The Jere Beasley Report

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I. CAPITOL OBSERVATIONS

We have just gone through an election in my hometown of Montgomery and the public schools and the Montgomery County School Board were very much a part of the debate. Prior to the election, our public schools had been in the spotlight and not in a good way. Hopefully the attention now being focused on the system's problems will result in the public demanding more support for public education. Because Montgomery is the Capital City, our school system should be a beacon of light on a hill for all to see. Unfortunately, that light has not been one that others would want to emulate.

The public schools in Montgomery have been sorely neglected for years and it's time to make the changes necessary to assure that each child gets a quality education. Regardless of background, race, or ethnicity, that is the right of every child. We have not provided that type education to all children in Montgomery County and that must be remedied.

Clearly, there is blame to be assessed for a poorly performing system. However, that blame must be shared by all of us who live and work in the Capital City. Simply put, we have not demanded that needed changes be put in place and implemented. We have failed to adequately fund the system. Neither have we demanded excellence in our schools. We have underpaid our school teachers, but some have been quick to criticize for what they perceive to have been a poor performance. Our teachers deserve better from the citizens of our county, as do our children, and it is our responsibility to make sure that we correct our problem and move forward. There is far too much good happening in Montgomery to let our schools hold us back.

Our schools must be adequately funded and we must demand excellence in performance from all persons who are a part of the system. The key to the future is a system of public education that provides a quality education for all students. There can be no excuse for mediocrity. Our children are entitled to a superior school system and no child can be left behind.

It is critically important for all citizens in Montgomery County to become actively involved in the support of public education. We must learn from the mistakes of the past and move forward. Our future depends on it.

II. THE OPIOID LITIGATION

An Update On The Opioid MDL

Significant progress continues to be made in the opioid multidistrict litigation (MDL) consolidated before U.S. District Judge Dan Aaron Polster in Cleveland, Ohio. Judge Polster recognizes the extreme urgency of the opioid crisis and has set an aggressive schedule of settlement negotiations while simultaneously putting certain cases on litigation tracks.

Bellwether Cases Set

In April, the Court's first case management order established briefing and litigation tracks for a limited number of state, county and city cases to address threshold legal issues through motion filings that may assist in the settlement negotiations and to prepare the test cases for trial in the event that a settlement does not occur. Judge Polster selected cases that represent a variety of jurisdictions, Plaintiffs, Defendants and issues.

The State of Alabama, the counties of Summit (Ohio), Cabell (West Virginia), Monroe, Michigan, and Broward (all Florida), and the City of Chicago were selected as bellwether cases for motion to dismiss practice. Summit and Cuyahoga counties and the City of Cleveland were selected to conduct discovery and prepare their cases for trial, which has tentatively been set for March 2019.

Court Sets Discovery Protocol

Due to the size and complex nature of the litigation, the Court has issued several orders governing the discovery process. The more than 700 cases currently pending in the MDL are governed by the Court's discovery protocol.

One order establishes the deposition protocol, which limits the Plaintiffs to 420 depositions and the Defendants to 120 depositions. The parties are granted discretion in how they wish to allocate the depositions amongst each other. The order also limits repeated depositions without leave of court upon a showing of good cause or an agreement of the parties.

Notably, the Court's order explicitly recognizes the numerous lawsuits filed in state courts nationwide and, while not seeking to limit those state actions, the Court expects counsel for Plaintiffs in both the MDL proceedings and the state court proceedings to cooperate in the deposition process. Shortly thereafter, the distributor Defendant Cardinal Health, Inc. was notified it would be deposed.

The court issued another order that implicates non-bellwether governmental entity cases that are currently stayed. The order requires these entities to submit a Plaintiff Fact Sheet, which provides information regarding that Plaintiff's damages, organizational background, and actions taken to combat the opioid epidemic. The responses are binding, similar to those submitted in response to interrogatories. The court set a deadline of Sept. 17, 2018, to submit the completed form.

IN THIS ISSUE

DEA Releases Opioid Transactional Information

The Court permitted the bellwether Plaintiffs to amend their complaints after it ordered the U.S. Drug Enforcement Administration (DEA) to release detailed data of opioid sales from its Automation of Reports and Consolidated Orders System (ARCOS) database. The ARCOS data lists individual opioid transactions, including which manufacturers sent certain opioids to which distributors and, ultimately, which pharmacies received those opioids. This information is critical to understanding the scope of the litigation.

Pleased with the ARCOS data provided to the bellwether cases, Judge Polster recently ordered the release of the data to all 50 states. The ARCOS data sheds light on which companies fueled the opioid crisis and, as a result, will be extremely helpful to Plaintiffs seeking to hold those companies accountable.

Seeking access to ARCOS information, certain media outlets have filed open records requests with Plaintiffs. Both the DEA and Defendants objected to its release, arguing the ARCOS data was highly confidential and disclosing it could potentially impede law enforcement efforts. Judge Polster ordered the DEA and defendants to file briefs by June 25 explaining why the data should be kept under wraps. A deadline of July 9 was set for the media to submit briefs arguing in favor of disclosure.

DOJ Joins Settlement Talks

Judge Polster has also agreed to allow the United States Department of Justice (DOJ) to participate in ongoing settlement talks as a friend of the court with regard to nonmonetary settlements. In April, the DOJ said it was capable of providing a nationwide perspective on the opioid crisis and assist in ensuring a resolution is "structured to serve the public interest." According to the DOJ's April filing, it will seek to recoup some of the direct and indirect medical expenses resulting from the epidemic.

* * *

Our firm has filed a number of lawsuits on behalf of governmental entities against opioid manufacturers and distributors. Beasley Allen lawyers are investigating other opioid cases on behalf of governmental entities. We are also handling cases for individuals. If you have any questions about this litigation, contact Rhon Jones, Rick Stratton, Ryan Kral, Will Sutton or Jeff Price, lawyers in our firm's Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallencom, Rick.Stratton@beasleyallencom, Ryan.Kral@beasleyallencom, Will.Sutton@beasleyallencom or Jeff.Price@beasleyallencom.

Indiana Tribes To Get Own Track Within Opioid MDL

Native American tribes will have their own track within the multidistrict litigation (MDL) over the opioid epidemic in Ohio federal court. Judge Dan A. Polster made that very clear last month. In an order reassigning work for those handling the MDL, Judge Polster said Cathy Yanni, one of three special masters in the litigation, among other duties will now be "working with the tribes to develop a case management order and a separate MDL track."

Judge Polster had said at a May 10 hearing that tribes involved in the litigation might have a track in the MDL—which encompasses hundreds of lawsuits claiming drugmakers and distributors fueled the opioid crisis through reckless sales of opioids—specifically set up to address their concerns. The judge said at the hearing that tribes had been "disproportionately affected by the opioid epidemic" and stressed that "if there is a resolution, there won't be one without them, so this court is not going to marginalize them ... whether they're a separate track or an integral part of the plaintiffs' track."

While Native Americans make up just fewer than 2 percent of the U.S. population, they have disproportionately borne the toll of the opioid crisis. This is according to data from the U.S. Centers for Disease Control and Prevention (CDC). For example, in 2014, Native Americans had the highest death rate from opioid overdoses out of any ethnic group.

However, not all tribes are committed to taking part in the MDL. Some of the largest tribes—the Navajo Nation, the Cherokee Nation and the Muscogee (Creek) Nation—are continuing to pursue their claims independently in the MDL. It's uncertain at this juncture if the creation of a new tribal track will result in those tribes participating in the MDL. Since efforts in the opioid battle are on the fast track things will have changed by the time this issue is received.

Source: Law360.com

Too Many Young Americans Are Dying From Opioid Overdose

A new research study suggests opioid abuse in the U.S. is now responsible for 20 percent of deaths among young adults. The study, published last month in the journal *JAMA Network Open*, reveals that young Americans are dying at a far greater pace than any other group. While one in every 65 adults in the U.S. suffered opioid-linked deaths in 2016—a 292-percent increase since 2001—opioids killed one in five young adults between the ages of 24 and 35, reported Time. The researchers, from St. Michael's Hospital in Toronto, found that in 2001, opioids accounted for only 4 percent of deaths among young Americans.

Due to the continued deterioration of the addiction crisis nationwide, the researchers concluded the U.S. lost a total of 1,681,359 years of life in 2016. "Despite the amount of attention that has been placed on this public health issue, we are increasingly seeing the devastating impact that early loss of life from opioids is having across the United States," Dr. Tara Gomes, a scientist at St. Michael's and lead author of the study, said in a recent statement. "In the absence of a multidisciplinary approach to this issue that combines access to treatment, harm reduction and education, this crisis will impact the U.S. for generations."

Source: Westernjournal.com

Drugmakers Denied Patient Information In Opioid MDL Bellwethers

A special master in multidistrict litigation (MDL) over the opioid crisis has rejected "clearly overbroad" drugmaker requests for detailed medical information about patients. However, lawyers were warned that not producing the information could jeopardize their bellwether cases. The ruling from special master David R. Cohen applied to three sets of document requests from the drugmakers in cases filed by local governments in Ohio. Lawyers for the local governments objected to the scope of the requests, which sought wide-ranging information about patient medical histories, and Cohen mostly sustained the objection. The Special Master wrote: "This objection is largely well-taken: Defendants' [requests] are clearly overbroad." These were the requests by the drugmakers:

- One of the requests sought "all documents" concerning medical care from the past decade for "any person" allegedly harmed in "any way" by the drugmakers.
- Another request sought "all documents and communications" concerning patients allegedly harmed by improper opioid prescriptions.

- A third request sought patient-specific data from Medicaid about prescription drugs and other health care services.

Those requests clearly go beyond the requirements of an order issued in April by U.S. District Judge Dan Aaron Polster. The order required the local governments suing over unnecessary prescriptions to identify specific ones that were allegedly improper and explain why they weren't legitimate.

The case is *In re: National Prescription Opiate Litigation* (case number 1:17-md-02804) in the U.S. District Court for the Northern District of Ohio.

Source: Law360.com

Doctor And Pharmacies Sued For Opioid-Related Death

A wrongful death lawsuit was filed against a north Alabama doctor, her clinic, and three pharmacies for over-prescribing and filling opioid prescriptions. The lawsuit states that Felicia Ann Kelly was 30 years old when she died on May 15, 2016, due to "fatal levels" of oxycodone and other drugs, according to the toxicology report.

According to the lawsuit, Dr. Cecilia Lloyd-Turney, a physician at Choice Medicine, began treating Ms. Kelly in January 2012 for anxiety and chronic pain. Between 2012 and 2016, Dr. Lloyd-Turney allegedly prescribed at least 3,645 oxycodone pills to Kelly—582 of these pills were prescribed in the final two and a half months of her life.

The lawsuit also names Star Discount Pharmacy, Inc., Propst Discount Drugs, Inc., and Hazel Green Pharmacy as Defendants for contributing to Ms. Kelly's death by filling the prescriptions. In addition, Choice Medicine is accused in the lawsuit of failing to properly train and supervise its employees.

This lawsuit is yet another example of the tragic toll the opioid crisis has taken on our country and Alabamians, in particular. Alabama has one of the highest prescription rates for opioids in the nation, with 1.2 prescriptions per person compared to the national average of 0.72. In 2015, no fewer than 282 deaths were attributable to opioid overdoses in Alabama. Lawsuits are being filed nationwide against opioid manufacturers, distributors, and other Defendants to hold them responsible for fueling the crisis.

Source: AL.com

Attorney General Says Walgreens' Dual Role Helped Spur Kentucky Opioid Crisis

The Attorney General of Kentucky has filed suit against Walgreens. It's alleged that the company helped spread unneeded opioids throughout Kentucky, as both a pharmacy chain and a distributor, and cultivated a public health nightmare that has killed Kentuckians, defrauded Medicaid and spurred an armed-robbery epidemic. As the operator of its own distribution network and a 26 percent owner of top distributor AmerisourceBergen, Kentucky Attorney General Andy Beshear says that Walgreens knew the signs of suspicious pharmacy orders and had the analytics to flag and halt them.

As a pharmacy chain with more than 70 Kentucky locations, Beshear says, the company has eyes on end customers and is required to make sure they are legitimate. And as a target of major U.S. Drug Enforcement Administration (DEA) action in 2013, Walgreens was on unmistakable notice that its opioid-order-filling practices were unacceptable, he said. However, Attorney General Beshear said none of this stopped the company from continuing to ship suspicious but profitable opioid orders and externalize their social costs. He added:

> *From at least 2006 through the present Walgreens disregarded and overrode its own safeguard systems and raised its own opioid order thresholds, purportedly set in accordance with each pharmacy's anticipated order size. … Walgreens made the most dangerous and addictive drugs in America also the most accessible. Kentucky Medicaid has paid and continues to pay substantial sums for the costs associated with treatment and services provided to opioid-addicted Medicaid beneficiaries, whose addiction was created by availability and access to drugs which were distributed in whole or in part by Walgreens.*

The damage doesn't stop there. More than 1,400 Kentuckians died of drug overdoses in 2016. That is said to be the third highest rate per capita in the nation, behind West Virginia and New Hampshire.

The suit includes two Consumer Protection Act counts, public nuisance, two Medicaid fraud counts, negligence per se, negligence, unjust enrichment, fraud by omission, and a request for punitive damages. The attorney general is represented by C. David Johnstone, LeeAnne Applegate, Elizabeth Natter, Charles Rowland, Wesley Duke, Brian C. Thomas and Billy Mabry. The case is *Commonwealth of Kentucky ex rel. Andy Beshear, Attorney General v. Walgreens Boots Alliance Inc., et al.*, (case number 18-CI-00846) in the Boone Circuit Court.

Source: Law360.com

Massachusetts Sues OxyContin Maker Purdue Pharma

The Commonwealth of Massachusetts recently filed a lawsuit against Purdue Pharma, the maker of the prescription painkiller OxyContin, which has been accused of creating America's opioid crisis, naming leading executives and members of the multibillionaire Sackler family that owns the pharmaceutical company. I am including this case because Massachusetts is the first state to actually name the company's executives as Defendants in a complaint

The lawsuit accuses the company of spinning a "web of illegal deceit" to fuel the deadly drug abuse crisis while maximizing profits. It also alleges Purdue deceived patients and doctors about the risks of opioids, pushed prescribers to keep patients on the drugs longer and aggressively targeted vulnerable populations, such as the elderly and veterans.

Purdue Pharma is already defending lawsuits from several states and local governments, including Alabama. The complaint names 16 current and former executives and board members, including the chief executive and eight members across three generations of the Sackler family that wholly owns Purdue. The Sackler family is collectively worth an estimated $13 billion, according to Forbes, with the vast bulk of the fortune generated from sales of OxyContin.

In the past year, Purdue Pharma has been sued by at least 15 other states. Purdue previously agreed to pay $19.5 million in 2007 to settle lawsuits with 26 states—including Massachusetts—and the District of Columbia after being accused of aggressively marketing OxyContin to doctors while downplaying the risk of addiction.

Source: NPR

Beasley Allen Opioid Litigation Team

Because of the enormity of the opioid litigation, our firm has put together an "Opioid Litigation Team." We represent the State of Alabama and numerous local governments and other entities in opioid litigation. Our firm is also handling individual claims for victims. If you have any

questions about this subject, contact Rhon Jones, Rick Stratton, Ryan Kral, Parker Miller, Jeff Price and Will Sutton, lawyers in our firm's Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com, Ryan.Kral@beasleyallen.com, Parker.Miller@beasleyallen.com, Jeff.Price@beasleyallen.com or William.Sutton@beasleyallen.com.

III. AUTOMOBILE NEWS OF NOTE

Jury Awards $12 Million To Family Of Teen Killed In Defective Toyota 4Runner Crash

Our firm went to trial recently in Anderson County, South Carolina, in a case involving defects in a 1999 Toyota 4Runner. At the conclusion of the trial, the jury awarded $12 million to the family of Lacee Dial, a 17-year-old who was killed on Sept. 15, 2012. The rear axle of Lacee's 1999 Toyota 4Runner fractured, causing the vehicle to roll over and collide with a utility pole. The high school student was trapped for approximately two hours in the vehicle before she died from her injuries. Chris Glover, one of the family's lawyers, had this to say about the verdict:

This verdict reminds companies that they will be held responsible for defective products that kill people. The Defendants knew the vehicle that killed our clients' daughter was unreasonably dangerous, yet they refused to take responsibility for Lacee's needless death. This family faced one of the largest corporations in the world in a tough case. Toyota told them they would never take responsibility. This is why the jury system is so important. It's the only place this family could get justice for their daughter.

The Toyota 4Runner had a serious manufacturing defect that caused the rear axles to crack and ultimately fail during everyday driving. The National Highway Traffic Safety Administration's (NHTSA) records show that 31 incidents of rear axle fracture in the vehicles were reported prior to the manufacture of Lacee's 4Runner. The records also show that over a 24-year period, between June 1987 and July 2011, 60 incidents occurred. There was overwhelming evidence during the trial that the axle failed and caused Lacee's death. The physical evidence on the roadway and the vehicle confirmed an eyewitness account from a motorist who saw the rear axle fail while Lacee was traveling down the road. Further, litigation testing done by Toyota, meant to defend the claim, ultimately proved that the axle should have never failed in this crash.

The incident occurred as Lacee was driving to an interview for an internship with a local veterinarian. The high school senior enjoyed competitive barrel racing with her horse, Kidd, and her friends and family remember how she was always smiling. This was a special family and Lacee was a very special girl. The jury awarded $6 million for Dial's pain and suffering and $6 million in damages for her parents.

Our lawyers were honored that the family chose our firm to represent them in a case of such great importance. Ben Baker, another of our lawyers handling this case, adds:

It's always hard when a parent has to bury their child and no verdict can ever take away the pain. But when a company like Toyota shows nothing but reckless disregard for life and their products contribute to injuries and death, as was the case with Lacee, it is important to hold those bad actors accountable.

This case was a prime example of how an automaker has knowledge of a defect in a vehicle and withholds that information. The case is *Donald L. Dial, Personal Representative of Lacee Michaela Dial vs. Toyota Motor Corporation, et al,* (C.A. 2013-CP-04-01483 i)n the Court of Common Pleas of Anderson County, South Carolina. As stated above, Chris Glover and Ben Baker from our firm represented the family.

Ford Explorer And Jeep Grand Cherokee Get Worst Ratings In IIHS Crash test

The Insurance Institute for Highway Safety (IIHS) has released its list of top safety picks for 2017 models. The following are their selections in the categories of small, mid-size, SUV, minivan, and large pickup. The Ford Explorer and Jeep Grand Cherokee had the worst results for midsize SUVs in the latest crash tests from the IIHS. In fact, damage to the Ford Explorer caused the structure to collapse. Both the Grand Cherokee and Honda Pilot showed the possibility of head injuries.

The ratings were based on results from the passenger-side small overlap test. A small overlap crash happens when the front corner of a vehicle strikes another vehicle or an object such as a utility pole or tree. IIHS Chief Research Officer David Zuby said:

Although some vehicles in this group offer very good protection, in other models the airbags, safety belts and structure showed serious deficiencies. In those SUVs, a front-seat passenger would be at risk of injuries to the head, hip or leg in a right-side small overlap front crash.

Zuby said the Institute had noticed that some automakers had improved safety for drivers but had neglected front-seat passengers and wanted to put them on notice that the Institute expects the same level of protection for both. Of eight SUVs tested, the Explorer and Grand Cherokee both received poor overall grades in the tests focused on passenger-side impacts, while the Kia Sorento earned a Top Safety Pick rating from the group and the others all earned good or acceptable ratings. In addition to the Sorento, the GMC Acadia and Volkswagen Atlas received good ratings, and the Toyota Highlander, Nissan Pathfinder and Honda Pilot received acceptable ratings. All vehicles were 2018 models except for the Sorento, which was a 2019 model.

In the Explorer crash, the damage severely compromised "the survival space" for the front passenger, according to Zuby. "Intrusion reached 15 inches at the lower door hinge pillar and 13 inches at the upper door hinge pillar and the dashboard. The door sill was pushed in 6 inches toward the dummy," IIHS said. The crash test dummy experienced forces consistent with broken bones or dislocations of the right hip or lower leg, Zuby said. Driver-side protection in the Explorer apparently is better but not great. "The Explorer also had poor structural performance in the driver-side test and earns an overall rating of marginal for driver-side small overlap protection," the release noted.

The Institute recently rated the Ford Escape at the bottom for passenger protection. The Insurance Institute said the Grand Cherokee structure was not as bad as the Explorer, but it had other issues. IIHS said:

More alarming was what happened to the passenger dummy's head. It hit the dashboard hard through the front airbag and then, because the side curtain airbag didn't deploy and the door opened, it moved outside the vehicle during rebound.

Zuby noted that the door opening indicated a risk of ejection or partial ejection and that right leg and head injuries would be possible. Despite the possibility of head injuries in a crash, the Honda Pilot scored an acceptable rating because of "good structural performance," IIHS said.

Source: *Detroit Free Press*

Judge Refuses To Seal Trial Records After $38 Million Verdict

A Virginia federal judge has rejected a request by Hankook Tire Co. Ltd., a Korean tire company, to seal certain trial records after a $38 million verdict was returned against the manufacturer. U.S. District Judge Robert Payne said in a ruling last month that the public's right to access the records trumped its confidentiality concerns. The manufacturer and an affiliate were found liable by a jury for leaving Robert Benedict quadriplegic after a 2014 crash where a Hankook-manufactured tire on his truck failed. The company sought to seal certain exhibits, jury instructions and portions of the transcript, but Judge Payne said no, writing:

> *The waiver doctrine is clearly implicated here. Defendants knew of the confidential nature of the information to be presented at trial. Nevertheless, they did not attempt to protect that information during trial. They did not ask that the courtroom be closed; they did not request that observers be ordered not to reveal what they heard; they did not avoid discussing confidential topics or seek to prevent plaintiff from doing so in open court; and they did not apprise the court of any confidentiality concerns.*

Hankook had argued that the material it sought to seal had been designated confidential earlier in the case, and said the Plaintiff had agreed that the proper way to protect its information was to file a motion to seal after the trial ended. But Judge Payne said just because Benedict's lawyers agreed does not make it legally so.

Even if the judge hadn't found that confidentiality protections had been waived, he still would have refused to seal the records Hankook sought to seal. Protective and sealing orders in the case only covered confidential material, and something can't be confidential if it's been said or projected on TV screens in open court, Judge Payne reasoned. Applying either common law or the First Amendment, the judge wrote, "Hankook's interest isn't strong enough for sealing."

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

Source: Law360.com

Takata Special Master Reports How Victims Can Get Payout

The special master overseeing the handling of a nearly $265 million restitution fund in the criminal lawsuit over Takata Corp.'s deadly air bag inflators has made a report to a Michigan federal court explaining how victims and their families can request payouts. Harvard Law School professor and longtime mediator Eric D. Green was appointed special master in July by U.S. District Judge George Caram Steeh.

The special master said that there are three types of claims that can be pursued by those who seek compensation for injury or wrongful death through the U.S. Department of Justice's (DOJ) $125 million Takata Individual Restitution Fund and the $140 million Takata Airbag Tort Compensation Trust Fund. Those are claims where the alleged injury arises from Takata's air bag inflator defect. They include airbag ruptures, aggressive airbag deployments and non-airbag phase-stabilized ammonium nitrate (PSAN) recall related Takata claims. The non-PSAN recall related claims are only expected to get pennies on the dollar through bankruptcy.

The claims process applies to all Takata airbags and components despite what manufacturer installed them in their vehicles. Virtually every manufacturer used Takata bags in various vehicle lines. Honda and Acura vehicles are further eligible for an additional claims process to compensate those injured by Takata airbag ruptures and aggressive deployments in their vehicles. We expect the Honda and Takata process to fully compensate victims of Takata airbag ruptures and overly aggressive deployments.

As we have previously reported, Takata's legal troubles began after its air bag inflators were linked to at least 11 deaths in the U.S. and prompted the largest auto recall in the nation's history, as well as further recalls across the globe. The Japanese company filed for Chapter 11 bankruptcy protection in Delaware in June and has agreed to sell most of its assets to Sterling Heights, Michigan-based auto parts supplier Key Safety Systems Inc. for $1.6 billion. Takata pled guilty to one count of wire fraud in February 2017, and as part of the plea agreed to pay a $25 million criminal penalty, $125 million to people who were harmed or will be harmed by a malfunctioning Takata air bag inflator and $850 million in restitution to automakers.

In October, the special master made his first report to the court, saying that he had hit several delays carrying out his duties despite "working in an expedited manner," because he was gathering information that would allow an economic consultant to test the claims model and provide an independent analysis of current and future claims. The three claims that are covered include:

- an Individual Restitution Fund claim, which would pull from the DOJ fund;
- a trust claim, which would come from the Takata Airbag Tort Compensation Trust Fund, which is being established in connection with the bankruptcy plan; and
- a POEM claim against a participating original equipment manufacturer, which at this point only includes Honda/Acura.

The mediator also asked the court to extend the deadline for individuals to file an IRF claim through August. The release from the special master lists websites that provide detailed explanations for filing various claims: TakataSpecialMaster.com and TakataAirbagInjuryTrust.com.

The United States is represented by Assistant U.S. Attorneys John K. Neal, Erin S. Shaw and Andrew J. Yahkind, and Andrew Weissmann, Brian K. Kidd, Christopher Jackson and Andrew R. Tyler of the DOJ. The case is U.S. v. Takata Corp., (case number 2:16-cr-20810) in the U.S. District Court for the Eastern District of Michigan.

Source: Law360.com

Volkswagen Fined €1 Billion In Germany Over Emissions Scandal

German authorities have fined Volkswagen AG €1 billion ($1.18 billion) marking the latest repercussion for its emissions-cheating scandal first disclosed in late 2015. The Braunschweig public prosecutor determined 10.7 million vehicles sold between 2007 and 2015 contained an "impermissible software function," according to a statement from Volkswagen. The German automaker has paid more than $25 billion since the U.S. Environmental Protection Agency (EPA) and

the California Air Resources Board (CARB) first accused Volkswagen of using defeat devices to suppress emissions during testing in September 2015. The defeat devices allowed the vehicles to emit more toxins into the air after they left testing labs and were out on the roads. The company said:

Following thorough examination, Volkswagen AG accepted the fine and it will not lodge an appeal against it. Volkswagen AG, by doing so, admits its responsibility for the diesel crisis and considers this as a further major step towards the latter being overcome.

The automaker has reached numerous settlements with the U.S. government, states and consumers to resolve allegations that it rigged diesel vehicles with the software to cheat emissions tests. For example:

- Volkswagen agreed to a $14.7 billion settlement in 2016 to end claims brought by the U.S. government and consumers.
- The following year, VW agreed to pay the Federal Trade Commission as much as $4.04 billion.
- The automaker was also ordered to pay a $2.8 billion criminal fine in April 2017, six weeks after the automaker formally pled guilty to three criminal charges stemming from the scandal.

A number of former executives have pled guilty to criminal charges as well. Volkswagen has admitted fault and disclosed that millions of its diesel vehicles worldwide were equipped with defeat devices, nearly 600,000 of which were sold in the United States.

Source: Law360.com

Auto Safety Groups Lose Bid To Force DOT Seat Belt Rule

The D.C. Circuit Court of Appeals has rejected a bid by auto safety groups to force the U.S. Department of Transportation (DOT) to immediately publish a proposed safety standard requiring automobile warnings when backseat passengers fail to buckle up. A three-judge panel issued a *per curiam* order denying a petition for *writ of mandamus* from auto safety groups Kids and Cars Inc. and the Center for Auto Safety attempting to force the DOT to move more quickly on rulemaking that would establish a safety standard for rear seat belt reminders.

The panel said the groups weren't entitled to such extraordinary relief from the court, given that the DOT has already put out a detailed schedule projecting that the rule will be sent to the White House's Office of Management and Budget for approval by late July and then published by the end of October. The D.C. Circuit said in the decision:

In light of, inter alia, the Department of Transportation's representations regarding its schedule for agency action, petitioners have failed to show a 'clear and indisputable' right to mandamus relief.

The appeals court denied the groups' petition for now, but allowed them to renew it in the future "in the event of significant additional agency delay." The decision came weeks after the panel heard oral arguments in mid-May that focused heavily on the court's jurisdiction and what exactly was required of the DOT. The auto groups blasted the DOT for doing little or nothing to implement a congressional mandate requiring automobile warnings when backseat passengers don't buckle up.

The groups had argued that the 2012 Moving Ahead for Progress in the 21st Century Act, or MAP-21, required the DOT and the National Highway Traffic Safety Administration (NHTSA) to initiate a rulemaking by October 2014 and issue a final rule a year later. But so far, the DOT has only launched a study on the matter, which doesn't cut it, the groups' lawyer Katherine A. Meyer of Meyer Glitzenstein & Eubanks LLP told the panel.

The Center for Auto Safety and Kids and Cars, in a joint statement, said it was a "sad day for safety and the ability of the American people to expect its government will follow the duly passed laws of the United States Congress." The groups said in the statement:

The failure of NHTSA to protect children, and all rear seat passengers, by writing a simple rule that requires all cars to have a reminder to buckle up in the back seat has likely resulted in the loss of hundreds if not thousands of lives.

The groups added that after more than three years of DOT delay, the D.C. Circuit gave NHTSA until the end of October to issue a proposed rule that meets the congressional intent to protect rear seat passengers. They said:

The Center for Auto Safety and Kids and Cars will be prepared to renew our lawsuit on Nov. 1 if NHTSA has failed to fulfill its statutory mission yet again.

Meanwhile, the DOT has claimed throughout the litigation that it is not under a duty to issue a proposed rule immediately. It also says there is no legal requirement to issue a final standard within a year of a proposed rule. The DOT takes the position that it has fulfilled its obligations under the Moving Ahead for Progress in the 21st Century Act (MAP-21), claiming studying the matter fulfills the obligation to initiate rulemaking. The DOT said it has properly extended its deadlines, and that lawmakers established no means of challenging the DOT for not issuing a rule because only Congress should have oversight over the rulemaking.

U.S. Department of Justice lawyer Carleen M. Zubrzycki asserted at oral arguments that all Congress wanted the DOT to do was to "get started on looking into this." She said other parts of the law use "much clearer language" to require specific action. The case was originally filed in D.C. District Court in August 2017, but the auto safety groups dropped that after both sides agreed the challenge belonged in the appellate court.

The government is represented by Carleen M. Zubrzycki, Mark B. Stern and Alisa B. Klein of the U.S. Department of Justice; Steven G. Bradbury, Paul M. Geier and Joy K. Park of the DOT; and Jonathan Morrison, Emily Su, Kerry Kolodziej and Michael Kuppersmith of the National Highway Traffic Safety Administration. The Center for Auto Safety and Kids and Cars are represented by Katherine A. Meyer and Nick Lawton of Meyer Glitzenstein & Eubanks LLP. The case is *In re: Kids and Cars Inc. et al.* (case number 17-1229) in the U.S. Court of Appeals for the D.C. Circuit.

Source: Law360.com

IV. THE NATIONAL SCENE

Judge Approves AT&T And Time Warner's $85 Billion Merger

A federal judge in Washington, D.C., has approved AT&T's $85 billion merger with Time Warner. The ruling from U.S. District Judge Richard Leon brings to a potential close what is said to be one of the most important and influential antitrust cases in decades. This was the first time in at

least 40 years for the Justice Department (DOJ) to have challenged a vertical merger. The DOJ's antitrust chief, Makan Delrahim, stated:

> *We're disappointed with the court's ruling and we'll review the opinion and take a look at our next steps consistent with our missions to protect competition and consumers.*

The government first launched its bid to block the merger last November. AT&T, a service provider that also owns DirecTV, announced in 2016 it would bring Time Warner, a content producer that counts CNN, HBO, and live sports programming in its offerings, into its fold.

AT&T contended that the merger was necessary to keep up with companies such as Netflix, Amazon and Google. But the government's lawyers, led by Craig Conrath, a veteran of the Antitrust Division, argued the merger would hinder rival content distributors. The DOJ said the new company could hike prices for their content, a move that would hurt consumers, or threaten to yank programming from competitors. The outcome in this case could have ripple effects for other companies contemplating mergers.

Source: Law.com

$409 Million ISDAfix Settlements Approved

U.S. District Judge Jesse Furman has given final approval to $408.5 million in settlements with 10 banks accused of manipulating the global swaps and options benchmark ISDAfix. The judge had a number of complex questions for Plaintiffs' lawyer Dan Brockett and expert witness Christopher Fiore about how the settlement figures and distribution plans were calculated. However, Judge Furman approved the settlements, saying they satisfied the relevant legal criteria and had not received any objections.

ISDAfix, which has since been overhauled and renamed the ICE Swap Rate, is a benchmark set of rates incorporated into trillions of dollars' worth of derivative contracts. The Plaintiffs contended that the banks conspired with one another and with ICAP Capital Markets LLC to influence the rates to enrich themselves, partly by submitting bids and offers designed to move the rate rather than as an honest indicator of what they would pay or accept for a derivative contract.

The settlements—with Bank of America NA, Barclays Bank PLC and an affiliate, Citigroup Inc., Credit Suisse AG's New York branch, Deutsche Bank AG, the Goldman Sachs Group Inc., HSBC Bank USA NA, JP Morgan Chase & Co., Royal Bank of Scotland PLC and UBS AG—total $408.5 million. Judge Furman said that figure amounts to 28 to 59 percent of the sums the Plaintiffs would have sought at trial.

The period of alleged misconduct covered by the suit spans from 2006 through 2014. The funds received in the settlements will be distributed based on complex formulas that turn, in part, on how much the value of a given financial instrument was influenced by the alleged conspiracy. There are some Defendants who haven't settled, including BNP Paribas, ICAP, Morgan Stanley & Co., Nomura Securities International Inc. and Wells Fargo Bank NA.

The Plaintiffs are represented by Scott & Scott Attorneys at Law, Quinn Emanuel Urquhart & Sullivan and Robbins Geller Rudman & Dowd. The case is *Alaska Electrical Pension Fund v. Bank of America Corp. et al.*, (case number 1:14-cv-07126) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

NCAA Settles Suit Over Football Player's CTE Death

The National Collegiate Athletic Association (NCAA) and the widow of a former University of Texas football player alleging the organization could and should have prevented her late husband's Chronic Traumatic Encephalopathy (CTE) have reached a settlement. The agreement was reached during the first-ever trial about the NCAA's responsibility for a football player's CTE. Plaintiff Debra Hardin-Ploetz and the NCAA reached their agreement during the third day of the trial in Dallas. District Judge Ken Molberg, who presided over the case, told the jurors the case was settled. Quoting poet John Milton, Judge Molberg told the jurors it was their service that had enabled the case to be settled. In that regard, he added:

> *They also serve who only stand and wait. While we were in that lengthy pause the parties have reached a resolution of this case… and I want to say that I couldn't make them do it before they got here, I was incapable of that, they were incapable of doing it themselves, so what did it take, it took the thirteen of you, essentially, to do that.*

The Plaintiffs lawyer, Eugene Egdorf of Shrader & Associates LLP, told the jury that when Ploetz began playing football at UT, he knew he was risking broken limbs, but was given no warning from the NCAA that he might suffer long-term neurological damage even though the organization had known for decades about the dangers of head trauma. The jury was also told their verdict could have an impact, saying it was the first time a jury has been asked to consider what the NCAA purportedly knew about the head trauma associated with football and what it knew about CTE.

One of the lawyers for the NCAA, Chris Watt of Reed Smith LLP, told the jury during his opening statement that the plaintiff was engaging in "Monday morning quarterbacking" and was trying to say the NCAA should have known in the 1960s that football caused CTE. He said that was a contention that is still not accepted in the medical literature and that it was first suggested in a 2005 case study.

In 2014 the NCAA agreed to provide a $70-million medical monitoring fund and set aside $5 million for concussion research to settle the multidistrict litigation brought by former student-athletes who accused the organization of failing to address concussions arising from football, basketball and other high-contact sports. In 2015, the National Football League (NFL) got final approval for an uncapped settlement with about 5,000 former players who alleged the league knew about the long-term risks of head injuries and concealed them. Under that settlement, players diagnosed with CTE can receive up to $4 million.

Hardin-Ploetz is represented by Shrader & Associates LLP, Baron and Blue, and Goldberg Persky & White PC. The case is *Debra M. Hardin-Ploetz, individually and on behalf of the Estate of Gregory Ploetz, v. National Collegiate Athletic Association,* docket number DC-17-00676.

Source: Law360.com

Jury Awards Dyson $16 Million Over Rival's False Vacuum Ads

An Illinois federal jury has awarded Dyson Inc. more than $16 million in damages after finding rival SharkNinja Operating LLC falsely advertised its Rotator Powered Lift-Away as a better product than Dyson's best-performing machine at the time. The trial involved Dyson's claims that SharkNinja's advertisements, which ran from August to December 2014, touted reports it falsely claimed were conducted independently and proved its Lift-Away vacuum was a better carpet cleaner than Dyson's DC65.

The jury also sided with Dyson's claim that Shark's conduct was intentional, and its award encompasses nearly all $18

million in profits Shark made from its vacuum during the time the commercial aired.

The ads at issue claimed independent tests prove Shark's "Rotator Powered Lift-Away has more suction and deep-cleans carpets better than Dyson's best vacuum" and show a graph measuring each machine's cleanability. Dyson claimed the tests were not only dependent on Shark's direction, but also noncompliant with industry standards on how to conduct the independent tests in the first place.

Dyson is represented by Gregg LoCascio, Robin McCue, Brian Verbus, Gregory Polins, Ian Block and Megan New of Kirkland & Ellis LLP. SharkNinja is represented by John Froemming, Allison Prevatt, David Witcoff, Jessica Bradley and Meredith Wilkes of Jones Day. The case is *Dyson Inc. v. SharkNinja Operating LLC et al.* (case number 1:14-cv-09442) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

San Francisco Bans Flavored Vaping Products

San Francisco voters recently went to the polls and voted for a ban on all flavored tobacco products, from colorfully packaged e-liquids to menthol cigarettes. San Francisco voters backed it despite a $12 million advertising campaign funded by a major tobacco company. The ban is said to be the most restrictive in the country, and health groups predict it could serve as a model for other cities throughout the country.

The vote had been expected to be close, but the final count revealed heavy support in favor of the ban. The votes reflected a big miscalculation by big tobacco, which had flooded the city with advertisements in four languages. A coalition of groups, including the American Cancer Society, the American Heart Association, the American Lung Association and Tobacco-Free Kids Action Fund, countered big tobacco's advertising campaign, albeit on a much smaller scale.

Currently valued at roughly $23 billion, the vaping industry is growing fast, fueled on one hand by adults who turn to the devices in the hopes they'll help with attempts to quit smoking, and on the other by teens attracted to their colorful packaging and candy-like flavors. Although using electronic cigarettes, or vaping, is touted as a means of smoking cessation, parents, public health advocates and federal regulators have expressed deepening concern as some studies show that the products are gateways to smoking for teenagers. E-cigarettes give users a powerful hit of nicotine, but allegedly without the mix of toxins contained in traditional, combustible cigarettes.

Advocates of the ban pointed to some 7,000 products, including those with flavors said to be particularly alluring to young users like bubble gum, chicken and waffles, and unicorn milk. It is hoped that the San Francisco vote would be a first step toward ending the sale of candy-flavored nicotine and tobacco products before nicotine addiction claims a new generation of young people.

A handful of other cities, including Chicago, New York and Providence, Rhode Island, have some restrictions on flavored tobacco products, such as limiting their sale to adults-only stores. San Francisco's ban is expected to take effect within days after the vote is officially certified.

If you need more information on this subject, development, or the litigation involving these products, contact Will Sutton, a lawyer in our firm's Toxic Torts Section, at 800-898-2034 or by email at William.Sutton@beasleyallen.com.

Source: *New York Times*

V. WHISTLEBLOWER LITIGATION

Insys Sales Representative Pleads Guilty To Opioid Kickback Scheme

A former sales representative for Insys Therapeutics Inc. has admitted in a New Jersey state court to taking part in a scheme to bribe physicians with purported speaking fees for marketing and education events in exchange for them prescribing the fentanyl painkiller Subsys for off-label uses. Michelle Breitenbach pled guilty in Middlesex County Superior Court to a second-degree charge of conspiracy to commit commercial bribery, according to the New Jersey Attorney General's office.

Under a plea agreement, prosecutors may recommend a sentence of up to five years in prison for Ms. Breitenbach, the Attorney General's office said in a statement. Her sentencing is scheduled for July 6. Veronica Allende, Director of the Division of Criminal Justice, said in the statement:

> *This former sales rep admitted her role in a scheme to pressure doctors to prescribe more Subsys in return for so-called speaker fees and other perks. When doctors receive improper incentives to prescribe drugs, self-interest can cloud or supplant their medical judgment, with dangerous results, particularly when a risky, addictive opioid like Subsys is involved.*

The guilty plea comes after the Attorney General's office filed a lawsuit last year against Insys and its founder, John N. Kapoor, alleging that they endangered the public in their efforts to increase Subsys sales. The state claimed that those Defendants made bogus marketing claims and offered unlawful incentives to health care providers to prescribe the drug to an improperly broad mix of patients.

The Attorney General's office also filed a complaint last year against OxyContin producer Purdue Pharma LP over claims that the business deceptively marketed addictive medications and exploited vulnerable new markets. Attorney General Gurbir S. Grewal had this to say:

> *As we have alleged in multiple court filings, a primary cause of the devastating opioid epidemic gripping the country has been overprescribing of prescription opioids, driven by the greed of manufacturers like Purdue Pharma and Insys. We are fighting the opioid epidemic on all fronts, including through criminal prosecutions and civil actions against mercenary pharmaceutical companies, their employees and irresponsible prescribers.*

The sales representative, in pleading guilty, admitted to participating in a scheme in which doctors were given bribes and kickbacks in the form of fees to speak at events where they allegedly educated other physicians about the painkiller. Those illicit payments were made in return for off-label prescribing of Subsys. The doctors taking part in the so-called speakers bureau program were "paid as speakers even if they did not speak, or if other doctors did not show up to listen," according to the Attorney General. The events also involved free meals at expensive restaurants as a part of the marketing scheme.

Ms. Breitenbach said Insys management put pressure on sales representatives to promote the program "as a primary means to drive increased sales of Subsys." She admitted that the speaking fees were actually rewards to doctors for prescribing

more Subsys. The State of New Jersey is represented by Deputy Attorneys General Brian Faulk and Jillian Carpenter.

Source: Law360.com

$30 Million Settlement In Whistleblowers' Nursing Home Fraud Suit

Two whistleblowers who filed False Claims Act allegations against a large Kentucky-based nursing home corporation have helped the U.S. government and state of Tennessee recover more than $30 million for Medicare. The whistleblowers, both former employees of Signature HealthCARE LLC, accused the company of defrauding Medicare by providing rehabilitation therapy services that were not reasonable, skilled, or needed by patients. Signature owns about 115 skilled nursing facilities, including seven in Tennessee's middle district, where the whistleblowers filed their complaint in federal court.

The U.S. Department of Justice (DOJ) says that signature engaged in various practices that resulted in the submission of false claims to Medicare. Federal prosecutors investigated and backed the whistleblowers' claims, alleging the Signature nursing facilities failed to perform individualized patient evaluations to determine their clinical needs and the most appropriate level of care. Instead, the nursing facilities automatically placed patients in the highest therapy reimbursement level so that they could bill Medicare for more services.

The nursing facilities also provided the minimum number of minutes required to bill at a given reimbursement level while discouraging employees from providing additional therapy beyond the minimum threshold. The lawsuit also alleged that Signature pressured therapists and patients to complete the planned minutes of therapy even when patients were sick or declined to participate so that it could maximize Medicare billings. Additionally, Signature also forged admission documents that certified the need for skilled nursing therapy and submitted them to Tennessee's Medicaid program. Tennessee will receive a portion of the settlement for Medicaid funds it paid to Signature for the false claims, the Justice Department said.

The whistleblowers, Kristi Emerson and LeeAnn Tuesca, will also receive a part of the total settlement, between 15 and 25 percent, as their award for helping the government recover the Medicare and Medicaid funds. Charge Derrick Jackson, Special Agent in for the U.S. Department of Health and Human Services, Office of Inspector General, stated:

> *Signature was charged with illegally boosting profits by providing excessive amounts of therapy to patients whether they needed it or not. The decision to provide therapy should never be based on corporate financial considerations rather than a patient's medical needs.*

It is very good to see state attorneys general being proactive in the opioid epidemic. Kentucky Attorney General Andy Beshear is to be commended for his actions.

Source: DOJ News Release

Wells Fargo Whistleblower Wins Retaliation Claim

The Labor Department's Occupational Safety and Health Administration (OSHA) has ordered Wells Fargo to rehire and pay $5.4 million to a former manager who was fired in 2010 after reporting fraudulent behavior to his supervisors and to a bank ethics hotline. The $5.4 million is "intended to cover back pay, compensatory damages and legal fees," and it is said to be the largest individual award OSHA's whistleblower protection program has ever awarded in a case like this.

According to OSHA, the manager who worked in Wells Fargo's wealth management group, "lost his job after reporting suspected fraudulent behavior to superiors and a bank ethics hotline." The agency said the manager had received good job performance reviews, but was dismissed abruptly after reporting "separate incidents of suspected bank, mail and wire fraud by two bankers under his supervision."

OSHA has faced criticism for not moving faster to investigate "dozens of complaints filed in recent years by current and former Wells Fargo employees." The whistleblower's complaint that resulted in OSHA's $5.4 million award was submitted to the agency in 2011. While OSHA defended its "six-year investigation as an unavoidable consequence of the case's complexity and of the heavy caseloads that OSHA investigators juggle," it would appear that six years was far too long. If more resources are needed by OSHA, Congress should see that the agency gets what it needs.

Source: *New York Times*

Court Says Xerox Can't Blame Doctors In $1 Billion Texas Medicaid Fraud Lawsuit

Xerox Corp. cannot try to share the blame for what the state of Texas alleges is a $1 billion civil Medicaid fraud with orthodontists who are said to have provided unnecessary services to poor children. The Texas Supreme Court held that Xerox and its claims processor subsidiary, Xerox State Healthcare LLC—which has since been spun off into Conduent Business Services LLC—cannot designate the orthodontists as "responsible third parties" under Chapter 33 of the Texas Civil Practice and Remedies Code. The court's ruling leaves Xerox as being solely responsible for rubber-stamping orthodontics claims and approving payments for medically unnecessary procedures.

Texas filed suit in May 2014 alleging the Xerox unit then known as ACS State Healthcare LLC, which administered claims for Texas from 2004 until 2012, signed off on $1.1 billion in claims for orthodontic services, a "substantial percentage" of which were allegedly paid in violation of Medicaid policies. The state alleges Xerox lied about the qualifications of its personnel reviewing orthodontics reimbursement requests, saying Xerox falsely assured the state health department each request for orthodontia received a clinical review of all submitted materials by a qualified person, and that the review ensured services were being authorized or denied in accordance with Medicaid policy.

The Supreme Court said Chapter 33 does not apply to a suit brought under the Texas Medicaid Fraud Prevention Act (TMFPA) because the statute's penalties do not constitute "damages" that can be apportioned between responsible parties. The court said there is an irreconcilable conflict between the Chapter 33 proportionate-responsibility statute and the TMFPA's mitigation and fault-allocation scheme. The court's opinion stated:

> *The act adopts a civil-penalty scheme to deter, punish, and thereby prevent fraud on the Medicaid system. This is not an "action for recovery of damages" subject to apportionment under the proportionate-responsibility statute. Chapter 33 is also incompatible with the unique method the Legislature chose to uncover and combat Medicaid fraud and, therefore, does not apply to actions under the TMFPA.*

In its appeal to the high court, Xerox argued that Texas unfairly cast what

should be treated as a breach of contract claim as fraud. The state filed suit under the Texas Medicaid Fraud Prevention Act, a statute it says prevents Xerox from using the theory of comparative fault to blame the state's losses on the doctors who treated the patients. Texas argued no one other than Xerox can be responsible for the harm caused by its misrepresentations. The state has argued the designation of third-party procedures found in Chapter 33 does not apply to its claims because it has not filed a tort claim and is seeking to recoup civil penalties, not actual damages.

Texas claims that while under state law, only the most acute cases where orthodontic disfigurement poses a health risk to a patient are eligible for Medicaid coverage, Xerox routinely approved payments for cosmetic orthodontics and other services that were not medically necessary and therefore ineligible for Medicaid coverage. A Travis County district court judge in April 2015 denied Xerox's motion to designate the orthodontists as responsible third parties. The Third Court of Appeals in February 2016 declined to overrule the decision. The supreme court put the issue to rest by ruling against Xerox.

The state is represented by Reynolds Brissenden, Nathaniel Danko and Raymond Winter of the Texas Attorney General's Office. The case is *In re: Xerox Corp. et al.*, (case number 16-0671) in the Supreme Court of Texas.

Source: Law360.com

The Beasley Allen Whistleblower Team

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 a talented group of lawyers dedicated to handling whistleblower cases. The lawyers on our firm's Whistleblower Litigation Team are Archie Grubb, Larry Golston, Lance Gould and Andrew Brashier. They will be glad to discuss any potential whistleblower claim either in person or on the phone. You can reach these lawyers by phone at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com, Larry.Golston@beasleyallen.com, Lance.Gould@beasleyallen.com or Andrew.Brashier@beasleyallen.com.

VI. PRODUCT LIABILITY UPDATE

Product Liability Lawsuit Filed In Georgia Over Defective Kia Car Seat

A products liability lawsuit has been filed by our firm against Kia Motors Corp. in Gwinnett County State Court. Lawyers in our Atlanta office represent Michael Insalaca, who suffered spinal damage in a car wreck. The claim is based on a defective seat that caused our client's injuries. Michael was a front-seat passenger in a 2013 Kia Optima driven by his father. His mother was sitting in the back seat directly behind him. The driver of another vehicle crossed the center line and hit the Insalaca vehicle. His mother's knee was forced into the back of Michael's seat. The penetration of his seat in the collision fractured his spine and some of his ribs. The seat should have been strong enough to withstand this type impact and that would have prevented Michael's injuries.

The case is being handled by Chris Glover, the managing lawyer in our Atlanta office, along with Lance Cooper, a Marietta trial lawyer, who has a close association with our firm. Chris says:

> *Michael Insalaca is partially paralyzed because the Defendants put him in a seat they knew could injure and possibly kill him. Safer alternatives were available. Yet, the Defendants chose to use an unreasonably dangerous seat despite evidence the seat could not withstand the weight of shifting backseat luggage or passengers, even during crashes that are typical for the type of vehicle, including the type that injured our client. The Defendants also failed to warn consumers, like Michael, about the dangerous seat. They denied consumers the opportunity to choose a safer form of transportation.*

Lance says that "Michael's catastrophic injuries were clearly preventable." Lance Cooper is known nationwide because of his tremendous work in the lawsuit involving the death of Brooke Melton. Lance exposed the ignition defect that led to a massive recall of more than 30 million GM vehicles and a multidistrict litigation (MDL) that is still active.

Source: Law.com

Goodyear Settles Wrongful Death Lawsuit Over Defective Harley-Davidson Tire

The Goodyear Tire & Rubber Co. has agreed to settle a lawsuit filed by Judith McAllister-Lewis whose husband was killed when the tire on his Harley-Davidson motorcycle suffered a catastrophic failure. The trial was scheduled to begin on June 5 at the federal courthouse in Sioux Falls when the settlement was announced.

Ms. McAllister-Lewis was a passenger on the motorcycle when the accident occurred on Aug. 7, 2010. She and her husband, Robert Lewis, were on Interstate 90 on their way to the Sturgis Rally from their home town of Manawa, Wisconsin, when the rear tire blew out on the Harley-Davidson Ultra Classic touring bike. Mr. Lewis suffered fatal injuries and McAllister-Lewis suffered serious and permanent injuries. The lawsuit was filed in 2014.

Mr. Lewis had purchased the bike in 2004. The tire was produced in 2007 in Goodyear Dunlop's manufacturing facility in France. Mr. Lewis bought it in May of 2007 when it was installed on his bike. Goodyear was accused of knowingly selling a defective tire leading to the death of Mr. Lewis. The terms of the settlement are confidential.

Source: Argusleader.com

Tesla Autopilot—Intended Only For Fully Attentive Drivers—Will Cause Safety Problems On Our Highways

It appears that Tesla has taken the automotive industry by storm since being established in 2003. Rated the Number 4 most innovative company in the world, Tesla has introduced fully electric vehicles that operate on a lithium-ion battery. More notably, Tesla has now introduced self-driving cars.

Although truly autonomous cars have been in the works since around the 1960s, Tesla has produced Model S and Model X vehicles that come with an Autopilot feature that is designed to **assist** the driver with actually driving the car. However, many drivers have interpreted this feature as an opportunity to sit back, relax, and let the car drive itself. Unfortunately, there have already been safety concerns.

In 2016, the first fatal accident in a self-driving car occurred in Williston, Florida. Joshua Brown was a Tesla enthusiast and he believed that he was safe when letting off the wheel of his vehicle. Mr. Brown was even known to post YouTube videos demonstrating the Autopilot feature on his

vehicle. However, on May 7, Mr. Brown engaged the Autopilot feature of his Model S when the car's sensors system failed to recognize a white 18-wheeler crossing the highway. The car drove full speed under the 18-wheeler and severed the roof of the Model S. Tesla responded to the incident by stating, "Autopilot is getting better all the time, but it is not perfect and still requires the driver to remain alert."

A few months later, another fatal accident was reported in Mountain View, California. Walter Huang was engaged in the Autopilot feature of his 2017 Model X when the car veered to the left of the highway and struck a safety barrier. According to the National Transportation Safety Board (NTSB), Mr. Huang had placed his hands on the steering wheel for 34 seconds out of the minute prior to the crash. In addition, he received two visual alerts and one auditory reminder to put his hands back on the steering wheel, but these warnings occurred more than 15 minutes before the deadly accident. In the three seconds before the crash, the Tesla's speed increased from 62 mph to nearly 71 mph. Prior to the crash, the car showed no efforts to brake or steer out of the way.

In 2017, Tesla drivers began to take action. A putative class action on behalf of drivers in California, Colorado, Florida and New Jersey was brought by Model S and Model X drivers. The complaint alleged that Tesla failed to implement its enhanced autopilot software and safety features, and when the company finally did release the safety features, they were incomplete and defective. The suit also stated that Tesla's autopilot program implemented a "half-baked" software that rendered the vehicles "dangerous if engaged." As a result of the class action, a California Federal Court required Tesla to pay out $5.4 million to nearly 33,000 Model S and Model X purchasers. The NTSB has also spoken out and has urged Tesla to fix its driver-assist system quickly.

Despite the legal actions against Tesla's self-driving feature, Tesla plans to record the first fully autonomous cross-country expedition by 2019. Although Tesla's self-driving feature is promoted as being designed to remove the stresses of driving, the feature should always be supplemented with a fully attentive driver. If you need more information on this subject, contact Cole Portis, the head of our firm's Personal Injury & Products Liability Section Head, at 800-898-2034 or by email at Cole.Portis@BeasleyAllen.com.

Sources: Wired.com, Tesla.com, Theguardian.com and Law360.com

Kia Recalls More Than 507,000 Vehicles After Airbag Failure Kills Four People

Kia, the Korean automotive manufacturer, has issued a massive recall because of airbags that will not deploy during a frontal crash. More specifically, the Airbag Control Unit (ACU) can develop a short circuit, which causes the airbag to fail to deploy. The ACU is the brain of the airbag system and receives impact data from sensors on the car. With the data from the sensors, the ACU can determine crash severity and deploy airbags and seatbelt pretensioners when appropriate. The Kia recall is linked to the ACU short circuiting after becoming overstressed during frontal crashes, which may lead to the airbags not deploying.

In March, the National Highway Traffic Safety Administration (NHTSA) announced that it would be investigating the airbag deployment issues from Kia after four people were killed and another six seriously injured in vehicles from Kia Motors Corp. and its affiliate Hyundai Motor Corp. The two automotive manufacturers together recalled nearly 1.1 million U.S. vehicles for this issue. Also, NHTSA says this electrical overstress appears to be the cause of the Fiat Chrysler Automobiles NV recall of more than 1.4 million vehicles for airbags that were not deploying during frontal collisions in 2016. This issue has already been linked to four deaths and the following vehicles are impacted (approximately 507,587 vehicles):

- All Forte vehicles produced Feb. 24, 2009-Aug. 31, 2012;
- All Forte Koup vehicles produced June 5, 2009-Aug. 31, 2012;
- All Optima vehicles produced from Aug. 12, 2010-Aug. 31, 2012;
- All Optima Hybrid vehicles produced from Feb. 15, 2011- Aug. 31, 2012;
- All Sedona vehicles produced from March 3, 2010-Aug. 14, 2012.

Currently, Kia has no remedy for this airbag issue, but will notify all impacted owners by mail by July 27, 2018. The airbag control units are supplied by ZF-TRW, which builds the parts based on the specifications from Kia. Because Kia and Hyundai are owned by the same parent company, Hyundai Motor Group, the two companies share many of the same parts and suppliers.

Following the massive recall from Takata airbags, the industry remains under high scrutiny; however, the Takata airbags were deploying with explosive force, spraying shrapnel, while this airbag is not deploying under certain circumstances. The root issue with the Takata airbags was the use of an ammonium nitrate based propellant that degraded over time due to age, high temperature and moisture. In this case, there is an electrical shortage with the circuiting on the Kia and Hyundai vehicles that are not relaying that the airbags need to deploy.

Some believe that Kia waited too long to begin the recall process. Auto manufacturers are required to notify NHTSA of any defect within five days of discovery before the recall begins. Hyundai became aware of a similar issue with a similar ACU three months before Kia recalled the ACU, which could leave Kia open to a fine for a failure to report and respond to the defect.

If your vehicle is from one of the model years that has been listed, Kia does not yet have a remedy. However, the company will perform the work with no cost to the vehicle owner. You can check to see if your vehicle is one of those being recalled by going to the NHSTA website and giving your 17-digit VIN number to find out what recalls are out on the vehicle. A Kia spokesman has stated that if there is no remedy available by July 27, or the customer does not feel safe driving the vehicle, Kia will then provide a rental vehicle.

Sources: Consumerreports.org, Autonews.com and Kia.com

VII. MASS TORTS UPDATE

National Talc Litigation Update

Beasley Allen continues the battle on the front lines of the talc-related ovarian cancer litigation around the country. Our firm presently has hundreds of cases pending in New Jersey, Missouri, Georgia, Pennsylvania, and in other states. In addition to the state cases, there is an active multidistrict litigation (MDL). Leigh O'Dell from our firm is co-lead counsel for the Talc MDL in New Jersey.

While Ted Meadows and other members of our litigation team gear up for our next trial currently scheduled for January in St. Louis, other firms continue the charge against Johnson & Johnson, although on another front. On May 24, a jury in Covina, California, found that the asbestos in Johnson & Johnson's Baby Powder was

responsible for Joanne Anderson's development of mesothelioma.

The jury awarded Mrs. Anderson and her husband $21.7 million in compensatory damages and $4 million in punitive damages. Mrs. Anderson was diagnosed with pleural mesothelioma, "a cancer that develops in the lining of the lungs that is often linked to asbestos."

The jury found Johnson & Johnson and Johnson & Johnson Consumer, Inc., bore 67 percent of the responsibility for Mrs. Anderson's mesothelioma. The jury found Johnson & Johnson 100 percent responsible for the punitive damages award. Imerys Talc America, Inc. escaped liability due to a successful summary judgment motion. The other Defendants, all talc suppliers, share responsibility for the compensatory damage award, and were identified as Cyprus Amax Minerals, a unit of Brenntag, Honeywell International/Bendix, Borg Warner and Fel-Pro.

Unbelievably, the jury sent a question to the court during deliberations and asked if "they could circumvent monetary punitive damages and instead punish the Defendants by requiring them to place a warning label on their products." Sadly, but as required by law, the court responded that the jury could not order Johnson & Johnson to add a warning label to its product.

Mrs. Anderson testified that she likely had more than 10,000 uses of Johnson & Johnson's Baby Powder over her lifetime, including using it on her children for diaper rashes and regularly using it on her hands and in her shoes as an avid bowler. At trial, Johnson & Johnson continued to maintain that its product does not contain asbestos and that it does not cause cancer. The Plaintiff's lawyers from Simon Greenstone Panatier, PC cited studies of mills and mines dating back to the early part of last century and stated that "asbestos and talc, which are closely linked minerals, are intermingled in the mining process, making it impossible to remove the carcinogenic substance."

Both asbestos and talc are mined near each other. However, in 1976, the Personal Care Products Counsel asked all its members, including Johnson & Johnson, to use asbestos-free talc in their products.

One wonders how long it will take before Johnson & Johnson changes the label on its Baby Powder to provide warnings not only concerning the risks associated with ovarian cancer, but also the risk of the development of mesothelioma due to asbestos.

We will continue to provide updates on Beasley Allen's next talcum powder/ovarian cancer case, which is set for trial in St. Louis in September. The case is a consolidation of 13 Plaintiffs, all of whom developed ovarian cancer after years of perineal use of Johnson & Johnson's Baby Powder. We also have cases poised for trial in Atlanta and Philadelphia in early 2019. Discovery is ongoing in all three venues. Progress in the MDL has been steady as well.

If you need more information on the Talc Litigation, contact David Dearing, one of the lawyers on our Talc Litigation Team. He can be reached at 800-898-2034 or by email at David.Dearing@beasleyallen.com.

Sources: *CNN*, Law360.com and *Reuters*

Case Specific Discovery Has Begun In The First Wave Of Xarelto Case Remands

The Xarelto multidistrict litigation (MDL) has picked up speed nationwide as the process for case remands has officially begun. Earlier this year, U.S. District Judge Eldon Fallon ordered that 1,200 cases undergo case-specific discovery in 2018. These cases will then be remanded from the MDL to their original jurisdictions for trial.

The remand cases were to be selected in two waves, with each wave consisting of 600 case selections. The first wave of 600 remand cases was selected in May of 2018. Within this group of 600 cases, 200 were selected by the Plaintiffs' Steering Committee (PSC), 200 were selected by the Defendants, and 200 were randomly selected by the court. The second wave of 600 cases will be selected in the same manner in August of 2018.

Many of the cases that were selected in the first wave of remand have begun case-specific discovery that will help to prepare the case for trial. Upon completion of the case-specific discovery, each of the cases selected will be remanded to its originating jurisdiction for trial.

The parallel state court Xarelto litigation in Philadelphia, Pennsylvania, continues to move at a fast pace as well. The fourth trial in the Pennsylvania state court is scheduled to start in August of this year.

Beasley Allen lawyers believe in the Xarelto cases and are prepared to try every single one of our cases across the country if that's what it takes to get justice for our clients. Our lawyers are prepared to try these one-by-one until the manufactures of Xarelto take the basic steps necessary to correct the known health and safety risks associated with Xarelto. Beasley Allen will continue to press forward in the litigation until there is a successful conclusion for our clients.

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

Hundreds Seek To Centralize New Jersey Taxotere Hair Loss Suits

Hundreds of women have filed suit in New Jersey against Sanofi-Aventis and other drug manufacturers saying these companies failed to adequately warn them about the risk of permanent hair loss from using the breast cancer drug Taxotere. These women are now calling for centralization of their state court lawsuits through an application to deem these cases a multicounty litigation, or MCL, and to assign them to Superior Court Judge James F. Hyland in Middlesex County.

Taxotere is a cancer medicine that interferes with the growth and spread of cancer cells in the body. It is commonly used to treat breast cancer, lung cancer, prostate cancer, and stomach cancer. Taxotere is one of many chemotherapy agents on the market. Patients and doctors often choose Taxotere because, unlike other chemotherapy drugs, Taxotere is generally administered once every three weeks as opposed to once per week.

Lawyers for Plaintiffs in more than 350 cases pending across the state filed the consolidation motion in March 2018, citing the large number of Plaintiffs and common issues underlying their claims. The application states, "Centralized management will conserve judicial resources and provide all parties with the benefits of coordinated recovery." Additionally, the application states that centralization will "minimize duplicative practice and inconsistent discovery rulings."

Because the Plaintiffs live in various states, including New Jersey, Pennsylvania, Maryland, Ohio and Connecticut, the application states "The parties submit that this geographical diversity makes centralized management necessary for the efficient handling of this litigation." Centralization would also help facilitate coordination with the multidistrict litigation (MDL) over the use of Taxotere in Louisiana federal court, according to the application.

The application states that the Plaintiffs suffered injuries because of the Defen-

dants' wrongful conduct in designing, manufacturing, distributing, labeling, advertising, marketing, promoting, and selling the chemotherapy drug. The lawsuits contend the Defendants knew or should have known that Taxotere "causes and contributes to permanent disfigurement and hair loss," but the Defendants failed to adequately warn of these risks.

For information about these cases, contact Beau Darley, a lawyer in our firm's Mass Torts Section, at 800-898-0234 or by email at beau.darley@beasleyallen.com.

Panel Says J&J Unit Must Face Out-of-State Plaintiffs

A Pennsylvania appeals court ruled last month that the business ties of Ethicon, a Johnson & Johnson subsidiary, with the state were substantial enough to allow the company to face claims there from an Indiana woman in her lawsuit. Ethicon, which is headquartered along with its parent company in New Jersey, had tried to avoid the verdict after claiming a recent U.S. Supreme Court decision limiting the ability of state courts to hear claims from out-of-state residents should have resulted in the case being moved out of Pennsylvania.

A three-judge Superior Court panel ruled that Ethicon had clear and substantial business links with Pennsylvania, including its reliance on Philadelphia-area Secant Medical Inc. to manufacture the mesh, and that was sufficient to give the state jurisdiction over claims from Patricia Hammons over the product's alleged defects. The court's opinion said:

> *This evidence establishes an affiliation between Pennsylvania and Hammons' cause of action against Ethicon for defective design of the … device.*

The case was the first opportunity for a Pennsylvania appeals court to weigh in on the U.S. Supreme Court's decision last year that Bristol-Myers Squibb Co. did not have sufficient business contacts in California to confer courts there with jurisdiction over some 600 lawsuits brought by out-of-state Plaintiffs over injuries allegedly caused by the blood-thinner Plavix.

Subsequently, Ethicon launched a renewed attack on whether the Philadelphia County Court of Common Pleas could retain jurisdiction over mesh-related claims filed by out-of-state Plaintiffs as part of a mass tort program set up in February 2014. That attack has included not only the challenge brought as part of the Hammons case, but also a motion asking the supervising judge of the pelvic mesh mass tort to reconsider his 2015 ruling preserving claims brought by non-Pennsylvania litigants.

Much like the conclusion reached by the Superior Court in the Hammons case, the supervising judge in Philadelphia County ruled in December that Ethicon's work with Secant meant that out-of-state Plaintiffs could bring mesh claims in Pennsylvania. While the supervising judge had agreed to allow his decision to be challenged on appeal in the Superior Court, the opinion handed down will shut down that avenue of litigation for Ethicon. The Hammons case arose from a mesh implant that Ms. Hammons received in 2009 to correct sagging of her internal organs, but which became embedded in her bladder and left her with chronic pain and unable to have sex.

A jury sided with Hammons in December 2015 following a three-week trial and awarded $5.5 million in compensatory damages and $7 million in punitive damages. The case was the first that Ethicon had faced in Philadelphia over mesh-related claims. Since then, juries have sided with Plaintiffs in five other mesh-related cases, including a $57.1 million verdict handed down in September, and some 94 cases remain pending.

Ms. Hammons is represented by Chip Becker, Shanin Specter, Michelle Tiger, Lee Balefsky, Kila Fickes and Ruxandra Laidacker of Kline & Specter PC, and Adam Slater of Mazie Slater Katz & Freeman LLC. The case is *Patricia Hammons v. Ethicon Inc. et al.,* (case numbers 1522 EDA 2016 and 1526 EDA 2016) before the Pennsylvania Superior Court.

Source: Law360.com

Punitive Damage Reduced In Surgical Stapler Case

A California appeals court on June 13 reduced a $70 million punitive damages award to $19.6 million in the suit alleging a Johnson & Johnson unit's defective surgical stapler and a doctor's negligence caused a woman's anus to be stapled shut during hemorrhoid surgery. The appeals court ruled that the award was excessive. The company and its subsidiary Ethicon Endo-Surgery LLC had asked the panel to either overturn the verdict or at least reduce it, arguing the evidence didn't support the jury's finding that the device maker acted with malice.

In the ruling, the panel partially agreed. Even though the court found evidence Ethicon knew, when it designed the stapler, that elements of its design posed a risk to patient safety, the judges opted to reduce the award after finding the company's "degree of reprehensibility, while not negligible, is only moderate." "In light of Ethicon's moderate degree of reprehensibility and Plaintiffs' substantial noneconomic compensatory damages award, $70 million is a constitutionally excessive award," the panel ruled.

In December 2015, a California jury hit Johnson & Johnson and Ethicon with $70 million in punitive damages after having awarded nearly $10 million in compensatory damages to former police officer Florence Kuhlmann, who was injured when a surgical stapler allegedly misfired during a 2012 hemorrhoid surgery and left her in need of a colostomy bag.

In the opinion, the panel noted how Ethicon did not implement an inspection plan that the lead design engineer had recommended. The company had "received numerous reports over the years which either indicated an excessive force to fire or identified issues which could be attributable to excessive force to fire." The panel said: "This evidence is sufficient to support the jury's determination that Ethicon acted with malice." However, compared to "extremely reprehensible" conduct—like light cigarette manufacturers' decision to add chemicals to their products to make them more addictive and thus more dangerous, or an asbestos supplier's decision not to warn customers about the product's risk of cancer—the panel said the "degree of reprehensibility of Ethicon's conduct" is not as bad.

Ms. Kuhlmann is represented by Martin N. Buchanan of the Law Offices of Martin N. Buchanan. The case is *Kuhlmann et al. v. Ethicon Endo-Surgery* (case number A147945) in the First District of the Court of Appeal of the State of California.

Source: Law360.com

VIII. AN UPDATE ON SECURITIES INSURANCE AND FINANCE LITIGATION

State Farm Hit With $34.3 Million Jury Verdict Over Policy Fees

A Missouri federal jury has awarded $34.3 million in compensatory damages to a class of more than 43,000 State Farm Life

Insurance Co. policyholders in the state. It was contended that the insurer deducted more from the policy holders' accounts than their universal life insurance policies allowed. Jurors found the insurer liable for breach of contract and conversion.

Class representative Michael G. Vogt sued in 2016 over a $100,000 life insurance policy he bought in 1999. He claimed State Farm calculated policyholders' cost of insurance (COI) rates based on commonly used factors such as age, sex, and applicable rate class but also added "other, unauthorized factors" to determine the rate, resulting in higher charges. Vogt claimed in court documents that he was overcharged about $3,183 over the 14 years that he had the policy.

However, State Farm claimed it was entitled to summary judgment in December, arguing that the rates the company charged did not exceed those listed in a separate table in the policy listing cost of insurance rates. The insurer claimed:

> *Because State Farm charged Plaintiff COI rates consistent with the terms of his policy, there is no genuine dispute as to any material fact, and State Farm is entitled to judgment as a matter of law on all of plaintiff's claims.*

In May, U.S. District Judge Nanette K. Laughrey dismissed the Plaintiffs' punitive damage claims in the case, finding that there was no evidence that State Farm acted with evil motive or reckless indifference. "The proffered evidence does not indicate that State Farm knew that it should not have considered non-mortality factors, including expenses, in setting COI rates," the judge wrote. Interestingly, much of the briefing in the case was filed under seal or redacted.

State Farm had urged the court to decertify the class. The insurer argued that uninjured class members must be removed from the class and not merely receive no recovery. Additionally, State Farm contended that under the Plaintiff's theory on how cost of insurance rates should be calculated, some of the class members' rates would actually be increased.

State Farm argued that Vogt "has taken a position on pooling in his damages model—and advocated for a position before the jury—that favors himself at the expense of many other class members." Vogt and the class are represented by Patrick J. Stueve, Norman E. Siegel, Ethan M. Lange and Lindsay Todd Perkins of Stueve Siegel Hanson LLP and John J. Schirger, Matthew W. Lytle and Joseph M. Feierabend of Miller Schirger LLC. The case is *Vogt et al. v. State Farm Life Insurance Co.,* (case number 2:16-cv-04170) in the U.S. District Court for the Western District of Missouri

Source: Law360.com

IX. PREMISES LIABILITY UPDATE

Acquired Brain Injury Involved In Lawsuit That Was Settled

Rob Register, a lawyer in our Atlanta office, represented a woman who was struck by a vehicle while walking across a parking lot. The client did not sustain any trauma to her head. Her torso and lower body sustained fractures and musculoskeletal injuries, which led to other complications. However, as it turned out, the client did suffer a brain injury.

An acquired brain injury (ABI) is defined as an injury to the brain that has occurred after birth. One form of an acquired brain injury is a traumatic brain injury (TBI) which results from trauma caused by an external force to the head such as in automobile wrecks, assaults or falls. However, there are many ways in which a person can suffer an acquired brain injury without trauma. Knowledge of the potential causes of acquired brain injury is essential to understanding and evaluating the damages in every personal injury or product liability case.

During her course of treatment and hospitalization our client suffered multiple conditions known to cause cognitive decline, including:

- Acute respiratory failure with intubation;
- Prolonged sedation in the ICU;
- Multiple courses of general anesthesia during seven separate surgeries;
- Blood loss, hypotension and decreased perfusion of the brain;
- Anemia secondary to blood loss;
- Metabolic acidosis;
- Infections/sepsis including MRSA and pneumonia;
- Cardiac arrhythmia;
- Avulsion injuries affecting a total body surface area of 20 percent or greater;
- Fat emboli occluding microvasculature, including the microvasculature of the brain.

Additionally, as an older individual, our client was more vulnerable to vascular shearing in her brain and its outer coverings such as the subarachnoid layer. Studies show that older citizens typically show a poorer functional outcome after an acquired brain injury than a younger adult. The older brain is not able to adapt and overcome as well as a younger brain. In this case, the family reported changes in the client's behavior and a decline in her memory, planning and execution of tasks.

Rob retained a preeminent neuropsychologist in the case who objectively evaluated our client. The testing revealed a measurable decline in our client's cognitive functioning. The neuropsychologist said that the repeated insults to the brain during her hospitalization induced a pattern of protracted inflammation of neuronal tissue and caused a permanent and profound acquired brain injury.

Due to the provable decline in the client's cognitive functioning, her treating physicians and her neuropsychologist recommended that she receive assistance with her daily needs for the remainder of her life. The quantifiable brain injury and the need for daily care resulted in an exponentially higher life care plan. Ultimately, the case was settled last month for an amount many times greater than a valuation commonly expected for only the physical injuries. Rob did an outstanding job for his client in her case.

Lawyers in our firm litigate cases involving all types of brain injuries. If you have any questions regarding a brain injury case, contact Rob Register, who is in our firm's Personal Injury & Products Liability Section, at 800-898-2034 or by email at Rob.Register@beasleyallen.com.

Lawsuit Filed On Behalf Of Man Gunned Down At Atlanta Nightclub

Lawyers in our Atlanta office have filed a lawsuit on behalf of the family of 21-year-old Ewell Ynoa, who was shot and killed the night of Nov. 12, 2017, while attending a concert at the Masquerade, a night club and live music venue located in the Underground Atlanta development. Defendants in the suit are the Masquerade Inc., along with a number of other Defendants that owned, operated or were responsible for the promotion, supervision, security, oversight, management and safety of the public at the Masquerade venue and concert event where this shooting took

place. Parker Miller, one of the lawyers in our Atlanta office, is lead lawyer in the case. He says:

This was a tragic situation that shook the City of Atlanta, adding to a long line of senseless shooting deaths that our country is becoming numb to. It is heartbreaking that two young people were killed and others were severely injured in an act that was certainly preventable. We are filing this lawsuit because this family deserves justice, and it is time those in a position to profit from events held in confined venues such as the one in question are held accountable so their first priority is the security of their guests.

On the night Mr. Ynoa was killed, he was attending a concert by music entertainer Stephen Goss, who performs as "Cousin Stizz." A deranged individual entered the Masquerade venue carrying a firearm. At approximately 9:30 p.m. EST, the gunman fired numerous shots into the crowd, striking Mr. Ynoa and three others. Mr. Ynoa died as a result of catastrophic injuries sustained in the shooting.

The lawsuit seeks to hold the Defendants responsible for failing to put into place the common sense, yet critical, security measures necessary to ensure the safety of Masquerade guests. The complaint has been filed in the State Court of DeKalb County, (case no. 18A69571). If you need more information on the case, contact Parker Miller at 800-898-2034 or by email at Parker.Miller@beasleyallen.com.

Walgreens Faces Suit Over Teen's Seizure Death

As the result of a landmark decision by the Supreme Judicial Court, the highest state appeals court in Massachusetts, Walgreens must face a family's lawsuit alleging its negligence caused the seizure death of a 19-year-old. The young girl's prescription could not be filled without authorization from her insurance carrier. The court ruled that pharmacies owe a legal duty of care to take reasonable steps to notify customers and their prescribing physicians of the need for prior insurance authorization each time they try to fill their prescriptions. Thomas M. Greene, the Boston lawyer representing the family, told Bloomberg Law "this decision is the first in the U.S. to recognize a duty in these circumstances."

Health insurers often require prescribing physicians to submit prior authorization forms to establish that prescriptions for particular medications are medically necessary and cost-effective, Judge Barbara A. Lenk wrote for the court. It's important to ensure that doctors are notified, Greene said, adding that the doctor is the only one who can complete the preauthorization paperwork. A group that represents low-income Massachusetts residents in need of health care agreed. Health Law Advocates in Boston told Bloomberg Law in a statement:

The duty to share this information with their client's physician will help ensure that medical professionals communicate effectively with one another, without leaving patients to fall through the cracks.

The advocacy group filed a brief in support of the family's lawsuit. Here, prior authorization was necessary in order for Yarushka Rivera to obtain insurance coverage for Topamax, a medication she needed to control life-threatening seizures, the court said. Wells G. Wilkinson represented the group.

The teenager was unable to afford the medication without insurance, and could not take her medication in the months before she suffered a fatal seizure. A trial court granted summary judgment for Walgreens, saying it had no duty to notify the teenager's doctors about the need for authorization. The Supreme Judicial Court reversed the decision.

However, the appeals court said the new notification duty is limited. The court said the pharmacy was not required to follow up on its own or ensure that the prescribing physician received the notice or completed the prior authorization form. Justice David A. Lowy dissented, saying the majority is imposing a "nebulous duty" on pharmacies to inform physicians that a prior authorization is required for certain medications in order to secure insurance coverage.

The National Association of Chain Drug Stores, Inc. supported Walgreens in a friend-of-court brief. The American Association for Justice supported the family's position. The Plaintiff was represented by Thomas M. Greene, a lawyer in Boston. The case is *Correa v. Schoeck* 2018 BL 201174, Mass., SJC-12409., 6/7/18.

Source: *Bloomberg*

North Texas Spa Sued Over Drowning Death In Sensory Deprivation Tank

A wrongful death lawsuit has been filed against The Float Spot, a spa located in Flower Mound, Texas, alleging that the company's negligence caused the drowning death of a woman in one of its aquatic sensory deprivation tanks. Gloria Fanning, 71, died April 7, having spent eight days on life support following her first visit to the spa. Advertised as the "world's first tranquility studio," The Float Spot encloses customers in sensory deprivation tanks filled with highly salinated water that increases a person's buoyancy. It's contended that the company touts myriad health benefits, while downplaying any potential risks from the enclosed floatation tanks.

It's alleged in the complaint that Ms. Fanning, a first-time customer, was given a brief orientation and then left alone in the tank. She was discovered later in a state of "distress" by an employee who initially called the business owner for guidance rather than calling 911 for assistance. Once paramedics finally arrived, they found Ms. Fanning unresponsive. She never regained consciousness. Michael Lyons, the co-founder of the Deans & Lyons law firm, said:

Gloria was promised an experience that was beneficial and completely safe. The company's own website claims that accidental drowning is not possible, which is patently untrue and contradicts reports of others across the country who have died in a similar fashion. This is a rapidly expanding industry that lacks any of the regulation necessary to ensure that customers are kept safe inside these aquatic sensory deprivation tanks. It is too late for Gloria, but this has to change.

The lawsuit is *Greta S. Anthony and David Porter v. Fc Acqua, LLC, dba The Float Spot and Raymond J. Thoma,* (Cause No. 18-4802-367) in Denton County District Court. As stated above, Deans & Lynons represents the family of the victim.

Source: PR Newswire

X. WORKPLACE HAZARDS

Opioids And Worker's Compensation Programs

A recent study produced by the Workers Compensation Research Institute found that long-term prescribing of opioids more

than triples the duration of temporary disability among workers with certain work-related, non-life altering injuries compared to similar claims filed with no opioid prescribing.

The study, using data from more than half of the States, found that "a 10-percentage-point increase in the local rate of long-term opioid prescribing is associated with a 2.6-percentage-point higher likelihood that an otherwise similar injured worker would receive longer-term opioid prescriptions," the study states.

In addition to the loss of work place productivity caused by opioids, the prescription costs of opioids create a drag on worker's compensation programs. A study by the Workers' Compensation Insurance Rating Bureau of California on the California Worker's Compensation program indicated that injured workers who are continually prescribed opioids had much higher drug costs and higher treatment transaction volumes, nine times the cost of a patient not prescribed and treated with opioids long-term.

XI. TRANSPORTATION

Investigation Reveals Known Defect Likely Contributed To Osprey Crash In Australia

Last August, three U.S. Marines lost their lives when their U.S. Marine Corps MV-22 Osprey crashed off the eastern coast of Australia, as Beasley Allen reported. Findings from the crash investigation released recently reveal that a defect in the aircraft's design likely contributed to the tragedy that claimed the lives of 1st Lt. Benjamin Cross, Cpl. Nathaniel Ordway and Pfc. Ruben Velasco, according to U.S. Naval Institute (USNI) News. It was the third Osprey crash within a year.

The crash occurred as the aircraft was attempting to land on the *USS Green Bay* aircraft carrier. The crash also left the aircraft carrier inoperable and damaged another aircraft on the landing deck. The Osprey was assigned to the Marine Medium Tiltrotor Squadron 265 of the 31st Marine Expeditionary Unit, which is based at Camp Butler in Okinawa, Japan. At the time of the crash, it was performing regularly scheduled operations after launching from the *USS Bohomme Richard*.

As we have explained in prior issues of this Report, the aircraft, with its tilt-rotor technology, is designed to function as both an airplane and a helicopter. Yet, the Osprey's design is a compromise between two incompatible mechanical designs. The rotor blades are twisted more than a typical helicopter's blades so that they can function better when it is flying as an airplane. Additionally, the blades are shorter than optimal so that the Osprey can land on ships at sea.

These design defects can increase the risk of a phenomenon known as the vortex ring state, which creates significant downwash, and because the Osprey doesn't have the power it needs to overcome the downwash, the aircraft loses altitude too quickly, preventing it from landing safely.

Although the investigation report is heavily redacted, Naval Air Systems Command (NAVAIR) engineers note that the Osprey likely crashed because of the downwash effect, although it also noted that the aircraft may have been over its weight limit, which intensified the circumstances.

A similar incident, although not deadly, occurred in 2015. In that incident, the MV-22 was attempting to land on the *USS New Orleans* based in San Diego. It was returning to the ship following a training event and missed its landing spot on the flight deck, leaving half the aircraft hanging off the back of the ship. The root cause of the two incidents was the same—the downwash effect coupled with weight that exceeded the power capacity. NAVAIR engineers explained that they adjusted the weight limits an Osprey may carry on approach to a U.S. ship at sea in an effort to address this dangerous problem. Yet, they did not discuss any plans to improve the fundamental design flaw or if the design could be improved.

The vortex ring state phenomenon or downwash effect is not the only design defect that has plagued the Osprey. Defects in the V22 engine air filtration system prevent it from operating and landing safely in dusty environments where other transport aircraft (equipped with better and safer filtration systems) regularly operate. It was this defect that led to a crash in 2015 that claimed the life of 21-year-old Lance Cpl. Matthew Determan, son of the firm's clients. Also killed during the crash was 24-year-old Cpl. Joshua Barron.

The crash occurred when the Marines were launching the Osprey from the Navy assault ship *USS Essex* for practiced landing, unloading, reloading and turning to ship. The aircraft was descending to the landing zone at Bellows Air Force Base in Waimanalo (Oahu) Hawaii when it crashed. The engine air filtration system, because of the flawed design, prevented it from properly filtering particulates from entering the engines, which led to engine failure and the subsequent crash.

Without a doubt, the jobs our troops are tasked with are inherently dangerous, which is all the more reason to ensure their equipment is the safest and most reliable as possible. The Osprey does not meet that standard. This *Report* has noted one official count listed 37 troops killed in Osprey crashes and the body count continues to rise, yet the military continues to bet the lives of its service members as this defective and highly dangerous machine remains in operation.

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

Sources: Beasley Allen, U.S. Naval Institute News (USNI), Jere Beasley Report (March 2017), U.S. Marine Corps

The Evolution Of The Electronic Logging Device—A Continuing Saga

I am not sure how many of our readers are familiar with electronic logging devices. For those who are not, these are computer/GPS devices installed in a truck to track the number of miles and the number of hours a driver operates a rig. Prior to electronic logging devices, it was incumbent upon drivers to record their hours and miles on a paper log system. The logs were turned in generally on a weekly schedule. However, with electronic logging devices, a trucking company can monitor a truck driver at all times.

The American Trucking Association has always been a proponent of electronic logging device systems. The use of electronic logging devices was first proposed in 2007 and was finalized in 2010. The rule that went into effect on Dec. 18, 2017, with a bill passed in 2012 known as the Moving Ahead for Progress in the 21st Century Act (MAP-21). Under the current Federal Motor Carrier Safety Administration (FMCSA) rules, a truck driver is allowed to drive no more than 11 hours a day within a 14-hour workday. Then a driver must be off duty for 10 consecutive hours.

Lawyers in our firm know that driver fatigue is a most serious problem and causes a great deal of hurt and misery on our highways. We have seen many highway accidents that were caused by a driver who was over his hourly limit and severely fatigued.

The Owner Operator Independent Driver Association has been fundamen-

tally opposed to the electronic logging device mandate and has been very active in attempts to prohibit implementation of the rule. After losing all administrative and legal recourse to fight and oppose the electronic logging device legislation, this group has now sought the help of Congress. In May of this year, the Small Carrier Electronic Logging Device Exemption Act of 2018 was introduced. This bill would allow trucking companies with less than 10 trucks to continue to use paper logs instead of electronic logging devices. The bill is currently in committee with no date having been set for a vote.

This is not the first time that the Owner Operator Independent Driver Association has sought the help of Congress. In July of 2017, a bill was introduced to extend the implementation of the electronic logging device mandate until 2020. That bill too was referred to committee and has shown no movement.

Unfortunately, exempting small trucking companies from the electronic logging device regulation would give the owner/operators an exemption on a much-needed safety tool. Any exemption from the electronic logging device regulation would prevent the need for this type of oversight on the companies that need it the most. Statistics have shown that these smaller fly-by-night trucking companies are the ones who routinely commit the type of safety violations that lead to deadly trucking accidents.

Hopefully, Congress will not pass any of the bills that would exempt smaller trucking companies from the electronic logging device and bring them in line with all other trucks and trucking companies in this country.

If you need more information on this matter, contact mike Crow, a lawyer in our firm's Personal Injury & Product Liability Section. Mike is one of our lawyers who handles trucking litigation for the firm. He can be reached at 800-898-2034 or by email Mike.Crow@beasleyallen.com.

References: TruckingNews.com, TruckingInfo.com, and Trucks.com

XII. AN UPDATE ON ACTIVITY IN BEASLEY ALLEN'S TOXIC TORTS SECTION

The Different Asbestos Diseases

Asbestos exposure causes several diseases that give rise to legal claims: mesothelioma, lung cancer, and asbestosis. Mesothelioma is a cancer of the lining of the lungs, abdomen, heart, or testicles. It can be caused by very brief exposures to asbestos. Mesothelioma can take 15-50 years to develop after the exposure. Mesothelioma is always fatal, and the typical life expectancy from diagnosis is 18 months. Recent new treatments such as radical surgery to remove and replace the cancerous lining have been increasing the life span for many patients.

Lung cancer, the most well-known of these diseases, is a cancer of the actual lung. Although the most prevalent cause of lung cancer is smoking, asbestos exposure can cause lung cancer in both smokers and non-smokers. Medical literature shows that smoking and lung cancer have a synergistic effect, making it significantly more likely that a smoker who is exposed to asbestos develops lung cancer.

Asbestosis is a scarring of the lungs. It is caused by more long-term or high-intensity exposures to asbestos. Although it is not usually fatal, asbestosis can cause serious suffering through long term shortness of breath, chest tightening, and lack of oxygen. In some cases, asbestosis can be serious enough to be fatal.

All of these diseases give rise to personal injury or wrongful death claims that Beasley Allen is litigating. These claims allege that companies knew or should have known of the hazards of asbestos and failed to warn clients of the dangers or the proper precautions to protect themselves. Years of discovery have proven that major corporations have consistently put profits over people's lives and must be held accountable for their actions.

For more information on this subject, contact Beasley Allen mesothelioma lawyer Sharon J. Zinns, who is in our Atlanta office, at 800-898-2034 or by email at Sharon.Zinns@beasleyallen.com.

Coil Coater Files Lawsuit Over Benzene Exposure

Our law firm recently filed a products liability lawsuit in Denver County, Colorado, on behalf of a coil coater at a manufacturing plant who was diagnosed with Myelodysplastic Syndrome (MDS), a cancer that causes immature blood cells in the bone marrow to not mature and therefore not become healthy blood cells.

Coil coating is a process for coating metal coils prior to fabrication into end products. The process of coil coating involves cleaning, treating, priming and painting the coil in one single continuous process. The Plaintiff has worked as a coil coater since 1960, and was constantly exposed to toxic fumes and vapors, as well as skin exposure to Defendants' products containing the chemical benzene.

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

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

The current lawsuit alleges that the Defendants know that the products the Plaintiff was exposed to contained benzene and have known for years that benzene poses a health hazard and can kill humans working in close proximity to their products, yet they continued to manufacture and sell these products, while at the same time marketing the products as safe. We are very proud to be able to represent our client in his efforts to recover for his injury.

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

Water Contamination Cases

Beasley Allen lawyers have filed several important cases involving water contamination in Alabama. We are honored to represent water systems in Gadsden and Centre over allegations that carpet manufacturers and chemical suppliers have contaminated their water intake, which will ultimately require an extensive filtering process at each facility. The contaminants are PFCs, which are discussed more fully below.

Draft Of PFC Study Released Amidst Public Pressure

As this issue of the Report went to print, the U.S. Environmental Protection Agency (EPA) released a draft study it previously withheld examining the toxicity of the perflourinated chemicals PFOA and PFOS. Emails among government officials revealed that one official from the Office of Management and Budget was concerned that the study could pose a "public relations nightmare" when the report is released.

The study, titled "Toxicological Profile for Perfluoroalkyls," proposes updated minimum risk levels (MRLs) for PFOA and PFOS that are roughly 10 times lower than the EPA's reference doses. It also recommends new MRLs for additional perflourinated chemicals, perfluorohexane sulfonic acid (PFHxS) and perfluorononanoic acid (PFNA). An MRL is an estimate of the amount of a chemical a person can eat, drink, or breathe each day without a detectable risk to health. The EPA is also expected to release a draft toxicity values for perfluoro-2-propoxypropanoic acid (GenX)—a replacement chemical for PFOA—and perfluorobutane sulfonate (PFBS) in August.

These chemicals have been found nationwide in drinking water supplies near military installations and fire departments that used firefighting foams, and adjacent to factories, such as 3M and DuPont, that manufactured these chemicals. In March, the Department of Defense (DOD) released a report identifying 401 active and former military installations with known or suspected releases of PFOA and PFOS. Ninety of those facilities reported PFOA and PFOS levels that exceeded "deemed safe" by the EPA. Testing conducted by the EPA shows that 194 water systems nationwide serving 15 million people have found traces of these chemicals in their water, with 64 water systems reporting combined PFOA and PFOS levels above the EPA's lifetime health advisory.

The EPA's lifetime health advisory of 70 parts per trillion (ppt) for PFOA and PFOS warned that exposure to elevated levels of these compounds, which accumulate over one's lifetime, can lead to a number of health problems including testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, high cholesterol and pregnancy-induced hypertensions. As a result, individuals and water systems across the county have been filing suit to ensure their drinking water is decontaminated.

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

Beasley Allen lawyers are investigating other PFC contamination cases in Alabama and across the country. 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.

Sources: *CNBC* and *The Times Herald-Record*

XIII. ENVIRONMENTAL CONCERNS

EPA Settles Brooklyn Superfund Site

The U.S. Environmental Protection Agency (EPA) has reached a $100 million agreement with National Grid concerning the cleanup of the Gowanus Canal Superfund site in Brooklyn, New York. The settlement includes building a wall to stop coal tar from spreading and restoring a nearby park and pool.

The Brooklyn Union Gas Co., doing business as National Grid NY, has signed off on the administrative settlement, agreeing, among other things, to build a barrier wall on the east side of the canal, which is located in northwest Brooklyn, and to excavate and mix soil in the nearby Thomas Greene Playground in order to lock in coal tar or other pollutants.

National Grid will also design and construct a temporary swimming pool to be used while the Douglass and DeGraw Pool in the park is out of commission. EPA Administrator Scott Pruitt in the agency's statement, relating to the settlement, said:

> *This agreement will enable the remediation and revitalization of a heavily contaminated waterway and one of the neighborhood's most popular recreational areas. EPA is prioritizing the Superfund program so that sites in densely populated urban areas, such as the Gowanus Canal, are addressed quickly and thoroughly.*

The Gowanus Canal, which extends about 1.8 miles into Brooklyn and is about 100 feet wide, became one of the busiest industrial waterways in the U.S. after it was built in 1860. However, it also eventually became one of New York's most polluted waters. The EPA found the presence of polycyclic aromatic hydrocarbons, polychlorinated biphenyls, pesticides, metals and volatile organic compounds. In 2010, the canal was added to the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act. After conducting studies on the waterway, the EPA issued a record of decision in 2013 that required actions such as the dredging of the hazardous substance-contaminated sediments in the canal and the implementation of engineering controls to make sure that pollutants from separated stormwater weren't released into the canal in the future.

The EPA entered into an administrative agreement in 2016 with New York City requiring the city to design the larger of two combined sewage overflow retention tanks and to acquire certain property where the tank could be placed. National Grid also agreed to coordinate and cooperate with the city in those obligated actions in its own settlement. The settlement agreement mandates that National Grid submit for approval to the EPA work plans and submissions necessary for carrying out the actions outlined in the document within 60 days of the agency's emailing of the fully executed agreement to the power company.

Source: Law360.com

XIV. UPDATE ON NURSING HOME LITIGATION

Hidden Camera Records Nursing Home Abuse

A Michigan family has filed suit against a Livonia nursing home after a hidden camera captured footage of employees yelling at and roughly throwing a resident, an elderly man, onto his bed and wheelchair. The man's family recorded the abuse in 2015 on a hidden camera inside their 89-year-old relative's room.

Hussein Younes was a resident at Autumnwood of Livonia before this family pulled him out of the facility. This came about because his son noticed several bruises and cuts to his father's head and legs and significant weight loss. The lawsuit alleges that Mr. Younes was thrown and slapped, leading to unexplained bruises and cuts. Within weeks, the family knew something was wrong, so in December they put a hidden camera in the alarm clock in Mr. Younes' room. After a couple of days, the son says he discovered "unspeakable horrors." Jonathan Marko, the family's lawyer, says:

> *They blamed his injuries on him falling 11 times over a five-month period. We only caught two days of this horror show at Autumnwood of Livonia. He was there for approximately six months. He went in, in May, until his family saw the video in December and yanked him out as soon as they saw it.*

The lawsuit includes detailed allegations that caretakers cursed and hurled ethnic slurs at Mr. Younes. The complaint also alleges the resident was denied water, had his "call button" taken away from him, was violently shaken by his head and had his legs run into the wall and wheelchair while being moved. The family gathered 119 clips in the course of two days documenting the neglectful and abusive behavior.

This unfortunate incident is a reminder of why it is important for Beasley Allen lawyers to defend those who are in the most precarious and vulnerable positions in our society. Our firm has a team of lawyers who fight for those in need of protection from abuse and neglect in nursing homes and other long-term care facilities. We will continue to do so until these inexcusable instances of elder abuse and neglect no longer happen.

Sources: WJBK Fox 2, Detroit, MI; www.mlive.com

Resident Neglect: The Most Common Type Of Nursing Home Abuse

Elder abuse and neglect happens in many settings. Long-term care facilities, which include nursing homes and rehabilitation facilities, are not immune to the occurrence of these unfortunate acts. Many of the 1.4 million people in the United States who reside in nursing homes are helpless, vulnerable, and completely dependent upon nursing home staff to meet most or all their needs. Though many residents are well cared for, nursing home abuse and neglect is more widespread than most people are aware. In fact, a study by the National Center on Elder Abuse (NCEA) found that 95 percent of nursing home residents in the United States report to being neglected or seeing another resident neglected.

Neglect, which is the refusal or failure to provide the care and services necessary to ensure a person's freedom from harm or pain, is the most common type of abuse in nursing homes and other long-term care facilities. In the nursing home setting, neglect most commonly occurs when a resident does not receive proper medical, physical, or emotional care. Neglect can also be a failure to react to a potentially dangerous situation resulting in the resident's harm or anxiety. Unchecked neglect can pose a serious risk of harm or even death to some nursing home residents.

The types of nursing home neglect can vary. Some common types include: failure to provide adequate attention, prevention, or medication to properly address a resident's health concerns, including bed sores, infections, injuries, or mental and mobility impairments; failure to provide adequate food and water or reasonably clean living environment; failure to provide adequate help with cleaning, bathing, brushing teeth, or other hygienic tasks; and failing to provide residents with adequate emotional support.

Often, nursing home neglect is caused by the nursing facility having inadequate staff to properly care for all their residents. According to a 2017 study by the NCEA, 91 percent of nursing homes lack adequate staff to properly care for residents. Nursing home companies make the decision to short-staff their facilities despite awareness of numerous research studies conducted over the past 25 years that document a significant relationship between higher nurse staffing levels, particularly RN staffing, and better outcomes of resident care.

According to the NCEA, unfortunately, we do not know for certain how many people are suffering from elder abuse and neglect in nursing homes and other long-term care facilities. Signs of elder abuse may be missed by professionals working with older Americans because of lack of awareness and adequate training on detecting abuse and neglect. Elderly residents may be reluctant to report abuse themselves because of fear of retaliation, lack of physical or cognitive ability, or other reasons. Therefore, it is important for the loved ones of nursing home residents to be alert and mindful of the signs of potential abuse or neglect.

Signs of neglect can differ from case to case. Knowing the signs of nursing home neglect can help to prevent or stop it before a resident suffers harm. It is important to keep in mind that a nursing home resident exhibiting one sign may not necessarily indicate neglect. However, the existence of a combination of the following signs may indicate a need for further investigation: sudden unexplained weight loss; bedsores or pressure ulcers; fractures or other injuries from falls; uneaten food on resident's meal tray; withdrawn or other unusual behavior with nursing home staff or other residents; poor personal hygiene; change in personality or behavior; unsanitary living conditions; existence of safety hazards in the facility or resident's room; unsafe furniture or other items in the resident's room; and an inability to locate nursing home staff during visit.

Beasley Allen Lawyers Handle Nursing Home Litigation

Beasley Allen lawyers are fighting to protect nursing home residents from across the country from abuse and neglect. The lawyers on our Nursing Home Litigation Team represent the victims or families of those who have suffered death or serious injury because of nursing home abuse and neglect that occurs all too often. If you have suffered serious injury, your loved one had been catastrophically injured or died, or you have any questions about nursing home abuse and neglect, contact Chris Boutwell, who heads up the Nursing Home Litigation Team for our firm, at Chris.Boutwell@beasleyallen.com or by phone at 800-898-2034.

XV. An Update On Class Action Litigation

Class Action Litigation Update

A large number of important class action lawsuits are pending in courts throughout the country. Beasley Allen lawyers are involved in a good number of these cases. We will discuss some of the more significant cases below:

Antitrust

2018 started with a bang with the announcement of two antitrust settlements. Several drywall manufacturers agreed to pay a class of direct purchasers $125 million to settle price-fixing claims. This settlement brings the total paid by all Defendants to direct purchaser class members to $190 million. The Plaintiffs, represented by the Cohen Millstein and Berger Montague firms, among others, alleged drywall manufacturers conspired to hike prices starting in 2011. The case is *In Re: Domestic Drywall Antitrust Litigation*, No. 2:13-md-2437 (E.D. Pa.).

Southwest Airlines will pay $15 million to exit multidistrict litigation (MDL) in which Southwest and three other major U.S. airlines are accused of conspiring to limit domestic flight capacity and inflate fares. In addition, Southwest promised to provide "significant cooperation" with the case against the three remaining airlines—American, Delta, and United. The Plaintiffs are represented by co-lead counsel from the Hausfeld firm and Cotchett, Pitre & McCarthy. Our firm has provided manpower to co-lead counsel to assist in the prosecution of this most important case. This "ice-breaker" settlement with Southwest will facilitate larger settlements with the remaining Defendants. The case is *In Re: Domestic Airline Travel Antitrust Litigation*, No. 1:15-mc-1404 (D. D.C).

The Blue Cross Blue Shield Association and its 36-member health care insurers, including Blue Cross and Blue Shield of Alabama, are Defendants in one of the largest antitrust cases in U.S. history. Dee Miles, who heads our firm's Consumer Fraud & Commercial Litigation Section, is on the Plaintiff's Steering Committee for this important case. The case, brought on behalf of both health care providers (like doctors, clinics, and hospitals) and health insurance subscribers (patients) alleges that the Association and its members (the "Blues") have conspired to divide markets and reduce competition in the health care insurance industry. The Blues then use their monopoly power to negotiate lower rates to providers and lower reimbursement to subscribers. The Blues' multiple motions to dismiss the Plaintiffs' claims have largely been denied. The case, if successful, could provide relief to doctors and patients throughout the country, particularly here in Alabama, where BCBS of Alabama controls more than 90 percent of the health insurance market. The case, which is being heard in Birmingham by Judge David Proctor, is styled *In Re: Blue Cross Blue Shield Antitrust Litigation*, 2:13-cv-2000-RDP (N.D. Ala.).

Automotive

Beasley Allen lawyers are currently involved in a number of important auto class action cases. Dee Miles, who is recognized by his peers as one of the best class action litigators in the country, was appointed to serve on the Steering Committees of two landmark cases involving vehicle emissions. The first case, involving more than 600,000 Volkswagen, Audi, and Porsche diesel vehicles, demonstrated that the manufacturers installed "defeat devices" in the vehicles' emissions systems. The defeat devices improved the cars' gas mileage and performance by allowing the car to pollute at illegal levels. Multiple settlements resulted in billions paid to vehicle owners, as well as penalties to federal and state governments. The case, led by our friend Elizabeth Cabraser from San Francisco, is *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices and Products Liability Litigation*, No. 3:15-2672-CRB (N.D. Cal.).

Dee was also appointed to the Steering Committee in a similar case involving diesel Ram and Jeep Grand Cherokee models. Those vehicles, manufactured by Fiat Chrysler, also contained illegal defeat devices. Earlier this year, Judge Edward Chen denied a motion to dismiss and allowed the case to go forward. The case, also led by Cabraser and currently in discovery, is *In Re: Chrysler-Dodge-Jeep "Ecodiesel" Marketing, Sales Practices and Products Liability Litigation*, 3:17-md-2777-EMC (N.D. Cal.).

Beasley Allen lawyers also served in supporting roles in litigation involving defective Takata airbags and faulty General Motors ignition switches. These defects, which affected millions of vehicles, caused a number of deaths to motorists. Lance Cooper, who is associated with our firm's Atlanta office, discovered the GM ignition switch defect, and lawyers in our firm have resolved a number of personal injury cases related to this egregious design flaw that was covered up for years by GM. A class action settlement for owners of the affected GM vehicles is currently being considered by the court. See *In re: General Motors LLC Ignition Switch Litigation*, 1:15-md-2543-JMF (S.D.N.Y.).

Similarly, multiple settlements against automakers have been approved related to their installation of defective airbag inflators made by now bankrupt Takata Corporation. The inflators, which used ammonium nitrate, caused explosive eruptions that hurled metal fragments into the passenger compartment, sometimes injuring or killing occupants. The case, led by Peter Prieto from Miami, is *In Re: Takata Airbag Products Liability Litigation*, 1:15-md-2599-FAM (S.D. Fla.).

Consumer

A Beasley Allen lawyer was recently selected to a leadership role in a case involving the Apple iPhone. Archie Grubb was selected to the Plaintiffs' Steering Committee in the class action case that was consolidated before Judge Edward Davila in San Jose, California. Archie and other lawyers will represent millions of owners of older iPhone models such as the iPhone 6, 6S, 6 Plus, and SE. The suit alleges that Apple issued updates that slowed the older iPhones' processing speed in order to conceal a defect in the iPhones' batteries. The case, in its early stages, is led by two excellent lawyers, Joseph Cotchett and Laurence King, both from San Francisco. The case is styled *In re: Apple Inc. Device Performance*

Litigation, No. 18-md-2827-EJD (N.D. Cal.).

Employment

The United States Supreme Court recently issued bad rulings in three cases that increase the power of employers at the expense of their employees. In *Epic Systems Corp. v. Lewis, Ernst & Young LLP v. Morris, and NLRB v. Murphy Oil USA Inc.*, the Court upheld the use of arbitration clauses with class action waivers in the context of employment contracts. This means that to get or keep a job, employees can be forced to give up their constitutional right to a jury trial, and their rights under federal law to collective action. This ruling will hinder an employee's ability to take legal action against his employer, as most such claims will now be scuttled in private arbitrations.

Privacy

Consumer privacy continues to be an issue, with news of new corporate security failures and accompanying data breaches becoming a regular occurrence. Corporations that collect consumer data have a moral and legal duty to safeguard that information from disclosure, particularly from falling into the hands of criminals. The most significant privacy case currently pending involves Equifax, the Atlanta-based consumer credit bureau that allocates information on more than 800 million consumers worldwide. Last year Equifax suffered a security failure that resulted in the disclosure to criminals of over 150 million sensitive consumer records. The class action, pending in Atlanta, is styled *In re: Equifax Inc. Customer Data Security Breach Litigation*, No. 1:17-md-2800-TWT (N.D. Ga.).

An important case is also gearing up against Facebook. The social media giant is accused of allowing Cambridge Analytica, a London-based data-mining firm with ties to President Trump, to access the private information of tens of millions of users without their permission in an attempt to sway elections. A number of class actions have been filed in courts around the country, and I expect the Judicial Panel on Multidistrict Litigation will issue a ruling in early June that will consolidate all these cases before one judge—probably in the Northern District of California where Facebook is located. Once consolidated, I expect our firm will seek a leadership role in the case. Stay tuned.

For further information about activity in the Consumer Fraud & Commercial Litigation Section relating to ongoing or potential class action litigation, call 800-898-2034 and ask for one of these lawyers: Dee Miles (Dee.Miles@beasleyallen.com), Archie Grubb (Archie.Grubb@beasleyallen.com), or Leslie Pescia (Leslie.Pescia@beasleyallen.com).

$21.5 Million Monsanto Settlement Over Roundup Labels Approved

A Missouri federal court has approved a $21.5 million settlement between Monsanto and a class of consumers suing the agrochemical giant over misleading labeling on its Roundup weed killer, calling it a "strong result in the face of an uncertain trial outcome." U.S. District Judge Audrey G. Fleissig called the nearly $22 million common fund "excellent" and praised the consumers' lawyers for taking on "a case with little precedent" over claims Monsanto misled consumers about how much Roundup could be made from bottles of concentrate.

The concentrate labels say the formula "makes up to" a certain amount of herbicide when mixed with water but the instructions' fine print says the formula should be mixed at much higher concentrations for best results. Judge Fleissig said:

> *Absent approval of the settlement, what remains is one or more trials, perhaps in multiple forums, which are likely to be lengthy and complex, with an unpredictable outcome and post-trial motions and appeals, all while class members remain uncompensated and litigation time, stress, fees, and costs increase for both sides.*

Elisabeth Martin and Joshua Rawa filed their separate proposed class action lawsuits against Monsanto in 2016 and 2017, respectively, alleging the company lied to consumers about how much weed killer could be made from bottles of its concentrated-formula Roundup. The consumers claim they would have paid between 40 and 50 percent less for the Roundup concentrate if they were aware that the "makes up to" language only referred to a very weak mix of the weed killer.

Both suits sought to represent a class of all U.S. persons who purchased the concentrated Roundup with the misleading labels, and that class was certified as part of the recent order. Rawa filed his suit in Missouri, where Monsanto is headquartered, and Ms. Martin filed hers in California. As the settlement began to take shape late last year, Ms. Martin agreed to have her suit transferred to Missouri and consolidated with the Rawa suit.

Nine other separate, but highly similar, suits were also filed against Monsanto. Those Plaintiffs have all agreed to sign onto the Rawa-Martin settlement. The settlement will result in Monsanto being released from Martin and Rawa's state consumer protection statute claims, in exchange for a common fund of $21.5 million. Roughly $11 million of that will be paid out to the consumers submitted 71,000 or so validated claims, with $6 million to be paid out for attorneys' fees. About $800,000 will go toward administration and litigation costs. Roughly $4 million will be left in the common fund.

The court's order grants the Plaintiffs' request that the money balance be donated to third-party groups as a cy pres award. Judge Fleissig said she "finds such an award to be appropriate here for several reasons," including that the claims process was run efficiently and gave consumers a fair shot at claiming their share of the common fund. The judge pointed out that "the class action resulted in a further benefit to the class, as Monsanto changed its product labeling." Half of the $4 million will go to the National Consumer Law Center and half will go to the Better Business Bureau's National Advertising Division. All in all, Judge Fleissig said, the settlement was "a strong result in the face of an uncertain trial outcome."

The case is *Elisabeth Martin et al. v. Monsanto Company*, (case number 5:16-cv-02168) in the U.S. District Court for the Central District of California. The related case is Joshua Rawa, (case number 4:17-cv-01252) in the U.S. District Court for the Eastern District of Missouri.

Source: Law360.com

Wells Fargo's $142 Million Account Fraud Settlement Is Approved

A California federal judge has said that he will approve a $142 million settlement between Wells Fargo and a class of customers who say they suffered financial losses from unauthorized accounts opened in their names. U.S. District Judge Vince Chhabria told objectors the "imperfect" settlement was "the least-worst solution" to the fraudulent account scandal.

After listening to objections, Judge Chhabria said he will grant final approval

for the settlement, which creates a $142 million pot to be paid out to 3.5 million customers who say sales representatives created unauthorized accounts for them between May 2002 and mid-April 2017. The judge said he was sympathetic to critiques of the settlement's notification to class members and concern about whether it ameliorated their ongoing credit issues, but said such settlements' are "imperfect instruments for providing some measure of justice."

Wells Fargo first announced in March 2017 that it had reached a $110 million settlement resolving the case alleging that bank workers opened unauthorized accounts in customers' names or enrolled them in the bank's services without their consent. The initial proposed settlement class consisted of those claiming that Wells Fargo opened an account in their name or applied or enrolled them in a product or service without consent after Jan. 1, 2009. In April 2017, Wells Fargo subsequently agreed to allow the claims to go back to 2002, adding an additional $32 million to the settlement pot. But objectors at the hearing said the settlement still didn't accomplish enough to address the tremendous harm that had been done.

There were several very strong objections to the settlement. It appears that the objectors made a good argument that the amount was much too low. However, in support of the settlement, it should be noted that remediation costs were not capped in the settlement. The class size has increased from about 2 million to 3.5 million. Class counsel Derek Williams said that increase "will have no impact at all" on damages, which include the amount of money customers lost as well as compensation for increased borrowing costs for people whose credit was impacted by a fake account. He said: "This is an unprecedented uncapped guarantee. People will receive make-whole relief. They'll get back every bit of economic harm."

The Plaintiffs are represented by Derek W. Loeser and Gretchen Freeman Cappio of Keller Rohrback. The objectors are represented by Steven Alden Christensen of Christensen Young and Associates, S. Clinton Woods of Audet & Partners and Scott Wert. The case is *Jabbari et al. v. Wells Fargo & Co. et al.*, (case number 3:15-cv-02159) in the U.S. District Court for the Northern District of California.

Source: Law360.com

Lumber Liquidators MDLs Get Initial Approval For $36 Million Settlement

A Virginia federal judge overseeing multidistrict litigation (MDL) involving Lumber Liquidators' alleged false statements that its laminate wood flooring complied with California Air Resource Board's (CARB) formaldehyde emissions limits preliminarily approved a $36 million agreement to end the litigation. U.S. District Judge Anthony J. Trenga preliminarily approved the settlement that would end claims that the hardwood flooring exceeded California's approved level of formaldehyde emissions, as well as claims the flooring wasn't durable. Lumber Liquidators agreed to pay $22 million in cash and $14 million in vouchers to members of two settlement classes, according to court documents. The court said in the order:

> *The settlement on the terms and conditions of the settlement agreement filed concurrently with the motion for preliminary approval is hereby preliminarily approved, but is not to be deemed an admission of liability or fault by defendant or by any other party or person."*

Numerous proposed class actions were filed starting March 3, 2015, shortly after "60 Minutes" aired an investigation that found Lumber Liquidators misrepresented that its Chinese-made laminate flooring complied with Golden State formaldehyde emissions limits, according to court documents. On average, the level of formaldehyde in the company's flooring ranged from at least six times the state standard, with some samples nearly as high as 20 times the standard, the investigation found.

In June of 2015, the U.S. Judicial Panel on Multidistrict Litigation consolidated the formaldehyde emissions cases. Other consumers who bought the flooring said it scratched, chipped, warped and stained. These consumers also filed proposed class actions, which were consolidated in October 2016.

The court certified a class of consumers who bought the flooring between Jan. 1, 2009, and Dec. 31, 2010, when CARB allowed formaldehyde levels as high as .21 parts per million, and a class of consumers who bought the flooring between Jan. 1, 2011, and May 31, 2015, when CARB allowed formaldehyde levels as high as just .11 parts per million. The durability Plaintiffs are included in the latter class. Because the standard was stricter for the consumers in the latter class, these consumers have stronger claims and are eligible for a greater portion of the settlement fund, according to the agreement. Consumers in the earlier class are not eligible for vouchers.

The Plaintiffs are represented by Steven J. Toll of Cohen Milstein Sellers & Toll PLLC, Steve W. Berman of Hagens Berman Sobol Shapiro LLP, Niall McCarthy of Cotchett Pitre & McCarthy LLP, Alexander Robertson IV of Robertson & Associates LLP, Daniel K. Bryson of Whitfield Bryson & Mason LLP and Robert R. Ahdoot of Ahdoot & Wolfson PC.

The cases are *In Re: Lumber Liquidators Chinese-Manufactured Laminate Flooring Products Marketing, Sales Practices and Products Liability Litigation, MDL* (number 1:15-md-02627) and *In Re: Lumber Liquidators Chinese-Manufactured Laminate Flooring Durability Marketing and Sales Practices Litigation*, MDL (number 1:16-md-02743) both in the U.S. District Court for the Eastern District of Virginia.

Source: Law360.com

Biotech Co. Reaches $18.5 Million Settlement In Investor Fraud Class Action

Investors in Osiris Therapeutics Inc. have reached an $18.5 million settlement with the biotech research company over allegations it artificially inflated reported revenues and misled shareholders about its revenue growth. Lead Plaintiff Raffy Mirzayan asked the court for preliminary approval of the settlement, along with certification of the investor class, on the grounds that it was unopposed and the class members would recover between 36 percent and 86 percent of estimated damages.

In its most recently amended version, the 2015 action claimed Osiris and its top executives violated securities laws by engaging in "wide-ranging fraudulent acts" that resulted in the company misstating its revenue in SEC filings, reports and earnings calls. The company was said to have recognized revenue prematurely in some periods, recorded it using higher and inaccurate prices and contradicted its accounting policies by recognizing consignment inventory.

The investors said that in order to keep up with these inflated revenues, Osiris fraudulently initiated and agreed to unusually long payment terms in its deals with distributors. In at least one instance, Osiris fabricated deal documents with a distributor that did not exist at the time the revenues were recognized in the fourth quarter of 2014.

Former CFO Philip Jacoby acknowledged his role in the scheme in a related New York criminal action for which he has been fined $10,000. The Osiris executives are fighting civil claims from the U.S. Securities and Exchange Commission over allegations of inflated revenue reports. The same claims against Osiris were settled last year for $1.5 million. It was reported that the class of investors who purchased Osiris stock between May 2014 and November 2015 be certified so that it could be issued notice of the preliminary settlement.

The class of investors is represented by Reed R. Kathrein, Peter E. Borkon and Steve W. Berman of Hagens Berman Sobol Shapiro LLP as lead counsel and Wayne G. Travell and Robert R. Vieth of Hirschler Fleischer PC as liaison counsel. The case is *Nallagonda v. Osiris Therapeutics Inc. et al.*, (case number 1:15-cv-03562) in the U.S. District of Maryland.

Source: Law360.com

American Pipe Opinion Still Protects Class Members' Individual Claims From A Statute Of Limitations Defense

On June 11 the U.S. Supreme Court in the *American Pipe* case barred "stacked class actions;" however, the opinion still protects class members' individual claims from statute of limitations defense. The court in *American Pipe* held the timely filing of a class action tolled the applicable statute of limitations for all persons encompassed by the class complaint. Members of a class who failed to gain class certification are permitted to intervene as individual Plaintiffs in the still-pending class action, detached of its class character.

Similarly, those class members are also permitted to file timely separate actions against the Defendants because of *American Pipe* tolling. Stacked class actions occur when class certification is denied in one suit and then a different Plaintiff files a separate class action, outside of the statute of limitations period, with the same allegations against the same Defendant—relying on *American Pipe* to suspend the statute of limitations for the duration of the prior class action.

The issue in *China Agritech* was whether *American Pipe* tolling applied not only to individual claims, but to successive class actions as well. The Court held it does not. Before the Court in *China Agritech* was the third class action brought on behalf of China Agritech's common stock for alleged violations of the Securities Exchange Act. The Securities Exchange Act has a two-year statute of limitations that begins to run when the violation is discovered.

Class certification was denied for two earlier class actions for the same alleged violations when Michael Resh filed a class action suit in 2014; however, Resh filed a year and a half after the statute of limitations had expired. The district court dismissed the action as time-barred, but the Ninth Circuit reversed, holding *American Pipe* tolling applied to late-filed class actions and that Resh's successive class action had been tolled for the duration of the prior two class actions. The Ninth Circuit's holding deepened a circuit split, which was resolved when the Supreme Court reversed the Ninth Circuit, holding *American Pipe* tolling does not apply to successive class actions.

Though stacked class actions are now barred, *American Pipe* still protects class members' individual claims from statute of limitations, just not as a class representative. For example, a class member cannot file a new class action if the old one fails and rely on the statute of limitation protection of *American Pipe*. As Justice Ginsburg wrote in the opinion of the Court, "Any Plaintiff whose individual claim is worth litigating on its own rests secure in the knowledge that she can avail herself of *American Pipe* tolling if certification is denied to a first putative class."

Even though *American Pipe* still protects class members' individual claims, those seeking to file a class action need to be extremely diligent and not sit on their claims. The Court in stated in *China Agritech*:

> *The Plaintiff who seeks to preserve the ability to lead the class—whether because her claim is too small to make an individual suit worthwhile or because of an attendant financial benefit—has every reason to file a class action early, and little reason to wait in the wings, giving another plaintiff first shot at representation.*

If you need additional information on this subject, contact Chris Baldwin, a lawyer in our firm, at 800-898-2034 or by email at Chris.Baldwin@beasleyallen.com.

Sources: *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974). *China Agritech, Inc. v. Resh*, 584 U.S. ____ (2018).

Fiat Investors Win Certification In Emissions-Fraud Losses Lawsuit

A New York federal judge has certified a class of Fiat Chrysler investors in a stock-drop suit alleging the automaker lied about using emissions-cheating devices in vehicles in an effort to inflate the company's stock price. In a ruling, U.S. District Judge Jesse Furman also appointed Plaintiffs Gary Koopmann, Timothy Kidd and Victor Pirnik as representatives of the class, and appointed Pomerantz LLP and The Rosen Law Firm PA as co-lead class counsel.

The lawsuit, first filed in September 2015, claims that class members were financially harmed by false and misleading public statements and omissions made by FCA US LLC and others concerning the company's compliance with federally mandated vehicle emissions regulations. Fiat Chrysler's brands include Chrysler, Dodge, Fiat, Jeep and Ram. The class certified includes people and entities who purchased Fiat Chrysler common stock between Oct. 13, 2014, and May 23, 2017, the date on which the U.S. Department of Justice (DOJ) and the Environmental Protection Agency (EPA) filed a separate complaint against FCA US LLC, Fiat Chrysler Automobiles N.V. and others for alleged violations of the Clean Air Act.

The EPA's complaint accused Fiat Chrysler of installing secret "defeat devices" in about 104,000 Ram 1500 and Jeep Grand Cherokee diesel vehicles sold in the U.S. that showed lower emissions levels during testing than what would occur when the vehicles were on the road, resulting in increased emissions of harmful air pollutants.

The investors, in a December motion for certification, called their situation "a textbook example of a case warranting class action treatment." The start of the class period on Oct. 13, 2014, is when the Fiat Chrysler Defendants misleadingly told investors that Chrysler had a strong compliance system and said the company was in compliance with vehicle safety and emissions regulations, according to the investors' complaint. They said such assurances continued throughout the class period.

The investor Plaintiffs are represented by Jeremy A. Lieberman, Michael J. Wernke, Veronica V. Montenegro and Patrick V. Dahlstrom of Pomerantz LLP and Laurence M. Rosen, Phillip Kim and Sara Fuks of The Rosen Law Firm PA. The securities class action is *Pirnik v. Fiat Chrysler Automobiles NV et al.,* (case number 1:15-cv-07199) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

XVI. THE CONSUMER CORNER

SCOTUS Agrees To Hear Apple Antitrust Case

On June 18, the U.S. Supreme Court of the United States granted certification in an important antitrust case, *Apple Inc. v. Pepper*, accusing Apple of monopolizing the market for iPhone software applications (apps), which causes consumers to pay more than they should compared to if apps were available from other sources.

The Plaintiffs allege that Apple has an illegal monopoly by prohibiting competing app stores in the iOS ecosystem, which allowed Apple to charge a 30 percent commission to app developers. At the heart of the case is the indirect purchaser doctrine.

The indirect purchaser doctrine limits private Plaintiffs that may bring an antitrust damages suit under federal law to those who directly purchased the product or service from the manufacturer, as opposed to purchasing from a retailer for example.

The Ninth Circuit revived the class action and found that purchasers of iPhone apps had standing to sue Apple. Specifically, the Ninth Circuit found that Apple effectively was a distributor of apps, selling them directly to the consumer Plaintiffs, and therefore Plaintiffs had a direct purchaser relationship with Apple, which gave them standing to sue.

Apple had argued that it did not sell the apps, but instead acted as an intermediary used by the actual sellers, the app developers. Apple is supported by the Trump Administration, which argued that the Plaintiffs do not have standing to sue Apple under federal antitrust laws and urged the U.S. Supreme Court to take the case.

Specifically, the Supreme Court granted *certiorari* on the question of: "Whether consumers may sue for antitrust damages anyone who delivers goods to them, even where they seek damages based on prices set by third parties who would be the immediate victims of the alleged offense." The eventual ruling will be significant for antitrust precedent, has the potential to strengthen (or weaken) consumer protections against monopolies, and will have an influential effect on companies operating similar e-commerce platforms. A ruling in favor of Apple would make it more difficult for consumers to bring antitrust claims against the operators of these marketplaces under federal law. E-commerce plays a key role in today's economy and reached $452 billion in U.S. retail sales in 2017, according to U.S. government estimates.

If you need more information on this ruling and its effect, contact Leslie Pescia, a lawyer in our firm's Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Leslie.Pescia@beasleyallen.com

Sources: Law360.com, Lexology and *Reuters*

A Look At Payday Lending By A Consumer Advocate

As our readers should already know, I have never been a "big fan" of the payday lenders. Actually, I have actually worked very hard to help educate the public on how truly bad this industry really is. Two friends with Alabama Arise, Jim Carnes and Dev Wakeley, wrote an excellent piece recently on the need for reform of the payday lenders. Alabama Arise, a group that fights for consumers in Alabama, should be commended for its dedication and hard work. While their article is lengthy, because of its importance I am including it for our readers in its entirety.

Payday Lending Reform: Ending A Debt Trap In Alabama

On busy highways and run-down streets across the state, you can't miss them: big, bright signs promising easy money. From payday loans to auto title pawns to anticipation loans on tax refunds, Alabamians face a dizzying array of credit services designed to trap consumers in financial quicksand. This fact sheet highlights the pitfalls of payday loans in Alabama and offers policy solutions to address them.

Legalized usury?

Payday loans allow borrowers with a bank account to use a check dated in the future (usually two weeks later) as collateral for a cash loan. To qualify, all a person needs is proof of income (a pay stub or verification of government benefits). Research shows the payday lending business model is designed to keep borrowers in debt. Borrowers who receive five or more loans a year account for the large majority of payday lenders' business, according to research by the Center for Responsible Lending (CRL).

Most states have laws against usury, or excessive interest, but in some states like Alabama, lawmakers have carved out special exceptions for certain types of loans, including payday loans. The catch, however, is the huge profit that high interest rates pull from the pockets of vulnerable borrowers. Predatory lending promotes poverty by exploiting those caught in the gap between low wages and the real cost of getting by.

Each $100 borrowed through a payday loan in Alabama carries a "loan origination fee" of up to $17.50, and those charges occur with every renewal of the loan. With a 14-day loan period, this works out to an annual percentage rate (APR) of 456 percent. Loans that a customer cannot pay off entirely on the due date are rolled over, with no wait required for the first rollover and only a 24-hour wait required before the second. At triple-digit annual interest rates, even a short-term payoff for a payday loan can take a big bite out of a borrower's bank account.

Using payday loans doubles the risk that a borrower will end up in bankruptcy within two years, according to the Consumer Federation of America. It also doubles the risk of being seriously delinquent on credit cards and makes it less likely that consumers can pay other household bills. Payday loan use also increases the likelihood that a consumer's bank account will be closed involuntarily, which may subject the borrower to criminal prosecution under worthless check laws.

Alabama's payday loan database reveals the depth and details of the debt trap. A meager 22 percent of all payday loans go to borrowers who have more than 12 loans a year. Yet these borrowers are trapped into paying $56 million in fees, nearly half of all fees collected on payday loans in Alabama each year.

Serial borrowers are the bread and butter of payday lending, CRL research shows. Among payday borrowers who conduct multiple transactions, half take out new loans at the first possible opportunity, a process called "churning." This cycle of deep debt is big business. After six loans, borrowers typically have paid more in fees than the amount of the initial loan.

Struggling Alabamians are common targets of payday lenders. Payday lenders are located disproportionately in low-income neighborhoods, especially ones with large black or Hispanic populations. Lenders often target seniors, people without a high school education, and families who are likely to be living from paycheck to paycheck.

Understanding opposition to payday reform

Alabama's payday loan industry rakes in more than $100 million a year in fees. Lenders have used a portion of that money to hire a fleet of lobbyists to oppose reform in Montgomery. In 2017, a proposed state constitutional amendment to cap all consumer loans at 36 percent APR failed in the House Constitution, Campaigns and Elections Committee. And in 2018, the House Financial Services Committee killed a bill that would have given Alabama borrowers 30 days to repay payday loans (up from as few as 10 days under current law), even though the Senate voted for the measure by a significant margin.

Lenders' inflexibility facilitates a status quo that benefits them financially. Many legislators assert that they will not consider a reform bill without input from both consumer advocates and lenders. This allows lenders to preserve their existing advantage simply by opposing even small, reasonable changes.

Straightforward solutions

No state has legalized payday lending since 2005. In fact, 18 states and the District of Columbia essentially have banned payday loans. In 2006, Congress outlawed predatory lending to military personnel and their dependents, capping interest rates at 36 percent APR and barring loans based on holding checks or debit authorization for future payment. And the Consumer Financial Protection Bureau's new rule requiring lenders to assess consumers' ability to repay could help prevent defaults (if the agency doesn't weaken it).

Alabama could build on this momentum for change by enacting several reforms to improve the lending landscape for the state's borrowers:

- Capping the interest rates on all consumer loans in Alabama at 36 percent would broaden the protections that now apply to military borrowers.
- Cutting the fee for originating a loan from the current $17.50 per $100 would lessen the financial burden on borrowers.
- Restricting the borrowable amount to 10 percent of the borrower's income would reduce the risk of borrowers becoming trapped because they cannot repay the entire loan amount at once.
- Allowing borrowers to pay loans off in installments would let people work themselves out of debt gradually instead of making them pay a loan off all at once.
- Giving borrowers 30 days to repay payday loans would cut the effective APR from 456 percent to about 220 percent. It also would reduce the administrative burden on lenders, borrowers and the state.

Bottom line

Payday lenders are on track to pull more than $1 billion in fees out of Alabama communities over the next decade. Nearly all of their profits will flow to out-of-state companies. Advocates of payday lending reform will have to build massive public support to fight the well-funded lenders, who often target legislative leaders and committee members to help protect the status quo. The challenges may be great, but real payday lending reform for Alabama borrowers can and will happen.

Proof came in 2015, when the state Banking Department responded to years of public pressure by creating a uniform statewide payday loan database and requiring lenders to check it for outstanding loans. That move kept thousands of Alabamians from sinking even deeper into debt by finally enabling the state to enforce its $500 limit on the amount of payday loans that an individual can have at one time.

Now it's time for Alabama to take the next big step for borrowers by cutting the APR on payday loans to a more reasonable level. This simple but important change would be a great way to keep more money in our state's economy, encourage household financial stability, and strengthen communities across Alabama.

I commend Alabama Arise for its unwavering stand in its battle against the payday lenders. We can no longer allow this industry to have its way in state legislative bodies around the country and in Congress. It's past time to clamp down hard on the industry and bring about the badly needed reform. If you agree, contact your local legislators and members of Congress and encourage them to back the reform movement.

Source: Alabama Arise

XVII. RECALLS UPDATE

This month we are again reporting a large number of safety-related recalls. We have included some of the more significant recalls that were issued in June. For the first time we are listing a large number of auto recalls under a separate heading. If more information is needed on any of the auto recalls, readers are encouraged to contact Shanna Malone, the Executive Editor of the Report. We would also like to know if we have missed significant safety recalls in any category that should have been included in this issue.

A Summary Of Recent Auto Recalls

Kia Motors America (Kia) is recalling more than 500,000 2010-2013 Kia Forte, Forte Koup, 2011-2013 Kia Optima and 2011-2012 Kia Optima Hybrid and Sedona vehicles. In the event of a crash, the air bag control unit (ACU) may short circuit, preventing the frontal air bags and seat belt pretensioners from deploying. If the frontal air bags and seat belt pretensioners are disabled, there is an increased risk of injury to the vehicle occupants in the event of a vehicle crash that necessitates deployment of these safety systems. The National Highway Traffic Safety Administration (NHTSA) says there have been six crashes resulting in four deaths and six persons injured.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2018 Volkswagen Atlas vehicles. The owner's manuals provided with the affected vehicles do not inform the customers about the child restraint size limitation/restrictions for the second-row center seating position. As a result, the center and adjacent outboard seat belt buckles on the second row can become damaged if a child

seat base is installed that is wider than 12.6 inches. A damaged seat belt buckle can release unexpectedly, increasing the risk of injury in a crash

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2013-2018 Audi S6 and S7, 2012-2018 A7 and A6 Sedan, and 2014-2018 RS7 vehicles equipped with basic seats (with or without heating). Stress or wear of the body-sensing mat within the front passenger seat may cause the Passenger Occupant Detection System (PODS) control module to malfunction. If the PODS module malfunctions, the front passenger air bag may not deploy properly in the event of a crash, increasing the risk of injury.

General Motors LLC (GM) is recalling certain 2019 Chevrolet Corvette ZR1 vehicles. Hard braking or acceleration may cause the sensing diagnostic module (SDM) to enter a fault state. As a result, the SDM will not provide crash sensing or deploy the necessary air bags in the event of a crash. In the event of a crash, if the air bags do not deploy as designed, the occupants have an increased risk of injury.

General Motors LLC (GM) is recalling certain 2018 Buick LaCrosse, Cadillac ATS, Chevrolet Equinox, Malibu and Colorado and GMC Terrain, Acadia and Canyon vehicles. The high pressure fuel pump may detach from its mounting flange, possibly resulting in the pump damaging the high pressure fuel line. A damaged fuel line can create a fuel leak, increasing the risk of a fire.

General Motors LLC (GM) is recalling certain 2018 Chevrolet Sonic vehicles. A joint in the driver's seat-back frame may not be properly welded, reducing the strength of the seat-back frame. In the event of a rear-impact crash, the seat-back may fail, increasing the risk of injury.

Nissan North America, Inc. (Nissan) is recalling certain 2018 Infiniti QX30 vehicles. The bolt securing the right-hand side lower seat belt anchorage may have been incorrectly installed during production. This can result in the lower seat belt anchorage detaching in a crash. As such, these vehicles fail to comply with certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 210, "Seat Belt Assembly Anchorages," number 209, "Seat Belt Assemblies," and number 208, "Occupant Crash Protection." If the lower seat belt anchorage detaches in a crash, it can increase the risk of injury.

Maserati North America, Inc. (Maserati) is recalling certain 2018 Maserati Quattroporte, Ghibli, and Levante vehicles. The welds on the front sub frame may be incomplete, which can result in the welds breaking. If the welds fracture, it can cause a loss of vehicle control, increasing the risk of a crash.

Chrysler (FCA US LLC) is recalling certain 2019 Jeep Cherokee vehicles equipped with 2.0L engines. The engines in these vehicles may be missing valve stem keepers, which can allow the valve to drop into the engine cylinder causing engine damage. These engines may also have a reversed camshaft cap that can damage the camshaft bearing causing camshaft failure. Cylinder damage or camshaft failure can cause the engine to stall, increasing the risk of a crash.

Chrysler (FCA US LLC) is recalling certain 2018 Jeep Wrangler vehicles. The intermediate steering shaft may not have been properly welded causing a split where the external spline is formed. If the weld seam splits, the steering wheel may lose center positioning causing a loss of steering responsiveness and increasing the risk of a crash.

General Motors LLC (GM) is recalling certain 2018 GMC Terrain vehicles. The sensing diagnostic module (SDM) that senses a crash and deploys the necessary air bags may not power down correctly when the vehicle is shut off, causing it to be inoperative when the vehicle is restarted. If the SDM becomes inoperative, it will not detect a crash or command the necessary air bag deployment, increasing the risk of injury in the event of a crash.

Kia Motors America (Kia) is recalling certain 2015-2018 Kia Sedona vehicles equipped with a power sliding door (PSD). The PSD may not auto-reverse when its closing is obstructed. If the door closes on an occupant, there is an increased risk of an injury.

Jaguar Land Rover North America, LLC (Land Rover) is recalling certain 2017 Land Rover Range Rover, Range Rover Sport, and Discovery vehicles. The fuel gauge on these vehicles may indicate that the fuel level is low and illuminate the warning lamp, when the fuel tank actually has more fuel. The engine management software may also cut off the engine when the vehicle has traveled approximately 17 more miles. If the engine were to shut off, it can cause loss of power brake assistance. An engine stall would cause a loss of drive power. Both scenarios can increase the risk of a crash.

BMW of North America, LLC (BMW) is recalling certain 2009-2013 X5 xDrive 35d diesel vehicles. The engine idler pulley bolt may loosen over time and break. If the idler pulley bolt breaks, the vehicle may unexpectedly lose power-assisted steering, increasing the risk of a crash.

Daimler Vans USA, LLC (DVUSA) is recalling certain 2015-2017 Mercedes-Benz Metris vehicles. The transmission support may not have been properly tightened to the vehicle body, potentially resulting in damage to the driveshaft. Damage to the driveshaft could cause a loss of power to the wheels, increasing the risk of a crash.

Van-Con, Inc. (Van-Con) is recalling one 2016 33803 Dual Rear Wheel school bus. The roof panel seams were not correctly bonded and thus may separate in the event of a crash. As such, this vehicle fails to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 221, "School Bus Body Joint Strength." If the roof panels separate in a crash, the occupants have an increased risk of injury.

Suzuki Motor of America, Inc. (Suzuki) is recalling certain 2013 Suzuki Kizashi and SX4 vehicles equipped with a Continuously Variable Transmission (CVT). The Transmission Control Module (TCM) may fail causing a reduction in speed or reduced vehicle acceleration. A reduction in vehicle speed or reduced acceleration can increase the risk of a crash.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2012-2016 Eos, 2012 Passat, 2012-2016 CC, 2015 e-Golf, 2011-2015 Touareg, 2012-2015 Tiguan, and 2011-2016 Golf and 2011-2013 GTI vehicles. Modifica-

tions made while the vehicles were in an internal evaluation period may cause the affected vehicles to not comply with all of the applicable regulatory requirements. If the vehicles do not meet all regulatory requirements, there could be an increased risk of a crash, fire, or injury.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain Audi S5 Cabriolet vehicles equipped with Super Sport seats. The seat-mounted head/thorax air bag in the front passenger seat may have been folded incorrectly during installation. If the air bag was not folded correctly during installation, the seat-mounted air bag may deploy improperly in the event of a crash, increasing the risk of injury.

Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2018 Volkswagen Tiguan long wheel base (LWB) vehicles. The nut that holds the lower ball joint of the front wheel on each side of the vehicle may be loose or improperly tightened. A loose or improperly tightened ball joint nut can result in the separation of the lower ball joint causing steering, traction or other stability issues, increasing the risk of a crash.

BMW of North America, LLC (BMW) is recalling certain 2018 BMW M5 vehicles. In certain driving conditions, the engine control unit software may cause the fuel pump to stop. If the fuel pump stops, the vehicle will stall, increasing the risk of a crash.

Porsche Cars North America, Inc. (Porsche) is recalling certain 2018 Porsche Macan S and Macan vehicles. These vehicles have a control unit that may fail and prevent safety-related functions such as driver display alerts and possibly impair drivability and post-crash functions. Failure of the control unit may increase the risk of a crash.

BMW of North America, LLC (BMW) is recalling certain 2010-2011 BMW 335d vehicles with diesel engines. The connection of the positive battery cable at the fuse box terminal may degrade over time, possibly resulting in an intermittent loss of electrical power. A loss of electrical power to the vehicle can cause the vehicle to unexpectedly stall, increasing the risk of a crash.

Other Safety recalls

A&I Recalls Tractor Canopies Due To Injury Hazard

ATI Products Inc., a subsidiary of Deere & Company, of Moline, Ill., has recalled about 6,200 A&I tractor canopies. The canopies do not meet design specifications and can cause the tractor's Rollover Protective Structure (ROPS) to fail to protect the operator in a rollover accident, posing an injury hazard. This recall involves steel A&I tractor canopies sold in green, blue, orange, red and dark red. The recalled canopies are sold as a separate attachment that can be bolted to a tractor's ROPS and come with mounting brackets and hardware.

The canopies were sold at John Deere dealers and non-John Deere resellers nationwide from September 2016 through April 2018 for about $350. Consumers should immediately stop using tractors with a recalled canopy and contact an authorized John Deere dealer for a free repair. Contact A&I at 800-657-4343 from 8 a.m. to 6 p.m. ET Monday through Friday or online at www.aiproducts.com or www.johndeere.com and click on Recalls under the Parts & Service drop-down menu for more information.

IKEA Recalls Bicycles Due To Fall Hazard

IKEA Supply AG, of Switzerland, has recalled about 4,900 SLADDA bicycles. The bicycle belt can break, posing a fall hazard. This recall involves IKEA 26-inch and 28-inch SLADDA bicycles. The recalled bicycles are a light grey and have an aluminum frame. IKEA is printed at the bottom of the seat tube near the crank.

The bicycles were sold exclusively at IKEA stores nationwide and online at www.ikea-usa.com from August 2016 through January 2018 for between $400 and $500. Consumers should immediately stop using the recalled bicycles and return them to any IKEA store for a full refund. Contact IKEA toll-free at 888-966-4532 anytime or online at www.ikea-usa.com and click on Press Room at the bottom of the page, then on Product Recalls at the top of the page for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/IKEA-Recalls-Bicycles-Due-to-Fall-Hazard

Jané Recalls Strollers

About 800 Jané Muum strollers have been recalled by Jané USA LLC, a division of Jané Group, of Charlotte, North Carolina. The recalled strollers violate the federal Stroller and Carriage standard. An infant can pass through the opening between the stroller armrest and the seat bottom and his/her head and neck can become entrapped by the armrest, posing entrapment and strangulation hazards. This recall involves the U.S. model of Jané Muum strollers. The recalled strollers have a black frame, a reclining seat or hammock that is reversible and a hood. An insert is sold with the stroller for smaller babies. There is a basket for storage underneath the stroller seat. The recalled strollers were sold in: dark gray and black (S85), light grey and black (S49), blue and black (S46) and green and black (S47). "Muum by Jané" is printed on the front bottom frame. "Muum" is printed on the side frame and on the handle. "Jané" and "Muum," "Jané USA LLC," "Muum US 5399US/S85" or "S47," "S49," "S46" are printed on a label on the leg of the stroller.

The stroller was sold at Albee Baby, Baby World, Kidsland, Toys R US, Dainty Baby, USA Baby stores and other stores nationwide and online at Amazon.com and other websites from July 2016 through August 2017 for between $300 and $450. Consumers should immediately stop using the recalled strollers and contact Jané for a free repair. The repair consists of a free replacement armrest. Consumers can continue using the recalled strollers if they remove the armrest and harness the child properly until they receive the replacement armrest. Contact Jané toll-free at 844-200-7971 anytime to leave message or from 8 a.m. to 11 a.m. ET Monday through Thursday for a live operator, email at info@jane-usa.com or online at www.jane-usa.com and click on MUUM USA MODEL for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Jane-Recalls-Strollers-Due-to-Violation-of-the-Federal-Stroller-and-Carriage-Safety-Standard-Entrapment-and-Strangulation-Hazards

Bluefin Recalls Wireless Phone Chargers Due To Burn Hazard

Bluefin International, of Cumming, Georgia, has recalled about 3,000 wireless phone chargers. The wire-

less phone charger can overheat while in use, posing a burn hazard to consumers. This recall involves wireless smart phone chargers with model number AC16B printed on the bottom. The recalled chargers are circular and have clear edges and a white plastic center with black trim. They measure about 3.9" in diameter and 0.4" tall. A black USB cable is included with the chargers. The company has received three reports of the phone chargers overheating. No injuries have been reported.

The chargers were distributed as a free promotional item to attendees at the FICO World tradeshow in Miami Beach, Florida and other events and the ad specialty channel in April 2018. Consumers should immediately stop using the recalled chargers and contact Bluefin for a full refund. Contact Bluefin toll-free at 877-211-7220 ext. 145 from 9 a.m. to 5 p.m. ET Monday through Friday, email at recall@logoincluded.com or online at www.logoincluded.com and click on the recall link at the bottom of the page for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/Bluefin-Recalls-Wireless-Phone-Chargers-Due-to-Burn-Hazard

GE Lighting Recalls LED Tube Lamps

GE Lighting, of East Cleveland, Ohio, has recalled about 46,000 packages of Cool White Universal T8/T12 LED tube lamps. The pins on one end of the lamp can be energized during installation/removal, posing electric shock and electrocution hazards. This recall involves GE Lighting's 31243 LED13T8U840 LED two-pack tube lamps. These units are most often used in garages, basements, workshops and utility rooms. The GE logo and model information are printed on a label near the tube's base.

The bulbs were sold exclusively at Lowe's stores nationwide and Lowes.com from approximately November 2017 through April 2018 for about $15. Consumers should immediately contact GE Lighting to receive instructions on safely removing the LED tube lamps, and to receive a refund in the form of a $17 gift card. Consumers should make sure the light switch is "off" before attempting to change LED tube lamps. Contact GE Lighting at 800-338-4999 from 8 a.m. to 8 p.m. ET Monday through Friday, email at lightingconcerns@ge.com or online at www.gelighting.com and click on "Product Safety Information" for more information. Pictures available here: https://www.cpsc.gov/Recalls/2018/GE-Lighting-Recalls-LED-Tube-Lamps-Due-to-Shock-and-Electrocution-Hazards-Sold-Exclusively-at-Lowes-Stores

Keyera Energy Recalls Propane Gas

Keyera Energy Inc., of Houston, Texas, has recalled 1.7 million gallons of Propane (LP) gas. The recalled propane gas does not contain sufficient levels of odorant to help alert consumers to a gas leak. Failure to detect leaking gas can present fire, explosion and thermal burn hazards. This recall involves under-odorized propane (LP) gas delivered to consumers for use in storage tanks or sold at retail locations in portable refillable cylinders (for use in recreational vehicles, barbeques, stoves and other appliances). The LP gas was also sold to businesses for commercial and industrial use. Keyera Energy Inc. does not sell propane directly to any retailers or consumers, but supplies propane to distributors that sell directly to retailers and consumers.

The gas was distributed in Texas and Louisiana by various companies and sold by retailers between February 2018 and April 2018. Consumers should not attempt to test the propane themselves. Instead, consumers who have propane delivered to storage tanks should immediately contact the retailer, supplier or Keyera Energy to arrange for a free inspection. If the inspection confirms that the propane contains insufficient odorant, Keyera Energy will arrange for additional odorization or a replacement of the under-odorized propane. Consumers should have carbon monoxide alarms in homes or other buildings that utilize propane gas. If consumers do smell even a faint odor of gas or a gas leak, they should immediately leave the building and call 911 or call their gas supplier. Do not light a match, turn on a light or switch on anything electrical. Contact Keyera Energy toll-free at 844-879-8419 from 9 a.m. to 5 p.m. CT, email propane@keyera.com or online at www.keyera.com and click on "Propane Safety Update" on the Corporate Responsibility page or www.keypropaneupdate.com for more information.

Melon Recalled In Eight States Is Blamed For Sickening 60 People

Pre-cut melon tainted with salmonella has sickened 60 people in multiple states, the Centers for Disease Control and Prevention (CDC) said. Indianapolis, Indiana-based Caito Foods LLC has recalled packages of pre-cut watermelon, honeydew melon, cantaloupe and fresh-cut medley products after people reported feeling sick. Recalled products were distributed in 18 states, including Alabama. The fruits were sold in clear, plastic clamshell containers at Costco, Jay C, Kroger, Payless, Owen's, Sprouts, Trader Joe's, Walgreens, Walmart, and Whole Foods/Amazon. The CDC is still investigating to determine if products were sold to additional stores or states.

Sixty people have been infected with salmonella linked to the outbreak, 31 of whom required hospitalization. No deaths have been reported. Officials urging people to throw out pre-cut melon sold within in recalled area. Retailers are advised not sell or serve recalled pre-cut melon products distributed by Caito Foods Distribution, Gordon Food Service, and Spartan-Nash Distribution. Salmonella can cause fever, diarrhea, vomiting and abdominal pain. In some cases, the infections can be serious, especially for young children, the elderly and people with compromised immune systems. In rare cases, the salmonella infection spreads from the intestines to the bloodstream and then to other places in the body. Signs of illness typically occur within 12 to 72 hours and last up to seven days.

Tyson Recalls Frozen Chicken Tenders Due To Risk Of Plastic Contamination

Tyson Foods Inc. has issued a recall for 3,120 pounds of frozen chicken tenders in the United States due to the risk there might be blue and clear soft plastic pieces inside the product. The U.S. Department of Agriculture's (USDA) Food Safety and Inspect Service (FSIS) reports in a news release that the problem was discovered by a supplier on June 8. The affected frozen, uncooked breaded chicken tenders were produced on May 17 of this year. The USDA reports the recall covers 3-pound plastic bags of Tyson "UNCOOKED, BREADED, ORIGINAL CHICKEN TENDERLOINS" with a lot code of 1378NLR02.

The product was shipped in a 12-pound box that contains the 3-pound plastic bags of chicken. There are no known reports of injuries or incidents related to the recall, according to the USDA. Affected products were shipped to restaurants nationwide, and are not available for purchase in retail or grocery locations. "FSIS is concerned that some product may be frozen and in freezers at food service institutions and could be served," the news release reads. "Food Service Institutions who have purchased these products are urged not to serve them. These products should be thrown away." For consumers with questions, Tyson Foods Inc. can be reached at 888-747-7611.

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

XVIII. FIRM ACTIVITIES

Lawyer And Employee Spotlights

CLAY BARNETT

In August, Clay Barnett and his family will be moving to Atlanta. Clay, who is in our firm's Consumer Fraud & Commercial Litigation Section, will be in our Atlanta office. Clay has been with Beasley Allen for 11 years. For his first eight years, Clay pursued pharmaceutical companies for fraud and Consumer Protection Act violations.

Clay has now transitioned to "product defect class actions." In that role, Clay helped bring the Volkswagen Diesel Emissions Fraud class action for consumers whose vehicles were designed to bypass regulations. The $15 billion settlement for 2.0-liter vehicles is the largest auto-related consumer class action in U.S. history. Clay is a member of the Plaintiffs Response Team, a group of lawyers who work directly with VW claimants navigating the claims submission process.

Clay is also one of the Section's lawyers handling a class action lawsuit for economic losses involving potentially defective airbags manufactured by the Takata Corporation.

Five of Clay's newest cases involve: General Motors, Toyota and Polaris. The GM class action is brought on behalf of owners of full-size pickups and SUVs powered by the Generation IV Vortec 5300 V8 engine, which has a defect that can cause internal failures at unheard-of rates. Clay has also filed a class on behalf of 2010-2012 GM Crossover SUVs for failing liftgate struts, as well as a class against Toyota involving Sienna vans from 2011-2017 with defective power sliding door software that prevents proper latching and invites spontaneous door openings while the vehicles are in use.

Clay's second class action against Toyota involves a defective charging system in 2010-2016 Prius cars. The defective Intelligent Power Module deteriorates internally and is not repaired with a software reflash, contrary to Toyota's purported recall "fix." Clay's latest filing is on behalf of 2011-2018 Polaris Ranger and RZR owners because multiple models in these lines suffer from a design defect that creates a significant and unreasonable risk of the vehicles overheating and catching fire.

Practicing automotive/vehicle defect class action law gives Clay the opportunity to combine his interests and skill sets—practicing law and his passion for tinkering on cars, boats and off-road vehicles—something he has been passionate about since he was in middle school. Clay says that as he has aged, his interest and understanding has deepened. He is now part owner and the team captain of a road-course BMW race car. If the car breaks, Clay typically knows how to fix it or can work with a professional mechanic to get the car back on the track. He says it's truly fun to have the mechanical knowledge that uniquely qualifies him to pursue manufacturers for poor decisions that cause consumers both physical and monetary injury.

Clay believes that this ability to place lawyers in specific areas of legal practice where they can draw on their unique skill-sets, backgrounds and experiences sets Beasley Allen apart from lots of other law firms. Clay says that the firm's commitment to honesty and predictability in all aspects of its work is important to him. He says:

This firm just seems to be special in its ability to put its lawyers in the fields that fit them best. And, when lawyers bring a unique set of skills and knowledge to their cases, it allows our clients and referring lawyers to have full confidence in us when they ask for our professional assistance.

The trial lawyer and "automobile aficionado" is a graduate of the University of Alabama's Culverhouse College of Commerce and Business Administration and the University of Alabama School of Law. Following law school graduation, Clay clerked for Circuit Judge James C. Wood, in Mobile, Alabama, for a year and then joined the Alabama Attorney General's Office for five years. While with the Attorney General, Clay tried jury and non-jury cases with offenses ranging from misdemeanor harassment to capital murder. In 2006, the U.S. Department of Justice (DOJ) appointed Clay as a Special Assistant United States Attorney. Clay and his prosecution team tried and convicted three high-profile Defendants in the Federal District Court in Mobile.

Clay is married to Dr. Elise Plauche Barnett, a general and cosmetic dermatologist. They are proud parents of two children, a son and daughter. Outside of work, Clay enjoys his free time with Elise and their children, playing tennis and occasionally he enters a car he built in endurance road racing events around the Southeast. Clay is a talented lawyer who works hard for his clients and is dedicated to their cases and we are fortunate to have him with us. He will be a definite asset to our Atlanta office.

CASIE COGGIN

Casie Coggin is Legal Assistant to Ben Locklar in the firm's Personal Injury & Products Liability Section. In June, she celebrated her one-year anniversary with the firm. Casie assists Ben with cases involving nursing home abuse and neglect, motor vehicle crashes and other product liability and personal injury cases.

The 20-year veteran legal assistant attended the University of South Alabama in Mobile and has worked for both Plaintiff and Defense firms in Birmingham, and Atlanta. She has completed a number of professional development training for legal assistants including a National Association for Legal Assistants (NALS) course at Samford University's Cumberland School of Law.

Casie has been married to her husband, Mark, for almost 18 years and they have two children, John David (14) and Faith (13). She says she has been blessed and

enjoys spending time with her family, including participating with her children in their various sport and other extra circular activities. Casie also enjoys going to the movies, attending the theatre, reading and when possible, and escaping to the beach or lake for some rest and relaxation.

Casie is a very hard worker who says that working with Ben is truly a blessing and that she loves being part of the Beasley Allen family. We are most fortunate to have Casie with us.

ANGIE FRAZIER

Angie Frazier is a receptionist who has been with the firm for more than 14 years. As a receptionist, Angie answers phones and directs calls to other employees. She is often the first point of contact for potential clients. Angie helps update and maintain information in the firm's database and helps others as needed. She began and remains in the Mass Torts section where she has handled a variety of Clerical and Staff Assistant duties.

Before joining the firm, Angie worked for Winn Dixie for more than 29 years. She graduated from Robert E. Lee High School in Montgomery, Alabama, and attended Auburn University Montgomery.

The mother of three children, Adrian, Holly and Gary Jr., Angie will celebrate her 39th wedding anniversary with her husband, Gary, in November. The couple also have five grandchildren, including one girl, Destiny, and four boys, James, Bryant, London and Liam. Angie says she has truly been blessed.

Angie loves taking care of her grandchildren, and spending time with and helping her family when needed. In her spare time, she enjoys crocheting and sewing or working on projects with her sisters. She values being available to friends when they need help and lending a good listening ear. She also loves to read, as well as watching the Hallmark Channel and old movies.

Angie says she enjoys her role at the firm, especially working with all the employees and clients. She does a very good job in a position that is demanding and can be difficult at times. Angie handles her role extremely well. We are fortunate to have her with the firm.

LAUREN MILES

Lauren Miles has returned to Beasley Allen, but in a different role. In 2014, Lauren was a law clerk in the Consumer Fraud & Commercial Litigation Section. She has now returned to the firm as a lawyer in the Section. Lauren is working on class action litigation involving consumer fraud in the health care industry, as well as Attorney General litigation on behalf of states and qui tam litigation under the False Claims Act. Prior to returning to the firm, Lauren practiced law with the Schreiber Law Firm, P.C. in Birmingham, focusing on contract, fraud, and employment law.

Lauren, who is Dee Miles' daughter, says that as the daughter of a lawyer, her father's work exposed her to the reality of how often people are taken advantage of by many in Corporate America in favor of profit or power. Lauren says she was motivated to pursue a career that would allow her to confront such behavior. Lauren says:

> *I originally explored lawmaking and advocacy through non-profit organizations, but I was not blessed with the kind of patience required to pursue the measured change which occurs through those paths. Being an attorney allows me the opportunity to bring about immediate action and remedy to injured clients.*

In 2012, Lauren graduated from Birmingham-Southern College with a B.A. in Political Science. While there, Lauren was selected to multiple national academic honor organizations, was a dean's list student, and was an active member in the Greek communities, as well as student organizations including the EnACT Club and student art league. Lauren also interned in the U.S. Senate for Sen. Richard Shelby and Sen. Lindsey Graham.

Lauren continued her education at Samford University Cumberland School of Law, where she earned her law degree in 2015. While in law school, Lauren was a dean's list student, and a member of the Cumberland Women in Law organization and the Cumberland Environmental Law Society. She also participated in Cumberland's various community outreach programs. While in law school, Lauren worked as a law clerk for several firms, including Beasley Allen.

According to Lauren, the requirement of adaptability is her favorite part of practicing law. She explains, "Anything and everything can change from the laws we pursue actions under, to the judge you're arguing a case in front of, to the dynamics between lawyers in and outside of the courtroom. I really enjoy knowing that experience and knowledge are important, but practicing law doesn't allow you to rest on your laurels."

The passionate advocate for people supports Kings Home, the Wellhouse Birmingham, and Catholic Social Service. Lauren is also an active BSC alumna and advisor to her sorority chapter. Lauren says it is Beasley Allen's reputation for active community involvement, support for its employees, and its motto of "helping those who need it most" that drew her back to the firm.

Lauren says she feels blessed to be practicing in a firm that was already family to her and to Montgomery where she grew up. Lauren is a member of Holy Spirit Catholic Church in Montgomery. We are blessed to have Lauren back with the firm.

LEIGH O'DELL

Leigh O'Dell is a lawyer in the firm's Mass Torts Section and she is instrumental in helping to guide the section's work. She has been with the firm for 13 years and is a member of its five-person Executive Board.

Leigh has taken on some of the largest pharmaceutical companies in the country for their reprehensible actions. Earlier in her career, she spent six years as part of the trial teams for five of the 17 bellwether trials against Vioxx maker Merck & Co. resulting in a then-record global settlement with the pharmaceutical giant, which agreed to pay $4.85 billion to resolve all Vioxx-related claims.

Leigh was recently selected to serve as Co-Lead Counsel of *In re: Johnson & Johnson Talcum Powder Products Marketing, Sales Practices and Products Liability Litigation*, a multidistrict litigation (MDL) involving more than 9,000 women who are suffering from or who have died of ovarian cancer as a result of their exposure to Johnson's Baby Powder or Shower-to-Shower products.

Leigh is also a member of the Plaintiffs' Steering Committee for MDLs against six transvaginal mesh manufacturers. She formerly handled cases involving adverse side effects of Gardasil, a vaccine manufactured and marketed by Merck & Co. Inc. for the prevention of cervical cancer.

A graduate of Auburn University, Leigh earned a degree in accounting before obtaining her law degree from the University of Alabama School of Law. Following law school, Leigh had the honor of serving as a law clerk for the late Ira DeMent, who was a U.S. District Judge for the Middle District of Alabama.

Leigh is driven by a strong sense of purpose, which is to "stand in the gap" for her clients and others facing overwhelming challenges. This sense of purpose is shaped by her deep faith and love for the Lord. In 1998, she demonstrated this faith when she left the firm for full-time ministry, first with Focus on the Family as Director of Women's Ministries and then as Director of Revivals for AnGeL Ministries. These years of working in full-time ministry were transformational, giving

Leigh the opportunity to witness thousands of lives changed for God's glory, to grow in her love for Jesus, as well as professionally.

Leigh says that what sets our firm apart is "its commitment not only to espouse Christian values but to actively live those values out on the daily anvil of practice" and she says it was this core value that was paramount in her decision to return to the practice of law. She says:

> *What I have learned is that our mission field is between our own two feet—life is ministry. Serving God to the fullest wherever He has called you—whether in vocational ministry or in law practice—is the greatest adventure, often, the greatest challenge, and certainly, the greatest joy, a person can experience.*

Leigh leads on the national stage and is committed to encouraging her colleagues. She co-chairs the Bridge to Practice and Next Generation Programs at Emory Law Institute for Complex Litigation, which are designed to help attorneys new to the practice of complex litigation better understand the underlying principles and strategies of the practice. She also serves on the National Trial Lawyers Association's executive committee.

Earlier this year, Leigh was selected to The National Trial Lawyers' Mass Tort Trial Lawyers Association—Top 25. She has been selected for inclusion on the Best Lawyers in America list since 2011 and was included in the 2017 Super Lawyers list.

Leigh is an active member of Gateway Baptist Church. Leigh enjoys spending time with her large extended family, reading, pulling for her beloved Auburn Tigers, playing tennis, as well as participating in other sporting activities. Leigh is an outstanding lawyer who is totally dedicated to the firm's guiding statement of "helping those who need it most." She is an inspiration to all of us. We are blessed to have Leigh in the Beasley Allen family.

XIX. SPECIAL RECOGNITIONS

Remembering An Alabama Legend

Clement Clay "Bo" Torbert, Jr., a statesman of the first order, had a distinguished career in his public and private life. Bo was a champion for equitable funding of Alabama public schools, a crusader for reforming Alabama's Constitution and tax structure, and a lifelong public servant who, along with U.S. Senator Howell Heflin, helped transform the Alabama court system into a unified structure. The Alabama Supreme Court building now bears the names of the two men—"Heflin-Torbert Judicial Building."

Bo, who was the 25th Chief Justice of the Alabama Supreme Court (1977-1989), passed away last month at his home in Opelika, Alabama. The Lee County native is survived by his wife Gene Hurt Torbert and his three children, Dixie Alton, Shealy Cook, and Clay Torbert, as well as his five grandchildren.

Bo attended the U.S. Naval Academy before graduating from Auburn University in 1951 and then from the University of Alabama School of Law in 1954. He practiced law with Bill Dickinson and established the Samford & Torbert law firm with Yetta Samford before he was elected to the state legislature in 1958. Bo also served two terms in the Alabama Senate, representing his home county, before he was elected Chief Justice. As Chief Justice, Bo also served as President of the Conference of Chief Justices, Chairman of the National Center for State Courts, and Chairman of the State Justice Institute and, in 1979, he was elected to the Alabama Academy of Honor.

After leaving the bench, Bo took his place in the classroom, teaching at the University of Alabama School of Law and Cumberland School of Law. He returned to the practice of law and joined Maynard, Cooper & Gale until he retired. As a practicing lawyer, Bo offered his expertise as Chair of the Alabama Commission on Tax and Fiscal Policy Reform in 1990. That year, he also sued the State of Alabama, challenging its funding of K-12 education, which was below the national average and, Plaintiffs claimed, was behind the poor school conditions and inadequate educational materials.

Bo was a hunter, conservationist, historian, and outdoorsman. Those who knew him best knew that he loved his family, the State of Alabama, bird hunting, and his friends. Bo Torbert was a true statesman in every respect. Bo's service to his state benefited all Alabamians. Bo was loyal to his family, his friends, and to his state and nation. We need more folks like Bo in public life.

Beasley Allen Lawyer Ends Term As President Of ALAJ

Frank Woodson, a lawyer in our Mass Torts Section, has served as an officer of the Alabama Association for Justice (ALAJ) for six years. During the past year, Frank served as ALAJ's President. As his term ends, Frank had this to say about the role ALAJ plays in our State and AAJ plays in Washington.

> *After many years of working in the legislature here in Alabama I see firsthand the attempts to limit the rights of citizens or small business in the name of profit. I also have seen the legislature substantially cut funding to an equal branch of government—our court system. Our founding fathers would never have supported the "tort reform" movement that has sought to limit access to our courts. That's because they knew that abridging Constitutional rights for some, endangers the rights of all Americans.*
>
> *I am proud of the work ALAJ does to protect the 7th amendment. The jury is the protector of our democracy. The American people gave themselves the right to make law by being a juror in part because they did not want to fully entrust that job to legislators. The jury is meant to be an exercise in direct democracy, and was meant to judge the conduct of private actors. In this way, the people could affect the development of the law.*
>
> *I hope to continue to serve on ALAJ's legislative team to continue to protect the 7th amendment and the mission of ALAJ which provides:*
>
> *"We preserve and protect the constitutional right to a trial by jury guaranteed by the Seventh Amendment to the United States Constitution by ensuring that every person or business harmed or injured by the misconduct or negligence of others can hold wrongdoers accountable in the one room where everyone is equal—the courtroom."*

Frank has done an outstanding job in his role as president of ALAJ. He worked hard and involved large numbers of lawyers in the battle to preserve the judicial system and to protect Alabama citizens. Having a judicial system that is independent, fair, and accessible to all citizens is something worth fighting for. Frank has led that fight for the past year in

his role as president of ALAJ. He has fought the good fight and for the right reasons.

Beasley Allen Lawyer Leon Hampton Elected Alabama Lawyers Association Vice President

Beasley Allen lawyer Leon Hampton was selected to serve as the Vice President of the Alabama Lawyers Association at the organization's annual meeting held May 31-June 1, in Negril, Jamaica. Last year, the organization recognized Leon as the Board Member of the Year. He joins other Beasley Allen lawyers who have helped lead the ALA, including LaBarron Boone, Kendall Dunson, Larry Golston, Navan Ward and Danielle Mason. Leon said:

I am proud of the work that Alabama Lawyers Association does throughout the community and I'm honored to serve as Vice President during this administration.

The ALA (formerly known as the Alabama Black Lawyers Association) was organized in 1971 to help populations that have historically been unrepresented or underrepresented in the legal arena. The ALA provides support services and networking opportunities for members to enhance their effectiveness as legal counsel, and to protect the civil and political rights of all citizens.

As a member of the firm's Consumer Fraud section, Leon is currently working on class action, employment and whistleblower claims. Prior to his work at Beasley Allen, he was a prosecutor with the Montgomery County District Attorney's Office. While at the DA's office, Leon was part of the Violent Crimes Unit and served as a lead counsel on homicide cases.

Since joining Beasley Allen in August 2017, Leon has helped secure verdicts for clients totaling more than $16 million. His courtroom experience was integral to the trial team that obtained a $1.9 million verdict on behalf of Leon Battle and exposed the Defendant's fraudulent efforts to hide unsafe working conditions. Most recently, Leon was heavily involved in a whistleblower case that recovered $14.7 million for Barry Taul. His client uncovered and reported an illegal kickback and false billing scheme that defrauded the Alabama Organ Center and Alabama taxpayers. After reporting the scheme, Taul suffered physical abuse at the hands of his employer, as well as death threats against him and his family.

Leon is also a member of the Alabama State Bar and serves on the group's 2017-2018 Election Procedures Review Task Force, as well as the Montgomery County Bar Association and the Hugh Maddox American Inn of Court. He is also a member of the Alpha Phi Alpha Fraternity, Inc., where Leon serves as the chapter's parliamentarian and constitution committee chairperson for the Montgomery Alumni Chapter. Leon is a graduate of Samford University's Cumberland School of Law and Alabama A&M University. We are blessed to have Leon in our firm.

Beau Darley Elected President-Elect Of Alabama Association For Justice's Emerging Leaders

Beau Darley, a lawyer in our Mass Torts section, has been elected as President-elect of the Alabama Association for Justice's (ALAJ) Emerging Leaders. The ALAJ preserves and protects the constitutional right to a trial by jury guaranteed by the Seventh Amendment to the United States Constitution by ensuring that every person or business harmed or injured by the misconduct or negligence of others can hold wrongdoers accountable in the one room where everyone is equal—the courtroom. The ALAJ's Emerging Leaders is a caucus for lawyers younger than 40 or those who have been practicing for 15 years or fewer. Beau, in preparing to assume the leadership role, had this to say:

I am truly humbled to serve on the leadership in this great organization. ALAJ is known throughout the entire country as one of the premier state-level justice associations. This is due, in large part, to the work done by the staff including Executive Director Ginger Avery, Justin Bailey, Cathy Givan, and Johnnie Smith. I very much look forward to working with them in advancing ALAJ's mission—to preserve and protect the constitutional right to a trial by jury.

Beau has been a member of the Emerging Leaders section for approximately four years. He will take office immediately as first chair before assuming the role of President in June 2019. Beau explains the group is already very active and credits the ALAJ staff and other members who have served in leadership positions. He hopes to continue the effort to increase participation from younger lawyers throughout the state during his administration. Beau plans to place a special emphasis on recruiting young lawyers practicing outside of the major metropolitan areas of the state such as Birmingham, Huntsville, and Montgomery. In pursuing these recruiting efforts, Beau says he plans to work with immediate-past ALAJ President Frank Woodson, who has been very successful in reaching out to and recruiting members from all areas of the state during his tenure. Beau hopes to expand on Frank's great work.

Beau joined the firm's Mass Torts Section in August 2011 after graduating from Samford University's Cumberland School of Law. He primarily handles cases involving transvaginal mesh, a type of surgical mesh used for the repair of common pelvic floor disorders. Beau also is handling cases involving the chemotherapy drug Taxotere, which has been linked to claims that the drug causes permanent hair loss.

Beau is also a member of the Alabama State Bar; Alabama State Bar's Young Lawyers Section, where he serves on the Executive Committee; and the Montgomery County Bar Association. He also serves on the Board of Directors for the Montgomery County Bar Association Young Lawyers Section.

XX. FAVORITE BIBLE VERSES

Kathy Eckermann, my Executive Assistant, says her favorite verses are Isaiah 55:8-9, 11. Kathy said she loves these verses because they bring comfort when she is going through adversity, or circumstances that don't seem to make sense to her. Kathy said: "It helps me to remember that I can see only a small fraction of what is happening, but God knows all and He has a reason and a purpose, and He can accomplish His will in ways that I may not understand."

"For my thoughts are not your thoughts, neither are your ways my ways," declares the Lord. "As the heavens are higher than the earth, so are my ways higher than your ways and my thoughts than your thoughts....so is my word that goes out from my mouth; It will not return to me empty, but will accomplish what I desire and achieve the purpose for which I sent it." Isaiah 55:8-9, 11

Shanna Malone, who is the Executive Editor of this Report, says one of her favorite books in the Bible is Proverbs. Although Proverbs has so many great

verses, she says this one always stands out to her.

Trust in the LORD with all your heart, And lean not on your own understanding; In all your ways acknowledge Him, And He shall direct your paths. Proverbs 3:5-6

Tara Shuffitt, a legal assistant in the firm, sent in James 1:2-5 as her favorite verse. Tara says she was directed to these verses as a teenager when her father died. Tara says: "It has been my one of the scriptures I go to when I feel like I just cannot handle another burden. It serves as a reminder of the things that I have overcome and how each obstacle has made me stronger. It also reminds me that I don't have all of the answers, but God does."

Consider it pure joy, my brothers and sisters, whenever you face trials of many kinds, because you know that the testing of your faith produces perseverance. Let perseverance finish its work so that you may be mature and complete, not lacking anything. If any of you lacks wisdom, you should ask God, who gives generously to all without finding fault, and it will be given to you. James 1:2-5

XXI. A LOOK AT CASES BEASLEY ALLEN LAWYERS ARE CURRENTLY HANDLING

Lawyers in our firm are currently handling cases around the country in a number of categories. Our lawyers will look at any case involving serious injury or death. The following is a list of cases the lawyers in the four sections of our firm are concentrating on at present.

Personal Injury / Products Liability

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

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

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

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.

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

Premises Liability—In premises liability claims, patrons of establishments are often injured because the premises, for some reason, was unsafe. Premises liability claims can take many forms, including when severe injury or death results when a building or structure collapses, merchandise falls, during swimming pool accidents, due to poor lighting, falling debris, unsecured fixtures and furniture that falls or tips over, unsecure drainage that creates drowning or fall hazards, slippery surfaces, and inadequate maintenance. Beasley Allen 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 or Chris.Glover@beasleyallen.com.

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

Pharma and Devices

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, or symptoms of overdose requiring hospitalization. Contact: Rhon.Jones@beasleyallen.com, LaBarron.Boone@beasleyallen.com, Melissa.Prickett@beasleyallen.com, Roger.Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

Xarelto—Lawsuits filed against Johnson & Johnson subsidiary Janssen Pharmaceuticals and Bayer Corp. over the blood thinner Xarelto have been consolidated in Louisiana federal court. Xarelto has been linked to serious side effects including internal bleeding, gastrointestinal bleeding, brain bleed and death. The Xarelto lawsuits come on the heels of the recent $650 million Pradaxa settlement. Researchers linked Pradaxa, also a blood thinning medication, to more than 500 deaths. Xarelto blood thinner litigation has been consolidated before U.S. District Judge Eldon Fallon in the Eastern District of Louisiana, who presided over suits against Merck & Co. over its medication Vioxx. The Vioxx litigation resulted in a $4.85 billion settlement in 2007. Contact: David.Byrne@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Talcum powder and ovarian cancer—As many as 2,200 cases of ovarian cancer diagnosed each year may have been caused by regular use of talcum powder. Talc is 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. Contact: Ted.Meadows@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

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

Invokana—Approved in March 2013, Invokana (canagliflozin) is an SGLT2 Inhibitor used to treat adults with Type 2 diabetes, manufactured by Janssen Pharmaceuticals, a subsidiary of Johnson & Johnson. SGLT2 inhibitors work by preventing high blood sugar by helping the patient's kidneys remove excess sugar through their urine. In May 2017, the U.S. Food and Drug Administration (FDA) issued a safety announcement warning the drug causes an increased risk of leg and foot amputations and ordered Janssen Pharmaceuticals to change Invokana's label to carry the most prominent boxed warning. Contact: Danielle.Mason@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Bone Cement—The type of bone cement used during knee replacement surgery affects the outcome of that surgery. High viscosity bone cement (HVC) boasts shorter mixing and waiting times and longer working and hardening phases, meaning surgeons can handle and apply the cement earlier than with low- or medium-viscosity cements. Although HVC may be more convenient to use, there is mounting evidence that the bond it produces is not as strong. Researchers have observed more early failures with the use of HVC, even when used in combination with a previously well-performing implant. Complications associated with knee

replacements performed with HVC include loosening and debonding (where the implant fails to adhere to the cement interface on the shin or thigh bone), which requires revision surgery. Other reported problems include new onset chronic pain and instability. Contact: Roger.Smith@beasleyallen.com, Liz.Eiland@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Proton Pump Inhibitors—Proton pump inhibitors (PPIs) were introduced in the late 1980s for the treatment of acid-related disorder of the upper gastrointestinal tract, including peptic ulcers and gastrointestinal reflux disorders, and are available both as prescription and over-the-counter drugs. Beasley Allen 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

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

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

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 DePuy Pinnacle, the Zimmer Durom Cup, the Wright Conserve, and the Biomet M2A "38mm" and M2A-Magnum hip replacement systems, which have not been recalled. Reported problems include pain, swelling and problems walking. Contact: Navan.Ward@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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 reoccurrence, organ perforation, mesh migration, sepsis and even death. In May 2016, Ethicon issued a market withdrawal of Physiomesh in the U.S. and recalled the product in Europe and Australia. We are currently investigating cases involving serious injury or death as a result of Ethicon's Physiomesh. Contact: Melissa.Prickett@beasleyallen.com.

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ties, creating conditions ripe for abuse. We are investigating cases involving opioid-related deaths and overdose, or symptoms of overdose requiring hospitalization. Contact: Melissa.Prickett@beasleyallen.com, Roger.Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

Fraud

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, they may have a valuable legal claim that our firm would like to investigate. Contact: Dee.Miles@beasleyallen.com, Andrew.Brashier@beasleyallen.com or Rachel.Boyd@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: Lance.Gould@beasleyallen.com, Larry.Golston@beasleyallen.com, or Andrew.Brashier@beasleyallen.com.

Self-funded Health and Pharmacy Insurance Plans—Third Party Administrators and Pharmacy Benefit Managers may have been charging unauthorized fees to self-funded insurance health and pharmacy benefit plans. These extra fees may be in violation of the contracts with the self-funded plan and a breach of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA). We are looking into these cases on behalf of self-funded plans. Contact: Alison.Hawthorne@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.

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.

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 like Takata. These cases continue to be filed because of corporate misconduct in designing and manufacturing unsafe vehicles that are purchased by consumers, corporations and state agencies. We continue to investigate these automobile problems for class relief treatment. Contact: Dee.Miles@beasleyallen.com, Archie.Grubb@beasleyallen.com or Clay.Barnett@beasleyallen.com

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

Health Care Fraud—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.

Fair Labor Standards Act (FLSA)—Our lawyers are handling 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 or Larry.Golston@beasleyallen.com.

State and Municipalities Litigation—Our firm has represented numerous states throughout the country. These cases have been handled through the state 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 six of eight states for a recovery dealing with medical fraud, with still two states remaining. For more information, contact Dee.Miles@beasleyallen.com or Alison.Hawthorne@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.

Toxic Torts

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

Opioids—In addition to individual cases of serious injury and death related to opioid abuse, Beasley Allen is representing multiple local governments in Alabama against both manufacturers and distributors of opioids for increased costs faced by local governments related to the opioid epidemic. Providing city and county resources to battle the opioid crisis causes local governments to sustain economic damages and ongoing significant financial burdens. 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 municipal governments are left struggling to cope with the consequences. Contact: Rhon.Jones@beasleyallen.com or Ryan.Kral@beasleyallen.com.

Severe Lung Disease—We are investigating numerous cases involving severe lung disease, including where a client has received any of the following diagnoses: any interstitial lung disease, pulmonary fibrosis (whether idiopathic or not), silicosis, black lung, bronchiolitis obliterans, sarcoidosis, berylliosis or chronic beryllium lung disease, metal lung disease, hypersensitivity pneumonitis, pneumoconiosis, and non-smoker's lung cancer and emphysema. These are grave diseases that oftentimes result in either death or a lung transplant, and they are frequently caused by exposure to dusts, fibers, metals, chemicals, vapors, food flavoring additives or other tiny particles in the workplace or as a result of a defective product. Often overlooked, these can be very good cases. Contact: Rhon.Jones@beasleyallen.com or Sharon.Zinns@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 perfluorooactanoic acid (PFOA) in the water supply. After the EPA issued the new exposure limits, an advisory warning was provided to eight water systems in Alabama and more than fifty nationwide. The EPA advisory focused on PFOA and PFOS, man-made chemical compounds that are used in the manufacture of non-stick, stain-resistant, and water-proofing coatings on fabric, cookware, firefighting foam, and a variety of other consumer products. Exposure to the chemicals over time, even in trace amounts, could promote serious health problems, the EPA warns. Contact: Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com or Ryan.Kral@beasley allen.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. Although these cases do 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.

Lawyers in our firm will respond to any questions you have about any of these areas of litigation listed above that our firm is currently involved in. You can also go to our website www.BeasleyAllen.com for more information. We have been blessed to have had so many lawyers around the country refer cases to us. The confidence placed in the firm is greatly appreciated.

XXII. CLOSING OBSERVATIONS

Lionfish, A Delicious Eco-threat, Changing Gulf Fishing Culture

My law partner Greg Allen has educated me on the lionfish, a species of fish that is literally taking over in the Gulf of Mexico, and, as a result, causing severe problems. I thought that our readers might need to learn more about these fish and what is happening in the Gulf. Since sometime in the mid-1980s—nobody knows for sure when or how—the beautiful but deadly species of lionfish started inhabiting the Gulf of Mexico, Caribbean, and the warm Atlantic waters off the southern U.S. coast.

Lionfish are native to the South Pacific and Indian Ocean, but they are now thriving in this part of the world, where an absence of natural predators has left their numbers unchecked. Combined with a voracious appetite for local fish populations and the ability of females to disperse about two million eggs per year through ocean currents, lionfish threaten to decimate local ecosystems.

These flamboyant orange-and-white-striped fish with fins that resemble long feathers can grow as large as 18 inches. They also occupy depths from one to 1,000 feet in a multitude of marine environments from shallow mangrove swamps to deep sand floors and devour more than 70 endemic species with a stomach that expands to 30 times its size.

The lionfish's beauty is also foreboding. The fish is highly venomous, with potent neurotoxic venom contained in spiny glands along its top and sides. Mishandling the fish can result in an excruciating and long-lasting sting, even after the fish is dead. Sweating, respiratory distress, and paralysis are some of the effects of a lionfish sting.

Part of the invasive lionfish's diet includes algae-eating parrotfish. When parrotfish populations are reduced, the algae that they consume blooms full-force, allowing seaweed to smother coral reefs already stressed by rising ocean temperatures. Lionfish also eat armies of small fish that clean other fish, increasing the risk of infection and disease to indigenous types of fish prized by sport fisherman.

To counter the exponentially growing lionfish problem, fishermen from all parts of the U.S. Gulf Coast and the southeastern seaboard have organized lionfish hunting tournaments, derbies, fishing expeditions, and even harvest programs

that, at least in Florida, are reimbursed by the state. Some of the lionfish fishing competitions have reeled in more than 8,000 fish in a single weekend, according to Smithsonian.

Lionfish are also delicious, and they are a regular menu item in many South Florida restaurants. Farther north, from the Florida Panhandle across to Alabama, Mississippi, Louisiana and Texas, lionfish appears irregularly as an occasional dinner special depending on what happened at the docks that morning.

But like the species itself, a growing familiarity with the fish and a year-round, uncapped catch are slowly migrating north, promising to make lionfish as coveted as snapper, yellowfin tuna, and mahi mahi.

Sources: Smithsonian, Florida Fish and Wildlife Commission, REEF, Lionfish World

Our Monthly Reminders

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

2 Chron 7:14

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

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortune, Which they have prescribed. To rob the needy of justice, And to take what is right from the poor of My people, That widows may be their prey, And that they may rob the fatherless.

Isaiah 10:1-2

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

Martha Washington (1732—1802)

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

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

Vincent Lombardi

XXIII. PARTING WORDS

The American people lost a true champion when Robert F. "Bobby" Kennedy was assassinated 50 years ago in Los Angeles. Bobby Kennedy was one of my favorite political figures during the turbulent times of the 1960s. He served as U.S. Attorney General and later in the U. S. Senate for New York from January 1965 until his assassination in in June 1968.

Bobby Kennedy was a fierce advocate for civil rights and as U.S. Attorney General, he led the fight against organized crime and the mafia. I always believed he was the strongest voice in the White House for ordinary citizens during the time his brother was President.

I am convinced that Bobby Kennedy would have been elected President in 1968 had he not been killed. His assassination came shortly after Dr. Martin Luther King was killed in Memphis. I will never forget Bobby Kennedy's statement to a huge crowd of supporters on the night that Dr. King was tragically killed. The following is a part of that statement:

"What we need is not division; what we need is not hatred, but love and compassion toward one another and a feeling of justice toward those who suffer within our community, whatever their color or faith. Let us dedicate ourselves to what the Greeks wrote so many years ago: To tame the savageness of man and make gentle the life of this world."

We badly need men and women in public office today who have real concern and compassion for people. We cannot tolerate those in high office who foster division and hate in America. The American people need for individuals with the moral character and compassionate spirit exhibited by Bobby Kennedy to seek and hold public office.

God has blessed America, but our Heavenly Father cannot be pleased with all of the hate and division that exists in our country. Without any doubt, America is more divided today than at any time since the 1960s. Racism and bigotry have again raised their ugly heads and cannot be tolerated. Love for others leads to unity and that combination has to be the answer for America. Jesus gave us the New Commandment when he said: "A new commandment I give you: love one another, as I have loved you, so you must love one another." John 13:33-34. My prayer is that the American people, and especially our leaders, will incorporate that very clear commandment into their lives and follow it daily.

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On January 15, 1979, Jere L. Beasley established a one-lawyer firm in Montgomery, Alabama, which has grown into the firm now known as Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.

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

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

It has been nearly 40 years since he began the firm with the intent of "helping those who need it most." Today, Beasley Allen has offices in Atlanta and Montgomery, and employs more than 250 people, including more than 75 attorneys. Beasley Allen is one of the country's leading firms involved in civil litigation on behalf of claimants, having represented hundreds of thousands of people.

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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.