

The JERE BEASLEY REPORT

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ATLANTA | MONTGOMERY



I. CAPITOL OBSERVATIONS

NETFLIX MOVIE HIGHLIGHTS DANGERS OF MEDICAL DEVICES

Most people trust that vital medical devices on the market have been tested and are proven safe. But they are painfully wrong. The Netflix documentary *The Bleeding Edge*, directed by Kirby Dick, reveals how the \$400-billion-dollar medical device industry puts the health and safety of consumers at risk in order to reap bigger profits, and how the regulatory system fails to protect consumers from medical device-related injury or death.

The documentary focuses on several people who received a medical device they trusted was safe, only to discover their devices weren't tested and they were essentially human guinea pigs.

One patient is an orthopedic surgeon who received a metal-on-metal hip implant that disintegrated inside his body and released metal ions in his blood resulting in neurological problems. Another is a mother in her 40s who received a transvaginal mesh implant to treat urinary incontinence, but the mesh eroded into her organs leaving her in excruciating pain, unable to have sexual intercourse with her husband. Another is a woman who was implanted with Bayer's permanent birth control device Essure. The device fractured inside her body, causing pain and requiring several surgeries. She now suffers from a debilitating device-related autoimmune disease.

The film casts a dim light on the Food and Drug Administration (FDA), the agency charged with protecting consumers from dangerous drugs and medical devices. But as *The Bleeding Edge* points out, the FDA's approval process is flawed. Most devices are approved under the FDA's 510(k) process, an accelerated approval program which brings devices to the market faster. But under this system, the only requirement is that the device must be "substantially equivalent" to one that is already on the market. That means medical devices are being approved and

marketed without first being tested for safety and efficiency.

The overuse of the 510(k) process means that the first users of these devices are often the ones to discover the side effects, and in many cases, live with the consequences. They're also the ones who have to push for change, like victims of the contraceptive Essure.

The movement against Essure began as a Facebook page uniting tens of thousands of women who said they suffered various Essure side effects. The women took their fight to Washington, and lawmakers pressured the FDA. In October 2016, following a review of the safety of Essure, the FDA fell short of banning the device, and instead ordered Bayer to place a boxed warning informing women and their doctors of risks associated with use.

The victims of Essure continued to fight and in April 2018 the FDA restricted the sale and distribution of the device. Finally, in July 2018, just after *The Bleeding Edge* was released, Bayer announced that as of Dec. 31, 2018, it would stop selling and distributing the birth control device in the United States.

Lawyers in our Mass Torts Section handle medical device cases on a regular basis and were not at all surprised at the findings and conclusions reached in *The Bleeding Edge*. Hopefully members of Congress saw this movie and will be motivated to take some badly needed action to protect the American people.

Sources: PR Newswire, *Forbes*, Netflix-*The Bleeding Edge*, and FDA

AN UPDATE ON BEASLEY ALLEN'S ATTORNEYS GENERAL LITIGATION

Lawyers in Beasley Allen's Consumer Fraud & Commercial Litigation Section have represented at least nine states, through the office of the states' attorney general, in various litigation involving fraudulent, unfair and deceptive practices that cost the states millions in taxpayer dollars. Beasley Allen lawyers are especially passionate about its work with attorneys general. That's because, as the chief legal officer of a state, the attorney general is in a unique and powerful position to pursue litigation and recover the state's money that was

essentially stolen as a result of fraudulent and dangerous corporate conduct frequently and unfortunately overlooked.

Not only can attorneys general bring common-law claims that are likewise available to private Plaintiffs, but in many jurisdictions, attorneys general can bring statutory causes of action such as Consumer Protection claims, Medicaid Fraud claims, claims under the False Claims Act, and other causes of action that statutorily provide standing for an attorney general to file suit.

More often than not, these various statutory causes of action reserved for the attorney general provide for the

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recovery of actual damages and civil penalties, in addition to litigation costs and attorney's fees. As an added benefit, many attorney general statutes provide for a pre-suit investigation through the issuing of a Civil Investigative Demand. Litigation brought by attorneys general can cause a significantly positive impact on the future of corporate America and how a company chooses to do business when it knows state taxpayer dollars are involved.

Currently, lawyers in Beasley Allen's Consumer Fraud & Commercial Litigation Section are involved in the following litigation with state attorneys general:

- **Fresenius Litigation**—Manufacturer and provider of dialysis products and services, Fresenius fraudulently sought and obtained Medicaid reimbursements for a dialysate component called GranuFlo that it knew could cause increased bicarbonate levels in patients resulting in cardiac related events or even death; Beasley Allen represents Kentucky and Louisiana in litigation involving more than 100 Defendants.
- **U&C Pricing Litigation**—Major chain pharmacies with discount drug programs engaged in repeated and continuous acts of reporting false and inflated prices to Medicaid programs in order to increase the amount the pharmacy received in Medicaid reimbursements for the drugs in their program; Beasley Allen represents Mississippi in four different litigations involving various major chain pharmacies, and is currently investigating several additional cases.
- **Unapproved Drugs Litigation**—Some of the nation's largest pharmaceutical manufacturers have engaged in fraudulent and deceptive practices of falsely reporting their drugs as covered outpatient drugs approved by the FDA, causing Medicaid to reimburse for drugs that it never should have; Beasley Allen represents Louisiana and Mississippi in six different cases involving almost 100 Defendants.
- **Average Wholesale Price Litigation**—Big pharma's most notable drug makers engaged in a nationwide pricing scheme whereby they fraudu-

lently reported false and inflated average wholesale prices to the states for purposes of obtaining higher reimbursements for their drugs, then marketing that higher reimbursement to providers as an incentive to prescribe or dispense their drug over a competitor's drug; Beasley Allen has represented Alabama, Alaska, Hawaii, Kansas, Louisiana, Mississippi, South Carolina and Utah against hundreds of pharmaceutical manufacturers.

- **Actos Litigation**—Drug giants Eli Lilly and Takeda fraudulently misrepresented the safety of their drug, Actos, causing the State to give the dangerous drug a preferred status in terms of Medicaid coverage, thus costing the State millions of dollars for the dangerous drug that it otherwise would not have spent; Beasley Allen represents Louisiana against several Eli Lilly and Takeda Defendants.
- **Molina Litigation**—Government contractors Molina and Unisys incorrectly processed the State's Medicaid reimbursements causing millions of dollars of overpayments; Beasley Allen represents Louisiana in litigation against its former fiscal agent.

Identifying potential litigation on behalf of a state often begins at the most vulnerable citizen's level. Our everyday experiences in our personal lives, as well as the lives of our clients that we work with, can be enough to discover a potential attorney general case. States pay an exorbitant amount of money for goods and services just like consumers, including prescription drugs, medical care and contractor services.

When your drug price drastically changes, when your Medicaid or Medicare benefits are taken advantage of, or when your local pharmacist raises a concern about the amount he/she received in a drug reimbursement, all of these instances may also affect taxpayer dollars. When companies fraud consumers, oftentimes they are committing fraud against states as well.

While fraudulent activity can occur under any circumstance, state Medicaid programs are characteristically preyed upon due to their uniquely profitable nature paired with limited resources by overwhelmed government employees.

Bad actors exploit state agencies and conceal dangerous information faster than the agency can uncover the wrongdoing. Identifying potential claims for a state to pursue on behalf of itself and its citizens is sometimes as simple as recognizing basic wrongdoing.

Perhaps there are patients who have suffered injury from negligent medical care consistently provided by a Medicaid provider. Or, a medical provider is seeking reimbursement from Medicaid for treatments, services and/or products at a higher price than sought from privately insured patients. While these circumstances may not be practically sustainable as individual claims, they may yield a legally viable claim to be pursued by an attorney general on behalf of the state.

Beasley Allen lawyers welcome the opportunity to investigate any potential litigation on behalf of any state. If you have any question about attorney general litigation, contact Ali Hawthorne or Lauren Miles, lawyers in our firm's Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com or Lauren.Miles@beasleyallen.com.

KAY IVEY IS THE 3RD MOST POPULAR GOVERNOR IN THE UNITED STATES

Kay Ivey is the third most popular governor in the country and the most popular among Southern state leaders, according to a recent poll. The Morning Consult quarterly Governor Approval Rating has Gov. Ivey's approval at 67 percent, putting her behind only Charlie Baker, R-Massachusetts (69 percent) and Larry Hogan, R-Maryland (68 percent). All three of the governors had disapproval ratings of 17 percent; 16 percent of those responding had no opinion on Gov. Ivey. Gov. Ivey's approval was highest among all Southern governors, followed by Asa Hutchinson of Arkansas (57 percent) and Nathan Deal of Georgia (56 percent).

The results were based on 326,051 surveys with registered voters across the country. It was conducted April 1-June 30. Based on media reports and comments from around the state, there haven't been any changes in Gov. Ivey's approval or disapproval ratings. In fact,

developments in Alabama since this poll was done should improve Gov. Ivey's ratings. With the general election only about eight weeks away, the prospects of a full term for Gov. Ivey should be very good.

II. OPIOID LITIGATION

ALABAMA PLAYS KEY ROLE IN OPIOID MDL

U.S. District Judge Dan Aaron Polster has delayed the first bellwether trial in multidistrict litigation (MDL) over the opioid epidemic to September 2019. The move by Judge Polster applies to three cases that local governments in Ohio have filed against opioid manufacturers, distributors and pharmacies.

In an order, Judge Polster said the cases will go to trial on Sept. 3, 2019, instead of March 18, 2019. In conjunction with the trial delay, Judge Polster also pushed back various deadlines for discovery, depositions and challenges to expert testimony.

The MDL now includes roughly 1,000 cases. Additional bellwethers have been filed by local governments in Florida, Illinois, Michigan and West Virginia, as well as Native American tribes and a Florida hospital. Judge Polster is expected to rule on motions to dismiss those cases, after which any surviving claims may be sent to other courts for trial. 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.

The State of Alabama, the counties of Summit (Ohio), Cabell (West Virginia), Monroe, Michigan and Broward (all Florida), and the City of Chicago were all selected as bellwether cases for motion to dismiss practice to determine the viability of threshold legal issues 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.

Summit and Cuyahoga counties and the City of Cleveland were selected to conduct discovery and prepare their

cases for trial. The State of Alabama is gearing up in expectation that it will be appointed as a bellwether case in the second round of bellwether trials. Currently, Alabama is the only state litigating its case in the MDL.

Alabama has been hit very hard by the opioid crisis. My state has one of the highest prescription rates for opioids in the nation, with 1.2 prescriptions per person, nearly twice the national average of 0.72 prescriptions per person. According to the National Institute on Drug Abuse, there were 343 opioid-related overdose deaths in Alabama in 2016, and at least 282 deaths were attributed to opioid overdoses in Alabama the previous year.

On a national level, the effects of the opioid epidemic are startling. A study published in the journal *JAMA Network Open* suggests opioid abuse in the U.S. is now responsible for 20 percent of deaths among young adults—up from just 4 percent in 2001—a far greater pace than any other age group. Comparatively, one in every 65 adults in the U.S. suffered deaths associated with opioid in 2016—a 292-percent increase since 2001. Due to the continued deterioration of the addiction crisis nationwide, the researchers concluded the U.S. lost a total of 1,681,359 years of life in 2016 alone.

But loss of life isn't the only toll the opioid crisis takes on communities. According to the Centers for Disease Control and Prevention (CDC), the opioid epidemic costs the U.S. about \$78.5 billion a year in health care, lost productivity, addiction treatment and criminal justice involvement.

To better assist local governments in the opioid MDL, Judge Polster has also ordered the Drug Enforcement Administration (DEA) to release detailed data regarding opioid sales activity in the six critical states from its Automation of Reports and Consolidated Orders Systems (ARCOS) database.

The ARCOS database lists individual opioid transactions and tracks quantities of specific opioids from manufacturer to distributor to pharmacy. Local governments in the MDL requested records dating back to at least 1995, to provide a baseline for opioid sales activity. This request was granted by special master David Cohen, who concluded that this "baseline evidence" regarding opioid

sales must be provided in order to contextualize the issue that allegedly broke laws and created the opioid epidemic. The timeline coincides with the launch of Purdue Pharma LP's OxyContin, which was approved for marketing in the U.S. in 1995.

The ARCOS data is pivotal to local governments suing opioid manufacturers, distributors and pharmacies because it gives insight into the marketing and sales practices of drug makers accused of fueling the opioid crisis by overstating the benefits of the drugs while downplaying their highly addictive qualities. ARCOS data will be extremely helpful in holding these companies accountable for their role in destruction opioids have had on local governments across the nation. Shortly after releasing the ARCOS data to the six potential bellwether states, Judge Polster agreed to release the data to all 50 states.

Sources: *Reuters*, U.S. District Court of Ohio and Law360.com

OPIOID MDL COUNTIES GET PARTIAL INFORMATION FROM MCKESSON REPORT

The special master appointed to oversee a discovery dispute in the opioid multidistrict litigation (MDL) partially granted a request by counties for more information from a McKesson Corp. internal investigation into its suspicious drug order monitoring program. The counties were found to be entitled to witness names, but statements and terms used in the investigation were said to be protected work product.

Special Master David R. Cohen partially granted the counties' request for information used to create "McKesson Corp. Board of Directors' Response to the International Brotherhood of Teamsters," which was prepared by a special review committee appointed by McKesson as a result of concerns by the Teamsters union, a major shareholder. The Teamsters asked questions about oversight of suspicious order quantities after McKesson, a major drug distributor, paid \$150 million to the federal government in April 2015 to settle claims, including allegations it had failed to report suspicious orders to the DEA as required by federal law.

The special master ruled that the work product doctrine did not preclude production of the list of 46 witnesses. He stated that disclosing the list of names does not disclose the thought process of the lawyers who conducted the investigation, rendering the work product content insubstantial. He also said that the Plaintiffs were entitled to the information as a matter of right under Rule 26(a).

While the special master found that the list of names should be disclosed, he disagreed with the assertion that memoranda documenting the statements of the interviewees, and search terms used to assemble documents as part of the investigation should also be submitted. The special master also rejected the idea that the Plaintiffs have a substantial need for search terms applied by counsel and the documents collected as a result. These terms and documents were said to be “opinion work product,” giving insight to the lawyers’ strategies and ideas.

Interestingly, the special master stated that the release of the internal report did not waive any privilege over the information but noted that if McKesson introduces evidence from the investigation that is outlined in the report, he will reconsider whether the Plaintiffs are entitled to discover the additional information that has been denied.

Source: Law360.com

GOVERNMENTAL ENTITY PLAINTIFFS TO COMPLETE FACT SHEETS IN OPIOID MDL

Pursuant to a recent Order by Judge Dan Polster, governmental entity Plaintiffs (cities, counties and other entities) will be providing certain information pertaining to their cases in the form of what the Court has termed Plaintiff Fact Sheets.

These fact sheets seek to elicit information relating to each governmental Plaintiff’s injuries, damages, and persons with knowledge about the cases. The fact sheets also request specific types of data including information relating to law enforcement investigations into the prescribing and dispensing of opioids by physicians, health care providers, and pharmacies within the governmental entities’ borders.

The Order requires that all governmental entities with a filed lawsuit complete the fact sheets within 90 days of the order and that new cases filed after the Order to provide them 90 days after their cases is docketed into the multidistrict litigation (MDL).

BEASLEY ALLEN OPIOID LITIGATION TEAM

As previously reported, because of the enormity of the opioid litigation, our firm has put together an “Opioid Litigation Team.” Beasley Allen represents the State of Alabama and numerous local governments and other entities in opioid litigation. Our lawyers are 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

TEXAS JURY FINDS EVIDENCE OF “GROSS NEGLIGENCE” BY TOYOTA

A civil jury in Texas found “clear and convincing evidence” of “gross negligence” by Toyota and returned a \$242 million verdict last month against the automaker. The jury found that the automaker (the parent company of Lexus) failed to warn consumers that front seats can collapse backward during certain types of rear-end collisions and propel people into the backseat. The verdict of more than \$242 million stems from a 2016 crash where two young children were severely hurt in a Lexus.

The auto industry has long known car seats do not hold up in certain kinds of rear-end crashes where the vehicle is hit at a high rate of speed. The injuries to those in the backseat can be catastrophic. The internal documents show

the cost to fix the problem could be on the order of \$1 or so per seat. That should shock all American citizens and should also get the attention of the National Highway Traffic Safety Administration (NHTSA).

Ben and Kristi Reavis were stopped in traffic on a Dallas area expressway on the way home from church in September 2016. Their two children, 3-year-old Owen and 5-year-old Emily, were in the back, in their car seats, when an SUV slammed into the back of their 2002 Lexus sedan at 45 mph. As a crash test simulating the crash and used during the trial shows, the front seats collapsed, sending Ben and Kristi head first into their own children. Both children suffered permanent traumatic brain injuries. Frank Branson, one of the lawyers for the family, stated:

I think the jury pretty much understood that the only way you were going to get any movement here was to get Toyota’s attention or any other car makers. Toyota testified in this matter that they had known since the ‘80s.

The jury saw parts of CBS News’ investigation including a 2016 report where a jury awarded the Rivera family more than \$124 million for a similar crash that left their son with brain damage. “I am angry that I feel like we were never given the chance to make the decision for ourselves,” Ben Reavis said, adding, “I wish I had seen that piece six months before our accident happened because I would have started asking questions about my own car.”

The investigation by CBS identified more than 100 cases where seatback collapses resulted in serious injuries or death, mostly to children in the backseat. That’s despite meeting or exceeding federal standards for seat strength that date back to 1967—standards even a banquet chair can pass.

Because of the CBS investigation, several members of Congress have called on NHTSA to change the seatback strength standard. The agency has consistently maintained it lacks sufficient evidence to take action but has also acknowledged seatback collapse is likely under-reported. NHTSA still recommends the backseat as the safest place for children.

Source: CBS News

JURY RETURNS \$4.8 MILLION VERDICT AGAINST FORD IN EXPLORER DEFECT CASE

A federal court jury in Texas has awarded \$4.8 million in damages to a man whose left arm was amputated when his 1999 Ford Explorer rolled over. The jury found that a design defect—the type of window glass used—led to his injuries. The panel determined that Ford Motor Co. was 90 percent liable for the injuries that left Jose Leos-Ortiz, a welder, unable to work, but also found that the Plaintiff was 10 percent responsible for the incident. The jury awarded Leos-Ortiz \$3.3 million for past damages and \$1.5 million for future damages.

Leos-Ortiz was involved in a one-vehicle crash in June 2009, as he was driving the SUV on a Texas highway. The jurors were told that if Ford had used laminated glass, which is glass between layers of plastic that keep broken pieces intact, rather than the cheaper tempered glass, the window of the Explorer wouldn't have shattered on impact, and Leos-Ortiz would not have lost his arm.

Leos-Ortiz is represented by Pat Ardis and Kip Whitemore of Wolff Ardis PC and Scott West of The West Law Firm. The lawyers did a tremendous job in this case. The case is *Jose Leos-Ortiz v. Ford Motor Co.*, (case number 7:11-cv-00158) in the U.S. District Court for the Southern District of Texas, McAllen Division.

BEASLEY ALLEN FILES A CLASS ACTION AGAINST FORD FOR F-150 BRAKE FAILURE

Our firm recently filed an important nation-wide class action case against Ford Motor Company in the Federal Court of the Eastern District of Michigan involving an alleged brake failure in the company's most popular product, the Ford F-150. The thrust of the case concerns purchased or leased vehicles for model years 2013-2018 for the Ford F-150 trucks ("class vehicles"), and the vehicles' brake master cylinder, which contains piston cup seals within the master cylinder that roll within their grooves and become unseated, allowing brake fluid to escape from the master cylinder resulting in loss of brake fluid, leading to loss of hydraulic pressure on the brake system, and finally resulting in loss of brake function on the class

vehicles. These primarily affect front brake circuits, but front brake circuits are responsible for 75 percent of the vehicles' braking force, thus the master cylinder defect results in an almost complete loss of stopping power on the F-150. A clear safety issue.

In February 2016, the National Highway Traffic Safety Administration (NHTSA) Office of Defects Investigation began a preliminary evaluation of reports of brake fluid leaking from the master cylinder in 2013-2014 Ford F-150s models with the 3.5-liter engines. In response, in May 2016 Ford Motor Company issued a safety recall known as 16S24 to address the loss of the front brake circuit function in a subset model year 2013-2014 for the Ford F-150, specifically those with the F-150s 3.5 liter "EcoBoost Engine" that were built between Aug. 1, 2013 and Aug. 31, 2014. In that safety recall, 16S24, Ford admitted the existence of the master cylinder defect. Ford cited risks of a "compromised" primary cup seal and the corresponding loss of the brake fluid "into the brake booster." However, the recall was grossly inadequate.

Not only did the 2016 recall failed to address all affected models from 2013-2014 F-150s, neither did it address any model year 2015-2018, even though all model years 2013-2018 F-150 vehicles share the very same master cylinder as the recall vehicles. In addition, the recall provides an ineffective remedy even for vehicles it does address because it merely calls for the replacement of the master cylinder with a new master cylinder that is internally identical to the one that failed. In other words, the recall simply calls for the replacement of one defective part with another defective part.

Despite its awareness of the master cylinder defect, Ford continued to sell hundreds of thousands of F-150s and did so despite knowing that the dangerously unreliable master cylinders failed suddenly and unexpectedly, posing a safety hazard to Plaintiffs and other class members as well as others sharing the road with the class vehicles. Therefore, lawyers at Beasley Allen, alone with and their partners, have filed this class action lawsuit to remedy this problem.

Dee Miles, Clay Barnett, and Chris Baldwin from our firm filed this class action lawsuit along with Adam J. Levitt,

John E. Tangren and Daniel Ferri from the Dicello, Levitt & Casey firm located in Chicago, Illinois, and our local counsel E. Powell Miller with the Miller Law Firm located in Rochester, Michigan. Our firm has worked with these law firms before on other nationwide class actions and we are honored to be teaming up with them again for this important case.

We will keep our readers posted on any new developments that occur with this very important consumer class action lawsuit.

TOYOTA RECALLS 19,400 AVALONS FOR LIKELY SEAT BELT DEFECT

Toyota Motors North America Inc. is conducting a safety recall of 19,400 of its 2012 Avalon vehicles in the United States for possibly defective seat belt buckles, which could result in the airbag not deploying properly. The front seat belt inner buckle in some vehicles may have been replaced with one that does not correctly identify if the seat belt is buckled, because of a service part manufacturing error at a supplier, according to Toyota. The company said in a statement:

This could affect how the air bag system determines the appropriate air bag deployment method in a crash, and could increase the risk of injury to the occupant where the front seat belt inner buckle was replaced.

Out of the approximately 19,400 vehicles being recalled, 97 of them—at most—may have had the front seat belt inner buckle replaced with the defective service part either by a Toyota dealer or non-Toyota service provider, according to the company statement. Toyota dealers will inspect those buckles and, if a problem is discovered, replace them with new ones, free of charge.

A notification will be sent out this month to all known owners. For customer support, the Toyota Customer Experience Center can be reached at 800-331-4331, or the Lexus Guest Experience Center at 800-255-3987. For the latest on recalls relating to Toyota, Lexus or Scion vehicles, customers can visit toyota.com/recall and enter their

vehicle identification number, or VIN, or license plate information.

Safety recall inquiry by individual VIN is also available at the National Highway Traffic Safety Administration site: nhtsa.gov/recalls.

NHTSA INVESTIGATING FORD-150 FOR SEAT BELT FIRE HAZARD

Federal safety regulators are investigating Ford F-150 Supercrew pickup trucks after receiving driver complaints of a potentially defective seat-belt assembly that starts fires during or immediately after a crash. The National Highway Traffic Safety Administration (NHTSA) said it received five reports from Ford F-150 owners that the seatbelt pretensioners, which regulate slack in the seatbelt and lock in place during a crash, started fires in the “B pillar” that houses the belt.

Although no injuries or deaths were reported, three of the Ford F-150 trucks were completely incinerated by the seatbelt fire. The other two trucks were extensively damaged. “The truck went up in complete flames in a matter of minutes and is a complete loss,” one of the F-150 owners told NHTSA, according to Consumer Affairs. In its description of the problem, NHTSA said that “during a crash, deployment of the seat belt pretensioner may result in a fire inside the B pillar at the seatbelt floor anchor.”

According to Digital Trends, Ford uses “pyrotechnic pretensioners” in the seatbelts of the affected Ford F-150s. “Pyrotechnic pretensioners, which must be replaced after they are activated just like airbags, use small explosions to tighten loose seatbelts to protect passengers during crashes in addition to locking the belts in place,” Digital Trends explains. “Not all pretensioners use pyrotechnics; other types use mechanical or electrical locking mechanisms.” The allegedly defective parts were made either by German supplier ZF TRW or the notorious Japanese auto parts maker Takata, which filed for bankruptcy last year after recalling more than 100 million dangerously defective airbags.

The seatbelt fire hazard affects model year 2015-2018 Ford F-150 Supercrew pickups. No recall has been announced at this point. However, if NHTSA determines a recall is needed for safety

reasons, Ford would have to recall about 1,425,000 of the trucks.

Beasley Allen lawyers are handling lawsuits involving the fire hazard defect described above. For more information relating to product liability cases involving death and serious personal injury contact Ben Baker, a lawyer for our firm’s Personal Injury & Products Liability Section, at 800-898-2034 or by email at Ben.Baker@beasleyallen.com. For class action (non-injury) litigation, contact Clay Barnett, a lawyer in our firm’s Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Clay.Barnett@beasleyallen.com.

POLARIS RECALLS GRAVELY AND BOBCAT UTVs DUE TO FIRE AND BURN HAZARDS

Polaris is recalling about 2,100 Gravelly Atlas JSV 3000 and 6000 utility vehicles and an additional 2,700 Bobcat 3400 and 3400XL utility vehicles. The utility vehicles’ exhaust header pipe can crack, posing fire and burn hazards.

The Gravelly recall involves all model-year 2015 through 2018 Gravelly Atlas JSV 3000 and 6000 gas-engine-powered utility vehicles. The recalled utility vehicles feature red body panels and one or two rows of seats with a rear box. “Gravelly” is printed on the rear box, and “Atlas” is printed on the hood of the utility vehicle. The model and serial number can be found on the driver’s side and are visible from the front wheel well.

If the exhaust note becomes louder or develops a pop or rattle, consumers should immediately stop using the recalled utility vehicles. Gravelly has already received seven reports of cracked header exhaust pipes.

The vehicles were sold at Gravelly dealers nationwide from September 2014 through July 2018. Polaris Industries Inc., of Medina, Minnesota, manufactured the units and sold them to distributor Gravelly Company of Brillion, Wisconsin.

The Bobcat includes about 2,700 Bobcat 3400 and 3400XL utility vehicles. This recall involves model year 2015 through 2018 Bobcat 3400 and 3400XL gas engine-equipped utility vehicles manufactured by Polaris Industries. The recalled utility vehicles are white and black with orange decals and

have one or two rows of seats with a rear box. “Bobcat” is printed on the hood of the utility vehicle and “3400” or “3400XL” is printed on the rear box. The model and serial number can be found on a label under the seat and storage bin on the passenger side.

Bobcat has likewise received seven reports of cracked exhaust pipes. The vehicles were sold at Bobcat dealers nationwide from August 2014 through July 2018. Polaris Industries Inc., of Medina, Minnesota, manufactured the units and sold them to distributor Bobcat Company of West Fargo, North Dakota.

Beasley Allen lawyers have filed a class action lawsuit against Polaris Industries for a similar fire risk in the Ranger RZR models. The Plaintiffs are represented by Clay Barnett, Chris Baldwin and Dee Miles of Beasley Allen. The case is *In re: Polaris Marketing, Sales Practices, and Products Liability Litigation*, Case No. 18-cv-00939 (WMW/DTS); US District Court for the District of Minnesota. To contact Clay Barnett, you can dial 800-898-2034 or reach him via email at Clay.Barnett@beasleyallen.com.

Lawyers in our firm are currently investigating burn and fire risks associated with Polaris Gravelly Atlas JSV 3000 and 6000 utility vehicles and Bobcat 3400 and 3400XL utility vehicles. If you know someone who has suffered a personal injury or death as a result of being burned while operating one of these vehicles or you just need more information, contact Ben Locklar, a lawyer in our Personal Injury & Product Liability Section, at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com. Clay Barnett is handling the consumer class action litigation for the firm. You have his contact information above.

AN UPDATE ON THE FIAT CHRYSLER MDL

Dee Miles from our firm, and other lawyers from the court-appointed Plaintiffs’ Steering Committee, continue to put pressure on Fiat Chrysler and Bosch related to emissions cheating devices used in “EcoDiesel” branded Jeep and Ram vehicles. The Plaintiffs allege that Fiat Chrysler duped its customers into paying a premium for diesel vehicles marketed as environmentally friendly

and fuel-efficient, when they were, in fact, illegally emitting pollutants well beyond federal limits.

Specifically, this scheme involved Bosch supplying electronic diesel control units that managed the emissions from the engine to Fiat Chrysler, and the companies working together to develop and install the hidden devices in approximately 100,000 EcoDiesel Jeep Grand Cherokees and Ram 1500s.

Over the past few months, Fiat Chrysler and Bosch have made multiple attempts to get the emissions cheating claims in the multidistrict litigation (MDL) against them thrown out of court. On Aug. 2, Judge Edward Chen, in the Northern District of California, heard arguments related to the Defendants' second round of motions to dismiss. Plaintiffs' lawyers, led by Elizabeth Cabraser from the Lieff Cabraser firm, argued that Plaintiffs' adequately pled their fraudulent concealment, breach of warranty, consumer protection and Racketeer Influenced and Corrupt Organizations (RICO) Act claims.

The Plaintiffs countered that their second amended complaint not only includes substantial descriptions of Fiat Chrysler's deceptive marketing strategies, but also "detailed allegations from nearly every named Plaintiff describing how they were misled by the company into buying the EcoDiesel vehicles."

Judge Chen had already rejected most of a previous motion to dismiss by the Defendants. He ruled in March that the Plaintiffs alleged enough facts to show that Fiat Chrysler and Bosch "knowingly participated in a scheme to defraud regulators and consumers by selling EcoDiesel trucks containing illegal defeat devices that allowed them to emit amounts of nitrogen oxides that were 20 times above the legal limits." The second motion to dismiss was a rehash of many of the Defendants' previously rejected arguments. A ruling from Judge Chen is expected in the next few weeks.

The Plaintiffs have also filed a motion for to certify a nationwide class of people who purchased or leased a vehicle at issue. The Plaintiffs' motion alleges that the owners and lessees fell victim to a common scheme and "all overpaid for vehicles that were marketed as 'EcoDiesel' even though they emitted up to 20 times the legal limits of

nitrogen oxides." The hearing on the Plaintiffs' motion for class certification will be held Nov. 20 in San Francisco. Stay tuned.

Sources: Law360.com

IV. WHISTLEBLOWER LITIGATION

INSYS TO PAY \$150 MILLION TO END DOJ SCRUTINY OF OPIOID-RX BRIBES

Opioid manufacturer Insys Therapeutics Inc. has agreed to pay at least \$150 million to get the U.S. Department of Justice (DOJ) to drop its criminal investigation and civil claims that the company bribed doctors to prescribe its under-the-tongue fentanyl spray. The Arizona-based drugmaker, whose former executives are also facing separate criminal charges in Massachusetts federal court, said in a news release it could pay an additional \$75 million, contingent on "certain events," to end the DOJ's scrutiny of "inappropriate sales and commercial practices by some former company employees."

The agreement in principle is in line with what Insys had predicted in May it would pay. That was when the federal government and seven states intervened in a False Claims Act (FCA) case in the Central District of California alleging the company paid doctors in exchange for prescribing its main product, Subsys. The DOJ's intervenor complaint said the company's alleged kickbacks, off-label promotion and lies about patient medical history caused Medicare to pay tens of millions of dollars for illegitimate prescriptions.

Several doctors in Connecticut, Michigan and Rhode Island have pled guilty to taking kickbacks from Insys. The company's billionaire founder and other former executives are facing racketeering and fraud charges in Massachusetts for orchestrating the scheme. They are facing a 2019 trial in the criminal case. Several state prosecutors including those in New York, New Jersey and North Carolina have filed separate civil fraud and consumer protection claims against Insys.

California, Colorado, Indiana, Minnesota, New York, North Carolina and Virginia have intervened in the FCA case and those states have filed a consolidated complaint against Insys.

The federal government and the relator (whistleblower) are represented by Assistant U.S. Attorney John E. Lee, Robert Scott Oswald and David Lawrence Scher of The Employment Law Group PC and Mark A. Kleiman of the Law Office of Mark Allen Kleiman. The states are represented by their respective attorneys general. The FCA case is *U.S. et al. v. Insys Therapeutic [sic] Inc.*, (case number 2:13-cv-05861) in the U.S. District Court for the Central District of California.

Source: Law360.com

PRIME HEALTHCARE TO PAY \$65 MILLION IN FCA SETTLEMENT

A whistleblower who filed a False Claims Act (FCA) lawsuit against Prime Healthcare Services, one of the nation's largest hospital chains, and its founder and chief executive officer, has received an award of \$17,225,000 for helping the federal government recover \$65 million in Medicare funds.

Karin Berntsen, the former Director of Performance Improvement at Alvarado Hospital Medical Center in San Diego, filed the suit under the whistleblower provisions of the False Claims Act. Ms. Berntsen said that Prime Healthcare Services, Prime Healthcare Foundation, Prime Healthcare Management, and CEO Dr. Prem Reddy routinely admitted Medicare patients for costly in-patient treatment when the patients should have been treated as outpatients.

Federal Prosecutors alleged that Prime Healthcare and 14 of its California hospitals, including the one that employed Ms. Berntsen, engaged in false billing schemes designed to get as much money out of Medicare as possible. In addition to unnecessarily admitting Medicare beneficiaries, the whistleblower complaint alleged that the Defendant hospitals also "upcoded" patient billings, meaning they charged Medicare for costlier services by falsifying and exaggerating patient diagnoses.

Prime Healthcare agreed to pay the U.S. \$65 million to resolve the False

Claims Act charges. The settlement also requires that Prime Healthcare enter a five-year Corporate Integrity Agreement with the Health and Human Services Office of Inspector General. The Prime Healthcare companies are required to take significant compliance efforts, including retaining an independent review organization to oversee the accuracy of the company's claims for services provided to Medicare beneficiaries.

Paul Delacourt, Assistant Director in Charge of the FBI's Los Angeles Field Office, who helped investigate the whistleblower case, stated:

Those who engage in health care fraud, including corrupt doctors and medical professionals driven by greed, exploit helpless or unwitting patients in violation of the oath they took to protect us—and often American taxpayers are the victims. By reaching this settlement, the FBI and our partners are holding Prime Healthcare accountable for exaggerating patients' needs and inflating the severity of their symptoms while handsomely lining their pockets. This case should send a clear message to others who intend to engage in similar schemes that rout the American health care system.

Headquartered in Ontario, California, Prime Healthcare is one of the largest hospital systems in the nation, with 45 acute-care hospitals 14 states. Dr. Reddy will pay \$3,250,000 of the settlement and Prime Healthcare will pay \$61,750,000, the Justice Department said. Ms. Berntsen's whistleblower award accounts for about 26 percent of the total recovery.

Source: News Release from DOJ

ASTRAZENECA SETTLES TEXAS MEDICAID FRAUD SUITS FOR \$110 MILLION

AstraZeneca LP has agreed to pay \$110 million to the State of Texas to settle lawsuits accusing the company of falsely marketing its drugs Seroquel and Crestor in violation of the Texas Medicaid Fraud Prevention Act. The settlement was announced by Texas Attorney

General Ken Paxton. The company was accused of using misleading marketing schemes at a time when it was already under strict obligations of a 2010 federal "corporate integrity agreement" resulting from prior claims of Medicaid fraud. That agreement prohibited AstraZeneca from promoting off-label uses of its anti-psychotic medication Seroquel and its cholesterol-lowering drug Crestor. The Texas Attorney General said that "the company continued to do so anyway by promoting Seroquel to Texas Medicaid providers who primarily treated children and adolescents when those drugs were not approved as safe and effective for use in that vulnerable population."

Attorney General Paxton said in a statement that "Texas leads the country in protecting its Medicaid system from pharmaceutical fraud." The Attorney General added:

The allegations that led to this settlement are especially disturbing because the well-being of children and the integrity of the state hospital system were jeopardized. The cooperation and support of the Texas Health and Human Services Commission was essential in achieving this outstanding outcome for Texans.

The attorney general's office said AstraZeneca carried out a similar nationwide marketing fraud scheme involving Crestor, alleging the company "executed a plan of deception targeted directly at Texas Medicaid." Crestor is a statin, a type of drug that reduces fat levels in the blood, and Texas claims AstraZeneca tried "to expand the use of the statin beyond what the science supported, while downplaying a significant risk of diabetes in certain patients." According to the settlement agreement, AstraZeneca agreed to pay \$90 million to settle claims related to Seroquel and \$20 million to settle claims related to Crestor.

The settlement includes attorneys' fees and costs for both the state and the relators, former AstraZeneca employees who provided information to the attorney general's office under the whistleblower provisions of the Texas Medicaid Fraud Prevention Act.

Relator Allison Zayas is represented by Frederick P. Santarelli of Elliott

Greenleaf PC, James J. Pepper of The Pepper Law Firm LLC, and Brian P. Kenney and Brian McCafferty of Kenney & McCafferty PC. Relators Tracy Miksell-Branch, Layne D. Foote and Mark Lorden are represented by Alan M. Freeman Blank Rome LLP, and Scott Simmer of Baron & Budd PC. Relator Rosemarie De Souza is represented by Joel Androphy and Sarah Frazier of Berg & Androphy. Relator Kenneth McDonough MD is represented by Teresa N. Cavenagh of Duane Morris LLP. Texas is represented by Raymond C. Winter of the state attorney general's office.

The underlying lawsuits are *State of Texas ex rel. Allison Zayas and Tracy Miksell-Branch v. AstraZeneca LP et al.*, (number D-1-GN-13-003530) and *State of Texas ex rel. Layne D. Foote, Mark T. Lorden, Rosemarie De Souza and Kenneth McDonough, M.D. v. AstraZeneca LP et al.*, (number D-1-GV-13-000812) in the 353rd Judicial District Court of Travis County, Texas.

Source: Law360.com

WHISTLEBLOWER LAWSUIT FILED AGAINST PRATT & WHITNEY INVOLVING DEFECTIVE MILITARY ENGINE

Pratt & Whitney (P&W) and its parent United Technologies Corp. sold the U.S. military tens of millions of dollars in defective fighter jet engines, unnecessarily exposing military pilots to the risk of catastrophic engine failures, according to a whistleblower False Claims Act complaint unsealed last month in a Connecticut federal court. It's alleged that P&W has knowingly used and concealed a defective spray coating process for parts in its F100 and F119 engines, which are used in military F-15, F-16 and F-22 fighter jets. The amended complaint of the relator, Peter J. Bonzani Jr., was unsealed after the government declined to intervene in the case.

The whistleblower says the potential result of this defective process is premature wear of engine parts, possibly leading to catastrophic engine failure without prior warning. The issue was concealed through the use of falsified or cherry-picked durability testing results, and despite failing to meet the military's contractual quality control requirements, engines using these parts have

been pressed into service with the Air Force. Bonzani made this assertion:

Relator fears that as much as twenty-two years' worth of suspect hardware—obvious product quality 'escapes' - have been put into service.

Bonzani is a former P&W contractor and employee and a claimed expert on spray coating technology. The whistleblower said he had been called upon as P&W's "go-to" person to address sub-standard spray coating at several of the company's facilities, before being asked in November 2015 to look at F119 knife edge seals—used to keep hot gases sealed within the engine—that had failed testing at its Middletown, Connecticut, facility.

Bonzani diagnosed that the "plume" from the spray gun being used was too short to reach fully inside the crevices in those engines and properly coat the seals, according to the complaint. The same spray coating issue, albeit affecting a different engine part, the outer combustor, had affected F100 engines made at P&W's San Antonio facility for nearly two decades through 2014, and it was only addressed after manufacturing was moved to a different plant and a different spray gun was ultimately used, he said.

At these plants and other P&W facilities, parts that failed testing had nonetheless been passed for production, Bonzani claimed, intimating that two in-flight engine failures involving F-22s in April this year - the exact reasons behind which remain classified - may stem from the allegedly defective spray coating process. He also noted that P&W President Robert Leduc publicly admitted in March of this year that premature breakdowns in India and Europe of commercial aircraft engines made by the company were related to failures in durability testing and oversight, saying that those same flawed testing procedures were used for parts that went into engines intended for the U.S. military.

Bonzani further claimed that when he brought the coating and falsified testing issues at the Middletown plant to the attention of his superiors in November 2015, he was abruptly suspended and then later terminated from P&W. But while he has not worked at the company since 2015, he has been told by other

workers that the same flawed spraying process was still being used at the Middletown plant at least through March of this year. That was before P&W "finally acknowledged the insanity" of using the wrong spray guns and changed its equipment.

Bonzani is represented by Michael M. Mustokoff and Brett M. Feldman of Duane Morris LLP and N. Kane Bennett of Aeton Law Partners. The case is *U.S. ex rel. Bonzani v. United Technologies Corp. et al.*, (case number 3:16-cv-01730) in the U.S. District Court for the District of Connecticut.

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 an experienced group of lawyers dedicated to handling whistleblower cases. The lawyers on our firm's Whistleblower Litigation Team are Archie Grubb, Larry Golston, Lance Gould, Andrew Brashier and Paul Evans.

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

V. TALC LITIGATION UPDATE

THE SAD SAGA OF JOHNSON & JOHNSON CONTINUES

The litigation against Johnson & Johnson involving its talc products has been going on since 2013, when the first

trial was held in a South Dakota Federal Court. The most recent case was tried in St. Louis in July. There was a complete report on that trial, which resulted in a \$4.69 billion verdict, in the Mass Torts Section of last month's edition of this *Report*.

For more than a century, Johnson & Johnson has promoted its Johnson's Baby Powder as being safe enough for women and infants. However, internal J&J documents show that the consumer health care giant knew for decades that its talcum powder products posed cancer risks for persons who used the products as directed.

Over the past five years the ongoing litigation has made the public aware of several important things including the following:

- J&J's talcum powder products cause ovarian cancer.
- For decades, J&J covered up and hid the cancer risk from the public.
- The conduct of J&J has been horrendous and hurtful.
- The massive wrongdoing of J&J has now been exposed.
- The civil court system has done its job.
- Somebody at J&J should go to jail.

The Berg Case

In 2013, Johnson & Johnson faced its first trial alleging its talcum powder products can cause cancer. Deane Berg sued the company, claiming that regular use of Johnson's Baby Powder and Shower to Shower body powder on her genitals—as advertised by the company for feminine hygiene—caused her to develop ovarian cancer. In October 2013, a federal Jury in Sioux Falls, South Dakota, ruled that J&J's talcum powder products were a factor in the development of her ovarian cancer. This verdict came after a federal Judge ruled against J&J's challenge of the validity of Berg's scientific evidence and experts under the *Daubert* standard.

The Berg case exposed the dangers and conspiracy behind talcum powder exposure and prompted thousands of women to bring claims against Johnson & Johnson, its talc supplier Imeys Talc America, and the national trade associa-

tion Personal Care Products Council, for deceiving them about the ovarian cancer risks. Since 2013 there has been a huge amount of litigation around the country. In fact, since Berg, an additional six juries have determined that J&J talc products cause ovarian cancer. Another two juries have determined that J&J's and Imerys' talc is contaminated with asbestos and contributes to the development of mesothelioma, a rare but deadly form of cancer typically affecting the lungs.

The trials have resulted in multimillion-dollar verdicts for victims of talc exposure. Over the years, Johnson & Johnson and Imerys have gone to great lengths to cover up evidence that their talcum powder products were highly dangerous to consumers.

Talc and Ovarian Cancer

During their investigation into cases alleging ovarian cancer risk, lawyers in our firm began to uncover damning evidence of a decades-long cover-up by Johnson & Johnson and Imerys to conceal the risks of ovarian cancer with their talc-containing products. Ovarian cancer is the deadliest gynecological cancer.

In 1982, Harvard Cancer Center's Dr. Daniel Cramer published a study titled "Ovarian Cancer and Talc—A Case-Control Study," that showed a 92 percent increased risk of ovarian cancer in women who used talcum powder on their genitals for feminine hygiene. An earlier study suggested that talc particles can travel through the vagina and the fallopian tubes, and embed in and inflame the ovaries, creating a hotbed for cancerous growth. Dr. Cramer shared his findings with Johnson & Johnson, but the company refused to remove the talc from its products or to warn women of this risk.

In 1997, Dr. Alfred Wehner was hired by Johnson & Johnson and Imerys to evaluate studies linking genital use of talcum powder to ovarian cancer. In a letter to Johnson & Johnson's Preclinical Toxicology Department, Dr. Wehner advised that the company's statement that talc presents no significant risk of cancer was "outright false" and told them the studies were against them. He warned company executives that to continue to deny scientific research to the contrary put the company at risk of

being "perceived by the public like it perceives the cigarette industry: denying the obvious in the face of all evidence to the contrary."

In 2006, Imerys added a warning to its Material Safety Data Sheet (MSDS) that "perineal use of talc-based body powder is possibly carcinogenic to humans." The MSDS is a document that provides health and safety information about products or materials that are classified as hazardous substances or dangerous goods and is intended to warn manufacturers about potential health risks to workers who handle the materials. While the warning claimed to not be relevant to workers, it most certainly would be to consumers who ultimately used the products. Still, Johnson & Johnson refused to warn the public. Experts estimate that more than 100,000 women have died from talc-induced ovarian cancer as a result of talc exposure.

Talc and Mesothelioma

Talc is a naturally occurring mineral mined from the earth. It can be found in proximity to other naturally occurring minerals including asbestos, a known carcinogen as classified by the International Agency for Research on Cancer (IARC), an agency of the World Health Organization. The IARC further states on its website that "mineral substances (e.g. talc or vermiculite) that contain asbestos should also be regarded as carcinogenic to humans."

Asbestos exposure can cause mesothelioma, an aggressive type of cancer that forms in the lining of the lungs and other internal organs. The disease can take 10 to 50 years to develop, and usually proves deadly 12 to 24 months after diagnosis.

Johnson & Johnson has repeatedly denied that its talc contains asbestos. According to documents unsealed in a lawsuit in St. Louis alleging Johnson & Johnson's talcum powder products caused ovarian cancer, it was revealed that the company knew for decades that its talc was laced with cancer-causing asbestos.

One such document showed that, in May 1974, an official at Johnson & Johnson's Windsor Minerals talc mine in Vermont recommended "the use of citric acid in the depression of chrysotile asbestos" from talc extracted from

the site. "The use of these systems is strongly urged by this writer to provide protection against what are currently considered to be materials presenting a severe health hazard and are potentially present in all talc ores in use at this time," the mine's director of research and development wrote.

A 1973 report by a Johnson & Johnson official stated that Johnson's Baby Powder "contains talc fragments classifiable as fiber," and that "sub-trace quantities of" two types of asbestos "are identifiable and these might be classified as asbestos fiber." As a result of these findings, the official suggested that Johnson & Johnson replace its talcum powder with cornstarch. The company refused.

A year later, owners of the Val Chisone mine near Turin, Italy, produced a booklet to market the site. Johnson & Johnson, which used some Val Chisone talc in its products, reportedly urged the mine to stop the distribution of the booklet because it revealed that trace amounts of asbestos were discovered in the talc mined there. Mine officials agreed to stop distributing English-language versions of the booklet until Johnson & Johnson could rewrite it.

Dr. Barry Castleman, a consultant on the health effects of asbestos in building materials, wrote Johnson & Johnson in 1972 cautioning that asbestos in talc-containing products used by consumers could cause serious health problems. Dr. Castleman said the company responded by saying that there was no asbestos in its talc.

In May, California jurors awarded \$21.7 million in compensatory damages to a woman who said that the talc in Johnson & Johnson's products was contaminated with asbestos and contributed to her developing mesothelioma. The jurors asked the court if, instead of awarding punitive damages, they could punish the company by requiring it to place cancer warnings on its talcum powder products. The learned trial judge told jurors they did not have that authority. As a result, the jury added \$4 million of punitive damages to the verdict, bringing the award to \$25.7 million.

Talc Lawsuits In MDL

In 2017, the Judicial Panel on Multidistrict Litigation centralized thousands of ovarian cancer claims against Johnson & Johnson, Johnson & Johnson Consumer Inc., Imerys Talc America, and the national trade association Personal Care Products Council. The cases were consolidated in the U.S. District Court of New Jersey, the location of Johnson & Johnson's headquarters. The multidistrict litigation (MDL), overseen by U.S. District Judge Freda L. Wolfson, has since grown to more than 6,500 cases. Leigh O'Dell from our firm and Michelle Parfitt, a lawyer with Ashcraft & Gerel, LLP, a firm located in Washington D.C., are co-lead counsel for the Plaintiffs in the MDL.

Conclusion

I challenge the CEO of J&J, with all company lawyers and the news media present, to meet with lawyers from our trial team at a mutually agreed upon location to discuss the ongoing talc litigation. Our team will bring all the internal documents from J&J that they have obtained during case discovery for the media to see, read and digest. They will also bring copies of the large number of independent studies that have shown for years that J&J talc products cause ovarian cancer and further proof will be shown that J&J knew all about it.

Based on all we have learned since this litigation started in 2013, I am now convinced that some of the executives at J&J should go to jail. The conduct has been very bad and should be considered criminal. The civil component of our judicial system has done its job. It is now time for the criminal court to become involved. There is ample evidence against J&J to justify a criminal prosecution.

Sources: *Bloomberg*, IARC, and MyMeso.org

BEASLEY ALLEN TALC LITIGATION TEAM

Our firm has been heavily involved in the talc litigation for several years. We learned quickly that our lawyers and support staff had to be totally dedicated to the task in order to take on powerful companies like Johnson & Johnson. For that reason, we formed the Talc Litigation Team. Currently the following

lawyers are on the team: Ted Meadows, Rhon Jones, Leigh O'Dell, David Dearing, Danielle Mason, Sharon Zinns and Ryan Beattie.

Ted Meadows leads the firm's effort involving the ovarian cancer aspect of the litigation. Rhon Jones and Sharon Zinns handle the mesothelioma-related talc litigation for the firm. We expect both areas will continue to be very active over the next two years. Leigh O'Dell is co-lead counsel for the Plaintiffs in the Talc Litigation multidistrict litigation (MDL) in New Jersey. She can be reached at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com.

If you need more information on either aspect of the Talc litigation mentioned above, other than the MDL, contact Ted or Rhon at 800-898-2034 or by email at Ted.Meadows@beasleyallen.com or Rhon.Jones@beasleyallen.com. You can also contact Katie Tucker, the Legal Assistant who has been working with the team from the very beginning, at 800-898-2034 or by email at Katie.Tucker@beasleyallen.com. Katie will put you in touch with a lawyer.

VI. MASS TORTS UPDATE

BEHAVING BADLY: DANGEROUS AND SCANDALOUS MARKETING METHODS USED IN OFF-LABEL PROMOTION OF A DEADLY DRUG

Subsys is a powerful prescription pain medication containing the drug fentanyl. In fact, some sources report that Subsys is as much as 100 times more powerful than morphine and more addictive than heroin. Despite being approved for only a small subset of late term cancer patients in 2012, by 2015 revenue from Subsys was approaching \$500 million. We will give a running account of how Insys Therapeutics manufactured and marketed Subsys. I believe most of you will be shocked at what you will learn from this.

2012

January—Subsys (Insys Therapeutics Inc.) was approved by the U.S. Food and Drug Administration

(FDA) for pain management in **cancer patients** who are already receiving, and thus are **tolerant to, opioids** for their underlying persistent pain. It is a highly potent and addictive fentanyl-based pain medication that comes in spray form. Subsys is significantly more powerful than morphine, offering a rapid onset because it is administered under the tongue. Per the black box label, SUBSYS is:

- A strong prescription pain medicine that contains an opioid (narcotic) that is used to manage **breakthrough pain in adults (18 years of age and older) with cancer who are already routinely taking other opioid pain medicines around-the-clock for cancer pain**. SUBSYS is started only after you have been taking other opioid pain medicines and your body has become used to them (you are opioid tolerant). Do not use SUBSYS if you are not opioid tolerant.
- An opioid pain medicine that can put you at risk for overdose and death. Even if you take your dose correctly as prescribed you are at risk for opioid addiction, abuse, and misuse that can lead to death.

2013-2016

According to a recent Public Citizen article detailing unsealed federal court documents, complaints filed by four former sales representatives and two pharmacy benefits managers between 2013 and 2016 reveal alarming methods used by Insys employees in the marketing of Subsys to doctors.

After one former Insys sales rep expressed concern that increasing her sales numbers of Subsys may result in patients becoming addicted, her sales manager dismissed her fears and encouraged her to "behave more sexually toward pain-management physicians, to stroke their hands while literally begging for prescriptions" and "to ask physicians to prescribe Subsys as a favor."

Another representative describes programs used to entice doctors to prescribe Subsys using “monetary payments, trips to strip clubs and shooting ranges, stock options, hiring physician’s significant others, and expensive meals in violation of federal anti-kickback laws.”

Medicare has paid more than \$3.3 million for Subsys prescribed by one Florida doctor that was treated to such trips. This representative also claims that Subsys hired a dental hygienist with no pharmaceutical experience “to have sexual relations with doctors in exchange for Subsys prescriptions.” The U.S. Centers for Disease Control and Prevention (CDC) reports that opioids were involved in more than 33,000 deaths in 2015 alone.

2016

August—Illinois Attorney General Lisa Madigan filed suit against Insys, accusing the company of deceptively marketing a spray version of fentanyl to doctors for off-label uses when the drug is intended to be used for cancer patients. The complaint alleged that Insys aggressively targeted doctors who prescribe opioid drugs instead of oncologists treating the cancer patients that Subsys is intended for; marketing the medicine for off-label uses like back and neck pain to boost profits, even though it is a known gateway drug for heroin.

December—FBI agents arrested former Insys Therapeutics CEO Michael Babich and five other executives for their part in a nationwide conspiracy to bribe doctors with kickbacks in exchange for prescribing Subsys to patients who did not need the drug. The allegations include marketing to non-cancer patients and forming a “reimbursement unit” aimed toward insurance companies and pharmacy benefit managers to provide coverage for unauthorized uses.

Charges filed included racketeering, conspiracy, and mail and wire fraud. According to the indictment, the six former executives deliberately targeted practitioners at pain

clinics and saw an increase in the number of fentanyl spray prescriptions after these alleged bribes took place. Following establishment of the reimbursement unit, the prior authorization rate for prescriptions rose from about 33 percent to 46 percent during the first week of a pilot program and up to 85 percent after the first year it was created, according to the indictment.

2017

September—Insys agrees to pay \$4.45 million to settle the Illinois lawsuit. As part of the Illinois settlement, Insys also agreed to create a program aimed at identifying prescribers who abuse opioids and to restrict the promotion of Subsys to oncologists or prescribers who treat cancer patients. Attorney General Madigan said in a statement:

It’s unethical, greedy behavior by companies like Insys that is responsible for creating the opioid epidemic and resulting overdose deaths in our state.

October—The billionaire founder of Insys, John Kapoor was arrested and charged with conspiracy to bribe doctors for inappropriately prescribing Subsys and defrauding health insurers. Kapoor has appeared on the cover of Forbes and his net worth is estimated to be \$1.74 billion.

May—Alabama doctors John Couch and Xiulu Ruan were convicted and sentenced to 20 and 21 years for prescribing painkillers through two clinics for no legitimate purpose. Prosecutors said the Mobile doctors received illegal kickbacks from Insys in exchange for prescribing Subsys for neck, back and joint pain and became among the top U.S. prescribers of the drug. The doctors also owned a pharmacy, C&R, located next door to one location of the pain management clinic. During the sentencing procedure, multiple witnesses testified to devastating effects the clinic’s prescribing history had on their families.

April—Alabama Insys Sales Representative Natalie Perhacs, responsible for increasing the volume of prescriptions written by Drs. Couch and Ruan, pleads guilty and is sentenced to home confinement, five years of probation and 300 hours of community service. Prosecutors said Insys paid hundreds of thousands of dollars in speaker fees to Couch and Ruan. (Reuters) In a plea agreement Perhacs said she was hired by Insys as a kickback to Dr. Ruan, whom she claims was “romantically interested” in her.

Despite earning a base salary of only \$40,000.00 per year, commissions from off-label prescriptions written by Dr. Ruan and Dr. Couch resulted in Perhacs making more than \$700,000.00 between April 2013 and the doctors’ arrests on May 20, 2015. (CNBC) Top Insys executives, Dr. Kapoor and Mr. Babich, flew to Mobile in early 2014 to meet with the doctors, Ms. Perhacs said. Soon after, the company began selling Subsys directly to the doctors’ pharmacy. (WSJ)

According to the plea agreement, nearly all the prescriptions written were written off-label to non-cancer patients and these prescriptions were filled at C&R Pharmacy, which then billed federally funded and private health insurance providers a total of \$572,626.62. (CNBC)

May—Department of Justice announces it is joining whistleblower Plaintiffs in five lawsuits accusing Insys of illegal kickbacks and defrauding federal health programs under the False Claims Act (FCA). “Insys improperly encouraged physicians to prescribe Subsys for patients who did not have cancer, and that Insys employees lied to insurers about patients’ diagnoses in order to obtain reimbursement for Subsys prescriptions that had been written for Medicare and TRICARE beneficiaries.” (Public Citizen) California, Colorado, Indiana, Minnesota, New York, North Carolina and Virginia have all

intervened in the FCA case against Insys.

August—Law 360 reports that Insys has agreed to pay at least \$150 million for the Department of Justice to drop the criminal investigation and civil claims related to bribery. Doctors in Connecticut, Michigan and Rhode Island have pled guilty to taking kickbacks from Insys. State prosecutors have also filed complaints of civil fraud and consumer protection against Insys.

2019

Insys founder John Kapoor and other former executives are expected to be tried for the criminal racketeering and fraud charges in early 2019.

Hopefully, Congress and the FDA will see fit to take action to put a stop to the sorts of things that this drug company has been doing. Surely, criminal activity will get their attention. If you have been prescribed Subsys off-label for non-cancer pain and have suffered an addiction or overdose contact Liz Eiland, a lawyer in our firm's Mass Tort Section, at 800-898-2343 or by email at Liz.Eiland@beasleyallen.com.

BIG PHARMA PAYMENTS TO FDA ADVISORS

A recent investigative report by Science indicates a troubling pattern of compensation by pharmaceutical companies to individuals on advisory panels who determine U.S. Food and Drug Administration (FDA) drug approvals. When you consider that the FDA does not conduct independent testing, but relies on drug manufacturers' testing, this report should get the attention of Congress.

The FDA relies on advisory panels comprised mostly of doctors and researchers to approve therapies in the U.S. Every year, dozens of advisory committees, each consisting of approximately eight individuals, meet to hear presentations on a drug's preclinical and clinical data, question the company scientists and vote on approval.

Prior to appointment on an advisory panel, advisors must reveal potential existing conflicts of interest such as details of investments, contracts,

research support or other payments from drugmakers. They also must disclose a prospective employer. However, there are no rules regarding disclosure of industry support between appointment and the actual panel meeting, nor are there regulations prohibiting acceptance or disclosure of financial incentives after the advisory panel vote.

An investigation was done into the receipt of payments by physicians on advisory panels, and among the key findings were the following:

- 40 of 107 physicians on advisory panels received more than \$10,000 in post hoc earnings or research support from makers of drugs the panels voted to approve, or competing firms; 26 of those received more than \$100,000; and seven received more than \$1 million.
- The top 17 advisers earned more than \$300,000 each in personal payments or research support—94 percent came from the makers of the drugs the advisors previously reviewed, or from competitors.
- Most of those top earners received funds from the same companies either prior to or concurrent with advisory panel service. The payments were disclosed in scholarly journals, but not by the FDA.

The panel who voted in 2016 to recommend approval of adalimumab (Amjevita), Amgen's immune-altering drug for treatment of rheumatoid arthritis, contains one striking example of industry kickbacks. The rheumatologist who chaired the Amjevita panel received \$232,000 for his study of etanercept (Enbrel), another Amgen arthritis drug, about three months before the panel meeting, and one month before the panel meeting competitor AbbVie provided \$819,000 for a study of Humira, a similar drug.

The investigation found that financial incentives were provided in the form of travel, consulting, and research support or subsidies. Research funding affects a scientist's career development, advancement, compensation and professional influence. Payments from market competitors selling or researching drugs in the same class or intended for the same condition were included because the addition of a warning label or the emer-

gence of a new market contender could either positively or negatively affect those competitors.

Such support from industry can create the perception that a doctor or researcher may be rewarded later and bias them toward approving the drug. Essentially, a pay-later conflict of interest develops that does not benefit the public or patients.

Measures could be taken to eliminate such conflicts, such as accepting individuals who have received few or no industry payments. The European Medicines Agency in London (EMA), an agency analogous to the FDA, prohibits service on an advisory panel if the potential adviser has had a pharmaceutical relationship within three years prior to a meeting. Other measures could include barring those members who previously accepted payments from industry after voting to approve a drug, or using a third party to evaluate potential panel advisors.

The Open Payments search tool can be used to search payments made by drug and medical device companies to physicians and teaching hospitals, and is located at the following address: <https://openpaymentsdata.cms.gov/> If you need additional information, contact Jennifer Emmel at 800-898-2034 or by email at Jennifer.Emmel@beasleyallen.com.

Source: <http://www.sciencemag.org/news/2018/07/hidden-conflicts-pharma-payments-fda-advisers-after-drug-approvals-spark-ethical>

FDA 'DEEPLY CONCERNED' ABOUT SAFETY OF VAGINAL REJUVENATION PROCEDURES

U.S. Food and Drug Administration (FDA) Commissioner Scott Gottlieb, M.D. recently issued a scathing news release regarding deceptive claims by some medical device manufacturers who are promoting laser and other high-energy devices for vaginal rejuvenation procedures. Dr. Gottlieb warned that the "products have serious risks and don't have adequate evidence to support their use for these purposes."

While the devices are cleared for use for serious conditions such as pre-cancerous and cancerous tissue in the vagina and cervix, the manufacturers are marketing the devices to pre-menopausal women and women who have completed breast cancer treatment, claiming to relieve symptoms of meno-

pause, urinary incontinence, and sexual dysfunction. “The deceptive marketing of a dangerous procedure with no proven benefit, including to women who’ve been treated for cancer, is egregious[.]” wrote Dr. Gottlieb.

The FDA has received numerous reports of serious injuries to women who have undergone the vaginal rejuvenation procedure. Those injuries include severe burns, scarring, painful intercourse, and chronic post-procedure pain. Dr. Gottlieb identified seven manufacturers of the products at issue—Alma Lasers, BTL Industries, Cynosure, InMode, Sciton, Thermigen, and Venus Concept—and demanded the companies respond within 30 days to address the FDA’s concerns about patient safety and unproven claims of efficacy. Dr. Gottlieb also encouraged any women who have experienced injuries after the procedure to report those injuries to the FDA by filing an Adverse Event Report through the FDA’s MedWatch website at <https://www.fda.gov/safety/medwatch/>.

If you need additional information on this subject, contact Matt Munson, a lawyer in our firm’s Mass Torts Section, at 800-898-2034 or by email at Matt.Munson@beasleyallen.com.

A LOOK AT THE VALSARTAN RECALL

The Food and Drug Administration (FDA) has announced a recall of certain batches of medications containing the generic drug Valsartan. As you may know, Valsartan is an Angiotensin II Receptor Blocker (ARB), commonly known to treat high blood pressure and heart failure. These recalled products were found to contain an impurity, a chemical known as N-Nitrosodimethylamine and some levels of the impurity could have been in the Valsartan-containing products for as long as four years.

N-Nitrosodimethylamine (NDMA) has been found to increase the occurrence of cancer in animal studies. Several animal studies, dating back to the 1960s, have shown that NDMA consumption may lead to carcinomas of the liver, lungs, kidneys and, in some cases, the nasal cavity (if inhaled). A comparative study performed in 1970 showed that NDMA is metabolized in human liver at about the same rate as in rat liver. The

U.S. Environmental Protection Agency (EPA) considers NDMA to be a probable human carcinogen, which can increase the risk of cancer.

NDMA can be found in water supplies and some foods, such as cured meat products, smoked fish and cheese. It can also be inhaled through cigarette smoke and contaminated air. While small amounts of NDMA consumption and inhalation is considered reasonable, the amount found in the recalled batches of Valsartan exceeded the acceptable levels of human consumption.

The manufacturer of these recalled Valsartan products is Zhejiang Huahai Pharmaceuticals, located in Linhai, China. The presence of NDMA was unexpected and the FDA believes it is related to changes in the way the active substance was manufactured. As of Aug. 9, 2018, the FDA has updated the list of Valsartan products under recall to incorporate the manufacturer Hetero Labs Limited, in India, labeled as Camber Pharmaceuticals, Inc.

This company uses a process similar to that of Zhejiang Huahai Pharmaceuticals to manufacture the drug. Test results from Hetero Labs also show the amount of NDMA found exceeds the acceptable levels but was generally lower than the amount discovered in the product manufactured by Zhejiang Huahai Pharmaceuticals. You can see the full list of the recalled products, including NDC Numbers, Lot Number, and Expiration Dates on the FDA’s website at www.fda.gov.

BONE CEMENT LITIGATION UPDATE

Bone cement is commonly used in knee, hip, shoulder and elbow replacement surgery. In each of these, the artificial joint is attached to the bone using bone cement. Generally, bone cements come in three types: low, medium, and high viscosity. Interestingly, these HV cements were all approved by the U.S. Food and Drug Administration (FDA) relying on the manufacturers’ representations that new HV cements were “substantially similar” to other non-HV cements on the market. Recently, medical researchers have started to recognize trends of early failures regarding high-viscosity cements used in total knee replacement surgeries. These

studies show that HV cements are not as strong and fail at a much higher rate than non-HV cements.

Beasley Allen lawyers are currently investigating four bone cements used in total knee replacement surgeries:

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

Lawyers in our firm have filed four HV bone cement cases, with each involving a different HV bone cement product. We are including a description of these cases below.

In mid-May, Beasley Allen lawyers filed a case against the manufacturers of CMW 1 Bone Cement on behalf of Mr. William Robinson in federal court in North Carolina. Mr. Robinson, a resident of Tarboro, North Carolina, underwent replacement of his left knee in July 2010. The surgery went smoothly, with no complications. The prostheses were bonded with CMW 1 Bone Cement, a product of DuPuy Orthopedics. For a short time, all was well until Mr. Robinson started experiencing severe pain and instability in his left knee. In July 2015, Mr. Robinson had to undergo an additional revision surgery in which the surgeon saw that the bone cement was not properly bonded to the tibial component, which caused the component to come loose.

Later that month, our lawyers filed the second bone cement case against the makers of Cobalt HV Bone Cement. This action was brought on behalf of Carla Ducombs of Chalmette, Louisiana, and filed in federal court in New Orleans. In July 2012, Ms. Ducombs had a total knee replacement surgery on her right knee. Her surgeon bonded her components with Cobalt HV Bone Cement. Once Ms. Ducombs started experiencing severe pain and instability, she had to undergo a revision surgery to replace her artificial knee implants. Like Mr. Robinson’s surgeon, Ms. Ducombs’ surgeon noted that the

tibial component was “grossly loose.”

In June, the third bone cement case was filed in federal court in Dallas, Texas, against the manufacturers of Simplex HV Bone Cement. This case arises out of Rebecca Feldman’s similar complications involving loosening of the tibial component, leading to revision surgery. However, the Simplex HV Bone Cement implanted in Ms. Feldman lasted only eight months before her physician saw evidence of loosening. Less than a year after her initial total knee replacement, Ms. Feldman had to undergo another painful revision surgery.

In mid-June, our lawyers filed our fourth bone cement case in federal court in Alexandria, Louisiana. This action was filed on behalf of Ms. Osa Green of Alexandria. Unfortunately, Ms. Green had to endure similar complications when her knee implant components were bonded with SmartSet HV Bone Cement and came loose within less than a year.

None of these patients, nor their physicians, were aware by way of warning or otherwise, of the defects of HV bone cement. None would have used HV bone cement in the original total knee replacement surgery had they been aware of the problems.

Lawyers in Beasley Allen’s Mass Torts Section continue to investigate cases involving early knee replacement failure associated with high-viscosity bone cement. If you or a loved one has experienced complications from knee replacement surgery, requiring revision surgery, contact Roger Smith or Ryan Duplechin, lawyers in the Section, at 800-898-2034 or by email at Roger.Smith@beasleyallen.com or Ryan.Duplechin@beasleyallen.com.

VII. AN UPDATE ON SECURITIES INSURANCE AND FINANCE LITIGATION

FINAL APPROVAL GIVEN TO THE \$250 MILLION LIBOR MDL SETTLEMENT REACHED BY BARCLAYS AND CITI AND INVESTORS

U.S. District Judge Naomi Reice Buchwald, a Manhattan federal judge, has granted final approval for two settlements worth a combined \$250 million that will resolve claims against Citigroup Inc. and Barclays Bank PLC. The litigation involves a massive, seven-year multidistrict lawsuit by investors who accused multiple banks of conspiring to rig the London Interbank Offered Rate (Libor).

The judge said the two settlements—\$130 million from Citi and \$120 million from Barclays—would likely be the best recovery for the class of over-the-counter investors who claim they purchased Libor-tied financial instruments during a time when the multiple banks worked together to manipulate the rate.

The case has gone through extensive discovery since it was filed in 2011. The judge noted the case had not reached the summary judgment stage and would require years of expensive fact-finding and litigation before reaching a trial. Judge Buchwald said:

There is little reason to believe that this complexity will abate if the case were to proceed through to summary judgment and trial, and indeed, even the optimistic schedule advanced by OTC plaintiffs regarding the litigation class has a trial being held in late 2020 or early 2021.

The judge had said earlier this year she anticipated approving the settlements reached during 2017, but she added that the investors and the banks would first have to wait for a decision on class certification in the ongoing multidistrict litigation (MDL). As we have previously reported, Libor tracks

how much banks charge one another to borrow funds.

Judge Buchwald certified the class of the over-the-counter investor Plaintiffs in March in their federal antitrust claims against Bank of America NA and JPMorgan Chase & Co. The two settlement classes were described in the judge’s order. In each settlement, the class shall consist of anyone who purchased a “U.S. dollar Libor-based instrument” from the Defendant bank and owned it between August 2007 and May 2010. Each class would consist of about 137,000 potential class members.

While multiple other banks have agreed to their own settlements, Bank of America and JPMorgan continue to defend the claims brought against them. The underlying claims stem from investigations by government regulators around the world into the alleged violations of Libor that sparked a series of lawsuits that went into the MDL in New York’s Southern District.

The over-the-counter Plaintiffs are represented by Hausfeld LLP and Susman Godfrey LLP. The case is *Mayor and City Council of Baltimore et al. v. Credit Suisse AG et al.*, (case number 1:11-cv-05450) and the MDL is *In re: Libor-Based Financial Instruments Antitrust Litigation* (case number 1:11-md-02262) both in the U.S. District Court for the Southern District of New York.

Source: Law360.com

INSURER SUES AMAZON OVER EXPLODING E-CIGARETTE BATTERIES

State Farm General Insurance Company recently sued LG Chem Michigan Inc. and Amazon Technologies, Inc. for making and selling an e-cigarette battery that caused a \$400,000 fire in the house of one of its policyholders. The lawsuit has been removed from California state court to federal court.

The State Farm policyholder bought a vape battery made by LG Chem Michigan Inc. and distributed by Amazon Technologies Inc. The policyholder purchased the battery to use in conjunction with his e-cigarette. On Sept. 11, 2016, the battery “exploded and caught fire,” causing severe damage to the policyholder’s house and property. State Farm

ultimately paid more than \$400,000 to cover the damages.

State Farm alleges that the battery was defective and unsafe for its intended purpose at the time the policyholder purchased it because said battery “exploded and caught fire.” State Farm further alleges that LG and Amazon did not take proper care with respect to the design, manufacture, distribution, and sale of the battery and that the named Defendants were legally required to take a higher level of care.

The causes of action in the suit are for subrogation, negligence, indemnity and breach of warranty. The suit was originally filed in California Superior Court for the County of Los Angeles and was later removed to the U.S. District Court for the Central District of California.

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

Source: Law360.com

VIII. EMPLOYMENT AND FLSA LITIGATION

#MeToo Movement Gives Voice To Sexual Harassment Claims

In the last year, victims of sexual harassment have found their voice and began breaking the silence that workplace bullies and abusers have relied on for far too long. The #MeToo movement and the #TimesUp campaign, with their strength in numbers, have given many victims the courage to reclaim their voice and their dignity.

While stories of media moguls, journalists, members of Congress and other high-profile people have helped propel the issue into the national spotlight, many victims remain silenced by threats and intimidation.

Earlier this year, a study commissioned by Stop Street Harassment showed that, across the country, “81 percent of women and 43 percent of men reported experiencing some form of sexual harassment and/or assault in

their lifetime,” including in their workplaces.

Sexual harassment is outlawed by Title VII of the Civil Rights Act of 1964 because it is a form of discrimination, as explained by the Equal Employment Opportunity Commission (EEOC). The agency defines sexual harassment as “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.”

Sexual harassment can occur in various forms and under a number of circumstances and employers with 15 or more employees are subject to Title VII, including state and local governments.

Because sexual harassment is a form of discrimination and discrimination is a type of workplace injury, employers are encouraged to implement policies and procedures prohibiting and addressing sexual harassment. Without such measures, victims feel as if they have no choice but to endure the bad behavior and perpetrators are left with the belief that their behavior is acceptable.

Failure to address harassment can land employers in court just like the seven U.S. companies that were slapped with lawsuits by the EEOC this summer. Further, employers cannot retaliate against employees or individuals taking steps to oppose unlawful employment practices such as sexual harassment.

As with other instances where employees have been cheated or abused at the hands of an employer or even fired over reporting discrimination, employees should know their rights when it comes to workplace sexual harassment. There are solutions and measures to hold accountable those employers that fail to protect their employees.

If you have any questions about whether you or someone you know has experienced sexual harassment, or you just need more information before filing a claim, you can contact a lawyer at Beasley Allen. Larry Golston in our Consumer Fraud & Commercial Litigation Section is the lead lawyer handling these claims. You can email him at

Larry.Golston@beasleyallen.com or call us at 800-898-2034.

Sources: Stop Street Harassment, Equal Employment Opportunity Commission (EEOC), BusinessInsurance.com

IX. PREMISES LIABILITY UPDATE

Lawsuit Filed By Beasley Allen Involving Death Of Man Killed In Colonial Pipeline Explosion

Lawyers from Beasley Allen have filed a lawsuit on behalf of Beverly Kay Willingham, widow of Anthony Lee Willingham, who was killed when a Colonial Pipeline exploded in Pelham, Alabama in 2016. The complaint alleges that Defendant Colonial Pipeline Company knew that its pipeline was dangerous and in disrepair, and that sending in a crew to repair its badly leaking fuel pipeline was dangerous, yet Colonial failed to take even the minimum necessary and proper precautions to ensure the Plaintiff’s safety. The lawsuit also names Superior Land Designs, LLC, as Defendants. Beasley Allen lawyers representing Willingham include Mike Andrews and Chris Glover.

There is never an excuse for a company to disregard safety in the name of profit or speed. This tragedy would not have happened if these Defendants had taken the necessary steps to maintain this pipeline properly and safely, to provide competent supervision on site and at a minimum to have accurate maps showing where its underground components were located so crews could operate safely. Anthony Willingham went to work as usual on the day of the explosion but did not return home to his family that night because of the negligence and carelessness of the Defendants.

In September 2016 a leak was discovered on the Colonial Pipeline in Shelby County, Alabama, and Colonial hired L.E. Bell to help repair the leak. Willingham was employed by L.E. Bell and was assigned to one of the crews performing excavation and repair work on the leak. Colonial also hired Superior as an additional, third-party inspector to super-

wise the excavation and repair work performed by Willingham's crew. Although Superior shared the responsibility to ensure the work was performed safely, Colonial was ultimately responsible.

On the day of the explosion, Colonial's inspector, Nicky Cobb, failed to report to the excavation site. He instructed the inspector for Superior to allow the excavation to proceed. During the excavation, the pipeline was ruptured and a large spray of gasoline was released. Willingham and others attempted to flee the site, but the gasoline ignited and created a large explosion, killing Willingham, the Superior inspector and seriously injuring four others.

The Colonial pipeline is the largest refined petroleum pipeline system in the U.S., extending over 5,000 miles from Houston, Texas to Linden, New Jersey. It delivers 100 million gallons of petroleum products each day. Colonial is responsible for the pipeline system's condition, operation, maintenance, and repair, including the excavation work similar to that performed by the Plaintiff. The leak that occurred in September 2016 resulted in a spill of more than 300,000 gallons of gasoline near the Cahaba River Wildlife Management Area located in Bibb and Shelby Counties in Alabama.

The Pipeline and Hazardous Materials Safety Administration (PHMSA) ordered Colonial to shut down a portion of the Pipeline and repair the leak. It was just the latest significant incident for the Defendant, which had accrued 185 such incidents in the 10 years preceding the leak. Following the explosion, fires burned for several days and received national media attention. As a result of the explosion, more than 170,000 gallons of gasoline were released.

The complaint has counts of negligence, wantonness and wrongful death and is filed in The State Court of Gwinnett County, Georgia, (Civil Action No. 18 C06090-4). Lawyers from our firm who are handling this case are Chris Glover and Mike Andrews along with Alan Wittenberg, a lawyer from Southfield, Michigan. If you need more information contact Mike or Chris at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com or Chris.Glover@beasleyallen.com.

PROTECTING CHILDREN FROM SWIMMING POOL INJURIES AND DEATH

Viral stories of tragic child drownings on social media helped push swimming pool safety to the forefront of necessary conversation this summer. Grieving parents, like skiing champion Bode Miller and his wife, Olympic volleyball player Morgan Beck Miller, are educating other parents on the dangers of swimming pools after their 19-month-old daughter tragically drowned in a neighbor's pool in June. The toddler tagged along to the neighbor's house with her mother and wandered off for a short period of time. When Ms. Miller realized her daughter was missing, she searched and found her daughter in the neighbor's pool. After her daughter's drowning, Ms. Miller learned that drowning is the number one cause of death in young children and that it takes just 30 seconds for a child under 30 pounds to drown.

On average, 356 children ages 0-14 drown in pools and spas annually. Seventy-seven percent of these deaths involve children younger than 5. A majority of drowning deaths occur in Southern states experiencing the hottest summers, with almost half occurring in residential pools. For instance, in 2016 alone, Texas and Florida experienced 40 child drowning deaths each—the highest in the country.

However, swimming pool hazards stretch far beyond drowning deaths. Mechanical or structural problems with swimming pools can also cause serious injuries and death. For instance, drain and pump defects can create suction entrapment where a swimmer becomes stuck underwater or may get their hair caught in a drain due to the drain suction. Diving boards or ladders can fail causing swimmers to break bones, suffer head injuries, or drown. The same injuries can occur when diving boards are installed in pools that are too shallow. Pool filters can also explode from the compressed air, which can launch shrapnel and cause serious injury.

Despite the prevalence of drowning and other swimming pool hazards, pediatricians rarely discuss swimming pool safety with parents. The U.S. Consumer Product Safety Commission (CPSC) suggests the following steps to save lives:

- Stay within arm's reach at all times in and around the pool;
- Assign an adult water watcher;
- Fence your pool: Use a 4-foot or taller fence with self-closing or self-latching gates;
- Install pool and gate alarms;
- Learn how to swim; and
- Learn CPR.

If you or a loved one has been injured in a swimming pool accident, contact Cole Portis, Warner Hornsby or Stephanie Monsplaisir, lawyers in our firm's Personal Injury & Products Liability Section, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com, Warner.Hornsby@beasleyallen.com or Stephanie.Monplaisir@beasleyallen.com to discuss any potential claims you may have regarding pool defects. Defect cases may involve the design of the pool, the manufacturing of the pool or its parts, the installation of the pool, or representations made when the pool was sold.

SoCAL GAS REACHES \$119.5 MILLION SETTLEMENT IN CALIFORNIA GAS LEAK LITIGATION

Southern California Gas Co. (SoCal-Gas) has agreed to a proposed \$119.5 million settlement to end state litigation by the California Air Resources Board (CARB) and the City and County of Los Angeles over the huge Aliso Canyon gas leak. The company and local officials announced the settlement in Los Angeles County Superior Court. If approved, the settlement will bring to an end all remaining issues in the case from the governmental entities related to the leak. The settlement must get court approval.

The leak giving rise to the suit was found in Aliso Canyon in October 2015, and gas leaked into the surrounding community of Porter Ranch for a couple months, leading Los Angeles County to declare a state of emergency and relocate thousands of residents to temporary housing.

The various governmental entities involved would be repaid for having to deal with the leak. Additionally, the company would start a program to help

“mitigate the methane emissions from the leak.” California Attorney General Xavier Becerra said in a statement:

California is a leader when it comes to addressing climate change. This leak undermined our crucial work to reduce greenhouse gas emissions and protect our people and the environment. If approved, this settlement will go a long way in addressing the short and long-term harms attributable to the leak.

SoCalGas in September 2016 agreed to pay \$4 million to settle criminal charges brought by Los Angeles County in a separate case over the alleged lack of proper notification about the leak, and additionally has reached an \$8.5 million settlement with the South Coast Air Quality Management District—the local air pollution control agency—over claims stemming from the leak. “We have also secured important health and safety protections for the Porter Ranch community, as well as underserved communities throughout Los Angeles,” Los Angeles city attorney Mike Feuer said in a statement. “This landmark settlement will benefit Los Angeles for decades to come.”

The California Air Resources Board is represented by Xavier Becerra, Sally Magnani, Robert W. Byrne, Sarah E. Morrison, Catherine M. Wieman and Elizabeth B. Rumsey of the Office of the Attorney General. The city of Los Angeles is represented by Michael N. Feuer, Wilfredo R. Rivera, Jessica B. Brown, Jaelyn Romano and Nick Karno of the Office of the Los Angeles City Attorney. The county of Los Angeles is represented by Mary C. Wickham and John Scott Kuhn of the Office of the County Counsel, and Louis R. Miller, Amnon Z. Siegel, Mira Hashmall and Jason H. Tokoro of Miller Barondess LLP.

The case is *In re: Southern California Gas Leak Cases* (Judicial Coordination Council proceeding number 4861) in the Superior Court of the State of California, County of Los Angeles.

Source: Law360.com

X. WORKPLACE HAZARDS

HIERARCHY OF HAZARD CONTROLS

The hierarchy of hazard controls is a system recognized by the National Institute of Safety and Health (NIOSH) to minimize occupational hazards in the workplace. In 1970 Congress established the Occupational Safety and Health Act and an accompanying Administration (OSHA) with the mission to assure safe and healthy working conditions for the American people. Under Section 5(a)(1) of the Act, employers are required to provide their employees with a place of employment that “is free from recognizable hazards that are causing or likely to cause death or serious harm to employees.”

This provision of the Act is typically referred to as the general duty clause, and goes on to require that employers comply with the standards promulgated under the entirety of the Act. OSHA has without question made the U.S. work force safer in the 40-plus years since its inception. However, despite these efforts, on the job injuries are far too common. Often these injuries could be prevented had the designers of industrial machinery followed the hierarchy of hazard controls.

The first step in any safety evaluation requires a through hazard analysis. In a hazard analysis, engineers evaluate equipment and workplace settings to identify any potential hazards. If done properly, this analysis begins before any equipment is built and placed into the occupational setting. The engineers will determine exactly what hazards a given machine will have, and then determine how best to either eliminate or reduce the risk of injury. To determine how best to eliminate or reduce the risk of injury from a given hazard, the prudent engineer will then run through the hierarchy of hazard controls.

The first and highest level of safety protection would be to eliminate the hazard altogether. Although eliminating the hazard is the most effective means of reducing the risk of injury, often due to the very nature of the machines, the hazards cannot be completely elimi-

nated. To completely do away with these functions would eliminate the hazard, but also the utility of the machine. If the hazard cannot be eliminated, the next step on the hierarchy of hazard controls instructs the engineer to substitute the hazard-causing product. Oftentimes a hazardous product can be replaced with a product that functions in such a way that does not create a hazard.

If the product cannot be substituted, the next step on the hierarchy is to engineer controls to mitigate the hazard. This idea is nothing new but can be quite effective. For example, two hand presses located away from the moving machine parts create engineering controls that create isolation from the hazard. Oftentimes, with automated machinery, the hazard is necessary to the machine’s function and simply needs to be isolated, or out of some operator’s reach or work space. In such cases, guards are often the best means to retain both the function of the machine and protect the employee against the hazard. The OSHA Act specifically speaks to the necessity to guard against hazards caused by machinery. Section 1910.212, often referred to as the general guarding provision, requires “one or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks.”

The next step on the hierarchy of hazard controls is administrative controls. This step is less effective than the previous steps as it is less effective in reducing the risk of injury. Administrative controls look to change the way people work. Oftentimes these administrative controls take the form of procedures or rules passed down to workers on how to safely do a given task. This level of protection is less effective as it does not reduce or eliminate a given hazard and requires the worker to properly follow the administrative control or rule every time the task is performed. All too often new hires will not be properly instructed on the administrative controls, or operators will deviate from the procedures, opening themselves up to risk of injury.

Finally, the last and least effective step in the hierarchy of hazard controls is personal protective equipment (PPE). Although it is always appropriate to have PPE protocol as a last line of defense, it is just that. PPE will not prevent an accident, but it may mitigate the amount of damage or extent of injury to an employee. PPE often takes the form of hard hats, steel toe boots, gloves, etc.

Every workplace has a duty under the OSHA Act to provide employees with a work environment free from recognized hazards. Ensuring that employees are protected requires employers to conduct routine hazard analysis. Finally, once a hazard is identified, the hierarchy of hazard controls must be used to properly eliminate or mitigate the risk of injury caused by that hazard.

If you need more information on this subject, contact Evan Allen, a lawyer in our Personal Injury & Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com. Evan is one of the lawyers handling product liability cases for the firm.

XI. TRANSPORTATION

BOATING ACCIDENTS ARE A MAJOR PROBLEM

Time on the water should be a fun way to unwind and relax. Unfortunately, a relaxing day on the water can turn into tragedy in the blink of an eye if proper precautions are not taken. Recently, the tragic accident involving a duck boat in Missouri took the lives of 17 individuals. There are countless causes and scenarios that lead to boating accidents, but all too often they are preventable. Looking at statistics gathered by the United States Coast Guard (USCG) over a 30-year time frame sheds light on the many ways to decrease the likelihood of recreational boating accidents.

In 2017 alone, 4,291 boating accidents were reported to the USCG. Of those accidents, 2,629 resulted in injuries and 658 resulted in death. Unfortunately, the number of boating accidents, injuries and fatalities has remained nearly constant for the past five years. Of the 2017

fatalities where cause of death was known, 76 percent were due to drowning. Although this may seem commonsensical—that fatalities on the water are often due to drowning—consider that 84.5 percent of those victims were not wearing a life jacket. As the name implies, life jackets are as important a lifesaving tool on the water as seatbelts are on the roadways. It is imperative that life jacket use become common practice when on the water.

Another preventable trend that has remained nearly constant in the USCG data is that alcohol use is the leading known contributing factor in fatal boating accidents year to year. Despite campaigns from the USCG and many state and local agencies aimed at educating the public about the dangers of boating under the influence, accidents involving alcohol continues to be the leading factor in boating fatalities.

Alabama law enforcement agencies in recent years have joined an initiative called “Operation Dry Water.” This program was established to educate the public about the laws against boating under the influence (BUI), and also places an emphasis on enforcing those laws. Much like the DUI laws in Alabama, a boater with a blood alcohol concentration percentage greater than .08 is considered over the legal limit.

The penalties for those convicted of BUI include fines from \$600-\$2,100, up to one year of jail time, and/or a 90-day suspension of his or her operator’s license for a first offense. The penalties stiffen if convicted of multiple offenses. Interestingly, if an operator older than 21 is convicted of BUI with a child younger than 14 in the vessel, the minimum punishments are automatically doubled. Alabama law enforcement has taken appropriate measures to address the serious problem of boating under the influence and the deadly results it can cause.

Unfortunately, lawmakers and law enforcement can only do so much. One would hope stiff penalties and persistent enforcement would make boaters think twice before operating a vessel under the influence. However, all too often these laws are not needed. Despite penalties for BUI increasing in recent years, and many campaigns launched to raise awareness of the dangers, too often the general public seems to either

not appreciate, or not care about the dangers boating and alcohol pose.

Statistics help quantify what is readily apparent to most. Just as stats related to automobile fatalities show a significant link to alcohol use, the same goes for the waterways. Unfortunately, in both situations, it is not always about the choices you make, but the decisions of the drivers and boaters you share the roads and waterways with as well.

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

Source: <http://www.uscgboating.org/library/accident-statistics/Recreational-Boating-Statistics-2017.pdf>

AIRPLANE HEIST REVEALS POTENTIAL GAPS IN AIRPORT SECURITY

The National Transportation Safety Board (NTSB) and the Federal Aviation Administration (FAA) are investigating an incident involving a stolen commuter jet. The federal authorities assured the public that while the incident “was not viewed as an act of terrorism,” they expressed concern that the act was carried out so easily by an employee from the inside.

Richard Russell, a baggage handler and grounds crew member at Seattle-Tacoma Washington International Airport (Sea-Tac), commandeered a Q400 turboprop Bombardier airplane on the Friday night in question, the Washington Post reported. Russell had been employed at the airport for three years, and after clearing a criminal background check had obtained security clearances at the time he was hired. There is no proof the man was a licensed pilot. However, his security clearances allowed him to gain access to the plane and he was familiar with the process of towing aircraft across the tarmac, knowledge that he used to steal the plane.

The 29-year-old Puget Sound man took the aircraft on a joy ride for approximately an hour, performing aerobatic maneuvers, including loops and barrel rolls. Minutes after the 76-seat plane belonging to Horizon Air left the ground, two Air Force F-15s were scrambled from Portland, Oregon, to intercept and divert it away from the Seattle

metro area and toward the Pacific Ocean. North American Aerospace Defense (NORAD) Command oversees airspace protection in North America and a spokesman for the agency, Air Force Capt. Cameron Hillier, told the media that the F-15s did not fire on the aircraft. They accompanied the rogue plane at a safe distance.

Radio chatter with the control tower and pilots attempting to help the man safely land the plane revealed the ramblings of a madman. He eventually told the control tower that the plane was almost out of fuel before guiding it to Ketron Island, an area 25 miles south of Sea-Tac that is sparsely inhabited. There he plunged the aircraft into a wooded area in what federal authorities called an act of suicide.

Mary Schiavo, a former inspector general of the U.S. Department of Transportation, described two issues that investigators are likely to consider during their probe of the incident. She explained that screening procedures for airline mechanics and ground crew members are not as thorough as those for pilots and the screenings do not include mental health exams. She also explained that “security procedures are not always observed, especially for smaller commuter aircraft such as the Bombardier Q400.”

Alaska Airlines, the name Horizon Air operates under as an air carrier, described the event as an irregular occurrence but a lesson nonetheless, according to USA Today. Sea-Tac agreed and defended its security protocols that were carried out without any lapses at the time of the incident.

If you need more information on this subject, contact Mike Andrews, a lawyer in our Personal Injury & Products Liability Section, at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com. Mike handles aviation litigation for the firm.

Sources: *Washington Post* and *USA Today*

XII. TOXIC TORT CONCERNS

\$289 MILLION JURY VERDICT IN FIRST ROUNDUP WEEDKILLER TRIAL

The first case to go to trial claiming that Monsanto’s Roundup weedkiller causes cancer has resulted in a combined \$289 million jury verdict. The jury in San Francisco deliberated for three days before returning its landmark verdict last month, which consisted of \$39 million compensatory and \$250 million punitive damages.

Plaintiff DeWayne Johnson worked as a groundskeeper for the Benicia Unified School District in California from 2012 until late 2015, over which time he applied Roundup or Ranger Pro (generic Roundup) to the school district’s properties 20 to 30 times per year. In 2014, after spraying thousands of gallons of Monsanto’s glyphosate-based herbicides and suffering two workplace accidents drenching him in Monsanto’s chemicals, Johnson was diagnosed with a form of non-Hodgkin Lymphoma that has since covered upwards of 80 percent of his body in lesions. Monsanto argued that Johnson’s cancer was caused by other factors.

Glyphosate (the main ingredient in Roundup) is the most commonly used weed killer in the world. In 2015, the International Agency for Research on Cancer (IARC) found that glyphosate is “probably carcinogenic to humans.” Since then, thousands of Plaintiffs throughout the country have filed lawsuits against Monsanto alleging that exposure to Roundup caused them or their relatives to develop Non-Hodgkins Lymphoma and that Monsanto failed to warn them of the risks.

More than 450 lawsuits have been consolidated into a multidistrict litigation (MDL) pending before Judge Chhabria of the U.S. District Court in San Francisco, and approximately 4,000 Plaintiffs have made similar claims against Monsanto in state courts. In July of this year in the federal MDL litigation, Judge Chhabria denied Monsanto’s motion for summary judgment and issued a Daubert order allowing three of the Plaintiffs’ experts to testify that

glyphosate can cause cancer in humans. Johnson’s lawsuit is seen as a bellwether case for the claims of the other Plaintiffs.

John Tomlinson, a lawyer in our firm’s Toxic Torts Section, has filed both state and federal Roundup exposure lawsuits and is currently investigating cases involving only commercial/occupational exposure to Roundup. If you need more information on this contact John at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com.

Source: Law360.com

PRINTER PRESSMAN FILES LAWSUIT OVER BENZENE EXPOSURE

Our law firm recently filed a products liability lawsuit in Jefferson County, Alabama, on behalf of a printer pressman who had worked at a number of commercial printing operations and who was diagnosed with Acute Myeloid Leukemia (AML), a cancer that causes the bone marrow to make abnormal white blood cells, red blood cells, or platelets.

Commercial pressmen are required to mix and prepare inks, fill the ink fountains in industrial printers, and clean ink fountains, plates, and printing unit cylinders with benzene-containing solvents and cleaners. The Plaintiff worked as a pressman since 1966, 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 inks, 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 AML, myelodysplas-

tic syndrome (MDS) and other forms of leukemia and lymphoma.

The 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 Toxic Torts Section, filed this suit and he is currently investigating other benzene exposure cases. If you need more information on this subject contact John at 800-898-2034 or by email at John.Tomlinson@beasleyallen.com.

MESOTHELIOMA LAWSUIT FILED IN ALABAMA

Beasley Allen mesothelioma lawyer Sharon J. Zinns, along with co-counsel Cory Watson law firm, has filed a lawsuit in the United States District Court for the Northern District of Alabama on behalf of an 83-year-old woman diagnosed with mesothelioma from exposure to asbestos-containing Johnson & Johnson Baby Powder.

Our client, who was diagnosed with mesothelioma in May 2017, used Johnson & Johnson Baby Powder daily in her personal hygiene routine. She also used it at least four times per day for the 38 years her son was alive. Her son was born with severe mental and physical handicaps, and was in diapers his entire life. Our client was his sole caregiver for almost every day of his life, and she used Johnson & Johnson Baby Powder during diaper changes to keep him dry. She has already testified that she had no idea she was exposing herself and her son to asbestos by being a loving, caring mother to her disabled child.

It is alleged in this case that Johnson & Johnson failed to warn consumers of the hazards of asbestos in their talc products despite their knowledge of the hazards of asbestos.

Beasley Allen lawyers are investigating all cases of mesothelioma caused by talcum powder exposure, including

those products made by Johnson & Johnson, Avon, and others. For more information on mesothelioma cases, contact Sharon J. Zinns at 800-898-2034 or by email at Sharon.Zinns@beasleyallen.com.

JURY VERDICT IN NEW YORK MESOTHELIOMA CASE

A jury in New York City has awarded more than \$40 million dollars in damages to mesothelioma victim Walter Twidwell. The jurors deliberated for less than two hours before returning the verdict. Mr. Twidwell, who is now 81 years old, was a 17-year veteran of the United States Navy where he served aboard seven ships as a boilertender and fireman. During his service on these ships, he maintained and repaired equipment in the machinery spaces, and was exposed to hundreds of asbestos containing products. Two of those products were Durabla and Cranite gaskets, manufactured during certain time periods by Goodyear. Gaskets were used in many industries, including aboard Naval ships, to maintain the steam system and other crucial operating components of the engineering rooms.

The judge in this case allowed 60 companies to be listed as possible at fault options on the verdict form. However, the jury apportioned 63 percent liability to Goodyear. Twidwell's lawyers also presented evidence that Goodyear had actual knowledge of the hazards of asbestos as early as 1939 but failed to warn Mr. Twidwell and workers like him. The jury found the company to be reckless, making it jointly and severally liable for all damages.

Beasley Allen's mesothelioma lawyers have represented many veterans including those who served our country during World War II, the Korean War and the Vietnam War. To learn more about asbestos claims for veterans, contact Beasley Allen mesothelioma lawyer Sharon J. Zinns at 800-898-2034 or by email at Sharon.Zinns@beasleyallen.com.

AN UPDATE ON THE PFC LITIGATION

3M Company recently made headlines regarding its contamination of Minne-

sota drinking water from its production and disposal of toxic chemicals known as perfluorinated chemicals (PFCs). 3M entered into a \$850 million settlement on Feb. 20, with the state of Minnesota due to its contamination of the state's drinking water and natural resources. The settlement proceeds will primarily be used to fund projects focused on providing enough clean drinking water to meet the needs of residents and businesses by providing alternative water sources and/or treating current water sources. A significant portion of the money will also be used to fund projects focused on environmental remediation.

However, 3M is far from being in the clear. Lawsuits have been filed in the state of Alabama against 3M, DuPont and other carpet manufacturers. In addition to Minnesota, 3M owns large plants in Georgia as well. A plant in Decatur discharges its waste into the Tennessee River, which flows into Wheeler Lake. Another plant, located in Dalton, discharges its waste into the Coosa River which flows into the Gadsden water supply. The city of Dalton alone contains more than 150 carpet manufacturing plants and more than 90 percent of the world's carpet is produced within a 65-mile radius. Lawsuits have been filed on behalf of the Water Works and Sewer Board of the town of Centre as well as the Water Works and Sewer Board of the town of Gadsden.

Perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) are two types of PFCs that were used to make carpets, furniture fabric, clothes and food packaging water and stain resistant. Stable Carbon-Fluorine bonds make these chemicals extremely pervasive. Although 3M discontinued the production of these toxic chemicals many years ago, they continue to persist in the environment because they resist degradation. At this time, there is no known environmental degradation mechanism for these toxic chemicals. Epidemiological studies have suggested an association between the exposure to PFOA to kidney and testicular cancers. Other studies, according to the Alabama Health Department advisories, have shown that certain levels of exposure to PFOA and PFOS may cause developmental effects to fetuses during pregnancy or to breast-fed infants.

In 2016, the U.S. Environmental Protection Agency (EPA) issued a new drinking water health advisory for PFOA and PFOS. According to the advisory, levels of these chemicals should not exceed 70 parts per trillion. The previous limit was significantly higher than this. Prior to 2016, the limit had been set at 600 parts per trillion. Federal toxicologists have now determined that even the 2016 advisory limits far exceeded a safe level.

A study, published as recently as Aug. 9, found that 33 states have water supplies with levels which exceed the current EPA safety limit and that 13 of those states account for the majority of the contaminated water supplies. Alabama was included in the list of states affected the most by this contamination. The study based its findings on the data from water samples collected by the FDA from 2013 to 2015. Water samples collected in areas near industrial sites, military bases, and wastewater treatment plants were found to have the highest levels of PFCs. Fortunately, the EPA stated that it will prepare a national management plan for these chemicals by the end of 2018.

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

Beasley Allen lawyers are investigating other PFC contamination cases. If you have any questions about this subject, contact Rhon Jones, Rick Stratton, or Ryan Kral, lawyers in the 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.

BEASLEY ALLEN JOINS LAWSUIT AGAINST SAINT-GOBAIN OVER POLLUTED WATER

Beasley Allen has joined a lawsuit filed by New Hampshire residents

against Saint-Gobain Performance Plastics for contaminating their properties with perfluorooctanoic acid (PFOA). The lawsuit was filed by Paul M. DeCarolis of Gottesman and Hollis, P.A. and Kevin S. Hannon of the Hannon Law Firm, LLC.

The New Hampshire Department of Environmental Services (NHDES) discovered the presence of PFOA in residential wells in the vicinity of Saint-Gobain's plant in Merrimack that were above the EPA's 70 parts per trillion lifetime health advisory. As a result, the NHDES advised certain residents to find alternative sources of water to cook with and drink.

The class action lawsuit includes all residents on a private well within two miles of Saint-Gobain's plant. It seeks compensation for reductions in property value, the use and enjoyment of their property, and remedial costs like installing water filtration systems. The lawsuit also seeks compensation for medical monitoring of all class members for latent diseases associated with exposure to PFOA.

The residents allege that Saint-Gobain released PFOA into the air, which migrated into the soil on their properties and ultimately contaminated their groundwater. The lawsuit further alleges that Saint-Gobain was aware of the potential for PFOA contamination generated from its manufacturing process due to past issues with its plant in Hoosick, New York, in 2014. The Plaintiffs claim that Saint-Gobain moved its operations from a plant in Vermont to the Merrimack facility after Vermont imposed tighter environmental protection regulations to reduce PFOA emissions. Despite this prior knowledge, the lawsuit alleges that Saint-Gobain failed to install filtration systems to limit PFOA emissions from its Merrimack facility.

In December 2017, U.S. District Court Judge Joseph LaPlante refused to dismiss all counts besides a negative unjust enrichment claim alleged in the class action lawsuit. Since then, the Plaintiffs moved to certify the classes and the parties are currently engaged in discovery. The case is *Kevin Brown et. al. v. Saint-Gobain Performance Plastics Corporation and Gwenael Busnel*, (Case No. 1:16-CV-00242-JL.)

Beasley Allen is highly honored to partner with Gottesman and Hollis and

the Hannon Law Firm in this case. As mentioned earlier in this Report, our firm represents the water systems in Gadsden and Centre that are also dealing with PFOA contamination. The lawsuits allege that carpet manufacturers in Dalton, Georgia, and their chemical suppliers are liable for the contamination of their drinking water.

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

JURY AWARDS \$475.5 MILLION IN THIRD HOG FARM NUISANCE TRIAL

Six North Carolina residents who live near a Smithfield Foods subsidiary hog farm were awarded a total of \$475.5 million last month on their nuisance claims alleging the farm inundated the surrounding property with foul odors from millions of gallons of sewage, decaying corpses, swarms of flies and gnats, constant noisy truck activity, and other revolting conditions.

The Plaintiffs filed their lawsuit against Murphy-Brown LLC and affiliated companies in a North Carolina federal court, claiming the farm "substantially and unreasonably" imposed unbearable nuisances on their property.

Murphy-Brown is a subsidiary of Smithfield Foods Inc., the self-proclaimed largest hog and pork producer in the world. Smithfield is a subsidiary of WH Group Ltd., a privately owned Chinese meat and food processing conglomerate based in Henan Province, China. For years, the people who live in the areas surrounding the Murphy-Brown affiliated hog farms have claimed that the facilities produce millions of gallons of hog waste that are stored in open cesspools, then sprayed in liquified form into the air.

The six Plaintiffs claimed that the three Murphy-Brown affiliated hog farms are overcrowded with hogs, and that the farms operate without regard to residents in the area, who are mostly poor and African-American. According to Law 360, the Plaintiffs complained of

“obnoxious, recurrent’ hog waste odors, swarms of flies caused by the hogs or the large, loud, dirty trucks that bring live and dead hogs in and out of the farms. Plaintiffs have suffered smells from hog feces, urine, body odor, and corpses; the sight of dead, bloated, and decaying hogs; liquid dripping from passing hog trucks and ‘dead trucks;’ increased pest populations; and other aspects of the nuisance,” the complaint alleged.

The federal court jury awarded \$75 million in punitive damages and between \$3 million to \$5 million in compensatory damages to each Plaintiff. The punitive damages, however, will have to be drastically reduced because of a state law limiting “deterrent damages” to \$250,000.

The latest case is the third such case to be tried, with 23 similar cases still pending in litigation. Earlier in August, a federal court jury awarded a North Carolina couple \$25.13 million for their nuisance claims against Murphy-Brown LLC, including \$65,000 each in compensatory damages and \$5 million each in punitive damages. The punitive damages were subsequently lowered to \$250,000 each due to the state’s punitive damage cap.

The first of the hog farm nuisance trials concluded in April when a federal court jury awarded 10 Plaintiffs \$50 million. That award was lowered to just over \$3 million because of the punitive damages cap. The Plaintiffs in that case were represented by Mona Lisa Wallace and John Hughes of Wallace & Graham PA who have represented the Plaintiffs in all three cases. In the second and third trials the Plaintiffs were also represented by Michael Kaeske, Lynn Bradshaw and Eric Manchin of the Kaeske Law Firm.

The case is *Artis et al. v. Murphy-Brown LLC*, (case number 7:14-cv-00237) in the U.S. District Court for the Eastern District of North Carolina.

Sources: Law360.com and Indyweek.com

XIII. UPDATE ON NURSING HOME LITIGATION

NURSING HOMES MISLEAD GOVERNMENT BY OVERSTATING STAFFING LEVELS TO BOOST THEIR MEDICARE RATINGS

According to recently released federal data, most nursing homes had fewer nurses and caretaking staff than they reported to the government for years. This new data, based on daily payroll records from more than 14,000 nursing homes, confirm for the first time that nursing homes have frequent and significant periods of inadequate day-to-day staffing, with particularly egregious shortfalls on weekends.

The daily payroll data were analyzed by the highly respected Kaiser Health News, a non-profit, independent organization dedicated to researching and analyzing health-care issues impacting especially vulnerable individuals and Medicare/Medicaid recipients.

The release of this information bolsters complaints and the long-held suspicions of many families of the nearly 1.4 million nursing home residents the United States that nursing home staffing levels are often inadequate to properly care for all the residents in many facilities.

The Centers for Medicare and Medicaid Services (CMS) developed its Five-Star Quality Rating System to help potential nursing home residents, their families and caregivers choose an appropriate nursing home by allowing them to more easily compare the quality of various nursing homes. The star ratings are based on information from each facility including staffing levels. Under the CMS system, five stars indicate a facility is much above average quality and facilities with one star are considered to have quality much below average.

Until April of this year, CMS relied on nursing homes to self-report their staffing levels, but only for the two weeks before a government inspection of the facility. Under that system, the nursing homes sometimes anticipated when an inspection would happen and could increase their staffing levels before the

inspection. The new daily payroll data offers reliable and strong evidence that over the last decade, based on the nursing homes’ self-reported information, CMS’s Five-Star Quality Rating System often exaggerated staffing levels and rarely identified the periods of thin staffing that were common in most facilities.

Medicare’s nursing home payroll records showed that on the worst staffed days at a typical nursing home on-duty personnel cared for nearly twice as many residents as they did when the staffing roster was fullest. On average, there were 11 percent fewer nurses providing direct care on weekends and 8 percent fewer aides. Commenting on problem of weekend staffing deficiencies, David Stevenson, an associate professor of health policy at Vanderbilt University School of Medicine, stated:

It’s not like the day-to-day life of nursing home residents and their needs vary substantially on a weekend and a weekday. They need to get dressed, to bathe and to eat every single day.

The payroll data also revealed that staffing levels fluctuated substantially during the week, when an aide at a typical home might have to care for as few as nine residents or as many as 14. Inadequate staffing in nursing homes can create a hectic environment where overburdened nurses and aides scramble to deliver services and treatments to residents. This can easily lead to gaps in care where essential medical tasks such as repositioning a patient to avert bedsores can be overlooked. These gaps in care sometime lead to avoidable injuries, hospitalizations or even death.

This new information underscores the relationship between staffing levels and quality of care. It demonstrates, yet again, the critical importance of adequate numbers of nursing home staff. Research and experience show the harm residents can suffer when there are not enough nursing staff to care for them.

Lawyers on our firm’s Nursing Home Litigation Team are currently representing nursing home residents or their families in cases where the resident was

severely injured or died because of nursing home abuse or neglect.

Sources: *The New York Times* and *Kaiser Health News*

PRESSURE ULCERS ARE PAINFUL AND DANGEROUS, BUT USUALLY ARE PREVENTABLE

Pressure ulcers, also known as bedsores, pressure sores, and decubitus ulcers, are a particularly painful and gruesome sign of potential nursing home neglect. Pressure ulcers are the result of prolonged pressure being applied to an area of the body limiting blood flow to the skin. In the nursing home setting, these injuries are often caused from lack of attention and improper medical care—specifically when immobile or bedridden residents are not kept clean and dry and periodically repositioned.

According to the Centers for Disease Control and Prevention (CDC), as many as 1 out of 10 residents in nursing homes currently suffer from bedsores. More than 150,000 Nursing Home residents will experience some stage of a pressure ulcer each year.

Pressure ulcers are serious health concerns for nursing home residents and need to be identified and treated immediately. Without proper treatment and care, pressure ulcers progress rapidly. As the progression continues, the resident becomes more susceptible to serious, potentially life-threatening complications, including: Infections, including sepsis; cellulitis; and bone infections.

Pressure ulcers, especially later-stage ulcers, are often preventable. Nursing homes can prevent these extremely painful and dangerous wounds by having sufficient and properly trained staff who will take the time to move or reposition immobile and bedridden residents, provide pressure-redistribution devices, ensure sufficient nutrition and water intake, keep the resident's skin, clothes, and bedding clean and dry, and conduct regular body skin audits to detect new or worsening ulcers. A nursing home resident's development, and especially progression to later stages of pressure ulcers is cause to suspect neglect, if not abuse.

Lawyers on our Nursing Home Litigation team are currently handling cases

involving clients who suffered from pressure ulcers. One of our cases, filed in Tuscaloosa County, involves allegations that the nursing home failed to adequately treat and care for our client's bed sore, causing her extreme pain and other injuries. Another of our cases involves a Georgia woman, who because of the nursing home's failure to prevent, properly treat, and seek additional medical care, allowed her to develop a bed sore that became septic causing her tremendous pain and suffering for more than two years and ultimately caused her death.

Our lawyers are currently investigating several other pressure ulcer cases where residents have been injured or died as a result of suspected nursing home neglect. 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 one of the lawyers on our Nursing Home Litigation Team.

THE BEASLEY ALLEN NURSING HOME LITIGATION TEAM

Lawyers in our firm are fighting to protect the safety and well-being of nursing home residents in facilities across the country. Our nursing home lawyers represent the victims or families of those who have suffered death or serious injury because of nursing home abuse and neglect. We have a team of lawyers in our firm who handle nursing home litigation on a regular basis. Chris Boutwell heads up the Nursing Home Litigation Team. Other members of the team currently are Susan Anderson and Leah Robbins. The firm's Board of Directors recognized that handling nursing home litigation required lawyers and support staff to have specific experience and expertise in this type case.

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

XIV. AN UPDATE ON CLASS ACTION LITIGATION

AN UPDATE ON THE COST OF INSURANCE CLASS ACTION LITIGATION

Beasley Allen lawyers have filed several cases against insurance companies for unjustly raising the cost of insurance (COI) charges on universal life (UL) insurance policies. The policies themselves often limit the circumstances for which an insurer can increase the COI; generally, COI can only be increased prospectively based on changes to certain factors such as mortality or interest rates.

The Plaintiffs in our cases allege that the COI was increased to recoup losses incurred in the past, and/or that the increase was based on factors that are not permitted by the policies. While the cost of insurance charge on a UL policy does not immediately affect the amount of premiums to be paid, it does decrease the policy's account value, thus causing the policy to lapse unless the policyholder makes significant premium payments to rebuild the account value. The cases we have filed are in varying stages of litigation. A brief summary follows:

Banner Life Insurance Company

In 2015, Banner sent its UL policyholders a letter informing them of an increase to their cost of insurance charge. In this letter, Banner claimed the COI increases were necessary because the company "did not adequately account for future experience," i.e. the number and timing of death claims, how long people would keep their policies, how well the company's investments would perform, and the cost to administer policies. This letter was the first-time policyholders learned of any issues with their policies. Rather, their annual statements had indicated that the policies were performing adequately and building account value.

Plaintiffs filed suit against Banner in January of 2016, alleging inter alia that Banner increased the COI to

improperly recoup prior losses (in violation of the policy language), and lulled them into a false belief about the performance of their policies in order to induce them into paying additional premiums and building account values that were ultimately depleted after the COI increase was implemented. In December of 2016, the United States District Court for the District of Maryland denied Banner's motion to dismiss as to Plaintiffs' breach of contract and fraud claims. Discovery commenced in early 2017 and has recently closed. Plaintiffs have filed a motion for class certification and will soon be opposing Banner's motion for summary judgment.

William Penn Life Insurance Company of New York

William Penn and Banner are both wholly owned subsidiaries of Legal and General America, Inc. Like Banner, William Penn also implemented a COI increase in the fall of 2015. The William Penn policies also prohibit recouping past losses by implementing a COI increase, yet Plaintiffs allege that is exactly what William Penn intended to do. Plaintiffs filed their Complaint in July of 2017 in the District of Maryland, and the parties finalized briefing on William Penn's motion to dismiss in December of 2017. This case is currently awaiting a ruling from the court on William Penn's motion.

U.S. Financial Life Insurance Company

In a letter dated Aug. 11, 2015, U.S. Financial Life (USFL) insurance company notified policyholders of Nova and Supernova UL policies that it would increase the COI on their policies due to "future mortality experience" being "worse than was anticipated." Nonetheless, various industry studies and publications demonstrate that mortality has improved. Plaintiffs filed suit against USFL in June of 2017, alleging that USFL was actually raising COI charges to recoup past losses because of its financial instability caused by the lower interest rate

environment, the miscalculation of a prior COI increase implemented in 2008, the reimbursement of tens of millions of dollars to policyholders for charging above the maximum COI rates, and captive reinsurance transactions.

USFL filed a motion to dismiss all but the breach of contract claim alleged in Plaintiffs' Complaint. In May of 2018, the United States District Court for the Southern District of Ohio denied in part USFL's motion, allowing Plaintiffs to proceed on their breach of contract, conversion, breach of the covenant of good faith and fair dealing, and fraudulent misrepresentation/suppression claims. The parties have recently begun to conduct discovery.

Transamerica Life Insurance Company

Transamerica also increased its monthly deduction rate—of which COI is a component—in 2015. The United States District Court for the Central District of California recently granted class certification to plaintiffs who filed suit alleging that this increase was improper and in contravention of the policy language. Transamerica has appealed that ruling, and the case is awaiting a decision from the Ninth Circuit.

Beasley Allen is not currently involved in the class litigation filed against Transamerica. However, we have filed an individual action on behalf of a policyholder in Alabama based on the same conduct. This case is currently in the middle of the discovery process, as the court denied Transamerica's motion to dismiss in its entirety in April of 2017.

If you have seen this practice by any of these or other life insurance companies, there may be a claim that our firm would like to investigate. Contact Andrew Brashier, Rachel Boyd or Paul Evans, lawyers in our Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Andrew.Brashier@beasleyallen.com, Rachel.Boyd@beasleyallen.com, or Paul.Evans@beasleyallen.com.

FACEBOOK INVESTORS CLAIM FRAUD IN LAWSUIT

Investors have filed two proposed securities fraud class actions against Facebook in a New York federal court. The company and its top officers are accused of misleading shareholders in the months leading up to its disappointing earnings statement and subsequent \$120 billion stock drop.

In each of the suits, Facebook Inc. founder Mark Zuckerberg and Chief Financial Officer David Wehner are said to have been hiding the fact that the number of daily and monthly active users had been in decline for months. One of the suits alleged:

As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the company's securities, plaintiff and other class members have suffered significant losses and damages.

The historic stock plunge is considered one of the largest one-day tumbles any company has ever experienced. The suits add to what has already been a troubled 2018 for Facebook.

In March, reports emerged that Facebook did not tell users their private data has been harvested by Cambridge Analytica, a political data firm with ties to President Donald Trump's 2016 campaign. That scandal also led to a Facebook stock drop and subsequent lawsuits.

The latest complaint, filed by shareholder James Kacouris, cited the company's first quarter statements from April, when Zuckerberg said the business was "off to a strong start in 2018," and Wehner said active user figures were up compared to 2017. Kacouris claimed, however, that Zuckerberg and Wehner either knew or should have known at the time that "the number of daily and monthly active Facebook users was declining" and that "Facebook anticipated its revenue growth to slow and its operating margins to fall."

The other suit filed took a different tack, focusing on the European Union's recent implementation of the General Data Protection Regulation. The GDPR requires entities like Facebook to disclose user data collection and whether that data was being shared with third parties, including advertisers. It also

requires companies to obtain consent before using and distributing a user's data.

According to investor Fern Helms, Facebook should have known five months previously that the GDPR would have an "extraordinary impact" on its platform, claiming that 73 percent of Facebook's European users were targeted by marketers based on personal characteristics—"which was illegal under the GDPR." The Helms lawsuit alleges:

Defendants' statements failed to disclose that Facebook's efforts to comply with GDPR would have a foreseeable and negative impact on the use of the platform, Facebook's ability to collect data about its user base, and, in turn, Facebook's ability to sell advertising and its revenue. By May 25, 2018, Facebook's social network use and revenue growth had already begun to decline because of Facebook's efforts to comply with the GDPR.

In his suit, Helms also named Facebook Chief Operating Officer Sheryl K. Sandberg as a Defendant.

Both suits allege violations of the Exchange Act but have different class periods: Helms' proposed class would include all those who traded Facebook securities from Oct. 1 through July 27, while Kacouris' proposed class would include only those who traded from April 25 through July 26.

Kacouris is represented by Jeremy A. Lieberman, J. Alexander Hood II and Patrick V. Dahlstrom of Pomerantz LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC. Helms is represented by David Hecht and Yi Wen Wu of Pierce Bainbridge Beck Price & Hecht LLP. The cases are *Kacouris v. Facebook Inc. et al.*, (case number 1:18-cv-06765) and *Fern Helms v. Facebook Inc. et al.*, (case number 1:18-cv-06774) both in the U.S. District Court of Southern New York.

NFL CONCUSSION SETTLEMENT PAYS OUT MORE THAN \$502 MILLION IN CLAIMS

The special master overseeing the National Football League's (NFL) concussion settlement said recently that

more than half a billion dollars in claims have been awarded in the past year and a half, exceeding what the NFL originally estimated it would pay out over 10 years. According to a report posted online by the special master, 21 claims worth a total of \$502 million have been awarded to retired NFL players or their families since the settlement went into effect in January 2017. In a news release, class co-lead counsel Seeger Weiss LLP said the NFL had estimated \$404 million in payouts over the first 10 years of the settlement in a report submitted during the settlement approval process.

In a video released online, class co-counsel Christopher Seeger called the fact such a large amount has been paid "highly significant." "On the one hand, it's sad testament to the fact that there are a lot of sick players who need this relief badly," he said. "On the positive side, they're finally getting it." He predicted the NFL will ultimately pay more than \$1.5 billion over the 60-year term of the settlement.

In April 2015, the court approved an uncapped settlement ending multidistrict litigation (MDL) between the NFL and about 5,000 former players seeking damages for concussions and degenerative neurological conditions resulting from their playing days. More than 1,900 claims have been submitted, according to the report. The report said 531 claims have been denied and that additional documentation has been requested for 375 more.

U.S. District Judge Anita Brody declined a request by the NFL to appoint a special investigator to examine the claims. The league had argued an "extraordinary number of potentially fraudulent claims" have been submitted, but Judge Brody said the current screening process is working properly, although she said would appoint an investigator if the claims administrator or special master asked.

According to the report, of the claims awarded, 67 totaling more than \$84.5 million were for deceased former players found to have chronic traumatic encephalopathy, a degenerative brain condition that can only be diagnosed post-mortem. The settlement paid 157 claims totaling more than \$78.1 million for Alzheimer's disease claims and 186 claims exceeding \$193 million for

players claiming various degrees of cognitive impairment.

The Seeger Weiss news release also said as part of the settlement more than 6,000 baseline neurological exams have been performed on ex-players to evaluate them for brain injury. Seeger Weiss and Anapol Weiss LLP are co-lead class counsel in the litigation. The case is *In re: National Football League Players' Concussion Injury Litigation*, (case number 2:12-md-02323) in the U.S. District Court for the Eastern District of Pennsylvania.

Source: Law360.com

ABBVIE INVESTORS SUE OVER ONE-DAY \$100-MILLION STOCK DROP

A class action lawsuit has been filed against AbbVie Inc. ("AbbVie" or the "Company") and certain of its officers, on behalf of shareholders who purchased or otherwise acquired AbbVie securities on May 30, 2018. The complaint alleges a corrective disclosure related to the company's May stock buyback efforts led to a collective \$100 million loss in value for the shareholders. The shareholder Plaintiffs claim that AbbVie waited until after the end of the trading day May 30 to disclose that it had repurchased common stock in a Dutch tender offer at a price that was \$2 lower than the price announced earlier that day. The market's reaction to the disclosure was "swift and brutal," the suit said, and by the end of the next trading day, the company's stock price closed 4 percent lower than the previous day.

The company announced in April that it would be repurchasing \$7.5 billion worth of stock in the style of a Dutch auction, a process by which AbbVie would set a range of prices at which it would be willing to buy back shares. Investors would elect the price at which they would prefer to collectively sell. The company would then buy back the shares at that price until the \$7.5 billion was spent. This meant a higher price would restrict the number of shares repurchased and a lower price would expand it.

AbbVie set a price range April 26 of between \$99 and \$114 per share, an 8 percent to 24 percent premium on the \$91.87 price the stock was trading at the

day before. The Dutch tender offer commenced May 1 with a scheduled closing May 29.

The Complaint alleges that throughout the Class Period, Defendants made materially false and/or misleading statements and/or failed to disclose the preliminary results of a previously announced modified Dutch auction to repurchase the Company's securities, stating that a total of 75.7 million shares were tendered at or below the purchase price of \$105 per share. Then, at approximately 4:45 p.m. on May 30, 2018, AbbVie announced "updated preliminary results" of the Offer, stating that a total of 74.0 million shares of AbbVie's common stock had been tendered and not properly withdrawn at or below the lower purchase price of \$103 per share. On this news, AbbVie's share price fell \$4.07, or 3.95 percent, to close at \$98.94 on May 31, 2018.

The company claimed the discrepancy came as a result of additional shares that were "erroneously omitted" from results provided to AbbVie by its depository. According to the complaint, given the company's awareness that "one of the largest tender offers in history" was being closely watched by market participants, there is a strong inference of intentional failure to perform "grammar-school arithmetic" or check its depository's numbers.

The proposed class action stock drop lawsuit, which names the company and Chief Financial Officer William J. Chase as Defendants, seeks class certification, damages, prejudgment interest and attorneys' fees. The case is *Walleye Trading LLC v. AbbVie Inc et al.* (case number 1:18-cv-05114) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

SINCLAIR INVESTOR SUES OVER WITHDRAWN \$3.9 BILLION TRIBUNE DEAL

A Sinclair Broadcast Group Inc. investor filed a putative securities fraud class action against the company last month in a Maryland federal court, claiming the company and its top officials "mangled the review process" of a planned \$3.9 billion acquisition of Tribune Media Co. by knowingly misleading the public about its divestitures.

The suit by investor Edward Komito was filed the day Tribune announced it was dropping the proposed deal and suing its former would-be acquirer in Delaware Chancery Court for conducting "unnecessarily aggressive and protracted negotiations" with regulators, including one situation in which Sinclair general counsel Barry Faber told a powerful regulator: "Sue me."

Komito claims in the suit that Sinclair; its CEO and president, Christopher S. Ripley; and CFO Lucy A. Rutishauser used bogus divestments in an attempt to skirt the Federal Communications Commission's (FCC) National Television Ownership Rule, which regulates the number of U.S. television stations in which one company can have an interest. Komito alleges in the complaint:

Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated the prices of Sinclair stock and operated as a fraud or deceit on class period purchasers of Sinclair's stock by failing to disclose to investors that the Company was attempting to evade the FCC's ownership rules through a series of sham transactions.

Though the suit's named Defendants include only the company and two executives, Komito's complaint also details involvement of the four Smith brothers—David D., Frederick, J. Duncan and Robert—who ran Sinclair for decades and own all its Class B common stock as well as a 75 percent interest in the broadcast group.

The TV Ownership Rule prohibits any one company from having a station reach of more than 39 percent of the national audience. When Sinclair and Tribune filed paperwork on the merger in June 2017, Sinclair agreed "to designate ... certain additional Tribune stations or Sinclair stations for divestiture and to divest such stations in order to comply with the FCC's National Television Multiple Ownership Rule."

In February, Sinclair followed up with a document detailing the purported divestiture of 23 stations, but according to the suit, many of those proposed divestitures were ultimately revealed to be insider deals connected to the company and the Smith brothers.

Sinclair tried to withdraw the applications that had drawn scrutiny on July 18, Komito says, but "the withdrawal did nothing to persuade the FCC, who ... voted unanimously to send the proposed merger to a hearing anyway." Tribune withdrew from the merger on Aug. 9, and its lawsuit claims Sinclair breached contractual obligations, threatened the Justice Department and held up the FCC even after it had relaxed some regulations. Komito seeks to represent all investors who bought stock between February 2017 and July 19 on two claims of fraud under the Securities Exchange Act.

Komito is represented by Thomas J. Minton in Goldman & Minton PC, and Maya Saxena, Joseph E. White III, Lester R. Hooker and Steven B. Singer of Saxena White PA. The case is *Komito v. Sinclair Broadcast Group Inc. et al.* (number 1:18-cv-02445) in the U.S. District Court for Maryland.

Source: Law360.com

RECENT CLASS LITIGATION SETTLEMENTS

There have been a number of settlements in class action litigation over the past several weeks. We will discuss three significant settlements below.

\$115 MILLION ANTHEM DATA BREACH SETTLEMENT GETS FINAL APPROVAL

A California federal judge has given final approval to a \$115 million settlement that resolves claims Anthem Inc. put 79 million consumers' personal information at risk in a 2015 data breach. There had been calls for the settlement to go even further to punish the nation's second-largest health insurer. U.S. District Judge Lucy H. Koh ruled that the settlement agreed to in 2017—which provides the class of data breach victims with two years of credit monitoring, coverage of out-of-pocket expenses stemming from the breach, and compensation for those who got their own credit monitoring—is "fair, reasonable and adequate" and without valid objection.

Consumers had sued Anthem after it disclosed in February 2015 that its information technology system had

been hacked, exposing the birthdays, Social Security numbers, income data and other personal details of customers and employees. After consumers won an initial nod for the deal, some lined up to lodge objections, arguing that it was redundant for consumers who already had credit monitoring protection or unfair to those who opted for cash. One objector, Joseph Orlowski, said “the fraud resolution service is nice,” but the \$115 million does not go far enough in penalizing Anthem’s behavior.

The class is represented by Eve H. Cervantez of Altshuler Berzon LLP, Andrew N. Friedman of Cohen Milstein Sellers & Toll PLLC, Michael W. Sobol of Lief Cabraser Heimann & Bernstein LLP and Eric Gibbs of Girard Gibbs LLP. The case is *In re Anthem Inc. Data Breach Litigation* (case number 5:15-md-02617) in the U.S. District Court for the Northern District of California.

VW AGREES TO \$48 MILLION SETTLEMENT TO END DEFEAT-DEVICE SECURITIES CASES

Volkswagen has agreed to pay \$48 million to end claims by investors in multidistrict litigation over its diesel emissions-cheating scandal that it knowingly issued false financial statements about its exposure and liabilities. The agreement would certify, for the sake of the settlement, a class of thousands who bought Volkswagen Aktiengesellschaft ordinary and preferred American depositary receipts between November 2010 and January 2016. The motion for preliminary approval of the settlement was not opposed.

The investors are represented by James A. Harrod, Jai Chandrasekhar, Adam D. Hollander, Ross Shikowitz and Kate W. Aufses of Bernstein Litowitz Berger & Grossmann LLP. The case is *In re: Volkswagen “Clean Diesel” Marketing, Sales Practices and Products Liability Litigation* (case number 3:15-md-02672) in the U.S. District Court for the Northern District of California.

CBRE TO PAY \$100 MILLION TO END CLASS ACTION BY REALTY INVESTORS

A class of real estate investors has asked a federal judge in Florida to approve a \$100 million settlement of their case accusing property management giant CBRE and one of its employees of aiding in a multi-million-dollar embezzlement. The settlement amount, to be distributed among the 179-member class, is 71.6 percent of the Plaintiffs’ total damages, according to the motion for preliminary approval.

The Plaintiffs accuse property management firm CBRE, one of the largest firms of its kind in the world, and employee Gloria Hernandez of helping executives from Cabot Investment Properties LLC to embezzle at least \$7.9 million. The defaults and foreclosures that resulted on the loans financing the acquisition of the Florida properties led the Plaintiff class to lose more than \$139 million, according to the motion.

The investors are represented by Jason P. Hernandez, Mary Barzee Flores, Ryan T. Thornton, Joseph J. Onorati, Eugene E. Stearns, Matthew W. Buttrick, Cecilia Duran Simmons and Matthew M. Graham of Stearns Weaver Miller Weissler Alhadeff & Sitterson PA. The suit is *Cabot East Broward 2 LLC et al. v. Cabot et al.*, (case number 0:16-cv-61218) in the U.S. District Court for the Southern District of Florida.

XV. THE CONSUMER CORNER

THE ROLE OF THE CPSC IN REGULATING CHILDREN’S PRODUCTS

The U.S. Consumer Product Safety Commission (CPSC) is charged by Congress to “protect the public against unreasonable risks of injuries and deaths associated with consumer products.” (Consumer Product Safety Act of 1972) According to the CPSC website (www.cpsc.gov), the agency has “juris-

dition over thousands of types of products from coffee makers to toys to lawn mowers.”

The role of the CPSC is to help reduce the risks of injuries and deaths caused by consumer products. In doing so, it seeks to develop industry standards, to restrict or ban products that may be dangerous from the U.S. market, institute and order recalls of dangerous products, and educate the general public in the importance of product safety.

The CPSC provides a host of safety education resources, which address matters such as bicycles, clothing and accessories, containers and packaging, cribs, etc. The CPSC also maintains an online reporting system, where unsafe products can be reported to the agency. (www.SaferProducts.gov)

One of the primary areas regulated by the CPSC is children’s products. According to its website: “The law defines a ‘children’s product’ as a consumer product designed or intended primarily for children 12 years of age or younger.” Products that are not “children’s products” are referred to as “general use products.” The distinction about which category a product falls in is important because children’s products must “undergo third party testing and have a written Children’s Product Certificate (CPC) demonstrating compliance.” Some products are general use products, but the method and manner in which they are marketed make those products “children’s products” under the federal act and accompanying regulations.

The CPSC uses the example of a pen. If a manufacturer makes changes to the pen, causing it to be marketed toward children, then the pen may be subject to the more rigorous “children’s products” requirements. Another example would be furniture. Furniture is a “general use product” but it can become a “children’s product” if it is “designed or intended primarily for children 12 years of age or younger, [is] decorated or embellished with childish themes, [is] sized for children, ha[s] play value, or [is] marketed to appeal primarily to children....” The CPSC is charged with determining whether a product is or is not a children’s product for compliance purposes.

Children’s products also must include detailed tracking information on the

label of the product. The information should be sufficient enough to determine the place and date of manufacturer, batch numbers or the like, and include the manufacturer or private label name. This information is essential in the event a product recall is instituted for tracking purposes.

With the enormous influx of products manufactured in other countries, the job of the CPSC is getting more difficult. It is important to watch for the CPC and confirm that the product does not have issues that have been reported to the CPSC or to others. Consumers may search the CPSC website for issues involving a given product.

If you need additional information on the CPSC, contact Ben Locklar at 800-898-2034 or by email at Ben.Locklar@beasleyallen.com.

DELTA, BEST BUY AND SEARS CUSTOMER DATA EXPOSED

If any of you made any online transactions with Delta Airlines, Sears, Kmart, or Best Buy between Sept. 26 and Oct. 12 of last year, your personal and credit card information could have been accessed by cybercriminals.

The data breach appears to have compromised customers' full names, credit and debit card account numbers, card expiration dates, card verification codes, email addresses, phone numbers, street addresses, and other private identifiable information such as, in Delta's case, dates of birth, gender, redress numbers, and known traveler numbers.

The data breach stems from a chat application that Delta, Sears, Kmart, and Best Buy use on their websites to offer customers around-the-clock service and sales support. The app was developed and provided by San Jose, California, company [24]7.ai, which uses artificial intelligence to facilitate online interaction with customers.

On April 4, 2018, [24]7.ai belatedly acknowledged that, six months earlier, sensitive customer data had been obtained by cybercriminals. Delta says it learned of the breach on March 28. The airline announced it to the public on April 4.

Even if you didn't use the chat service on any of the company websites hit by the data breach, you could still be

affected. According to CNET, a Delta spokesperson said that, "Any customer who entered payment data on delta.com between Sep. 26, 2017, to Oct. 17, 2017, may have had their information accessed."

According to Delta, the data breach potentially affects hundreds of thousands of its customers. Sears Holdings, which also owns Kmart, claims fewer than 100,000 of its customers had their information potentially stolen through the data breach.

[24]7.ai appears to have failed in its duty to consumers to securely maintain their private, sensitive information. Instead [24]7.ai negligently failed to take adequate and reasonable measures to ensure its data systems were protected, and then for six months failed to disclose to consumers that their data had been exposed to cybercriminals.

Beasley Allen lawyers continue to investigate this matter. If you entered payment data on delta.com between Sept. 26, 2017, to Oct. 17, 2017, or received notice from Delta, Best Buy, K-Mart, or Sears that your data was compromised, contact Archie Grubb, a lawyer in our Consumer Fraud & Commercial Litigation Section, and he will be glad to tell with you. He can be reached at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com.

XVI. RECALLS UPDATE

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

Auto Recalls

BMW of North America, LLC (BMW) is recalling one each of 2019 BMW 430i xDrive Gran Coupe, 440i xDrive Gran Coupe and 430i xDrive Convertible

vehicles. The front passenger air bag inflator may have been incorrectly manufactured, potentially affecting the air bag deployment performance in the event of a crash.

Polaris Industries, Inc. (Polaris) is recalling certain 2017-2019 Polaris Slingshot S, Slingshot SL, Slingshot GT LE, and Slingshot SLR motorcycles. In the event of a crash, the seatbelt retractor on the side opposite of the impact may separate, preventing the seatbelt from locking.

Akoury is recalling certain AK AK88S motorcycle helmets, sizes XS, S, M, L, and XL. These helmets may not adequately protect the wearer in the event of a head impact during a motorcycle crash. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 218, "Motorcycle Helmets."

Chrysler (FCA US LLC) is recalling certain 2018 Jeep Renegade, Compass and Grand Cherokee, RAM 1500 and Promaster, Fiat 500x, Dodge Journey, Challenger, Charger and Durango and Chrysler 300x vehicles, 2017-2018 Jeep Wrangler, Dodge Grand Caravan and Chrysler Town and Country vehicles and 2018-2019 Jeep Cherokee and Chrysler Pacifica vehicles. The powertrain control module may be equipped with a voltage regulator chip in the circuit board that may fail, causing a stall or a no-start condition.

Chrysler (FCA US LLC) is recalling certain 2018-2019 Dodge Grand Caravan and Jeep Compass, 2018 Dodge Journey, and 2019 Jeep Cherokee vehicles. The rear brake caliper pistons on these vehicles may have an insufficient coating causing gas pockets to form, potentially reducing rear brake performance. A reduction of braking performance can increase the risk of a crash.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2018 Mercedes-Benz E300, E300 4Matic, E43 AMG 4Matic, E400 4Matic, E63S AMG 4Matic+, and 2019 CLS450 4Matic vehicles. The Occupant Classification System (OCS) may not be properly calibrated, resulting in the front passenger air bag not being deactivated if a child seat is in the front seat. If a child seat is in the front seat

and the passenger air bag is not deactivated, in the event of a crash it can increase the risk of injury.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2018 Mercedes-Benz CLA250, CLA250 4Matic, and CLA45 AMG 4Matic vehicles. The Occupant Classification System (OCS) may not be properly calibrated, resulting in the front passenger air bag not being deactivated if a child seat is in the front seat. If a child seat is in the front seat and the passenger air bag is not deactivated, in the event of a crash it can increase the risk of injury.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2018 Mercedes-Benz E400 Cabrio and E400 4Matic Cabrio vehicles. The child seat anchoring system (ISOFIX) in these vehicles may not have been properly installed. As a result, in the event of a crash, the ISOFIX console may partially detach from the car body. If the ISOFIX console partially detaches in a crash, it can increase the risk of injury for a child in a child seat.

Mercedes-Benz USA, LLC (MBUSA) is recalling certain 2018 GLE350, GLE350 4Matic, and GLE43 AMG vehicles. During manufacturing, components of the panoramic sunroof may have been installed with a bonding primer that was incorrectly made, possibly affecting the long-term adhesion to the vehicle. If the front cover and/or rear fixed glass are not properly adhered, they may detach, creating a road hazard and increasing the risk of a crash.

Honda (American Honda Motor Co.) is recalling certain Honda Genuine Accessory Centerstand Kits, part number 08M70-MJP-G50, sold for possible installation on 2016-2018 Africa Twin motorcycles. The circlip can break allowing the centerstand to detach. If the centerstand detaches while moving, it can become a road hazard, increasing the risk of a crash. If the centerstand detaches while the motorcycle is parked on the centerstand, the motorcycle can fall over, increasing the risk of injury.

General Motors LLC (GM) is recalling certain 2018 Chevrolet Express and GMC Savana vehicles with certain combinations of front-tire and gross-vehicle-weight option codes. The Tire Pressure

Monitoring System (TPMS) may be incorrectly calibrated, causing the TPMS warning lamp to illuminate when tire pressure reaches 37 PSI, not 41 PSI. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 138, "Tire Pressure Monitoring Systems." If the low tire pressure telltale is not illuminated at the correct tire pressure, the driver may have less time to react to a low-tire-pressure situation, which could affect the driver's ability to control the vehicle in certain situations and could increase the risk of a crash.

Subaru of America, Inc. (Subaru) is recalling certain 2019 Subaru Ascent vehicles. These vehicles may be missing spot welds on, or around, the B-Pillar. In the event of a crash, the missing spot welds may compromise the vehicle's strength, increasing the risk of injury.

H&H Sports Protection (H&H Sports) is recalling certain VCAN V531 motorcycle helmets in sizes XS, S, M, L, XL, and XXL. The helmet straps may not be properly sewn and, as a result, the helmets may not stay secured to the rider's head in the event of a crash. Additionally, the labels have an incorrect manufacturer's name. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 218, "Motorcycle Helmets." A helmet that does not remain secured to the rider's head will not adequately protect the wearer in the event of a crash, increasing the risk of injury.

Daimler Trucks North America, LLC (DTNA) is recalling certain 2012-2015 Freightliner Cascadia, Coronado, Business Class M2, 114SD, and Western Star 4900 trucks. In certain front axle, brake lining, and brake spider combinations, braking may cause high vibrations, resulting in early failure of the tie-rod tube. A tie-rod failure would cause a disconnect between the front wheels, resulting in a loss of steering ability, thereby increasing the risk of a crash.

Alta Motors (Alta) is recalling certain 2019 Alta Redshift EXR and 2018-2019 Alta Redshift MXR motorcycles. The software for the throttle control may fault if the throttle is rolled forward past the closed position, possibly resulting in

a motorcycle stall. A motorcycle stall can increase the risk of a crash.

TowBlazer, Inc. (TowBlazer) is recalling certain 2018 TowBlazer Heritage motorcycle tow-behind trailers. The axle spindles on these trailers may have a poor weld, possibly resulting in the spindle breaking and the wheel detaching. If the wheel falls off, there would be an increased risk of a crash.

Daimler Vans USA, LLC (DVUSA) is recalling certain 2017-2018 Mercedes-Benz Metris vehicles. The drive shaft securing bolts may loosen at the automatic transmission flange. If the bolts loosen and fall out, the driveshaft may separate causing a loss of drive, thereby increasing the risk of a crash.

Hyundai Motor America (Hyundai) is recalling certain 2018 Genesis G80 vehicles. The Occupant Classification System (OCS) may incorrectly detect that an adult is in the passenger seat, even if the seat is unoccupied. In the event of a crash, if a child or infant is in the seat, the front passenger air bag may deploy instead of being deactivated. In the event of a crash, if the front passenger air bag deploys instead of being deactivated when a child or infant are in the front passenger seat, it can increase the risk of injury.

Chrysler (FCA US LLC) is recalling certain 2015-2017 RAM 1500, 2500, and 3500 pickup trucks equipped with a power locking tailgate and either a 5-foot, 7-inch or 6-foot, 4-inch bed. The tailgate actuator limiter tab may fracture and cause the tailgate to unlatch and open while driving. If the tailgate latch releases and the tailgate opens while driving, cargo may fall out, creating a road hazard and increasing the risk of a crash.

Chrysler (FCA US LLC) is recalling certain 2018 Jeep Cherokee all-wheel-drive vehicles. The bearing cage for the right front halfshaft assembly may not have been properly heat treated, possibly resulting in the bearing cage breaking and a potential halfshaft assembly failure. If the halfshaft bearing cage breaks, the halfshaft may not be able to transmit engine power, causing a loss of drive or it can allow the vehicle to move while in the "Park" position. Either condition may increase the risk of a crash.

Chrysler (FCA US LLC) is recalling certain 2018 Chrysler Pacifica vehicles. The front axle halfshafts may have been incorrectly assembled, preventing the shaft from being properly secured to the constant-velocity (CV) joint. If the axle shaft disengages from the CV joint, the vehicle will have a loss of drive or allow the vehicle to move while in the “Park” position. Either condition may increase the risk of a crash.

Chrysler (FCA US LLC) is recalling certain 2019 Jeep Cherokee vehicles and 2018 Chrysler Pacifica non-hybrid vehicles. A component in the transmission may not have been welded properly, possibly causing the transmission to not transmit engine power to the wheels. If the transmission weld fails, the vehicle will stop moving, increasing the risk of a crash.

SynTec Seating Solutions, LLC (SynTec) is recalling certain S3B 45” Restraint School Bus Seats. The seat’s foot may pull through the bolted joint at the bus floor. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 210, “Seat Belt Assembly Anchorages.” If the seat mounting foot detaches from the floor, it can increase the risk of injury in the event of a crash.

Cummins Inc. is recalling about 500,000 medium- and heavy-duty trucks whose faulty emissions control systems spew too much nitrogen oxides. This is the largest voluntary truck emissions recall to date. The problem comes from defective parts, as opposed to defeat devices, which landed several automakers including Volkswagen and Fiat Chrysler in legal hot water in the recent past. The emissions problems surfaced as part of its heavy-duty in-use compliance program, in which vehicles are equipped with emissions sensors. California Air Resource Board (CARB) said its testing program showed that the trucks’ selective catalytic reduction systems were defective, which caused nitrogen oxide emissions to exceed state and federal standards. Affected vehicles include big-rigs, larger pickup trucks and some buses. “Our new heavy-duty in-use compliance program ensures that heavy-duty and other trucks already in operation meet the required emissions

standards both in the lab and on the road,” CARB Chair Mary D. Nichols said in a statement.

Other Safety Recalls

MILLER FIREWORKS RECALLS FIREWORKS DUE TO VIOLATION OF FEDERAL STANDARD CREATING EXPLOSION AND BURN HAZARDS

Miller Fireworks, of Holland, Ohio, has recalled about 3,800 fireworks. The recalled fireworks are overloaded with pyrotechnics intended to produce an audible effect, violating the federal regulatory requirements for this product. Overloaded fireworks can result in a greater than expected explosion, posing burn and explosion hazards to consumers. The fireworks are banned hazardous substances and are prohibited from being sold under the Federal Hazardous Substances Act (FHSA). This recall involves ball bullet rocket fireworks packed in bags of four with model number LB6103 and M-150 cracker fireworks packed in boxes of 36 with model number LA150B. The model numbers are printed on the packaging. The recalled ball bullet rocket fireworks were sold with four different colored fireworks and have “Ball Bullet Rocket” printed on the packaging. The M-150 cracker fireworks were sold in a yellow/orange box and have “Legend Fireworks M-150 Cracker 36 Pieces” printed on the front of the box.

The fireworks were sold at Fremont Fireworks stores in Indiana, Miller Fireworks and J&W Fireworks stores in Ohio and Red Falcon Fireworks and Rocky’s Fireworks stores in Michigan from May 2017 through June 2018 for between \$4 and \$13. Consumers should immediately stop using the recalled fireworks and return them to the place of purchase for a full refund. Contact Miller Fireworks toll-free at 833-474-1776 from 10 a.m. to 5 p.m. ET Monday through Saturday, email at sales@miller-fireworks.com or online at www.miller-fireworks.com and click on “SAFETY” for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Miller-Fireworks-Recalls-Fireworks-Due-to-Violation-of-Federal-Standard-Explosion-and-Burn-Hazards>

ZEBRA TECHNOLOGIES EXPANDS RECALL OF POWER SUPPLY UNITS FOR THERMAL PRINTERS DUE TO FIRE HAZARD

FSP Group, of Taiwan, has recalled about 1,370,000 power supply units for Zebra brand thermal printers. The power supply units can degrade and corrode over time when exposed to moisture and overheat, posing a fire hazard. This recall expansion involves power supply units that serve as the power source for models of Zebra manufactured thermal industrial printers (sold under the Zebra brand, including co-branded or re-branded) used to make bar codes and other commercial labels. The recall was originally announced in December 2016 and is now being expanded to include power supply units manufactured by the FSP Group between Oct. 1, 2006, and Dec. 31, 2012. The Zebra logo or FSP North America logo, date code and part number are printed on the power supply unit. The power supply units were either sold as after-market kits or included with the sale of the following models of printers manufactured by Zebra. The company has received a total of 30 reports of the power supply units overheating or catching fire, including a fire that spread from the connector to the printer, damaging the printer and surrounding work space. No injuries have been reported.

They were sold through direct sales from Zebra and through Zebra distributors and resellers, including BlueStar Inc., Ingram Micro Data Capture Pos. Div., ScanSource and Wynit Distribution LLC, to businesses, hospitals and end-users from October 2006 through June 2013 for between \$340 and \$2,000 with Zebra printers and for about \$130 as an aftermarket accessory. Printer owners should immediately stop using the recalled power supply units and contact Zebra for a free replacement power supply. Contact Zebra at 800-658-3795 any time Monday through Friday, email PSUrecall@zebra.com or online at www.zebra.com and click on “Power Supply Recall” for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Zebra-Technologies-Expands-Recall-of-Power-Supply-Units-for-Thermal-Printers-Due-to-Fire-Hazard>

**NEMO EQUIPMENT RECALLS STARGAZE
RECLINER CHAIRS DUE TO FALL HAZARD**

NEMO Equipment of Dover, New Hampshire, has recalled about 7,500 Stargaze recliner chairs. The plastic joint supports attached to the legs of the chairs can break, posing a fall hazard. This recall involves the Stargaze Recliner, Stargaze Recliner Low, and Stargaze Recliner Luxury lifestyle camping chairs. These portable swinging and reclining outdoor chairs have an aluminum frame and black and gray monofilament mesh seat, and weigh between five and seven pounds. They were sold in four colors: birch leaf green, graphite, verdigris (teal) and Sedona (red). They come in a black, padded carrying case, and are used as a portable seat for camping and outdoor activities.

The model name is printed on the pocket on the inside right side of the seat. The NEMO name and logo is attached to the back of the seat as a stitched logo. The three manufacturing lots included in this recall are marked with November 2017, December 2017, March 2018 or May 2018 date codes. The date code can be found on the plastic hub located on the inside edge of the leg strut. The date code is in a clock format: The numbers around the circle correspond to the 12 months of the year, the arrow points to the month of manufacture and the numbers on either side of the arrow represent the last two digits of the year. The company has received 14 reports of the joint supports breaking. No injuries have been reported.

The chairs were sold at REI and specialty outdoor stores nationwide and online at Nemoequipment.com and REI.com from November 2017 through May 2018 for between \$180 and \$220. Consumers should immediately stop using the recalled chairs and contact NEMO Equipment for a free inspection and, if necessary, a free replacement chair. Contact NEMO Equipment at 800-997-9301 from 9 a.m. to 5 p.m. ET Monday through Friday, email at journey@nemoequipment.com or online at www.nemoequipment.com and click on Product Recalls for more information or www.nemoequipment.com/product-recalls/stargaze-recliner-hubs/. Pictures available here: <https://www.cpsc.gov/>

Recalls/2018/NEMO-Equipment-Recalls-Stargaze-Recliner-Chairs-Due-to-Fall-Hazard

**KOEHLER-BRIGHT STAR RECALLS FLASHLIGHTS
DUE TO EXPLOSION HAZARD**

Koehler-Bright Star, of Hanover, Pennsylvania, has recalled about 7,500 WorkSafe 3-D cell flashlights. The flashlights are missing an encapsulation on a circuit board component that protects the flashlight from igniting in an explosive environment, posing an injury hazard to the user or bystander. This recall involves WorkSafe 3-D cell flashlights, model number 2224 LED. The model number is printed at the top right side of the text contained on the flashlight. The flashlight is safety orange with a black reflector assembly and black end cap and measures about 10.25 inches long by 2 inches in diameter. Only 3-D cell flashlights that do not contain a date code stamped on the body of the units are included in the recall.

The flashlights were sold at Koehler-Bright Star Industrial distributors, Grainger and online at Amazon.com from January 2017 through May 2018 for about \$21. Consumers should immediately stop using these recalled flashlights and inspect the flashlights for a missing date code on the body of the flashlights. If the recalled flashlight does not have a date code, contact Koehler-Bright Star for free replacement parts. Contact Koehler-Bright Star at 800-788-1696 from 9 a.m. to 5 p.m. ET Monday through Friday, email at 2224LEDReplacement@kbs-inc.net or online at www.koehlerlighting.com and click on the Contact Us tab for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Koehler-Bright-Star-Recalls-Flashlights-Due-to-Explosion-Hazard>

**XTAVA RECALLS ALLURE HAIR DRYERS DUE TO
FIRE, BURN AND ELECTRICAL SHOCK HAZARDS**

Xtava LLC, of New York, has recalled about 235,000 Allure and Allure Pro hair dryers. The hair dryer and power cord can overheat and catch on fire, posing fire, burn and electrical shock hazards. This recall involves the Allure and Allure Pro 2200W ionic ceramic hair

dryers. The hand-held hair dryers are black or white and include a concentrator nozzle. The hair dryers were sold separately or as part of various hair care kits that included hair treatment products, a flat iron or a diffuser. Many of the units have a label located underneath the back of the unit bearing the following SKU numbers: XTV010001, XTV010001N, XTV010002, or XTV010002N. All units have "xtava" imprinted on the blower end of the hair dryer. The company has received 193 reports of the hair dryers or power cords overheating, melting, exploding or catching fire, including 18 reports of burns and two reports of a minor electrical shock. Four of the reported burn incidents resulted in a blister to the hand, wrist or finger. One consumer reported a severe burn.

The dryers were sold online at Amazon.com, eBay.com, Walmart.com, Xtava.com, Groupon.com and other websites from October 2014 through August 2018 for between \$15 and \$60 when sold separately, and for between \$20 and \$80 when sold as part of a hair care kit. Consumers should immediately stop using the hair dryers and contact Xtava to receive a free replacement hair dryer. Contact Xtava toll-free at 877-643-8440 from 8 a.m. to 5 p.m. ET Monday through Friday, online at www.xtava.com and click on "Product Recalls" or <https://recall-xtava-allure.expertinquiry.com> for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Xtava-Recalls-Allure-Hair-Dryers-Due-to-Fire-Burn-and-Electrical-Shock-Hazards>

**VORNADO AIR REANNOUNCES RECALL OF
ELECTRIC SPACE HEATERS FOLLOWING REPORT
OF DEATH**

About 350,000 VH101 Personal Vortex electric space heaters have been recalled by Vornado Air LLC, of Andover, Kansas. The electric space heater can overheat when in use, posing fire and burn hazards. This recall involves Vornado VH101 Personal Vortex electric space heaters sold in the following colors: black, coral orange, grayed jade, cinnamon, fig, ice white and red. The heaters measure about 7.2 inches long by 7.8 inches wide by 7.10 inches high and have two heat settings

(low and high) and a fan only/no heat setting. “Vornado” with a “V” behind it is printed on the front of the unit. The model/type “VH101,” serial number and ETL mark are printed on a silver rating label on the bottom of the unit. In December 2017, a 90-year-old man in Chanhassen, Minnesota died as a result of a fire involving the recalled heater. Vornado has received a total of 19 reports of the heaters catching on fire.

The heaters were sold by Bed Bath & Beyond, Home Depot, Menards, Orchard Supply, Target and other stores nationwide and online at Amazon.com, Target.com, Vornado.com and other websites from August 2009 through March 2018 for about \$30. Consumers should immediately stop using the recalled heaters and contact Vornado for instructions on how to receive a full refund or a free replacement unit. Contact Vornado toll-free at 855-215-5131 from 8 a.m. to 5 p.m. CT Monday through Friday or online at www.vornado.com and click on “Recalls” in the lower right corner of the homepage or www.vornado.com/recalls and click on the VH101 Personal Heater recall button for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Vornado-Air-Reannounces-Recall-of-Electric-Space-Heaters-Following-Report-of-Death-Fire-and-Burn-Hazards>

CONFER PLASTICS RECALLS POOL STEP SYSTEMS DUE TO ENTRAPMENT AND DROWNING HAZARD

Confer Plastics, of North Tonawanda, New York, has recalled about 100,000 curve in-pool step systems. Children’s limbs can become entrapped in the side openings of the step systems, posing a drowning hazard. This recall involves three models of in-pool step systems with curved steps for in-ground and aboveground pools. The steps and handrails are made of gray and beige plastic. The manufacturing/date code is located on the side walls of each step. Confer Plastics has received two reports of children’s arms becoming entrapped in the side panel openings of the step systems, including reports of minor abrasions. No drownings have been reported.

The pools were sold at Champion Pool Distributors, Cinderella, EMSCO Distributors, Leisure Living, Leslie’s,

Superior Pool Products, Water Warehouse stores and other stores nationwide and online at www.conferplastics.com from January 2013 through July 2018 for between \$200 and \$400. Consumers should immediately stop using the recalled pool step systems and contact Confer Plastics for a free repair kit. The repair kit will include additional panels to prevent entrapment and installation instructions. Contact Confer Plastics at 800-635-3213 from 9 a.m. to 5 p.m. ET Monday through Friday or online at www.conferplastics.com and click on “Curve Recall” for more information. Pictures available here: <https://www.cpsc.gov/Recalls/2018/Confer-Plastics-Recalls-Pool-Step-Systems-Due-to-Entrapment-and-Drowning-Hazard>

CVS NASAL SPRAY RECALLED DUE TO “MICROBIOLOGICAL CONTAMINATION” FEARS

A CVS store-brand nasal spray is being recalled because it could be contaminated, the Food and Drug Administration (FDA) says. The affected product, CVS Health 12 Hour Sinus Relief Nasal Mist, a clear, colorless liquid, is a nasal decongestant. The potential problem is a microbiological contaminant, *Pseudomonas aeruginosa*, which could be life-threatening for people with cystic fibrosis or who are immuno-compromised, the agency says. More than 16,000 units of the half-fluid ounce bottle are included in the recall. Product Quest, the company that makes the spray, is in the process of notifying customers. It’s calling back the spray voluntarily, the FDA notes.

There haven’t been any illnesses reported yet stemming from the spray, the agency adds. The affected product was sold nationwide with a UPC code 50428432365. The box contains the lot number 173089J, with an expiration date of September 2019. The spray can be identified by the white spray bottle and an orange label with “Sinus Relief” written in white and the CVS Health logo on the top left.

Any consumers who bought it are urged to return it or throw it away. The FDA says consumers with questions can call Product Quest at 386-239-8787, Monday through Friday from 8 am to 4 pm EST. “Consumers should contact their physician or health care provider if

they have experienced any problems that may be related to taking or using this drug product,” the agency cautions.

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

XVII. FIRM ACTIVITIES

LAWYERS AND EMPLOYEE SPOTLIGHTS

ANDY BIRCHFIELD

Andy Birchfield joined Beasley Allen in 1996 and he now heads up the firm’s Mass Torts Section. Andy was instrumental in developing the Section in 2000. The Section is now recognized as a national leader in pharmaceutical litigation. The Section’s first foray into national litigation involved the diet drug Fen-Phen cases in Mississippi. As our Mass Torts lawyers continued to obtain large verdicts for our clients, the firm’s national profile was heightened and the reach of the firm’s services was expanded.

Andy and his team of lawyers in the Section have successfully resolved claims for thousands of clients involving drugs and medical devices including Vioxx, Bextra/Celebrex, Baycol, Rezulin, Hormone Replacement Therapy, Actos, hip and knee implants, heart devices and transvaginal mesh.

As a leader on the national front for the Plaintiff’s Trial Bar, Andy was chosen to co-lead the Plaintiff’s Steering Committee for the federal Vioxx multi-district litigation; and he served as lead counsel or co-lead counsel in five Vioxx

trials, including one that resulted in a \$51 million verdict against Merck.

Currently, Andy is serving as Co-Lead Counsel for the Plaintiffs Steering Committee in the multidistrict litigation (MDL) involving the blood thinner medication Xarelto. This drug has been linked to serious side effects including internal bleeding, gastrointestinal bleeding, brain bleed and death.

Bringing relief to folks who have been injured by the actions of others, especially huge corporations, that operate based on “greed,” is what Andy enjoys most about practicing law. Andy says his work is guided by the words of Jesus, who said, “Whatever you did for one of the least of these... you did for me.” Andy says:

To be able to give a voice and to provide help for hurting individuals against the most powerful and influential companies in the world is incredibly rewarding. And, striving to do so in a way that honors the Lord gives me a true sense of purpose and meaning in my work.

With his experience in handling some of the most influential complex litigation cases in the country, Andy is a regular speaker at national, regional and state seminars pertaining to complex mass tort litigation. He is a resource for other lawyers who share his passion for taking on powerful corporate giants and who strive to achieve justice for their clients.

Andy brings his leadership skills to a number of professional organizations. He is a member of the American Association for Justice and the Montgomery Trial Lawyers Association. Andy has served as president of the Alabama Young Lawyers, as well as numerous task forces and committees of the Alabama State Bar. He has served on the Committee for Character and Fitness, which assesses those attributes with respect to applicants for admission to the Bar. Andy also serves as a member of the Board of Governors of the Alabama Association for Justice and is an active member of the Trial Lawyers for Public Justice. Additionally, in December 2017, he became a member of Samford University’s Board of Trustees and will serve on the board through 2022.

This award-winning lawyer has been selected to Alabama Super Lawyers

annually since 2009, and to Best Lawyers in America annually since 2007. In 2010, Andy’s law partners recognized his consistent excellence on behalf of his clients and the firm and named him one of Beasley Allen’s Litigators of the decade. He was also the recipient of the firm’s 2017 Chad Stewart Award, which recognizes lawyers who best demonstrate service to God, family and the practice of law in the service of living out the firm’s motto—“helping those who need it most.” It is this guiding principle that Andy says he believes sets Beasley Allen apart as a law firm. Andy says:

Beasley Allen is a firm committed to doing the right thing for the right reasons. We have a clear objective of helping those who need it most in the civil justice arena and we are steadfast in that pursuit.

It is not only a guiding principle for Andy but a way of life. Andy is active in the community. He and his family are members of First Baptist Church of Montgomery, where he has served as chairman of the Deacon Board, and chairman of the Prayer Ministry. Currently, he teaches an adult Bible study class, and he is serving as the chairman of the Church Leadership Council. Andy has also incorporated his faith with his professional life by starting and leading a weekly Bible study and devotional time at the firm. Since its inception in 1997, this weekly devotion has grown from a small gathering of co-workers to a large group of employees, clients and friends. We are blessed to have Andy in the firm.

MIKE BUSH

Mike Bush has been with the firm for 23 years as one of seven in-house investigators and he currently serves as the firm’s Chief of Security. Like his fellow investigators, Mike has prior law enforcement experience, which is very important to his role as the lead safety officer and investigator. Mike and an off-duty officer from the Montgomery Police Department (MPD) are available to provide safety to employees working at the office outside of normal business hours, year-round. He coordinates the scheduling of the MPD officers.

As an investigator, Mike locates accident reports, accident scene photos from across the country, and the vehicles involved in accident cases the firm investigates. He also interviews clients, investigating officers, and other witnesses in various cases from across the firm. Prior to joining Beasley Allen, Mike retired from the MPD where he was assigned to the Traffic Division in the Accident Investigation / Reconstruction Unit.

Mike and his wife Michelle, a Registered Nurse at Jackson Surgery Center in Montgomery, have been married for 36 years. They have two sons, Matthew and Nolan. Matthew lives in Chattanooga, Tennessee, and is a Registered Nurse at Erlanger Medical Center in the Neurological Intensive Care Unit. Nolan is a lawyer and lives and works in Washington D.C.

In his spare time, Mike enjoys golf, hunting and woodwork, which helps him unwind and takes his mind off all of life’s problems for a little while. Although he enjoys turkey hunting the best of all his hobbies, Mike also enjoys the smiles he gets in exchange for crafting Alabama, and yes, even a few Auburn, birdhouses as gifts.

Mike’s cautious and trained eye for trouble gives the firm’s employees peace of mind. His skill, quick thinking and willingness to help others also recently benefited downtown patrons. He helped the MPD identify people who were attempting to kidnap an elderly gentleman. The people later revealed their plans to force the man to withdraw money from a downtown ATM.

Mike is a very good and dedicated employee and he is a credit to the firm. We are fortunate to have him with us.

JILL CAWLEY

Jill Cawley will mark 23 years with the firm this October. She is currently Secretary to the firm’s seven in-house investigators, transcribing dictation for vehicle inspection reports, witness interviews, inter-office memos, and correspondence. Jill also catalogs case-related information collected by the investigators such as downloading photos of vehicles and accident scenes and transferring data from vehicle downloads to case files. She also maintains inventories of stored vehicles involved in active cases, logs the investi-

gators' hours and handles other requests as needed.

Growing up in an Air Force family, Jill, her brother Richard and their parents moved often. The family returned to Alabama after Jill's dad retired in 1974. Four years later, Jill married her husband, Rob Cawley and the couple moved to Montgomery in 1979. They made their home in the Capital City until Rob's death in 2017. Rob was a good man who has been sorely missed by all who knew him.

The Valley High School graduate, class of 1976, also earned Associate degrees from Southern Union State Junior College and what is now South University. Away from the office, Jill enjoys doing needlework and spending time with her fur baby, Hettie. Jill describes Hettie as half Yorkshire Terrier, half Miniature Doberman and a full-blooded all-American attention hound.

Jill has a very important position with the firm and she does excellent work. She says she has to work very hard to keep all of our in-house investigators in line! We are most fortunate to have Jill with us.

KELLI FLANAGAN

Kelli Flanagan, who has been with the firm for 18 years, is Legal Secretary to Rhon Jones in the Toxic Torts Section. Kelli explains that when she first started with the firm, the section was called Commercial/Business Litigation, but the section's focus has shifted to Toxic Torts. As Legal Secretary, Kelli's job encompasses "a little bit of everything" including handling the calendaring, correspondence and pleadings, arranging travel, organizing files, document review, research, communicating with clients and attorneys, investigating cases, and updating internal documents and client files among other responsibilities.

Kelli is a very proud mother to three beautiful daughters, Alissa (19) and twins Emilee & Bailee (16). Alissa graduated in May 2018 and will be attending classes to earn a Certified Nursing Assistant (CNA) certificate this fall. Her ultimate goal is to work with children with special needs. The twins are high school sophomores and very active as well. They are members of the Junior Civitan and the Family, Career and Community

Leaders of America (FCCLA) clubs. Bailee is a class officer and is on the yearbook staff and Junior Varsity Volleyball team. This year, Emilee will be the Junior Varsity Volleyball team manager. Kelli says she never knows what these young ladies will be into next but looks forward to every adventure they undertake.

A graduate of Faulkner University, Kelli earned an associates degree in Legal Studies. In her spare time, she loves going to the beach, spending time with family and friends, cooking out or just relaxing.

Kelli is another very good employee who is dedicated to her work and to the clients Rhon represents. She does excellent work and we are most fortunate to have her at Beasley Allen.

GWYN HARRIS

Gwyn Harris has been with the firm since January 2001 and she is a Legal Assistant in the Mass Torts Section, working on the talcum powder litigation. Gwyn handles unfiled cases including setting statutes (or ensuring the cases are within the statute of limitations) and assisting with the drafting of complaints to be filed in the appropriate court.

A graduate of Auburn University Montgomery, Gwyn has a bachelor's degree in justice and public safety with a Legal Assistant emphasis. She is married to Heath, a Montgomery Water Works employee. Their daughter, Adalyn Ruth, just started the fifth grade at Prattville Intermediate School. Two dogs, Daisy and Abby, complete their family.

When she's not at the office, Gwyn enjoys spending time with her daughter—doing anything together—and playing with the family's dogs. She loves to read, especially mysteries, and working in the yard with her flowers. Gwyn also enjoys spending time with her family and friends, as well as going to church. She is a member of Vaughn Park Church of Christ in Montgomery, Alabama.

Gwyn does very good work and is dedicated to helping clients obtain justice in their cases. We are blessed to have Gwyn with the firm.

MARC MCHENRY

Marc McHenry joined Beasley Allen in March 2013 just three days after retiring

from the Alabama Department of Public Safety after 27 years of service. Marc is one of the firm's seven in-house investigators and assists the lawyers on personal injury and product liability cases. He verifies the location and coordinates the preservation of vehicles, equipment, and/or machinery that is the subject of the case working with the firm's legal assistants. Marc also works with adjusters and business owners in coordinating inspections of vehicles, equipment and/or machinery involved in the firm's cases. This is critically important in determining whether a viable claim exists.

The inspection process involves photographing, analyzing, measuring and documenting the accident scene or incident location, as well as the vehicles, equipment and/or machinery involved. Marc submits his findings to the attorney assigned to the case. If a case is pursued, Marc will conduct an additional, follow-up investigation including collecting and preserving additional evidence, interviewing witnesses and gathering supplementary case information. Additionally, Marc helps coordinate other future inspections by the firm's experts or Defense experts.

The Faulkner University graduate obtained a Bachelor's Degree in Criminal Justice before starting a career in law enforcement. Marc was a member of the State Trooper Tactical Team and received the Distinguished Service Award as a State Trooper in 1990. He was a firearms instructor, DUI instructor, Field Training Officer, RADAR instructor and RADAR specialist. Marc says he was blessed to be promoted to the rank of Major and retired as the Chief of the Administrative Division.

Marc and his wife Kay have been married for 27 years. They are members of Coosada Baptist Church in Elmore County. Kay is employed with Southern Company. Marc says he and his wife have two awesome children. Their daughter, Krystin, graduated from Troy University with a degree in computer science and works at ALFA in the IT department. Dalton is in his second year of college and he transferred from Auburn University Montgomery to Auburn University where he is pursuing a Bachelor's Degree in Mechanical Engineering. Marc says he is also blessed because his parents are living and doing

well. His sister, Sherry McHenry, previously worked for the firm and now continues her fight against breast cancer. Marc's brother, Jason, works as a Game Warden for the state of Alabama and is very active volunteer at Centerpoint Church in Wetumpka.

In addition to spending time with family, especially weekend visits to the lake for swimming, boating and skiing, Marc also enjoys planting wildlife food plots for himself and others. He says he thoroughly enjoys the outdoors and hunting.

Marc is a tremendous asset to our firm. He is totally dedicated to the firm and to the clients we serve. We are blessed to have Marc in the firm.

XVIII. SPECIAL RECOGNITIONS

TOM METHVIN

Tom Methvin accepted a position with the Beasley Allen Law firm in August 1988. This has been Tom's first and only professional job since graduating from Cumberland School of Law. Armed with a law degree, an undergraduate degree in corporate finance and a strong desire to help "the least of these" as the Bible instructs, Tom was ready to take on corporate giants that took advantage of people.

Tom comes from a long line of lawyers and judges in his family, spanning about 200 years. His dad, Bob Methvin, also served in public office in Barbour County and did a tremendous job. Tom says he always knew he wanted to be a lawyer and that his dad taught him early in life the importance of helping the poor, less educated and less advantaged populations in society and that is his favorite part of practicing law.

An example of the types of cases Tom handled during the early stages of his career involved a door-to-door sales and finance scam. Tom was the lead lawyer in the landmark predatory lending case, obtaining a verdict of \$581 million, which is the largest predatory lending verdict in American history. Consumer advocates hailed this verdict because as

a result of this litigation, the Defendant finance company shut down its business in the state of Alabama. He was also co-counsel in other consumer fraud cases resulting in verdicts of \$50 million, \$45 million, \$34.5 million, \$25.4 million and \$15 million. Tom has tried a total of 13 cases that have resulted in verdicts in excess of \$1 million.

The Alabama native of Eufaula just celebrated 30 years with our firm and 20 of those years have been as its Managing Attorney. At the age of 35, he assumed that role. Shortly afterward, Tom, with input from the firm's Board of Directors, totally reorganized the firm's structure. Tom realized that if lawyers could focus on certain areas of law, the firm could more effectively carry out its mission of "helping those who need it most." This move placed Beasley Allen at the forefront of a practice that is common today—organizing a firm in sections based on case type. The approach also allows lawyers to remain current on emerging trends and innovative in their practice of law. Beasley Allen has over the years expanded into a nationwide firm.

In 2016, Tom created the firm's Executive Board, charging its members to help lead the firm into the next generation. In conjunction with the Managing Attorney, the Executive Board identifies new areas of the law in which the firm will become involved and recommends processes for the smooth operation and growth of the firm. Tom celebrates the firm's employees for making it unique as a law firm. He says:

The people who work at Beasley Allen make it so special. They actually care for the people we represent. We attempt at all times to put our clients' interests first ahead of ourselves.

Tom has been a leader in the legal profession. As an active member of the Alabama State Bar Association, he has served in a number of leadership positions, including on the Board of Bar Commissioners for nine years, the Executive Council for two years, and as President (2009-2010) when he capitalized on the opportunity to emphasize and encourage increasing pro bono services to those in need. He has also provided leadership to groups outside of the legal profession, including as Past President

of the Board of Directors for Brantwood Children's Home, and serves on the Board of Directors for the Montgomery Area Chamber of Commerce, and the Cystic Fibrosis Advisory Panel.

Tom's vision, leadership and passion has helped lead the firm to become a national powerhouse in providing legal advice and representing victims of wrongdoing. He says he looks forward to what is in store for Beasley Allen over the next 30 years.

XIX. FAVORITE BIBLE VERSES

Sandra R. Gober, who is with Canaan Land Ministries, sent in the following scriptures:

Trust in the Lord with all your heart and lean not on your own understanding; in all your ways submit to him, and he will make your paths straight. Proverbs 3:5-6 NIV

Because of the Lord's great love we are not consumed, for his compassions never fail. They are new every morning; great is your faithfulness. Lamentations 3:22-23 NIV

Sandra says that "His faithfulness and mercy to me are new every morning, because of His love for me." She says when she trusts, He will make ALL her paths straight.

JP Sawyer, a lawyer in our firm before he returned to his home town of Enterprise, sent in two of his favorite verses this month. JP says: "I had a friend pass away recently and was asked to speak at his funeral. This verse in Mark summed him up—he served everyone and put others ahead of himself. It would be great if we all could be remembered for serving others."

For even the Son of Man did not come to be served, but to serve, and to give his life as a ransom for many. Mark 10:45

JP says that he sometimes has a problem with "expecting" God to be there, but this verse reminds him that "we have to go after Him!"

You will seek me and find me when you seek me with all your heart. Jeremiah 29:13

Tyner Helms, a lawyer in our firm, sent in the following verses. He says Joshua 1:9 is “the verse I always revert back to when I experience fear or anxiety. It is particularly applicable to me as a lawyer, but I believe it applies to everyone at one time or another. To do anything that requires people to put their trust and confidence in you, you have to first have confidence in yourself. This verse reaffirms that God will give us strength and courage when we trust in him, and that we can overcome any fear or doubts we have about a situation.”

Have I not commanded you? Be strong and courageous. Do not be afraid; do not be discouraged, for the Lord your God will be with you wherever you go. Joshua 1:9

Are you so foolish? After beginning by means of the Spirit, are you now trying to finish by means of the flesh?” Galatians 3:3

Tyler says: “This verse from Galatians may not be one of the more famous verses, but it is important. Living in the Spirit is something that I don’t think gets enough focus. Of course it is good for us to maximize our humanity and do good works, but when we put too much stock in doing good works as a way to get close to God, we run the risk of dulling our ears to the Holy Spirit. This verse was Paul reminding us that humbling yourself and trying to listen and live by the Spirit are essential for maturity as a Christian.”

XX. CLOSING OBSERVATIONS

GROWTH AND SUCCESS IN ATLANTA

Our Atlanta office had a busy and productive summer and we appreciate Chris Glover, a lawyer in the firm’s Personal Injury & Product Liability Section, for his leadership after taking on the role of Managing Attorney for the

Atlanta office. The Atlanta team has grown quickly benefiting our clients and others across the state of Georgia who have a need for legal assistance in our firm’s practice areas.

In January 2017, this new endeavor began with Chris and our law partner Navan Ward, a leader in our Mass Torts Section, heading the opening of the new office. This summer they were joined by two other firm lawyers. Parker Miller, who focuses on cases involving products liability and personal injury or death claims, has developed an interest in negligent security cases. For example, Parker recently filed a lawsuit on behalf of the family of a 21-year-old who was gunned down while attending a concert at an Atlanta nightclub last November.

Clay Barnett also moved recently to our Atlanta office. Clay’s practice includes automotive, heavy equipment and marine defect class action litigation. Additionally, the office has brought in two new lawyers. Rob Register, a life-long Georgia resident, is an experienced Georgia lawyer. He joined the Atlanta team and handles cases involving life-altering personal injury and wrongful death. The Atlanta office also welcomed Sharon Zinns, who has dedicated her practice to helping clients affected by asbestos-related illnesses including mesothelioma, lung cancer, and asbestosis. She will continue that as the primary focus of her practice.

The support staff in Atlanta now includes Jennifer Tanon (Legal Assistant), Ryan Traub (Legal Secretary), and two recent law school graduates, Daniel Philyaw and Benjamin Keen, who await their bar exam results.

Our most important measure of success has to be in the outcomes our lawyers have already achieved for our clients in Georgia. Earlier this year, lawyers in the Atlanta office secured \$25 million in verdicts and settlements in one week, including a \$12 million verdict for one family. Chris Glover and Ben Baker, another lawyer in our Personal Injury & Products Liability Section, were part of the legal team that helped the family gain justice for their daughter who was killed in September 2012 when the rear axle of her 1999 Toyota 4Runner fractured.

We anticipate the rest of this year will be equally productive. As our Atlanta office grows, we are pleased to continue

serving as your “Atlanta Connection” to Beasley Allen’s legal services. With nearly 40 years of experience in catastrophic injury and wrongful death cases, our lawyers are handling product liability cases and truck accident cases in Georgia, as well as cases involving negligent premises security. Additionally, lawyers in our Atlanta office are handling cases involving mesothelioma as a result of asbestos exposure.

Our lawyers can be reached by phone at 404-751-1162 or you can call toll-free at 800-898-2034 to discuss any cases of interest or to get more information. We are pleased and highly honored to be a part of the Atlanta legal community.

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

XXI. PARTING WORDS

Sen. John McCain died last month, and his death leaves a real “void” in our nation’s political structure. Being a Democrat, I did not always agree with Sen. McCain. However, as an American, I have always had deep respect for this man. Sen. McCain was a man who loved his country and spent all of his adult life serving and defending it. I won’t go into all of the Senator’s many accomplishments during his life of dedicated service. Instead, I am just going to include his last words, written by him to be read at his death.

**STATEMENT DELIVERED ON BEHALF OF
SENATOR JOHN MCCAIN:**

“My fellow Americans, whom I have gratefully served for sixty years, and especially my fellow Arizonans, Thank you for the privilege of serving you and for the rewarding life that service in uniform and in public office has allowed me to lead. I have tried to serve our country honorably. I have made mistakes, but I hope my love for America will be weighed favorably against them.

I have often observed that I am the luckiest person on earth. I feel that way even now as I prepare for the end of my life. I have loved my life, all of it. I have had experiences, adventures and friendships enough for ten satisfying lives, and I am so thankful. Like most people, I have regrets. But I would not trade a day of my life, in good or bad times, for the best day of anyone else’s.

I owe that satisfaction to the love of my family. No man ever had a more loving wife or children he was prouder of than I am of mine. And I owe it to America. To be connected to America’s causes—liberty, equal justice, respect for the dignity of all people—brings happiness more sublime than life’s fleeting pleasures. Our identities and sense of worth are not circumscribed but enlarged by serving good causes bigger than ourselves.

‘Fellow Americans’—that association has meant more to me than any other. I lived and died a proud American. We are citizens of the world’s greatest republic, a nation of ideals, not blood and soil. We are blessed and are a blessing to humanity when we uphold and advance those ideals at home and in the world. We have helped liberate more people from tyranny and poverty than ever before in history. We have acquired great wealth and power in the process.

We weaken our greatness when we confuse our patriotism with tribal rivalries that have sown resentment and hatred and violence in all the corners of the globe. We weaken it when we hide behind walls, rather than tear them down, when we doubt the power of our ideals, rather than trust them to be the great force for change they have always been.

We are three-hundred-and-twenty-five million opinionated, vociferous individuals. We argue and compete and sometimes even vilify each other in our raucous public debates. But we have always had so much more in common with each other than in disagreement. If only we remember that and give each other the benefit of the presumption that we all love our country we will get through these challenging times. We will come through them stronger than before. We always do.

Ten years ago, I had the privilege to concede defeat in the election for president. I want to end my farewell to you with the heartfelt faith in Americans that I felt so powerfully that evening.

I feel it powerfully still.

Do not despair of our present difficulties but believe always in the promise and greatness of America, because nothing is inevitable here. Americans never quit. We never surrender. We never hide from history. We make history.

Farewell, fellow Americans. God bless you, and God bless America.”

I sincerely hope that elected officials at every level, and especially those in Washington, will see fit to become more like John McCain. We cannot continue to be a deeply divided country. Sadly, “hate” rather than “love” and “compassion” seems to be the factor that motivates and influences decisions by some politicians in high office. Their conduct affects our nation in a negative and harmful manner.

I pray that reflecting on the life and legacy of Sen. John McCain, an American hero, will change the hearts of persons in government who have the responsibility to lead us during these difficult times and who lack the love of country exhibited by John McCain.

May God bless America!

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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.



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.

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