question that, frankly, I had never considered before I started working with Beasley Allen and trying cases with him. Namely, what kind of trial lawyer did I want to be? I mean, specifically, what was my style going to be in the courtroom and preparing cases for trial? You can probably guess what happened next. I tried to be just like
Jere Beasley. I tried to emulate the best that I had ever seen. That was a mistake. Over the course of a few years and trials, I learned that I was not Jere Beasley. Not even close. There is only one Jere Beasley.

I eventually learned that to have any sort of “success” I needed to be myself. Juries can tell when you are real and when you are not. People are smarter than most lawyers think. Many lawyers have been to seminars, read books, and have watched or heard great trial lawyers speak or try cases. I have never seen a successful lawyer that was not being him or herself. Let me repeat it, you cannot be someone else. You must be yourself. Master that, and you will be well on your way to success in the courtroom!

Hopefully, these trial tips from Andy and Rhon will be helpful to lawyers who get this Report. We can all learn from our peers and the learning process never ends. I have been in the business for a very long time and I am still learning how to be a more effective advocate for a client.

XXII.
RECALLS UPDATE

We are again reported a large number of safety-related recalls. We have included some of the more significant recalls that were issued in November. If more information is needed on any of the recalls, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed any safety recalls that should have been included in this issue.

AUTOMOTIVE RECALLS:

General Motors LLC (GM) is recalling certain 2019-2020 Chevrolet Silverado 1500 and GMC Sierra 1500, and 2020 Silverado 2500, Silverado 3500, Sierra 2500, and Sierra 3500 vehicles equipped with carpet floor covering. When the front seat belt pretensioners deploy, hot gas may vent through an opening in the pretensioner bracket, possibly igniting the carpet. A vehicle fire could result if materials ignite inside the vehicle.

General Motors LLC (GM) is recalling certain 2019-2020 Buick Regal vehicles. The driver or passenger front seat frames may have a lower crossbar that was improperly welded. Seats with improper welds may not provide adequate protection in the event of a crash, increasing the risk of an injury.

Ford Motor Company (Ford) is recalling certain 2019 Expedition and Lincoln Navigator vehicles. The rear suspension toe link fasteners may not have been properly tightened to the frame, possibly allowing separation from the frame. A disconnected toe link can cause a sudden change to vehicle handling, increasing the risk of a crash.

Ford Motor Company (Ford) is recalling certain 2019-2020 F-150 vehicles. The fastener securing the Power Distribution Box (PDB) 12V cable and Battery Monitoring System (BMS) eyelets to the positive battery terminal may loosen and affect the vehicle’s systems such as instrument panel displays and braking or steering assist. The engine could also stall. Inoperative vehicle systems or an engine stall can increase the risk of a crash. Reduced braking and steering efforts increase the risk of a crash. This condition could also create a resistive short, increasing the risk of a fire.

Ford Motor Company (Ford) is recalling certain 2019 Edge vehicles. The driver-side seat belt pretensioner anchor may have been improperly crimped, possibly resulting in the seat belt webbing detaching from the anchor in the event of a crash. In the event of a crash, seat belt webbing that detaches from the anchor will not properly restrain the driver, increasing their risk of injury.

Mercedes-Benz USA, LLC. (MBUSA) is recalling certain 2018 E400 Wagon 4MATIC, E400 4MATIC, E43 AMG 4MATIC, 2018-2019 E63S AMG 4MATIC Wagon, E63 AMG 4MATIC Wagon, E300, E300 4MATIC, GLC300S Coupe AMG 4MATIC, 2019 CLS450, CLS450 4MATIC, CLS53 AMG 4MATIC, E450 Wagon, E53 AMG 4MATIC, GLC300, GLC350, GLC53 AMG Coupe 4MATIC, G550 4MATIC, G63 AMG, GLC300 Coupe 4MATIC, GLC300 4MATIC, GLC350e 4MATIC, GLC43 AMG Coupe 4MATIC, GLC43 AMG 4MATIC, GLC63 AMG 4MATIC, GT63 AMG four-door 4MATIC, and GT63S AMG four-door 4MATIC vehicles. Although correctly fastened, the front seat belts may be inaccurately detected as being unfastened, which may cause the electric PRE-SAFE®-function and the pretensioner to be deactivated. The electric PRE-SAFE®-function and the seat belt pretensioners may not deploy during a crash, increasing the risk of injury.

Honda (American Honda Motor Co.) is recalling certain 2019-2020 Pilot and 2019 Passport vehicles. The front frame left and right side upper members may not have been welded completely to the unibody. As such, these vehicles may fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) numbers 208, “Occupant Crash Protection” and 219, “Windshield Zone Intrusion.” In the event of a crash, incomplete body welding may provide inadequate protection to occupants, increasing the risk of an injury.

Mazda North American Operations (Mazda) is recalling certain 2007-2012 CX-7, CX-9, and 2009-2012 Mazda6 vehicles. These vehicles had their passenger frontal air bag inflators previously replaced under a prior recall using inflators of the same design. The inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, temperature and temperature cycling. An inflator explosion may result in sharp metal fragments striking the driver or other occupants resulting in serious injury or death.

Mazda North American Operations (Mazda) is recalling certain 2003-2008 Mazda6, 2004-2005 MPV, 2004 RX-8, and 2006-2007 Mazdaspeed6 vehicles. These vehicles had their passenger frontal air bag inflators previously replaced under a prior recall using inflators of the same design. The inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, temperature and temperature cycling. An inflator explosion may result in sharp metal fragments striking the driver or other occupants resulting in serious injury or death.

Mazda North American Operations (Mazda) is recalling certain 2019 CX-9 vehicles equipped with Sumitomo Falken ZiEX CT50 A/S tires, size P255/50R20 104V, having date code 1619. An incorrect rubber compound may have been used in the tire’s manufacturing, allowing the tread to separate and detach. A detached tire tread can decrease vehicle stability and increase the risk of a crash.

Daimler Trucks North America LLC (DTNA) is recalling certain 2020 Western Star 4700 vehicles. The steering shaft may have been improperly installed, potentially causing a loss of connection between the steering wheel and front axle wheels. This loss of connection would result in a loss of steering control, increasing the risk of a crash.

Mercedes-Benz USA, LLC. (MBUSA) is recalling certain 2019 SL450, SL63 AMG, and SL550 vehicles. Over time, the bolt connection at the front-left mounting point on the rear axle carrier casting may fail, possi-
bly affecting the vehicle's handling. Unexpected changes in the vehicle's handling can increase the risk of a crash.

**Chrysler** (FCA US LLC) is recalling certain 2019 Dodge Grand Caravan vehicles. The welds on the outboard rear seat strikers for the second-row bench and second row bucket seats may fail during a front impact crash. The front outboard seat strikers for the third-row bench seats may fail in the event of a rear impact crash. In addition, the second-row bench and second row bucket seats may not withstand the required loads. If the seat strikers fail, the seat or seat belt may not adequately restrain the occupant, increasing the risk of injury.

**Chrysler** (FCA US LLC) is recalling certain 2019 Dodge Challenger and Charger vehicles. An incompatible front wheel and brake package was installed and may allow the front tire to contact the steering knuckle, causing tire damage. A damaged tire can suddenly lose air pressure and increase the risk of a crash.

**BMV of North America, LLC** (BMW) is recalling certain 2020 BMW X3 M40i and X4 M40i vehicles. The steering rack pinion teeth may break under load, resulting in a loss of steering control. A loss of steering control increases risk of a crash.

**Chrysler** (FCA US LLC) is recalling certain 2011-2013 Dodge Durango and Jeep Grand Cherokee vehicles equipped with a 3.6-, 5.7-, or 6.4-liter engine and previously recalled under NHTSA Recall 14V530 or 2011-2013 Dodge Durango and Jeep Grand Cherokee vehicles equipped with a 3.6-, 5.7-, or 6.4-liter engine and previously recalled under NHTSA Recall 14V530 or 5.7-, or 6.4-liter engine and previously recalled under NHTSA Recall 14V530.

**TIRE RECALLS**

**Sumitomo Rubber Industries, Ltd.** (Sumitomo) is recalling certain Falken ZIEX CT50 A/S tires, size P255/50R20 104V, having date code 1619, Dunlop SP Sport 5000 tires, size 215/45R18 89W, having date code 0919, and Goodyear Eagle LS2 tires size P215/50R17 90V, having date code 0619. An incorrect rubber compound may have been used in manufacturing, which may allow sections near the tread surface to become partially detached. A detached tread can decrease vehicle stability thereby increasing the risk of a crash.

**OTHER CONSUMER RECALLS**

**John Deere Recalls Compact Utility Tractors**

About 5,700 John Deere 4R Series compact utility tractors have been recalled by Deere & Company, of Moline, Illinois. Front cab support bolts that were torqued improperly during manufacturing can fail during a rollover, posing a crushing injury hazard to the operator. Each of the recalled compact utility tractors has a 17-digit serial number located on the right side of the frame above the front axle. Each serial number included in the recall begins with “ILV” and ends with a six-digit number that falls within the ranges below:

<table>
<thead>
<tr>
<th>Model</th>
<th>Serial Number Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>4044R</td>
<td>400284—401619</td>
</tr>
<tr>
<td>4052R</td>
<td>400381—405424</td>
</tr>
<tr>
<td>4066R</td>
<td>401588—407220</td>
</tr>
</tbody>
</table>

The tractors were sold at John Deere dealers nationwide from October 2016 through September 2019 for between $40,000 and $50,000. Consumers should immediately remove the recalled compact utility tractors and contact an authorized John Deere dealer for a free repair. John Deere is contacting all known purchasers directly. Contact Deere & Company at 800-537-8233 from 8 a.m. to 5 p.m. ET Monday through Friday and 9 a.m. to 3 p.m. ET on Saturday, or online at www.deere.com and click on “Recalls” on the drop-down menu under “Parts & Services” for more information.

**Dorel China Recalls Car Seats**

Dorel China America, Inc. (DCA) is recalling certain Babidéal Storm Booster Car Seats, model BC901BPXL, sold exclusively at Family Dollar Stores. The label attached to the fabric cover may not have the required safety warnings and instructions. As such, these child seats fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 213, “Child Restraint Systems.” Without the safety warnings and instructions, caregivers may not know the risks or how to properly use the child seat, increasing the risk of an injury in the event of a crash.

**New Port Sales Recalls All-Glo Craft Glue**

New Port Sales Inc., of San Juan, Puerto Rico, has recalled about 46,000 units of All-Glo Craft Glue. The glue contains methanol and poses a poisoning hazard to young children if ingested. The packaging is not child-resistant as required by the Poisoning Prevention Packaging Act. This recall involves bottles of All-Glo Craft Glue in 2-, 4- and 8-ounce sizes. The size of each translucent white plastic bottle of recalled glue is printed at the bottom of an orange, white and black label that includes a UPC number unique to that size.

<table>
<thead>
<tr>
<th>Size</th>
<th>UPC</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 oz</td>
<td>700332578122</td>
</tr>
<tr>
<td>4 oz</td>
<td>700332570126</td>
</tr>
<tr>
<td>8 oz</td>
<td>700332570133</td>
</tr>
</tbody>
</table>

The glue was sold at La Casa de los Botones and New Port Sales Inc. in Puerto Rico from April 2019 through June 2019 for between $2 and $7. Consumers should immediately remove the recalled glue from the reach of children and return it to the store where purchased for a full refund. Contact New Port Sales collect at 787-793-6201 from 8 a.m. to 5 p.m. ET Monday through Friday, e-mail info@newportsales.com or online at www.newportsales.com and click on “Recall” for more information. Pictures available here: https://www.cpsc.gov/Recalls/2020/New-Port-Sales-Recalls-All-Glo-Craft-Glue-Due-to-Failure-to-Meet-Child-Resistant-Closure-Requirements-Poison-Hazard-to-Children.

**Simmons Prepared Foods, Inc. Recalls Poultry Products**

Simmons Prepared Foods, Inc., a Gentry, Arkansas, establishment, is recalling approximately 2,071,397 pounds of poultry products that may be contaminated with extraneous materials, specifically metal. The U.S. Department of Agriculture’s Food Safety and Inspection Service (FSIS) announced the recall. The poultry items were produced from Oct. 21, 2019, through Nov. 4, 2019.

The products subject to recall bear establishment number “P-1949,” “P-486” or “P-5837” inside the USDA mark of inspection. These items were shipped to institutions in Alabama, Arizona, Arkansas, California, Georgia, Minnesota, Oklahoma and Pennsylvania. The problem was discov-
erred by Simmons Prepared Foods, Inc. establishments during further processing. There have been no confirmed reports of adverse reactions due to consumption of these products. Anyone concerned about an injury or illness should contact a health care provider. FSIS is concerned that some product may be frozen and in institutional freezers. Institutions that have purchased these products are urged not to serve them. These products should be thrown away or returned to the place of purchase.

FSIS routinely conducts recall effectiveness checks to verify recalling companies notify their customers of the recall and that steps are taken to make certain that the product is no longer available to consumers. When available, the retail distribution list(s) will be posted on the FSIS website at www.fsis.usda.gov/recalls. Consumers with questions about the recall can contact Donald Miller, senior vice president of sales at Simmons Prepared Foods, Inc., at 888-831-7007.

Consumers with food safety questions can call the toll-free USDA Meat and Poultry Hotline at 888-MPHotline (888-674-6854) or live chat via Ask USDA (ask.usda.gov) from 10 a.m. to 6 p.m. (Eastern Time) Monday through Friday. Consumers can also browse food safety messages at Ask USDA or send a question via email to MPHotline@usda.gov. For consumers that need to report a problem with a meat, poultry or egg product, the online Electronic Consumer Complaint Monitoring System can be accessed 24 hours a day at https://foodcomplaint.fsis.usda.gov/eCCF/.

**Whole Foods Recalls More Than 40 Vegetable Products After Manufacturer’s Recall**

In response to Mann Packing Co., Inc.’s recall of more than 100 vegetable products on Sunday over the potential risk of listeria contamination, Whole Foods Market issued its own recall on more than 40 of the vegetable products Wednesday, according to a U.S. Food and Drug Administration (FDA) announcement. The grocer is “voluntarily recalling multiple products from its stores in the U.S.,” the announcement said, also including a list of items affected by state. The Whole Foods recall only affects the products listed. “These products were available on salad and hot bars, chefs’ cases or packaged in plastic containers,” the FDA said.

The affected products were sold between Oct. 10, 2019, and Nov. 4, 2019. “Customers who purchased this product at Whole Foods Market can bring a valid receipt into stores for a full refund,” the health agency said. On Sunday, Mann Packing Co., Inc. issued a voluntary recall for its vegetable products sold in the U.S. and Canada, and released a full list of affected items. The recall was in response to a notification by the U.S. FDA and the Canadian Food Inspection Agency of “a potential contamination with Listeria monocytogenes,” the announcement said.

So far, public health officials have not reported any illnesses associated with the vegetable products, according to the announcement. “Listeria monocytogenes is a bacterium which can cause serious and sometimes fatal infections in young children, frail or elderly people, and others with weakened immune systems,” the announcement said. “Although healthy individuals may suffer only short-term symptoms such as high fever, severe headache, stiffness, nausea, abdominal pain and diarrhea, Listeria infection can cause miscarriages, stillbirths and fetal infection among pregnant women.”

**Skacel Collection Recalls FlipStix Knitting Needles**

Skacel Collection Inc., of Seattle, Washington, has recalled about 270 US 6 (4.0mm) addi® FlipStix knitting needles. The shaft of the knitting needle can split or burst, posing a laceration hazard. This recall involves US 6 (4.0mm diameter) FlipStix in 6” and 8” long knitting needles. The knitting needles have aluminum shafts that are tapered at both ends. The long shaft holds the active (unsecured) stitches of the fabric, to prevent them from unravelling, whereas the tapered ends are used to form new stitches. The knitting needles were sold in blue, red and yellow combination packages. There are five needles per pack. The firm has received three reports of the needle shafts splitting. No injuries have been reported.

The needles were sold at independent yarn stores nationwide from November 2018 through August 2019 for about $20. Consumers should immediately stop using the recalled knitting needles and contact the store where purchased for a full refund in the form of a store voucher. Contact Skacel Collection at 800-255-1278 from 8 a.m. to 3:30 p.m. PT Monday through Friday, email at recall@skacelknitting.com or online at www.skacelknitting.com/FlipStix_US6_Recall_Info for more information. Pictures available here: https://www.cpsc.gov/Recalls/2020/Skacel-Collection-Recalls-FlipStix-Knitting-Needles-Due-to-Laceration

**Hooey Recalls Children’s Sweatshirts With Drawstrings**

About 6,600 Hooey children’s sweatshirts with drawstrings have been recalled by Hooey LLC, of Spring Branch, Texas. A drawstring in the sweatshirt hood poses a strangulation hazard to children. Drawstrings can become entangled or caught on playground slides, hand rails, school bus doors or other moving objects, posing a significant strangulation hazard to children. This recall involves 15 styles of youth-sized sweatshirts with the “Hooey” brand or logo and drawstrings in the hood. The sweatshirts are polyester and cotton. The sweatshirts generally have a single front pocket. They were sold in boys’ and girls’ sizes XS, S, M, L, XL. A white size label has the word “Hooey” and “Made in China” and is located at the center back neck of the sweatshirts. A label in the side seam has the garment care instructions.

They were sold at Boot Barn, Orscheln’s, Cavenders and other western wear apparel stores from September 2017 through October 2019 for about $45. Consumers should immediately take the recalled sweatshirts away from children and remove the drawstring to eliminate the hazard. Contact Hooey toll-free at 888-847-0829 from 8 a.m. to 5 p.m. CT Monday to Friday, email at info@getyourhooey.com, or online at https://getyourhooey.com/ and click on Product Safety for more information. Pictures available here: https://www.cpsc.gov/Recalls/2020/Hooey-Recalls-Childrens-Sweatshirts-with-Drawstrings-Due-to-Strangulation-Hazard

**More Than 2 Million Pounds of Chicken Products Recalled in Eight States**

More than 2 million pounds of poultry products have been recalled in eight states over fears of contamination with foreign matter such as metal, federal health officials said. Arkansas-based Simmons Prepared Foods, Inc. recalled the items produced from Oct. 21 through Nov. 4 this year. They are 2,071,397 pounds of poultry products, including ready to cook chicken whole legs, boneless skinless chicken, halal chicken leg quarters and chicken tenderloins, the U.S. Department of Agriculture’s (USDA) Food Safety and Inspection Service (FSIS) said Wednesday.

The products subject to recall have an establishment number “P-1949,” “P-486” or “P-5837” inside the USDA mark of inspection, and were shipped to Alabama, Arizona, Arkansas, California, Georgia, Minnesota, Oklahoma and Pennsylvania. Those who’ve purchased the products are urged to throw them away or return them to the store.

**Kenmore Elite Microwave Ovens Recalled**

There’s a nationwide recall for about 700 Kenmore Elite microwave ovens that heat
up so much, it's a burn hazard. Faulty wiring is making it possible for the microwave's exterior temperatures to exceed 183 degrees Fahrenheit, which means you could get a pretty nasty burn from touching it, according to the United States Consumer Product Safety Commission (CPSC) listing. The recall involves 1,000-watt countertop convection microwave ovens that were manufactured on April 27, 2017, under the Kenmore Elite brand name by Galanz Guangdong Microwave Electrical Appliances Manufacturing Co. Ltd., of China. The microwaves were sold exclusively at Sears and Sears Hometown and Outlet Stores nationwide from May 2017 through July 2018 for about $350.

Sears is offering free in-home repairs to all customers nationwide who have one of the recalled microwaves. So far, there have been no reported injuries. **How to check:** Turn your microwave around and search for the date plate. That’s where you can find the brand name, model number and serial number. If your microwave has a model number of 204.77603610 and a serial number range of 17042700001 and 17042700684, you should stop using it immediately and call Sears for the free in-home repair. You can call the company at 800-659-7026 from 7 a.m. to 7 p.m. CT Monday through Friday online. You can also visit www.sears.com and click on "Safety" in the top header or at www.ecoxgear.com, online at www.ecoxgear.com, and on "Safety" in the top header or at www.ecoxgear.com/safetynotice for more information.

**SCARPA NORTH AMERICA RECALLS**

**SKI BOOTS**

SCARPA North America Inc., of Boulder, Colorado, has recalled about 4,200 Maestrale RS and Maestrale Men's Ski Boots. The ski boot shell can crack, posing a fall hazard and risk of injury to the consumer. This recall involves the Fall 2017 Maestrale RS and Maestrale Men's Ski Boots. The Maestrale style numbers are #12047/501.1 and can be identified by their orange color, and the “SCARPA” name on lower-outside shell and “Maestrale” model name on upper/outside cuff. The Maestrale RS style numbers are #12046/501.1 and can be identified by their white, black and lime color, and the “SCARPA” name on lower-outside shell and “Maestrale RS” model name on upper/outside cuff. SCARPA has received 605 reports of boot shells cracking. No injuries have been reported.

The boots were sold at authorized SCARPA dealers and outdoor stores nationwide and online at www.scarpa.com from August 2017 through August 2019 for $700 for the Maestrale model and $800 for the Maestrale RS model. Consumers should immediately stop using the recalled ski boots and contact SCARPA for instructions on returning the boot to receive a free boot shell repair. SCARPA is contacting all known purchasers directly. Contact SCARPA toll-free at 866-998-2895 from 8 a.m. to 5 p.m. MT Monday through Friday, by email at recall@scarpa.com, or online at www.scarpa.com and click on "Fall 2017 Maestrale RS and Maestrale Ski Boot Recall" for more information.

**GRACE DIGITAL RECALLS**

**BLUETOOTH SPEAKERS**

Grace Digital is recalling about 88,000 ECOXGEAR EcoBoulder speakers because they pose an impact hazard. The speaker's battery can become overloaded and burst. There have been five reports of speaker batteries bursting and fragmenting, including two incidents of property damage to the surrounding area. No injuries have been reported.

Consumers should immediately stop using the recalled speakers and contact ECOXGEAR to receive a free battery replacement kit. The company can be reached 9 a.m. to 9 p.m. Monday through Friday at 800-903-9664, email at safety@ecoxgear.com, online at www.ecoxgear.com, and on "Safety" in the top header or at www.ecoxgear.com/safetynotice for more information.

Once again there have been a large number of recalls since the last issue. While we weren't able to include all of them in this issue, we included those of the highest importance and urgency. If you need more information on any of the recalls listed above, visit our firm's web site at BeasleyAllen.com. 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.

**XXIII. FIRM ACTIVITIES**

**EMPLOYEE SPOTLIGHTS**

**KRISTEN ADAMS**

Kristen has been with the Firm for three years. She is a Staff Assistant in Mass Torts. Kristen is currently assisting with IVC Filter, Invokana, Taxotere, Fosamax, PPI and IIV litigation. Those are all ongoing and highly significant areas of our practice.

Kristen and her husband Jonathan are newlyweds and live in Prattville. She says their “beautiful blended family” consists of three boys and one girl. Kristen's husband works at International Paper and their children attend the Marbury Public School System. Kristen and Jonathan recently purchased a farm and they are encouraging their children to learn how to live off of the land. They have horses, cattle and chickens and are looking forward to expanding the farming activities.

Kristen says she enjoys reading, spending quality time with her family, hiking, kayaking and horseback riding. She enjoys working on the farm and clearing their land. She also enjoys restoring old furniture, crafting and wood work. Kristen says:

*The reason I enjoy working at Beasley Allen is because they care about their employees. The environment is very family oriented. We are encouraged to work together as a team and be supportive of one another. Beasley Allen has allowed me to grow personally and professionally. I am looking forward to many more years as a Beasley Allen employee.*

Kristen is a hard-working, dedicated employee and we are fortunate to have her with us.

**DAVID DIAB**

David Diab, a lawyer in our Toxic Torts Section, handles cases involving environmental contamination of water systems. This area of law has become quite active in recent years.

The Auburn University graduate earned his Bachelor of Science degree in Environmental Design in 2004 and a Master of Landscape Architecture in 2006. David earned his Juris Doctor and Advanced Certificate in Environmental Law from Elisabeth Haub School of Law at Pace University earlier this year.

David says he pursued his career in law because of the opportunity it gives him to combine two of his passions. He said, “I enjoy creatively analyzing complex problems as well as helping people and practicing law gives me the opportunity to do both.”

During law school, David interned for Judge Patty Schwartz, U.S. Court of Appeals for the Third Circuit, Judge Laura Taylor Swain, U.S. District Court, Southern District of New York, as well as for the Southern Environmental Law Center and the Alabama Disability Advocacy Program. While at Pace, David was a student board member and intern at the Pace Environmental Litigation Clinic and volunteered at the Pace Land Use Law Center. Additionally, he spent a semester as an intern at the
United Nations with Pace Law’s Environmental Diplomacy Practicum.

David served as Executive Productions Editor of Pace Law Review and was the President of the Honor Board. David also enjoyed competing in trial teams and moot court competitions during law school. He placed 2nd in the 2018 National Energy and Sustainability Moot Court Competition. As a member of Pace Law Review, David co-authored a primer for a symposium on public corruption that can be found in Volume 38, Issue 3 of the Pace Law Review.

David says investigating a client’s legal problem is one of his favorite part of practicing law. “Piecing together evidence and the different layers of a client’s story is similar to putting together a puzzle,” he explained. “When the pieces start to come together, the image becomes clearer.”

David grew up in Tuscaloosa, Alabama, and is a fan of the University of Alabama. A music lover, he also plays the guitar. He also enjoys exercise, exploring the outdoors, traveling, eating new foods and most importantly, spending time with his 2-and-a-half-year-old daughter, Adeline (Addie) Harper.

David says Beasley Allen is unique as a law firm because “it operates as a highly revered institution of success yet maintains a family atmosphere that appeals to clients and employees.

David brought a wealth of knowledge to the firm in a most important field of law. He does good work and is dedicated to the clients he helps to seek justice. We are fortunate to have David at Beasley Allen.

JACOB KANTER

Jacob Kanter, a Legal Secretary, has been with the Firm for a little over a year. He works for Sharon Zinns and the Mesothelioma Litigation Team in our Atlanta Office.

Jacob grew up in St. Louis, Missouri. His mother still lives there, along with his older sister and her two children. Jacob’s younger sister lives in Peoria, Illinois, and is finishing school at Bradley University.

Jacob says he really enjoys hiking and being in nature. He says that he has been learning to cook this past year and really enjoys it. He grew up playing tennis and will still play in leagues from time to time. According to Jacob, he tries to stay in shape and works out every day or goes for a run. Jacob's favorite is running on the Beltline during the summer months.

Jacob says he loves working with the Atlanta team. He says, “Sharon has been a great boss and mentor and Ashtyne and Maya are both very fun and energetic people to work with. We all get along great and it has made my time at Beasley Allen really enjoyable and a great overall experience.”

Lee McKee has been with the Firm for four years. He is the Firm’s Maintenance Specialist. Lee handles all of the day-to-day maintenance problems, and also keeps an eye on construction projects that are done at the firm’s buildings in Montgomery.

Lee is married to Aleshia Porter McKee. They have been married for 19 years and have two grown children, Travis and Elizabeth. They also have two grandchildren, Brody and Chessnie. Lee’s hobbies are bowling, golf and watching Auburn football. Lee says he also enjoys playing dominos, throwing darts, and fishing with friends and family. When asked what his favorite thing is about working at Beasley Allen, Lee says:

My favorite thing about working at Beasley Allen is of course the people. I like making sure things get fixed in a timely manner so that everyone can do their jobs. I like the benefits of the job, but most of all I like the opportunity to work with some great people.

Lee’s job at Beasley Allen is very important. We are in four separate buildings in Montgomery and that keeps him very busy. Lee does good work and we are fortunate to have him with us.

XXIV.

SPECIAL RECOGNITIONS

As regular readers of this Report know, Beasley Allen’s motto is ‘helping those who need it most.’ Obviously, this applies to our clients in the courtroom, but we also try to put it into practice every day in our community, in both Montgomery and Atlanta. God has richly blessed us at this firm, allowing us to support our families while we do work we enjoy and make real changes in the world that we hope can make people safer and more secure.

With so many blessings, we feel it is our responsibility—and our privilege—to give back. Each holiday season, we regularly support a number of charitable programs to help those in our community have a little brighter season. Some of these groups include:

Family Sunshine Center

Employees and lawyers donate food and funds to provide both Thanksgiving dinner and Christmas presents for families at the Family Sunshine Center in Montgomery. The Center provides shelter and assistance to families affected by domestic violence.

GTLA Secret Santa

Lawyers in our Atlanta office sponsored five foster children in this year’s Georgia Trial Lawyers Association New Lawyers Division Secret Santa drive. Lawyers in the Atlanta office also sponsored children individually. GTLA sponsored 210 children in total this year.

Friendship Mission

Our team donates warm clothing, blankets and essential toiletries to assist the homeless men and women in our River Region community.

Capitol Hill Healthcare

Folks throughout the Firm are able to “adopt” a senior resident of the Capitol Hill Healthcare nursing home facility. They receive a wish list from a resident, taken from the home’s Angel Tree, and help fill their Christmas stockings with joy.

In addition to these regular holiday projects, our lawyers and employees are active throughout the year individually and also with group fundraising and awareness projects. Some of the organizations whose work Beasley Allen helps support include the Montgomery Volunteer Lawyers Program, Atlanta Habitat for Humanity & Restore, Joy to Life Foundation, March of Dimes, Girl Scouts of Southern Alabama and Girl Scouts of Greater Atlanta, Valiant Cross Academy, Alabama Head Injury Foundation, Children’s Healthcare of Atlanta, Montgomery Area Humane Society, and so many more.

During this holiday season, we encourage everyone to take a moment to count your blessings. Remember the “reason for the season”—Jesus—and consider his example and our greatest commandments to “love one another.” Look around and find a place to share your heart with someone who needs uplifting.

JereBeasleyReport.com
XXV.
FAVORITE BIBLE VERSES

Alabama Governor Kay Ivey furnished several of her favorite verses for this issue.

Gov. Ivey, a dedicated Christian, says: “If one is born only once, one will die twice; if one is born twice, one will die only once.” She lists the following verses.

I appeal to you therefore, brothers, by the mercies of God, to present your bodies as a living sacrifice, holy and acceptable to God, which is your spiritual worship. Romans 12:1 (English Standard Version)

Paul Evans, a Beasley Allen lawyer, sent in Matthew 5:14-16 as his favorite verse. Paul says:

Perspective is critical. We are constantly bombarded with challenges, trials and difficult circumstances. By keeping our eyes and heart focused on Christ our Savior, we can know true peace even in the midst of life’s most violent storms. These verses help me keep proper focus and perspective.

You will keep him in perfect peace, Whose mind is stayed on You, Because he trusts in You. Isaiah 26:3

Therefore we also, since we are surrounded by so great a cloud of witnesses, let us lay aside every weight, and the sin which so easily ensnares us, and let us run with endurance the race that is set before us, looking unto Jesus, the author and finisher of our faith, who for the joy that was set before Him endured the cross, despising the shame, and has sat down at the right hand of the throne of God. Hebrews 12:1-2

XXVI.
CLOSING OBSERVATIONS

THE FILM “JUST MERCY” MUST BE SEEN

The Hollywood film ‘Just Mercy,” based on Equal Justice Initiative (EJI) founder Bryan Stevenson and his efforts to free an African American man sentenced to die for a murder he did not commit, will premiere in Montgomery on Dec. 20. The Montgomery screening is five days before the film’s limited release, and a month before it will be released nationwide. The movie is based on the 2014 New York Times bestseller, “Just Mercy: A Story of Justice and Redemption,” a memoir written by Stevenson.

Bryan Stevenson is an acclaimed public interest lawyer who has dedicated his career to helping the poor, the incarcerated, and the condemned. He founded EJI in 1989. The nonprofit, based in Montgomery, is focused on ending mass incarceration and excessive punishment in the U.S., challenging racial and economic injustice, and protecting basic human rights for the most vulnerable people in American society.

In 2018, EJI expanded its efforts to educate the public about the brutal history of slavery and lynching, and its far-reaching effects into justice for African Americans today. The Legacy Museum: From Enslavement to Mass Incarceration opened in 2018, EJI expanded its efforts to

The museum’s counterpart, the National Memorial for Peace and Justice, is the first memorial dedicated to the legacy of enslaved black people. In particular, it spotlights the history of lynching nationwide,
which together with segregation and Jim Crow laws, created a culture of humiliation and terror for black Americans.

The movie, “Just Mercy,” chronicles Bryan Stevenson and one of EJI’s first clients, Walter McMillian, a young black man sentenced to die for the murder of a white woman that he did not commit. “The case exemplifies how the death penalty in America is a direct descendant of lynching—a system that treats the rich and guilty better than the poor and innocent,” according to press reports.

These stories are difficult to see and hear, but by bringing them into the light, Stevenson and EJI are taking real steps toward opening people’s eyes to the long-lasting effects of our country’s shameful past. The movie features Michael B. Jordan portraying Stevens, and Academy Award winner Jamie Foxx as McMillian. I would encourage every person in our country to see this movie.

**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

Injustice anywhere is a threat to justice everywhere.

There comes a time when one must take a position that is neither safe nor politic nor popular, but be must take it because his conscience tells him it is right.

The ultimate tragedy is not the oppression and cruelty by the bad people but the silence over that by the good people.

Martin Luther King, Jr.

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

**XXVII.**

**PARTING WORDS**

**JIMMY CARTER, A LIVING EMBODIMENT OF CHRISTIANITY’S CORE VALUES**

Jimmy Carter, the 39th president of the United States and the longest-living president, recently underwent surgery at Emory University Hospital in Atlanta to treat a subdural hematoma, the result of a head injury he suffered in a fall.

Residents of Plains, Georgia, the small town that Jimmy Carter has called home since birth, have been praying for his recovery. The folks in Plains know that they can’t have the 95-year-old former president forever, but they will take him and his example as long as they can.

It doesn’t matter if you liked the job Jimmy Carter did as our country’s leader, or you disagreed with the decisions he made then, nobody can question his moral courage. As years have passed, it has become evident that in terms of spiritual investment today, Jimmy Carter is a rare commodity.

In these troubled times when some of our highest leaders are corrupt, dishonest, mean-spirited, foul, and thoroughly immoral, Jimmy Carter remains not only a cornerstone of his little Georgia community, but a living example of the Christian faith for the world. The man is Christ-like and a role model for young people.

In fact, if you follow President Trump’s Twitter account, you may find Carter’s words and actions are a potent antidote for the toxic tweets and general spiritual poison coming from the White House these days.

Despite his injuries, which include multiple falls, broken bones, and a battle with cancer, Jimmy Carter continues to find ways to serve his country and the underprivileged. His servant’s heart is what has driven him to build, hands-on, more than 4,200 Habitat for Humanity homes and it’s what leads him to this day to teach Sunday school at Maranatha Baptist Church in Plains. And he does all of this with grace, humility, and his signature 1,000-watt smile.

For those of us troubled by the moral example set by our national leaders, Jimmy Carter offers reassurance and hope. He speaks with certainty when he says America will learn from its mistakes.

On a personal side note, I have known President Carter since the 1960s. His brother Billy married a girl from my hometown of Clayton as a result. I met the two Carter brothers. I can vouch for the fact that Jimmy Carter is the real deal!

So, as Jimmy Carter recovers, let’s join the people of Plains in praying for his full and quick recovery, and thank God every day he is with us for the blessing of his example.

---

**To view this publication on-line, add or change an address, or contact us about this publication, please visit our Website: BeasleyAllen.com**

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

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