

# *The* JERE BEASLEY REPORT

*October 2018*



ATLANTA | MONTGOMERY



# I. CAPITOL OBSERVATIONS

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## *BEASLEY ALLEN PART OF TEAM SELECTED BY GEORGIA ATTORNEY GENERAL FOR OPIOID LITIGATION*

Our firm was honored to be selected as one of the firms to represent the State of Georgia in the state's opioid litigation. We appreciate the confidence placed in our firm by Georgia Attorney General Chris Carr. A news release from the attorney general's office can be found in the opioid section of this *Report*.

# II. AUTOMOBILE NEWS OF NOTE

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## *AUTOMOBILE ENGINE FIRES CAN PROVE TO BE DEADLY*

Greg Allen, the senior Products Liability lawyer in our firm, recently settled a case for a confidential amount with General Motors involving the death of an elderly gentleman, who was severely burned when a fire started in the engine compartment of his Chevrolet Blazer and quickly spread into the passenger compartment. Mr. Lamar Hough was on his way home when, unbeknownst to him, his Blazer developed an oil leak around an improperly installed oil filter.

The vaporized oil came out under pressure and sprayed onto the hot exhaust manifold. The vehicle started running rough due to the drop in oil pressure. Mr. Hough was very close to his driveway going up a hill when the Blazer shut off and the engine caught fire. The Blazer rolled back into the ditch. Mr. Hough was properly wearing his seatbelt.

At rest, the Blazer was tilted at an angle in the ditch. As a result, Mr. Hough had difficulty trying to unlatch his seatbelt. A witness, who tried to help release the seatbelt, testified in deposition about the buildup of heat and smoke inside the Blazer. The witness turned and ran to retrieve a fire extinguisher. The engine fire grew larger and, due to the lack of a firewall in the Blazer, the fire came into

the passenger compartment below the dashboard.

The interior of the passenger compartment caught fire in less than two minutes. Mr. Hough, whose clothes were on fire, eventually was able to get the seatbelt to release and he climbed out of the passenger side of the vehicle, but not before he was severely burned. He was transferred to the burn unit at the University of Alabama at Birmingham, where he suffered for four months before dying from the complications from his burn injuries.

Many consumers think that their vehicles have firewalls. While some European designs do, most U.S. and Asian vehicles do not. The manufacturers cut numerous holes through what was once called the "firewall." It should be noted that wiring harnesses, cables and HVAC vents penetrate the dash panel. Usually the holes are filled with some type of flammable material, such as rubber or plastic grommets. Car manufacturers generally make no effort to fireproof the barrier or bulkhead between the engine compartment and the passenger compartment.

It should be noted that the auto manufacturers refuse to call the barrier between the engine compartment and the passenger compartment a "firewall." Instead, they call the barrier a "dash panel" or "bulkhead." The reason is because car companies do no testing to determine how long this dash panel can withstand an engine fire before it goes into the passenger compartment.

There is no Federal Motor Vehicle Safety Standard that requires engine fires to be contained for any period of time. It is well known that engine fires are the most prevalent automotive fires, far more prevalent than fuel-fed fires, such as gasoline tank or fuel line rupture. There are 500 deaths and 3,000 injuries a year from engine fires getting into the passenger compartment; however, car manufacturers generally ignore this hazard.

Many consumers are not aware of the flammability danger of the numerous fluids and materials in the engine compartment that will allow the engine to burn. Oil, gasoline, transmission fluid, windshield wiper fluid, antifreeze, plastics and rubber are all capable of supplying a fuel load to a fire.

Studies show that at least 15 to 20 minutes escape time is needed to allow time for fire departments to arrive on the scene. This is especially true for rural areas. After crashes, the occupants may be disabled or entrapped and cannot

escape the passenger compartment. There are numerous horror stories about people being burned alive by engine fires coming into the passenger compartment. This is a needless tragedy.

Many European-designed cars, since at least the mid-1990s, have double firewalls, which isolate the engine compartment from the passenger compartment. These designs also isolate the brake reservoir to help reduce the potential for fires post-crash.

While Greg was in the process of writing this article, there was a news article of a gentleman in Birmingham who was entrapped in his car and burned to death from an engine fire before the fire department arrived. These fires are very

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prevalent and need to be addressed. However, without government intervention, only lawsuits can encourage manufacturers to do their job and design safer products.

The GM case was handled by Greg Allen, Stephanie Monplaisir and LaBarron Boone from Beasley Allen, along with Shane Seaborn and Myron Penn of the Penn & Seaborn Law Firm with offices in Clayton, Union Springs and Montgomery. The amount of the settlement is confidential. Greg did a tremendous job of discovery in this case and some of the depositions and Defense experts were devastating for the automaker. Greg felt it very important that the facts of the case and information relating to the overall safety problems involved not be confidential. If you need more information, contact Greg at 800-898-2034 or by email at [Greg.Allen@beasleyallen.com](mailto:Greg.Allen@beasleyallen.com).

#### **GM RECALLS 1 MILLION VEHICLES OVER POWER STEERING DEFECT**

General Motors has issued a recall of more than 1 million 2015-model trucks and SUVs, saying an electrical defect in the vehicles' power steering can cause drivers to lose control during low-speed turns. In a recall report submitted to the National Highway Traffic Safety Administration (NHTSA) last month, General Motors LLC wrote that six models of light trucks built between September 2013 and October 2015 had a potential defect that can cause the power steering to cut out during low-speed turns, then turn back on, because of an electrical issue. The recall encompasses 450,711 Chevrolet Silverados, 79,505 Suburbans and 145,198 Tahoes; 109,151 GMC Yukons and 186,083 Sierras; and 45,270 Cadillac Escalades.

A representative for GM said the company is aware of 30 crashes and two injuries related to the defect, but no fatalities. According to the recall report, 2 percent of the 1 million affected vehicles (about 20,000 of them) are estimated to have the defect. GM says it first became aware of the defect in the 2015 vehicles after receiving an increase in field reports and customer complaints about the steering. GM opened a safety investigation in June.

According to GM, when the power steering system experiences low voltage for more than one second, such as during a low-speed turn, the electrical power steering system shuts off until voltage

rises again. The company said that the defect can be identified in progress as the dashboard may alert the driver. Other electrical systems—such as the radio, dashboard lights, air conditioning or cruise control—may also shut down at the same time. GM is offering reimbursement to vehicle owners for repairs to the system. The automaker said it made improvements between 2015 and 2017 model years to address the electrical issue.

In a statement, NHTSA encouraged vehicle owners to visit its website to determine if their vehicles are affected and to contact a local dealership to schedule a free repair if they are. The loss of power steering described by customers matched an electrical issue that led to a recall of 691,000 2014-model Chevrolet Silverado 1500 and GMC Sierra 1500 pickup trucks that GM conducted last year, and the investigation showed it was caused by the same issue.

Source: [Law360.com](http://Law360.com)

#### **GM CRIMINAL CASE ENDS AFTER \$900 MILLION SETTLEMENT AND THREE-YEAR OVERSIGHT**

The U.S. Department of Justice's (DOJ) criminal charges that General Motors Co. committed wire fraud and made false statements related to a deadly problem with ignition switches were officially dismissed in New York federal court last month. This came after three years of oversight following a \$900 million settlement. U.S. District Judge Alison J. Nathan agreed to the request of federal prosecutors who said that the car-maker had complied with the provisions of a deferred prosecution agreement reached in September 2015, and that the case should therefore be dismissed with prejudice. The following is a brief summary of the settlement.

GM agreed to resolve the DOJ's criminal probe against it over the 2014 ignition switch recall for \$900 million. A deferred prosecution agreement filed in September 2015 confirmed that settlement, in which the automaker agreed to pay the amount to resolve the charges. In the settlement, GM admitted not only that it failed to disclose the ignition switch defect to regulators in a timely manner, but also that it misled consumers about the safety of the affected vehicles.

GM will not be prosecuted, nor will any of the company's officials face criminal charges. However, it should be noted that officials at GM knew about the defective ignition switch for about 10 years before the automaker was exposed in the Melton case. We have written extensively in previous issues about this Georgia case. As we have reported, Atlanta lawyer Lance Cooper was directly responsible for discovering the defect that had been known and hidden by GM for a decade. Lance brought this to NHTSA's attention. Had this not happened, there would have been no recall and no multidistrict litigation (MDL). Lance also brought our firm into the Melton case and the rest is history.

In the multidistrict litigation, which came about after the Melton case, people made personal injury and wrongful-death claims against GM. The design defects in the GM vehicle models caused the ignition to slip out of the "on" position, shutting off the vehicle and preventing airbags from deploying. Drivers would be unable to control their vehicles and in many cases crashes would occur. More than 100 deaths were caused by this defect.

GM launched an extensive recall of affected vehicles in 2014. The government is represented by Sarah K. Eddy. The case is *USA v. General Motors Company* (case number 1:15-cr-00747) in the U.S. District Court for the Southern District of New York.

Source: [Law360.com](http://Law360.com)

#### **GM BUYERS MUST CERTIFY CLASS IN ORDER TO ADVANCE \$1 BILLION SETTLEMENT**

Purchasers of General Motors vehicles manufactured before the carmaker's 2009 bankruptcy, now seeking damages caused by the ignition-switch defects, must certify a class to pursue a proposed settlement that could cost the reorganized New GM \$1 billion in new stock. U.S. Bankruptcy Judge Martin Glenn made this ruling on Sept. 25. The pending settlement that would allow and estimate claims on behalf of 11.4 million people against the bankruptcy trust for Old GM cannot be approved without the victims first certifying classes of car buyers whose vehicles lost value after the manufacturer admitted in 2014 that millions of its old cars may have ignition-switch defects.

This ruling creates another obstacle for roughly 600 "economic loss" and personal injury victims who for more than a year

have tried to settle claims against a trust set up for general unsecured creditors of GM's bankrupt predecessor, known as the "GUC Trust." The Plaintiffs, who brought their claims in late 2016, well after the 2009 bankruptcy sale and creation of "New GM," had a similar settlement rejected last year after the trust backed out at the last minute under pressure from GM.

The settlement proposal was intended to end a lengthy legal battle over claims that GM knowingly sold faulty vehicles before, during and after its 2009 bankruptcy. The parties submitted the settlement agreement to the bankruptcy court just months after Judge Glenn chastised the GUC Trust and its prior counsel for backing out of an earlier settlement, acting in what he describes as "unmistakably" bad faith.

The new settlement, much like the old one, will require the trust to pay out \$15 million and then agree to accept additional claims that it has been previously contesting. It is estimated this could bring the total value of unsecured claims against Old GM up to more than \$35 billion. This would require New GM, under a Chapter 11 creditor payout scheme, to turn over 10 million shares of common stock to pay those claimants.

In his opinion, Judge Glenn observed that "despite New GM's intransigence and unwillingness to negotiate," the carmaker is right about the class certification requirement in this instance since the parties are attempting to bind millions of economic loss claimants who have not appeared in the Chapter 11 case to a settlement. Thus far only a few hundred Plaintiffs have signed on to the agreement.

Plaintiffs' lawyer Elizabeth Cabraser of Lief Cabraser Heimann & Bernstein LLP said that she and her clients appreciate "the thoughtful opinion and guidance of the bankruptcy court" as the parties move forward. The Plaintiffs are represented by Brown Rudnick LLP, Stutzman Bromberg Esserman & Plifka APC, Hagens Berman Sobol Shapiro LLP, Lief Cabraser Heimann & Bernstein LLP, Goodwin Procter LLP and Hilliard Muñoz Gonzales LLP.

The cases are *In re: Motors Liquidation Co. et al.*, (case number 1:09-bk-50026) in the U.S. Bankruptcy Court for the Southern District of New York, and *In re: General Motors LLC Ignition Switch Litigation* (case number 1:14-md-02543)

in the U.S. District Court for the Southern District of New York.

Source: Law360.com

### **FORD GETS INITIAL APPROVAL ON \$300 MILLION SETTLEMENT IN TAKATA MDL**

A Florida federal judge has granted preliminary approval to a \$299.1 million settlement for Ford Motor Co. to resolve multidistrict litigation (MDL) over defective Takata Corp. air bags. It will also hasten the removal of dangerous air bag inflators from 6 million affected vehicles. U.S. District Judge Federico A. Moreno said the agreement, which mirrors previous settlements with automakers in the case, appeared to meet the necessary requirements. A fairness hearing was set for Dec. 11 to determine final approval. Lead class counsel Peter Prieto of Podhurst Orseck PA had this to say:

*We are pleased that Judge Moreno granted preliminary approval, and that our Ford class members are one step closer to seeing this settlement become effective. This settlement, like the ones that preceded it, will not only provide compensation but will save lives through unique and ongoing outreach efforts that are designed to have our class members and Ford's customers understand the danger of Takata's inflators so that they replace these defective inflators without delay.*

Ford Mustang owner Dolly L. Wright was the only objector. She asked the court to require class counsel to disclose the effectiveness of the "outreach program" approved in previous settlements to inform and motivate vehicle owners to come to dealerships to get their Takata air bags replaced. The court was assured by lead counsel that the settlement special administrator has been testing the various communications methods being used and said they would fully address the issue in a written response before final approval.

Under the terms of the settlement, Ford will do the following:

- Ford will inform affected consumers about the recall of cars with the defective air bags using a state-of-the-art outreach program that regularly contacts class members through direct mail, phone calls, email, internet ads, social media and in-person canvassing.

- Ford will provide compensation to consumers for their losses resulting from the recall, including the reimbursement of reasonable out-of-pocket expenses or up to a \$500 payment for those who did not document their out-of-pocket expenses.

- Ford will also provide rental cars for class members while they wait for their recall repairs.

Ford will make a total payment of \$299.1 million. There will be a 20 percent deduction as a credit for the rental car/loaner program. The payment will cover all attorneys' fees and costs, service awards to class representatives and costs for class notice and settlement administration. The settlement covers vehicle owners' economic loss claims, but the company will remain a Defendant to automotive recyclers' claims in the multidistrict litigation. The court severed those claims and they are not a part of the settlement.

The order identified 27 class representatives and named lawyers from Podhurst Orseck, Boies Schiller Flexner LLP, Power Rogers & Smith LLP, Baron & Budd PC, Carella Byrne Cecchi Olstein Brody & Agnello PC and Lief Cabraser Heimann & Bernstein LLP as settlement class counsel.

Ford, which entered into the agreement in July, became the seventh automaker to reach a settlement in the MDL. Honda agreed to a \$605 million deal last September, Nissan settled for \$98 million in August 2017 and Toyota, Subaru, Mazda and BMW agreed to pay a combined \$553.6 million in May 2017.

Four additional automakers—General Motors LLC, Fiat Chrysler, Volkswagen Group of America and Mercedes-Benz USA LLC – that were brought into the MDL with new suits filed in March are still litigating the claims against them. Judge Moreno said that he would schedule a hearing on their pending motions to dismiss in either late November or December after briefing is complete. Consumers first filed suit in 2014, alleging the cheap but volatile ammonium nitrate that inflates the bags can misfire. This is true especially in humid conditions, blasting chemicals and metal fragments at passengers and drivers. Takata's air bag inflators have been linked to at least 11 deaths in the U.S., and as had been reported the company has faced massive global recalls.

Takata has pled guilty to wire fraud, agreed to pay \$1 billion in fines and restitution and acknowledged that it ran a

scheme to use false reports and other misrepresentations to convince automakers to buy air bag systems that contained faulty, inferior or otherwise defective inflators. In June, the company filed for bankruptcy in Delaware and Japan.

The class is represented by chair lead counsel Peter Prieto, Aaron S. Podhurst, Stephen F. Rosenthal, John Gravante, Matthew P. Weinshall and Alissa Del Riego of Podhurst Orseck PA. Parts of the suit are being handled by Boies Schiller Flexner LLP, Colson Hicks Eidson, Power Rogers & Smith LLP, Lief Cabraser Heimann & Bernstein LLP, Carella Byrne Cecchi Olstein Brody & Agnello PC and Baron & Budd PC.

The MDL is *In re: Takata Airbag Products Liability Litigation*, (case number 1:15-md-02599) in the U.S. District Court for the Southern District of Florida.

Source: Law360.com

#### **HONDA EXPANDS RECALL OVER AIR BAGS**

Honda is recalling about 1.4 million Honda and Acura cars in the U.S. to replace the deadly Takata air bags. This comes several months ahead of the National Highway Traffic Safety Administration's (NHTSA) schedule.

The recall is the fourth phase of the Takata air bag recall announced by NHTSA in 2016. Honda said it decided to take action before NHTSA's planned expansion date in late December due to the significant progress the company has made with existing recall repairs. The automaker said it has nearly 78 percent of the existing recalls repaired and that parts are now available to complete the project.

The recall of Takata air bags, which can explode and send shrapnel flying inside the passenger compartment, is the largest in U.S. history. The recall involves 19 automakers, about 37 different types of vehicles in the U.S. and about 50 million air bags, according to NHTSA.

The recalls are being conducted in phases based on vehicles' location and age. As of Sept. 30, a total of about 12.9 million Honda and Acura vehicles in the U.S. have been or are now subject to recall to replace the air bags, according to the automaker.

#### **FORD RECALLS NEARLY 2 MILLION VEHICLES OVER FIRE CONCERNS**

Ford Motor Co. has recalled nearly 2 million F-150 Regular Cab and SuperCrew Cab pickup trucks, saying the front seat belts in the vehicles have the potential to start fires during collisions. In a press release, Ford said the seat belt pretensioners that reduce the slack of front seat belts during crashes in some F-150s made between 2015 and 2018 can ignite fires when they activate. Seat belt pretensioners use a small pyrotechnic device, triggered by collision sensors, to ignite gas and drive a piston that rapidly tightens the seat belt. The press release said:

*Ford is aware of 17 reports of smoke or fire in the United States and six in Canada. Ford is not aware of any accidents or injuries as a result of this condition.*

The Ford press release said the pretensioners in driver and front passenger-side seat belts in the recalled vehicles can produce excessive sparks that can ignite gas released into the central pillar that houses the seat belt mechanism. Ford said there have been reports of that fire spreading to carpeting and insulation behind the pillar as a result. The National Highway Traffic Safety Administration (NHTSA) launched a preliminary investigation into reports of F-150 fires in August. In a report posted to NHTSA's website, the agency said it had received five reports of fires in SuperCrew F-150s, three of them serious enough to result in total destruction of the truck. No injuries were reported.

The recalled vehicles were manufactured at Ford's Dearborn, Michigan, and Kansas City, Missouri, plants between March 2014 and August 2018. Ford said approximately 1.6 million of the trucks were sold in the United States, 440,000 in Canada and 37,000 in Mexico. Ford dealers will conduct repairs of the trucks free of charge, which will include removing insulation from the pillar's trim, applying heat-resistant tape to remaining insulation and carpeting and modifying rear interior panels.

Ford is currently facing pending litigation over other allegedly defective parts. There is currently a pending putative class action claiming Ford sold F-150 pickups between 2015 and 2017 with defective door latches that do not work in freezing temperatures and failed to warn customers of the defect. Another pending

suit alleges the F-150—along with the Fusion, Escape, Flex, Focus and F-350 vehicle models—were sold with lug nuts that swell and delaminate, making it impossible to remove the tire with the Ford-supplied wrench and forcing drivers to pay professionals to change the tires.

Source: Law360.com

#### **TOYOTA RECALLS 1 MILLION VEHICLES OVER ELECTRICAL WIRE FIRE RISK**

Toyota has recalled nearly 1 million of its Prius and C-HR compact SUV vehicles over concerns that an exposed wire in the engine can short-circuit and cause fires. The Japanese automaker said the problem affects 2016-2018 Prius and C-HR models. Car owners will be able to take their vehicles into Toyota dealerships to have the faulty wires fixed. Toyota announced the recall, saying in a statement:

*The problem is caused by "an engine wire harness which is connected to the hybrid vehicle power control unit. A portion of the wire harness could contact the cover at this connection and wear over time, causing an electrical short circuit, which can generate heat. If sufficient heat is generated, there is an increased risk of a vehicle fire.*

When car owners bring their vehicles in, the wire harness assembly will either be "replaced with a new one that includes a protective sleeve" if a "wire core is exposed," or the harness assembly will simply have protective tape applied if a core is not exposed, Toyota said. The company estimated that about 1 million vehicles would be affected by the recall. Roughly 800,000 of those - including all of the C-HR model compact SUVs - were sold in Japan, Europe and Australia, while 192,000 Priuses sold in the U.S. will also be affected. The recall announcement came just days after Toyota announced that it would be recalling nearly 20,000 2012 model Avalons for possibly defective seat belt buckles, which could result in the airbag not deploying properly.

Toyota was also sued in February by a putative class of car owners who claim that certain Prius models have a defect that creates a serious risk of stalling while traveling at high speeds, potentially resulting in a crash. Weeks before that, in January, Toyota announced that it would be adding several hundred thousand vehicles to the ongoing recall sparked by

faulty airbags manufactured by Takata Corp., which was dragged into a protracted bankruptcy by the ensuing fallout.

Source: Law360.com

### **SMART CAR SEAT, RESTRAINT, AND STRUCTURE DEATH SUIT ALLOWED TO GO FORWARD**

Cheri Marie Jolin was driving her SMART car in Colorado on Sept. 28, 2015, when traffic slowed down in front of her. As she slowed down to avoid hitting the car in front of her, Ms. Jolin was rear-ended by an F 150, killing her.

Natalie Carrado, Brittany Jolin and Alexander Nemers brought suit on behalf of Ms. Jolin against Daimler AG and its subsidiary, Mercedes Benz USA (MBUSA), claiming that the driver's seat, seating system, restraint system, and structure failed in the wreck, causing the victim's fatal injuries.

U.S. District Judge William J. Martinez ruled last month that the negligence claims against Daimler AG and MBUSA could proceed. Defense lawyers had contended that the "group pleading" alleged by the Plaintiffs was improper. Defense attorneys argued that the claims against Daimler AG and MBUSA failed to give each Defendant notice of what each particular Defendant allegedly did wrong. However, Judge Martinez ruled that "the Complaint describes the conduct and the claims at issue" and that "MBUSA is a wholly or partially owned subsidiary of Daimler" therefore making it "more reasonable for Plaintiffs to allege common allegations against the two remaining Defendants."

Ms. Jolin was operating a 2008 SMART car when she was killed. Judge Martinez ruled that, under Colorado law, the Plaintiffs' breach of warranty and Colorado Consumer Protection Act claims failed and those claims were dismissed.

The case is *Natalie Carrado et al. v. Daimler AG et al* (case number 1:17-cv-03080) in the U.S. District Court for the District of Colorado.

Source: Law360.com

### **NISSAN CAN'T ARBITRATE CLAIMS IN DEFECTIVE SUNROOF SUIT**

A California federal judge has denied the attempt by Nissan North America to compel arbitration for a consumer in a potential class action that accused the carmaker of selling vehicles with defective

sunroofs. U.S. District Judge William Orrick found that Nissan was not a third party to an arbitration agreement the customer signed with the dealership. Judge Orrick ruled that if the arbitration agreement Plaintiff Linda Spry entered into with the dealership when buying her 2012 Nissan Murano, in Centennial, Colorado, on Feb. 16, 2013, meant to include Nissan as manufacturer, it would have said so. The judge said in his order:

*Here, the dealership could have easily included Nissan as a third-party beneficiary, but it did not. The plain language of the contract suggests intent to include a limited class of third parties who are involved in disputes arising from the purchase, leasing, servicing or contract negotiations with the dealership. When a party who executed a contract or document could easily have designated a third-party beneficiary but failed to do so, it is indicative of a lack of intent.*

Nissan would be an obvious party to include in the agreement, had the dealer intended it, according to the judge's order. The fact that the language of the agreement is so broad as to not mention Nissan should not be inferred to mean it could be a third party under certain circumstances. Nissan argued that in suing it, Spry is unfairly holding the manufacturer vicariously liable for the dealership's alleged actions.

Judge Orrick said that by Nissan's own admission there is no intertwining of the dealership's employees, agents or affiliates with those of Nissan. That, the judge says, only further distances the automaker from any argument that it is a third party to any agreement made between Johnson and the dealer. The underlying suit was filed in February 2017. It was alleged by the drivers that the panoramic sunroofs Nissan installed in several models going back as far as 2008 are vulnerable to shattering suddenly.

The suit alleges that Nissan's decision to use thin, tempered glass that is weakened in the manufacturing process caused the defect. The complaint, as amended, seeks damages on behalf of drivers in California, Colorado, Florida, Illinois and New York under various state laws.

Spry is represented by Gregory F. Coleman, Mark E. Silvey and Adam A. Edwards of Greg Coleman Law PC, and Crystal Foley of Simmons Hanly Conroy

LLC. The case is *Johnson v. Nissan North America Inc.* (case number 3:17-cv-00517) in the U.S. District Court for the District of California, San Francisco Division.

Source: Law360.com

## **III. PURELY POLITICAL NEWS & VIEWS**

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### **THE NATIONAL SCENE**

The upcoming mid-term elections involving races for the U.S. Senate and House of Representatives could drastically change the power structure in Washington. There will be a number of races in key states around the country. If the Democratic Party stays on message and runs on issues affecting all of the American people, especially working men and women, the voting on Nov. 6 should result in a drastic change in the make-up of both the House and Senate. While races in Alabama don't appear to be in any danger of going to the Democrats, that is not the case in a number of key states. Based on recent national polling, it appears that women and minorities will turn out in record numbers on Nov. 6. If that happens the Democrats could well take over in both houses of Congress.

### **ALABAMA POLITICS FOR THE GENERAL ELECTION**

Based on all of the polling in Alabama that I have seen, the races for Governor, Lt. Governor and Attorney General won't be close. At press time in their races, Gov. Kay Ivey, Rep. Will Ainsworth and Attorney General Steve Marshall were leading their opponents in all of the polls by double digits. While Justice Tom Parker, according to the polls, has a lead in the race for Chief Justice of the Alabama Supreme Court, he will face a very strong challenge from Birmingham Circuit Judge Bob Vance. This race could wind up being closer than the other races. As for all of the other statewide races, I do not believe there is enough time for any of the Democratic candidates to overcome leads as high as 20 percent in some of the races.

## IV. AN UPDATE ON THE OPIOID LITIGATION

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The following is a press release from the office of Georgia Attorney General Chris Carr that was mentioned in the Capital Comments Section. We are including the release in its entirety.

### ***THE STATE OF GEORGIA WILL JOIN THE OPIOID LITIGATION***

Georgia Attorney General Chris Carr today announced that he has selected outside private counsel to serve as co-counsel in an investigation and litigation involving the manufacture, marketing, sale and distribution of prescription opioid products in the state of Georgia. John Bevis of the Barnes Law Group will be appointed as Special Assistant Attorney General (SAAG) pursuant to O.C.G.A. § 45-15-4. The Barnes Law Group will work in conjunction with The Cooper Firm, Franklin Law, LLC and Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.

“As Attorney General, I have dedicated every available resource our office has to fight the opioid epidemic—whether by increasing communication and coordination through our Statewide Opioid Task Force, cracking down on illegal prescribing through our Medicaid Fraud Control Unit or conducting training opportunities for law enforcement and prosecutors through our national partnerships,” said Attorney General Chris Carr. “As my office pursues legal action against those who may have had a role in fueling this epidemic, I feel very strongly that this legal team’s combined experience and expertise will help put our legal team in the best position to ensure the interests of Georgians are protected.”

Qualified attorneys were invited to submit proposals to the Office of the Attorney General on or before Friday, May 18, 2018 at 5:00 p.m. to include the following information: educational and professional background; particular abilities and experience relevant to representation of the

Georgia Department of Law for purposes of conducting the investigation and litigation; the firm’s experience with the pharmaceutical industry; state consumer protection laws, including the Georgia Fair Business Practices Act; Medicaid and false claims laws; damage and economic loss recovery; the firm’s trial and appellate experience; and the firm’s arrangements for large and complex litigation matters (including the adequacy of financial resources for such litigation).

The Attorney General and staff reviewed 20 proposals. After reviewing, the Attorney General invited seven in for an interview before making a final decision.

A portion of each selected firm’s “About” section is listed below for reference. You can learn more about the firms by visiting their respective websites.

#### ***BARNES LAW GROUP***

The attorneys at Barnes Law Group have the unique charge of Making It Right for the citizens of Georgia and across the country. They are an unrelenting collection of individual talents that make up one of the most powerful and varied groups of litigators that always fall on the side of consumer advocacy and the rights of the individual. Our legal team is made up of the best legal minds in Georgia. Our lawyers and experienced staff have literally spent decades working in both the public and private sectors on behalf of those who have been wronged by others’ actions. As a result, Barnes Law Group is highly regarded as a top national law firm that provides results for our clients.

#### ***THE COOPER FIRM***

We are a personal injury and wrongful death law firm that has successfully won multi-million dollar awards and settlements on behalf of our clients nationwide. Lance Cooper founded The Cooper Firm in 2006. With experience in substantial personal injury and wrongful death cases, he has represented plaintiffs in numerous civil jury trials and has successfully prosecuted hundreds of cases and

gained multi-million dollar verdicts and settlements on behalf of his clients. Mr. Cooper has built a practice that brings together a team that combines legal expertise and compassion to ensure clients receive the benefits of a large firm with the personal attention of a small firm. With this in mind, The Cooper Firm represents a select few clients in order to ensure that each client receives the attention they deserve.

#### ***FRANKLIN LAW, LLC***

Franklin Law is a Georgia law firm operated by the father-daughter team, James (“Jimmy”) B. Franklin and Rebecca Franklin Harris. Franklin Law was formed by Rebecca in 2009 and Jimmy joined as Of-Counsel to the firm several years later. Together, the duo brings more than 65 years of experience in representing individual clients, businesses, and government entities. Specifically, the duo has substantial experience in product liability litigation and other complex matters.

#### ***BEASLEY ALLEN LAW FIRM***

In 1979, Jere Locke Beasley founded the firm, which is now known as Beasley, Allen, Crow, Methvin, Portis & Miles, P.C. The firm represents plaintiffs and claimants in civil litigation. The firm employs more than 75 lawyers and over 200 support staff. Our primary offices are based in Atlanta, Georgia, and Montgomery, Alabama, although we work with attorneys and clients throughout the country. Our Atlanta office focuses on cases in the state of Georgia and especially in the metro area. Beasley Allen represents plaintiffs and claimants in the following areas: Business Litigation, Personal Injury and Product Liability, Medical Devices and Drugs, Fraud, Employment Law, and Environmental.

Our attorneys are leaders in complex litigation in courtrooms around the U.S., including state and federal courts. Our attorneys and cases have been profiled in major national media such as Time

Magazine, Business Week, Fortune Magazine, Forbes.com, Wall Street Journal, Los Angeles Times, USA Today, U.S. News & World Report, New York Times, National Law Journal, New Orleans Times-Picayune, CNBC's "The Closing Bell," 60 Minutes, NPR, CNN, Headline News, NBC's "Today Show," MSNBC, ABC's "Good Morning America" Fox News and Fox's "The O'Reilly Factor." We have also represented clients testifying before U.S. Congressional committees on Capitol Hill in Washington, D.C.

Source: News Release

### **OPIOID MDL STAKES RISE FOR PHARMACY BENEFIT COMPANIES**

The nation's largest pharmacy benefit management (PBM) companies must clamp down on painkiller prescriptions and that will take court action to make it happen. A new motion filed in the multi-district litigation (MDL) raises the stakes for PBMs over the opioid epidemic. The motion for a preliminary injunction targeted CVS Caremark, Express Scripts Inc. and OptumRx Inc., which collectively control most of the PBM market. A court order is sought requiring the three companies to immediately adopt policies consistent with a Centers for Disease Control and Prevention (CDC) guideline for prescribing opioids. If you aren't familiar with PBMs I recommend that you do a little research on what they are and how they operate.

The request was made as part of two MDL lawsuits: one filed by union benefit plans serving Ohio residents and another filed by Webb County, Texas. Those suits raise the profile of pharmacy benefit managers in the MDL.

The motion stated that the PBMs—which decide whether and how drugs should be covered by employers and insurers—have many shortcomings in their policies related to opioids. The PBMs allow "largely unchecked prescribing of opioids for chronic pain," permit excessive quantities of opioids to be dispensed and improperly restrict access to drugs that treat opioid addiction, the motion said. The motion will be heard by U.S. District Judge Dan Aaron Polster, who has done a magnificent job of handling the very complex MDL.

The MDL features more than 1,000 cases that are mostly aimed at drug manufacturers, distributors and pharmacies. However, a few cases also target pharmacy benefit managers. Webb County's suit says that PBMs "ignore or neglect their assorted contractual undertakings to ensure patient wellness." The suit filed by union benefit plans says that PBMs have for years been capable of identifying improper prescribing, but that they nonetheless "continued to authorize coverage for millions of unnecessary and/or inappropriate opioid prescriptions."

The MDL 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 individual cases are *County of Webb v. Purdue Pharma LP et al.* (case number 1:18-op-45175) and *Employer-Teamsters Local Nos. 175 & 505 Health & Welfare Fund et al. v. Purdue Pharma LP et al.* (case number 1:18-op-45446) in the same court.

Source: Law360.com

### **OXYCONTIN CREATOR CONTINUES TO PROFIT FROM OPIOID EPIDEMIC**

After making record profits from sales of OxyContin, and creating millions of new opioid addicts in the process, Richard Sackler now stands to make millions more peddling the antidote to that addiction. We have previously reported about Purdue Pharma's role in fueling our nation's opioid epidemic. Purdue's aggressive marketing campaign for OxyContin was unprecedented for a schedule II opioid.

The company's campaign targeted already-high prescribers of opioid pain medications and included a large sales force whose bonuses dwarfed their annual salaries, branded promotional items, and coupons for a free 7- to 30-day supply of the prescription pain medication.

Through it all, Purdue taught its sales reps to downplay physicians' concerns about the risk of addiction. Purdue's tactics worked, and OxyContin reached blockbuster status in the early 2000s, raking in nearly \$3 billion in sales over 2001-2002. Even as sales began to decline, OxyContin generated \$1.74 billion in 2017.

However, OxyContin's commercial success came at a steep price—rates of opioid addiction skyrocketed across the

country, with addiction and overdose rates in states and cities mirroring increases in OxyContin prescriptions.

In the face of increasing restrictions related to opioid prescribing, Richard Sackler recently patented a new formulation of a drug designed to help wean people off of his very own blockbuster drug OxyContin. Richard Sackler, son of Purdue Pharma's founder, was in charge of the research department that developed OxyContin. Sackler later became president and then co-chairman of Purdue while OxyContin made billions.

Now, Sackler stands to add to his fortune by continuing to exploit victims of the opioid epidemic that his drug helped create. It should be noted that Sackler has merely reformulated buprenorphine, a medication long approved for the treatment of opioid addiction and currently available as a more-affordable generic.

Lawyers in Beasley Allen's Mass Torts Section continue to investigate cases involving patients who have suffered addiction or overdose from prescription opioids. For more information, contact Liz Eiland, a lawyer in the Section, at 800-898-2034 or by email at [Liz.Eiland@beasleyallen.com](mailto:Liz.Eiland@beasleyallen.com).

Sources: *Washington Post*, *Reuters* and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2622774/>

### **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](mailto:Rhon.Jones@beasleyallen.com), [Rick.Stratton@beasleyallen.com](mailto:Rick.Stratton@beasleyallen.com), [Ryan.Kral@beasleyallen.com](mailto:Ryan.Kral@beasleyallen.com), [Parker.Miller@beasleyallen.com](mailto:Parker.Miller@beasleyallen.com), [Jeff.Price@beasleyallen.com](mailto:Jeff.Price@beasleyallen.com) or [William.Sutton@beasleyallen.com](mailto:William.Sutton@beasleyallen.com).



## V. WHISTLEBLOWER LITIGATION

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### **THIRD CIRCUIT CLARIFIES PUBLIC DISCLOSURE BAR IN FALSE CLAIMS ACT CASES**

In *United States v. Omnicare, Inc.*, the Third Circuit Court of Appeals recently clarified the operation of the public disclosure bar in the False Claims Act. The case focused on allegations that the Defendant unlawfully discounted prices to supply prescriptions to Medicare Part A patients in nursing homes.

The government reimburses nursing homes for these patients on a fixed per diem rate that covers all services including prescriptions. This discount allegedly induced nursing homes to give the Defendant contracts to supply prescriptions to other patients covered by Medicare Part D and Medicaid—both of which are reimbursed on a cost basis. This practice is known as “swapping.”

The relator alleged that Defendant agreed “to provide drugs to Part A patients at per-diem rates that were so low... that they must have been below cost, in exchange for the right to service the nursing home’s other residents at the market rate.” The relator claimed that such swapping violated the Anti-Kickback statute.

The district court dismissed the case, finding that the claims were prohibited pursuant to the public disclosure bar. The public disclosure bar prohibits a relator from bringing a False Claims Act lawsuit based on a fraud that has already been disclosed through certain public channels, unless the relator is an “original source” of the information. The district court relied on public reports generally discussing and disclosing the practice of swapping as well as the Defendant’s 10-k financial disclosure.

The Third Circuit rejected the overbroad interpretation of the public disclosure bar and held that publicly available information “could not have reasonably or plausibly supported an inference” of fraud. The court found that none of the documents, alone or considered together, disclosed the Defendant’s alleged fraudulent transactions. The court specified that “the documents do not point to any specific fraudulent transactions directly attributable to” the Defendant.

Instead, the court said, “the documents merely indicate the possibility that such a fraud could be perpetrated in the nursing home industry.” The Third Circuit further rejected application of the public disclosure bar because the relator used non-public information to “make sense of publicly available information.” Thus, the Third Circuit reversed and remanded the case back to the district court where it will proceed further.

Source: *National Law Review*

### **GEORGIA WHISTLEBLOWERS SHARE IN \$262 MILLION SETTLEMENT WITH FLORIDA HOSPITAL CHAIN**

Florida-based hospital chain Health Management Associates (HMA) and corporate parent Community Health Systems will pay \$262 million in a global settlement to resolve eight whistleblower suits against HMA in Georgia, Florida, Pennsylvania, Illinois, North Carolina and South Carolina. The settlement made with the Justice Department includes both civil claims and criminal charges stemming from a scheme to defraud Medicare and other federal health care programs by billing federal programs for inpatient admissions and services that should have been handled as outpatient or observation services.

The fraud was reported by both ER physician Craig Brummer and Ralph D. Williams, the former CEO for HMA hospitals Walton Regional Medical Center and Barrow Regional Medical Center. Despite simultaneously working for HMA in the same area, the two individuals were unaware of the other’s actions in reporting.

HMA cyclically defrauded the government by abusing federal policies that determine reimbursement rates based on inpatient diagnoses; the length of a patient’s hospital stay is immaterial to the money the hospital receives. After securing the higher federal reimbursement rate by admitting a patient, HMA would then quickly release said patient in order to admit new ones, generating higher profits for the corporate hospital.

HMA hospital executives perpetuated the fraud by various means, including but not limited to pressuring staff to admit ER patients by issuing ambitious admission goals, then observing whether these goals were met by monitoring the software HMA installed to track whether individual hospitals were meeting them. If expecta-

tions were not met, staff were dismissed from their employment.

During his time as CEO, Williams commissioned an independent report to analyze hospital admissions from the emergency room. Upon presentation of the report to his corporate supervisor in 2009, Williams was told to destroy the findings. He was subsequently fired by HMA after merely six months of employment.

Parent company Community Health Systems acquired HMA in 2014 while the whistleblower cases were pending. Since the acquisition, both parent company and HMA have operated under a mandatory corporate integrity agreement with the Justice Department’s inspector general that required the companies to establish an ethics and compliance-reporting program. The agreement allowed the companies to continue to participate in Medicare, Medicaid and other federal health care programs despite HMA’s known practices.

Community Health Systems acknowledged the settlement, which also resolved kickback allegations against several HMA hospitals, will be paid beginning in October 2018. Williams and Brummer will each receive between 15 percent and 25 percent of about \$53 million from the total settlement for their reporting. Under the False Claims Act, successful whistleblowers receive a portion of the recovered damages associated with the reported fraud.

The HMA settlement is the second result of Williams’ reporting fraudulent behavior observed during his six-month tenure at Walton Regional Medical Center. Williams’ previous whistleblower case settled in 2016 for more than \$513 million, and involved Dallas-based Tenet Healthcare Corp in one of the largest “pay-to-play” hospital corporate fraud schemes of the time. In the 2009 suit, Williams learned the hospital, along with several other hospitals owned by Tenet Healthcare Corp., arranged a deal with a string of clinics that were paid kickbacks by hospitals in return for sending them undocumented pregnant women in labor who qualified for Medicaid.

Reporting deceitful billing practices like HMA’s benefits taxpayers by both the financial recovery of federal funds fraudulently dispersed, as well as disincentivizing practices that expose patients to unnecessary harm and/or jeopardize a patient’s safety. If you have any information related to fraudulent and/or unsafe

practices you would like to share, contact a member of our firm's Whistleblower Team at 800-898-2034.

Source: CSNBC

#### **CALIFORNIA COMMISSIONER SUES BIOPHARMA GIANT ABBVIE ALLEGING ILLEGAL KICKBACKS IN PROMOTING HUMIRA**

California Insurance Commissioner Dave Jones filed an insurance-fraud lawsuit last month in Alameda County Superior Court on behalf of the state against AbbVie Inc. The state alleged that the company gave illegal kickbacks to health care providers to prescribe HUMIRA, which the state classified as an expensive and dangerous drug with potentially deadly side effects. The case was filed on behalf of the state under the Insurance Frauds Prevention Act.

It is alleged in the complaint that private insurers have paid out \$1.2 billion in HUMIRA-related pharmacy claims, making what Commissioner Jones believes is the largest health insurance fraud case in California Department of Insurance (CDI) history. It was further alleged in the complaint:

*AbbVie engaged in a scheme including both classic kickbacks—such as cash, meals, drinks, gifts, trips, and patient referrals—and more sophisticated ones. The more sophisticated schemes involved free and valuable professional goods and services to physicians to induce and reward HUMIRA prescriptions, according to the complaint. These professional goods and services allegedly included free insurance processing and prior authorizations, gifts of medical practice management hardware and software, and even marketing assistance, all of which save physicians valuable staff time and resources.*

The complaint claims that AbbVie inserts its own personnel directly into the homes of patients, and that when doctors prescribe HUMIRA, AbbVie sends its registered nurses into patients' homes, representing them to be an extension of the doctor's office. It is alleged:

*AbbVie nurses provide pharmacy and insurance authorization assistance, open enrollment resources, paperwork help, advice on insurance products, and other services,*

*all of which provide a substantial value and save physicians' time, money, and resources.*

The allegations of AbbVie's reported misconduct were brought to the attention of the CDI by a whistleblower, a registered nurse, who was employed as an AbbVie Nurse Ambassador in Florida. Commissioner Jones said in a statement:

*AbbVie spent millions convincing patients and health care professionals that AbbVie Ambassadors were patient advocates—in fact, the Ambassadors were HUMIRA advocates hired to do one thing, keep patients on a dangerous drug at any cost. Pharmaceutical companies know financial inducements are illegal, and patients depend on their health care professionals for straightforward honest information about their care and medication risks. In this case, patient care was traded for \$1.2 billion in ill-gotten gains.*

#### **ALABAMA HOSPITAL REACHES \$4.3 MILLION FCA SETTLEMENT OVER TOXICOLOGY TESTS**

East Alabama Medical Center (EAMC) and its subsidiary Aperian Laboratory Solutions, LLC has agreed to pay an additional \$4,250,000, plus attorney's fees and litigation expenses, to settle claims it violated the Anti-Kickback Statute and submitted false claims for payment to Medicare in violation of the False Claims Act. This settlement was in addition to earlier settlements in this same case of nearly \$2.4 million.

The whistleblower suit alleged Aperian paid percentage commission kickbacks to Summit Diagnostics and Compass Laboratory Solutions, marketing companies that arranged for doctors nationwide to refer toxicology lab tests to Aperian in Opelika, Alabama. The Anti-Kickback Statute makes it illegal to provide anything of value in exchange for referring or arranging the referral of services paid for by Medicare and other federal health insurance payors.

Congress passed the Anti-Kickback Statute to prevent kickbacks from influencing where medical services are provided to patients, or who provides those services. As Congress made clear, referral decisions should be based on the best interest of the patient and quality of care,

and not influenced by financial benefits to the referring provider or entity.

EAMC and Aperian previously paid \$477,403 to settle a limited number of claims set out in the litigation. In addition, the marketing companies and their owners settled the claims against them by agreeing to pay nearly \$2 million to reimburse taxpayers for the claims referred on account of the kickbacks they were paid, plus paying the whistleblower's attorneys' fees and expenses.

The whistleblower was a former Aperian employee who attempted to stop the wrongful conduct internally, but he was ignored by his supervisors. He will be paid a whistleblower reward for his efforts under the False Claims Act *qui tam* provisions.

Don McKenna and Randi McCoy, lawyers at Hare Wynn, along with Battle & Winn lawyers Bob Battle and Adam Plant, represented the whistleblower in this case. The United States did not intervene in the case. However, the U.S. Attorney's Office for the Northern District of Alabama cooperated with the whistleblower's lawyers throughout the litigation.

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.

## VI. PRODUCT LIABILITY UPDATE

### **A LOOK AT ATV ACCIDENTS AND CHILDREN**

Accidents involving children are some of the most tragic cases lawyers in our firm see. All too often we receive calls regarding children and young adults hurt or killed on ATVs and UTVs. ATVs (all-terrain vehicles) are off-road motorized vehicles having three or four wheels, a straddle seat for the operator and handle bars. UTVs (utility terrain vehicles) are motorized recreational off-highway vehicles with four or more wheels, multiple seats and steering wheels. UTVs are also commonly referred to as side by sides.

The Consumer Product Safety Commission (CPSC) has tracked injuries and fatalities of ATVs since 1982. As of Dec. 31, 2016, there were 14,653 ATV-related fatalities reported to the CPSC. Of those 14,653 fatalities reported, 3,232 were children younger than 16, or 22 percent of all fatalities. In 2016 alone, there were more than 101,000 ATV-related emergency department treated injuries in the United States. An estimated 26 percent of these injuries were to children younger than 16.

As shocking as these figures are, they do not include the countless fatalities and injuries suffered on UTVs. The CPSC has publicly commented that ATVs are at the top of the list of the most dangerous products the commission regulates, causing more injuries and deaths than almost any other product. Unfortunately, the data indicates that injuries and deaths caused by ATVs is on the rise.

The American Academy of Pediatrics has taken note of the unsettling connection between ATVs and pediatric injuries. At a recent AAP National Conference, the director of Pediatric Emergency Medicine from the University of Iowa characterized the problem as a growing epidemic, noting that the number of ATVs has more than tripled in the past decade. Additionally, the size, weight, horsepower and speed of the average ATV has dramatically increased in recent years as well. The high speeds the ATVs are capable of reaching has compounded the problem as the severity of accidents has also increased. The vehicles are given a high center of gravity, resulting in a vehicle that is susceptible to rollovers. Additionally, these vehicles are marketed as “go

anywhere,” “do anything” vehicles, creating a false sense of security for many users.

Recently, Fernando Stein, MD FAAP, President of the American Academy of Pediatrics, stated:

*As a pediatrician, my number one job is to keep children safe and healthy. ATVs are not safe for children and should not be used by any child under the age of 16. Children are not developmentally capable of operating these heavy complex machines.*

The American Academy of Pediatrics advises all parents to protect their children by preventing them from driving or riding in an ATV. This is good, sound advice.

Far too many children have been needlessly injured and killed on ATVs and UTVs. As Dr. Stein advises, the only way to stop these injuries and deaths is to prevent children from riding ATVs and UTVs altogether. However, if children are allowed on ATVs or UTVs it is imperative that every precaution be taken to make sure that the driver is capable of handling the vehicle and all oversight possible is maintained to ensure the safe operation of the vehicle.

If you need more information on this subject, contact Evan Allen at 800-898-2034 or by email at [Evan.Allen@beasleyallen.com](mailto:Evan.Allen@beasleyallen.com). Evan and other lawyers in our firm's Personal Injury & Products Liability Section have handled a number of cases involving children injured or killed while riding on ATVs and UTVs. They know firsthand how dangerous these vehicles can be for children.

Sources: [cpsc.gov](http://cpsc.gov) and [aap.org](http://aap.org)

### **TRACTOR MANUFACTURERS MUST INSTALL MORE SAFETY DEVICES TO PROTECT OCCUPANTS FROM FORESEEABLE TRACTOR FALLS**

Tractor accidents account for an estimated 130 deaths each year, so it is no surprise that agricultural workplaces have the highest rate of death due to work-related injuries. What is surprising is that these deaths are, in many cases, preventable. Most deaths occur when the operator falls from the tractor after the tractor tips up or completely overturns. Injury and death caused by tractor falls could be minimized or eliminated if the tractor contained safety devices such as seatbelts, rollbars, deadman switches, and rotary

mower guards. Yet, even after decades of research pointing to the necessity of these safety devices, manufacturers are still reluctant to incorporate and promote the use of these devices into their tractor designs.

Until 1985, seatbelts were not installed on tractors as standard equipment. In 1986, the National Safety Council found that less than one-third of tractors were equipped with seatbelts. Even today—almost 30 years after seatbelts became standard—tractor manufacturers are not promoting the use of seatbelts. Many tractor advertisements feature operators who are not using their seatbelts. Despite warnings on tractors suggesting use of seatbelts, operators primarily forego the use of seatbelts in favor of less restriction.

Due to minimal seatbelt usage, it is important that tractor manufacturers incorporate other safety devices, such as deadman switches and rotary mower guards to prevent injury in case of a fall. If an operator is not using a seatbelt, a deadman switch will cut off all power to the tractor once it senses that the operator has left the tractor seat. In addition, a rotary mower guard will minimize injuries from a tractor fall by protecting the occupant from being run over by the trailing mower. When a deadman switch is combined with a mower guard, the occupant is protected from being run over and from being dragged in front of the guard for an extended distance. This minimizes the chances of the occupant's body coming into contact with the rotating mower blade.

Seatbelts alone are not sufficient in protecting tractor occupants from injury and death just as seatbelts alone are not sufficient in protecting car occupants from injury and death. The automobile industry recognizes that passive safety devices, such as airbags, are necessary to protect car occupants from foreseeable accidents because an active safety device, such as a seatbelt, is dependent on the occupant's choice to utilize it. Tractor manufacturers must also recognize the need for passive safety devices, such as deadman switches and rotary mower guards that protect the occupant even if the occupant chooses not to protect himself by wearing a seatbelt.

Beasley Allen lawyers have successfully handled many cases involving tractor defects. If you need more information, contact Greg Allen, Cole Portis, Ben Baker, or Stephanie Monplaisir at 800-898-2034 or by email at [\*\*JereBeasleyReport.com\*\*](mailto:Greg.Allen@beas-</a></p></div><div data-bbox=)

leyallen.com, Cole.Portis@beasleyallen.com, Ben.Baker@beasleyallen.com or Stephanie.Monplaisir@beasleyallen.com.

Source: www.tractorlaw.com

### **ELECTRIC SCOOTERS CAUSE SEVERE INJURIES TO SPIKE IN MAJOR CITIES**

Rentable electric scooters are proliferating in cities throughout the U.S. as the latest urban transportation trend. But growing alongside the number of electric scooters and the companies providing them are the serious injuries caused by a lack of regulation or familiarity, and mechanical problems.

One San Francisco emergency room physician told *The Washington Post* recently that he sees as many as 10 severe electric scooter injuries a week. The Santa Monica Fire Department said it has responded to dozens of serious electric scooter accidents just this past summer.

And it's the same situation in Atlanta, Austin, Nashville, and other cities the Post surveyed—with ER doctors reporting spikes in severe accidents since electric scooters debuted. The kinds of injuries electric scooter drivers suffer in urban areas resemble those sustained in car crashes, with broken or fractured limbs, shoulders, noses, wrists, arms and shoulders, and traumatic brain injuries that can leave lifelong debilitating effects.

Contributing to these problems is a complete lack of safety regulations, such as a helmet requirement. Some electric scooter companies, such as Bird and Skip, are making efforts to provide helmets to scooter drivers, but at the same time are pushing back against proposed helmet mandates where they arise in legislatures.

Electric scooters may be unsafe due to mechanical problems, lack of maintenance, or defects. Several complaints highlighted by *The Washington Post* story related to accelerators that become stuck in position, causing riders to speed out of control, or bad brakes that made them unstoppable.

Critics of the electric scooters say that fleets of the devices are poorly maintained by amateur mechanics with no prior mechanic experience and poor training, making them even more prone to mechanical failures that can injure riders.

With so many dangers posed by the seemingly innocent-looking electric scooters, it may come as no surprise that the major scooter companies—Bird, Lime,

and Skip—require riders to give up their right to sue, either individually or as part of a class action, with arbitration agreements.

Arbitration clauses, which appear quite frequently in the “fine print” in terms of service and other user agreements, are widely used by companies whose services pose a physical risk to consumers. These agreements strip electric scooter riders of their legal leverage by forcing personal-injury and other complaints into mediation with an arbitrator chosen by the company.

Source: AL.com

## **VII. AN UPDATE ON THE TALC LITIGATION**

### **THE STATUS OF THE TALC MDL**

The talcum powder litigation in federal court continues to proceed toward a general causation hearing in June 2019. Judge Freda Wolfson ordered Plaintiffs to disclose their experts on Nov. 16, 2018. Thereafter, Defendants Johnson & Johnson (the manufacturer of Baby Powder and Shower to Shower talc products), Imerys Talc America (the talc mining company), and Personal Care Products Council (PCPC) (the trade organization), will be required to serve their expert reports on Feb. 15, 2019. During the June 2019 general causation hearing, the multidistrict litigation (MDL) court will consider whether there is sufficiently reliable scientific evidence to conclude that talcum powder products increase the risk of ovarian cancer.

During recent weeks, Plaintiffs in the MDL have taken numerous depositions of corporate employees of Johnson & Johnson, Imerys and PCPC. These depositions have focused on Defendants' efforts to influence the published scientific literature and manipulate the FDA and the National Toxicology Program so that talcum powder products would not be classified as carcinogenic when used in the female genital area. Evidence supports the conclusion that the talcum powder products contain not only talc and perfume as described on the products' labels but also fibrous talc, asbestos, and high levels of heavy metals such as nickel, chromium and cobalt. Fibrous talc is

made up of similar chemical elements to platy talc but the particles themselves are needle-like in nature, causing damage to cells, which results in the development of cancer. The World Health Organization's International Agency on Research for Cancer (IARC) has classified asbestos, fibrous talc, and heavy metals as substances that cause cancer in humans. Asbestos has been shown in studies to specifically cause ovarian cancer. Despite mounting evidence to the contrary, Defendants continue to deny the fact that there is asbestos in their talcum powder products and has been for decades.

More than 8,500 cases are pending in the federal MDL where women suffered from or died of ovarian cancer. After the MDL court addresses general causation, discovery related to their specific claims is expected to commence, leading to trials of individual cases. If you need more information on the MDL contact Leigh O'Dell or Liz Eiland at 800-898-2034 or by email at Leigh.Odell@beasleyallen.com or Liz.Eiland@beasleyallen.com.

### **CURRENT STATUS OF TALC/OVARIAN CANCER VERDICTS AND UPCOMING TRIALS**

Since early 2016, a remarkable number of Baby Powder/ovarian cancer cases have gone to trial against Johnson & Johnson and its talc supplier, Imerys Talc America. Six single-Plaintiff cases have been tried to verdict. Additionally, a 22-Plaintiffs case has been tried to verdict. Plaintiffs have won six of these trials and all are currently going through the appellate process.

The first of these verdicts (February 2016) was a \$72 million verdict on behalf of the estate of Jacqueline Fox—that Judgment was “reversed and vacated” by the Missouri Court of Appeals on jurisdictional grounds and has been sent back to trial Judge Rex M. Burlison for consideration of further litigation in St. Louis, Missouri.

The second verdict (April 2016), on behalf of Gloria Ristesund, totaled \$55 million and was also “reversed and vacated” by the Missouri Court of Appeals on jurisdictional grounds. It is currently being appealed to the Missouri Supreme Court.

The remaining Plaintiffs' verdicts are just starting the appellate process and are as follows:

- Deborah Giannecchini—St. Louis—October 2016—\$70 million
- Lois Slemp—St. Louis—April 2017—\$110 million
- Eva Eccheverria—Los Angeles—August 2017—\$417 million
- Gail Ingham, et al. (22 Plaintiffs)—St. Louis—July 2018—\$4.69 billion

While there are no more trials set for 2018, next year is already shaping up to be a busy one. The following cases are currently being worked up for trial:

- *Forrest, et al v. Johnson & Johnson, et al.*—January 2019—St. Louis, Missouri; *Brower v. Johnson & Johnson, et al.*—March 2019—Atlanta, Georgia; *Young, et al. v. Johnson & Johnson, et al.*—April 2019—St. Louis, Missouri
- *Kleiner v. Johnson & Johnson, et al.*—May 2019—Philadelphia, Pennsylvania
- Cases to be determined—August 2019—St. Louis, Missouri
- *Farrar, et al. v. Johnson & Johnson, et al.*—October 2019—St. Louis, Missouri

While Johnson & Johnson continues to deny that its products are dangerous to consumers, it appears its talc supplier sees the writing on the wall. There will be a time when J&J will realize that it should do the right thing and settle all pending litigation. In the meanwhile, we will continue the battle.

If you need more information on the Talc Litigation contact Ted Meadows, Danielle Mason, David Dearing or Brittany Scott, all lawyers in our Mass Torts Section, at 800-898-2034 or by email at Ted.Meadows@beasleyallen.com, Danielle.Mason@beasleyallen.com, David.Dearing@beasleyallen.com or Brittany.Scott@beasleyallen.com.

#### **JOHNSON & JOHNSON'S TALC SUPPLIER JUMPS SHIP IN A WAVE OF SETTLEMENTS**

The talc supplier for Johnson & Johnson's Baby Powder, Imerys Talc America, has been quick to defend the "quality and safety" of its talc in statements made to the press. However, despite this, Imerys has remained tight-lipped about the wave of recent settlements of claims asserting Imerys knowingly supplied Johnson and Johnson with talc tainted by asbestos and knew of the cancer-causing risks associ-

ated with its talcum powder. With Imerys Talc America jumping ship, Johnson & Johnson has been left to defend alone in its ill-founded defense claims a number of cases.

Since 2013, Imerys has been named in numerous lawsuits alleging its talc was used in products that eventually caused cancer in consumers. The company has maintained it is not at fault. However, since 2016 several juries have held Imerys liable for its part in causing these injuries. In June 2018, on the heels of several high-profile losses, Imerys Talc America settled with 22 women who alleged the company supplied Johnson & Johnson with asbestos-tainted talc that caused them to develop ovarian cancer. By doing so, Imerys Talc America evaded what would have been a high-profile trial focusing in part on whether Imerys knowingly sold talc tainted with asbestos.

A company spokeswoman announced in an email that the company, Imerys Talc America, was being dismissed from the lawsuit and had reached a settlement agreement with the 22 women Plaintiffs. Details of the settlement between the 22 Plaintiffs and Imerys have not been confirmed by Imerys; however, Bloomberg reports that Imerys Talc America paid the Plaintiffs at least \$5 million to free the company from the suit.

Most recently, on Sept. 15, Imerys Talc America chose to avoid having a jury decide its fate by entering into a last-minute settlement with a California woman who alleged that both Johnson & Johnson and Imerys Talc America knowingly sold asbestos-tainted talc and were responsible for causing her cancer. Plaintiff Carolyn Weirick said she used J&J's Baby Powder and Shower-to-Shower products almost daily for years, and that the asbestos in the products caused her mesothelioma, a cancer associated with exposure to asbestos.

During closing arguments, Weirick's lawyer asked the jury to award \$29.2 million in compensatory damages, and additional punitive damages. Shortly before the conclusion of closing arguments, the trial judge informed the jury that Imerys was no longer part of the case, but responsibility for Weirick's cancer, if any, would still be apportioned between J&J and Imerys.

Although Imerys has publicly confirmed that the company settled with Weirick, the company has declined to provide any details of the settlement. It should be noted that for years, Imerys has

placed a cancer warning on the containers of talc sold to J&J.

Sources: Bloomberglaw.com; Bloomberg.com and Law360.com

#### **IMPORTANT RULING AGAINST J&J IN A WARNING LABEL SUIT IN CALIFORNIA**

A California federal judge has rejected Johnson & Johnson's bid to dismiss a suit alleging the company violates state warning label and false advertising laws by selling asbestos-contaminated talcum powder products. U.S. District Judge George Wu denied J&J's motion to dismiss the suit brought by seven women. This lawsuit has opened a new front in the ongoing legal battles over J&J's talc by claiming that the alleged contamination of the products violates California's False Advertising Law, Unfair Competition Law and Proposition 65. Prop 65 requires businesses of all kinds to put up cancer warnings if their operations or products might expose customers to known carcinogens.

Judge Wu rejected J&J's argument that the complaint did not contain enough specific factual allegations to meet the standards set out by the U.S. Supreme Court in its 2007 and 2009 rulings *Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal*, which required federal complaints to go beyond "mere conclusory statements" to survive dismissal. Judge Wu wrote in his order that the instant suit presented "one of the occasional opportunities" to investigate where the line is drawn between "an insufficient conclusory allegation and a sufficient factual one." He found that the women had made it across that line. Judge Wu wrote:

*The court has reviewed the parties' briefs and the plaintiffs' allegations, and has determined that those allegations fall into the latter camp for purposes of stating the relevant claims, even if not pled at an evidence-level of detail. The court believes that defendants are simply demanding more from the plaintiffs at this stage than is required.*

Judge Wu also rejected J&J's argument that the women hadn't complied with Prop 65's requirements by actually testing J&J's products to see if they contained asbestos before filing a 60-day presuit notice that it was violating Prop 65, writing that barring an admission by the Plaintiffs that they failed to investigate, or "obvious timing-based failure," no Prop 65

case had been dismissed on these grounds. The Plaintiffs, Hermelinda Luna, Alexandria Hanks on behalf of the estate of Tania D. Hanks, Ethel Herrera, Jeanette Jones, Becky Canzoneri, Margaret Reed and Brenda Versic, filed suit against J&J and its unit Johnson & Johnson Consumer Inc. in Los Angeles Superior Court in March.

They allege that Johnson's Baby Powder and J&J's Shower to Shower, a scented talc product, contain asbestos, a known carcinogen, and thus violate Prop 65's warning label requirements as well as deceiving customers who were promised a pure, safe product in advertising. The suit is seeking injunctive relief—a warning label on J&J talc—as well as statutory penalties of \$2,500 per day for each J&J talc product sold without a warning label.

The Plaintiffs are represented by Lee A. Cirsch, Michael A. Akselrud, W. Mark Lanier and Richard D. Meadow of The Lanier Law Firm and Michael S. Burg, David K. Teselle, Seth A. Katz and Dan Ernst of Burg Simpson Eldredge Hersh & Jardine PC. The case is *Hermelinda Luna v. Johnson & Johnson et al.* (case number 2:18-cv-004830) in the U.S. District Court for the Central District of California.

Source: Law360.com

## VIII. MASS TORTS LITIGATION UPDATE

### **SETTLEMENT IN SIGHT FOR TESTOSTERONE REPLACEMENT THERAPY MDL**

The Testosterone Replacement Therapy (TRT) multidistrict litigation (MDL), originally centralized in the Northern District of Illinois in 2014 before Judge Matthew Kennelly, is finally nearing a settlement with all Defendants. The MDL has nearly 6,000 cases pending, and has seen back-to-back trials since mid-2017. The MDL includes multiple Defendants, each of which manufactured and sold different TRT drugs. As Plaintiffs allege, the manufacturers marketed them for off-label uses and without an adequate warning for adverse cardiac risks.

Defendants include AbbVie, which manufactures AndroGel; Eli Lilly, which manufactures Axiron; Endo & Auxilium,

which manufactures Testopel, Fortesta, and Delatestryl; and Actavis, which manufactures Androderm. Throughout 2018, Eli Lilly, Endo & Auxilium, and Actavis each reached final or tentative settlement agreements, putting an end to further trials. In early September, the last Defendant still pursuing litigation, AbbVie, entered a confidential term sheet regarding a potential global settlement, finally putting closure to this litigation within sight for thousands of impacted individuals.

Several jury trials led up to this milestone for the MDL. Over the past year, six TRT trials against AbbVie have gone to juries. The first was *Mitchell et al. v. AbbVie, Inc. et al.*, which resulted in a partial Plaintiff verdict awarding \$150 million in damages. That verdict was ultimately overturned because the judge found the jury's decisions on certain claims to be irreconcilable. The second trial was *Konrad et al. v. AbbVie, Inc. et al.*, which also resulted in a partial Plaintiff verdict and \$140 million in damages. It, too, was overturned under a similar rationale to Mitchell. The next three trials against AbbVie all resulted in full Defense verdicts. Finally, and most recently, the Mitchell case was retried and resulted in a Plaintiff verdict with \$3 million in damages. The only other Defendant to be brought to trial was Auxilium; that trial resulted in a Defense verdict. All of the remaining Defendants settled before having to try a case in court.

Upon seeing both sides' willingness to push forward with trials, in late 2017 Judge Kennelly ordered over 100 additional cases to be worked up for trial against all Defendants. These cases were selected in three separate waves, all to be heard by juries back-to-back throughout 2018, 2019, and potentially into 2020 if the parties did not reach settlements. As these cases were prepared for trial, parties did, in fact, begin to reach settlement agreements. Cases selected for trial against Eli Lilly, then Endo & Auxilium, and finally Actavis were stayed pursuant to those settlements. On Sept. 4, 2018, the Court announced that the parties had come to an initial agreement regarding a potential global settlement with AbbVie, which resulted in a stay of all remaining trials.

AbbVie's expected settlement agreement puts closure in sight for thousands of injured men and their families. AbbVie's settlement is not final at this time, but the knowledge that it has

reached an initial agreement and intends to finalize that agreement in the near future certainly provides some comfort for the men with claims pending against the pharmaceutical company. With nearly 4,000 Plaintiffs with claims against AbbVie, some of which were filed at the very inception of this MDL in 2014, this settlement marks the end of a long and difficult journey for those trying to seek justice and demand accountability from the largest and most formidable testosterone replacement therapy manufacturer.

Beasley Allen lawyer Matt Teague is handling the Testosterone Replacement Therapy litigation for the firm and serves on the Plaintiffs Steering Committee for the MDL. For more information, call Matt at 800-898-2034 or by email at Matt.Teague@beasleyallen.com.

### **J&J LOSES REHEARING BID OVER OUT-OF-STATE MESH CASES IN PENNSYLVANIA**

A Pennsylvania appeals court has denied a Johnson & Johnson unit's bid for en banc rehearing, following a decision that the company's business ties in the state allowed Philadelphia County to serve as venue for claims from an Indiana woman who won \$13 million for injuries sustained from a mesh implant.

Ethicon Inc., which is headquartered in New Jersey along with parent company J&J, sought reconsideration from the full Superior Court bench following a three-judge panel's decision in June saying Plaintiffs in a cluster of mesh-related cases brought by out-of-state Plaintiffs could move forward in Philadelphia County because of Ethicon's relationship with a Pennsylvania-based company in the manufacture of its mesh implants. The Superior Court, however, rejected the petition without comment on Aug. 29.

The appeal presented the first opportunity for a Pennsylvania appeals court to weigh in on a recent U.S. Supreme Court decision—*Bristol-Myers Squibb Co. v. Superior Court of California*—limiting the ability of state courts to hear claims from out-of-state residents.

A nearly \$13 million verdict was won by Indiana resident Patricia Hammons in December 2015, in the first trial the company faced in Philadelphia County over its allegedly defective mesh products. The verdict arose from claims that a mesh implant Hammons received to correct sagging of her internal organs became embedded in her bladder, leaving

her in chronic pain and unable to have sex.

Ethicon argued on appeal that it did not have sufficient business ties to Pennsylvania for the case to pass jurisdictional muster under the *Bristol-Myers Squibb* ruling. However, the Superior Court pointed to the company's reliance on Philadelphia-area Secant Medical Inc. to manufacture its mesh products. The Superior Court said in its decision in June:

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

In addition to challenging the verdict in the Hammons case, Ethicon also used the *Bristol-Myers Squibb* decision to petition the supervising judge of the pelvic mesh mass tort to revisit his 2015 ruling saying the Philadelphia County did have jurisdiction over claims from out-of-state Plaintiffs.

Much like the conclusion reached by the Superior Court in June, the supervising judge in Philadelphia County ruled in December that Ethicon's work with Secant meant out-of-state Plaintiffs can bring mesh claims in Pennsylvania. That decision is also on appeal to the Superior Court.

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

Source: Law360.com

#### **NEW JERSEY SUPREME COURT REFINES EXPERT STANDARDS**

In a much-anticipated decision, the New Jersey Supreme Court issued an opinion on Aug. 1 addressing the admissibility of expert testimony in the Accutane litigation. An understanding of the impact of this decision requires a review of the procedural history. Beginning in 1923, in the United States many courts followed a "general acceptance" standard for evaluating the reliability of expert testimony—a standard established in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). In 1991, the New Jersey Supreme Court

adopted a different standard, which focused on whether experts in the same field would use the same or similar methodologies (*Rubanick v. Witco Chemical Corp.*, 125 N.J. 421).

In 1993, the Supreme Court of the United States adopted the *Daubert* Standard, which shifted the analysis of expert testimony from a "general acceptance" standard to a review of the specific expert's methodology and reasoning. See *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 509 U.S. 579 (1993). Despite widespread acceptance of the *Daubert* Standard in many state courts, New Jersey declined to adopt it, instead continuing to adhere to its own *Rubanick* standard, which also focused on methodology, but did not adopt *Daubert's* specific factors for evaluating admissibility.

These standards of analysis have been particularly important in the Accutane litigation since Judge Nelson C. Johnson barred testimony of two of Plaintiffs' experts in February 2015, which led to later summary judgement on more than 2,000 pending cases. On appeal in July 2017, Judge Nelson's decision was reversed, finding that he had applied "too narrow" of an analysis in excluding these experts.

In its recent *Accutane* decision, the New Jersey Supreme Court reversed the prior decision by the Court of Appeals, finding that the *Daubert* factors could be considered by the trial court when performing the "gatekeeper" role of determining admissibility of expert testimony. Although the court stopped short of declaring itself a *Daubert* jurisdiction, it did refine its standards of analysis such that, moving forward, parties wishing to present expert testimony in New Jersey courts will have to determine how this decision applies to their own experts' methodologies and findings.

Source: Law360.com

#### **A REPORT ON CHANGES TO XARELTO'S LABEL**

Recent changes to Xarelto's label aim to improve patient safety, but fall well short of adequately warning physicians and patients of the significance and magnitude of Xarelto's risks. In October 2017, Janssen and Bayer amended Xarelto's label to include a lower dose for the prevention of recurrent venous thromboembolism (VTE). This change came after a new clinical trial, EINSTEIN-CHOICE, showed that the 10mg dose of Xarelto was safer than

and just as effective as the 20mg dose. Based on the results of that study, the U.S. Food and Drug Administration (FDA) forced Bayer and Janssen to remove the 20mg dose for this indication from Xarelto's label, making 10mg the only FDA-approved dose for the prevention of recurrent VTE.

Subsequently, in June 2018, Xarelto's label was amended to inform physicians of a recently approved reversal agent that can be used for patients experiencing bleeding while taking Xarelto. AndexXa, the reversal agent developed by Portola Pharmaceuticals, was approved by the FDA in May 2018. This is the first FDA-approved reversal agent that can be used to reverse Xarelto's anticoagulant effect in patients. This reversal agent will be important to the thousands of patients who suffer internal bleeding while taking Xarelto every year.

Despite these recent changes, Bayer and Janssen continue to omit crucial information from Xarelto's label to adequately warn physicians about the severity and magnitude of Xarelto's risk. For instance, Xarelto's label still fails to inform physicians that patients taking Xarelto and aspirin together experience a 93 percent increased risk of major bleeding compared to taking Xarelto alone. Xarelto's label also fails to warn physicians about Xarelto's significant inter-patient variability, meaning that some patients have drastically more drug in their system, exposing them to higher bleeding risk than other patients who take the exact same dose.

Although standard laboratory tests are available to measure the amount of Xarelto in a patient's blood to ensure proper dosing, Xarelto's label continues to tell physicians that monitoring Xarelto's effect on patients' blood is not possible. That claim directly contradicts the Xarelto label in Canada and Europe, putting U.S. physicians at a disadvantage and exposing U.S. patients to greater risks of serious and fatal bleeding while taking Xarelto.

Approximately 20,000 lawsuits have been filed by individuals who have suffered serious bleeding events while taking Xarelto. A dedicated team of Beasley Allen lawyers continues to work diligently in both the federal and state court Xarelto litigations to advance the interest of all individuals who have suffered serious medical complications from Xarelto.

If you have any questions about the Xarelto litigation, contact Joseph Van-

Zandt or Sonny Wills, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Joseph.Vanzandt@beasleyallen.com or Sonny.Wills@beasleyallen.com.

## IX. AN UPDATE ON SECURITIES INSURANCE AND FINANCE LITIGATION

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### **STATE FARM PAYS \$250 MILLION TO SETTLE CIVIL RACKETEERING SUIT**

State Farm has agreed to pay \$250 million to settle civil racketeering allegations brought by a class of Plaintiffs alleging the insurer worked to rig the Illinois Supreme Court with a judge who would vacate a \$1 billion jury verdict from 1999.

The nation's largest auto insurer moved to settle the case just before the start of opening statements in the racketeering trial Sept. 4 in an Illinois federal court. The Plaintiffs, who are the same Plaintiffs who filed the original suit two decades ago, sought as much as \$8.5 billion in damages.

Under the federal Racketeer Influenced and Corrupt Organizations (RICO) Act, any damages would have automatically been tripled, so it's likely State Farm played chicken with the impending trial until it got spooked by the risk of another verdict against it, legal analysts observed.

In 1999, an Illinois state court jury awarded the Plaintiffs more than \$1 billion for breach of contract. The State Farm customers alleged that for more than a decade, the insurer arranged to have vehicles repaired with generic parts in violation of their insurance policies.

State Farm appealed the verdict—the largest class action award in U.S. history—and then proceeded to secretly spend more than \$3.5 million on the election campaign of Judge Lloyd Karmeier to the Illinois Supreme Court. State Farm pulled this off by funneling money through advocacy groups that didn't disclose donors.

That investment paid off for State Farm. Judge Karmeier, a Republican, was elected to the state's highest court. A year later the court threw out the State Farm

verdict. Subsequently, the U.S. Supreme Court refused to review the case.

The Plaintiffs seemed to have run out of legal options until a 2009 SCOTUS ruling involving the coal-mining corporation Massey Energy found that judges need to recuse themselves in cases involving their top campaign donors. That ruling provided the State Farm class action a path forward, and Judge Karmeier, who has been the court's chief justice since 2016, was to be called as a witness in the latest trial.

Sources: *Insurance Journal* and *Bloomberg*

## X. EMPLOYMENT AND FLSA LITIGATION

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### **\$19 MILLION SETTLEMENT IN SOUTHWEST PILOTS' MILITARY LEAVE SUIT**

Southwest Airlines Co. has agreed to make nearly \$6 million in retirement payments and provide sick leave potentially worth more than \$13 million to settle a suit in a California federal court alleging it denied benefits for brief spurts of military service to a proposed class of as many as 2,000 pilots. The settlement, described in a motion for settlement approval and conditional class certification, will resolve claims Southwest violated the Uniformed Services Employment and Reemployment Rights Act (USERRA) by not letting pilots accrue sick leave while on short-term military leave (STML) and by not disclosing to workers the extent of their benefits under a 401(k) matching program.

USERRA bars employment discrimination against military service members and veterans. The settlement includes a \$5.8 million settlement fund designed to make workers whole for unpaid retirement contributions. It also makes Southwest provide workers the sick leave they should have accrued for time spent on STML, which refers to periods of military leave lasting up to two weeks.

Peter Romer-Friedman of Outten & Golden LLP, a lawyer for the workers, said the sick leave provision is worth more than \$13 million if workers use it. However, Southwest disputes this valuation.

The suit, filed in July 2017 by pilot and Air Force Reserve member Jayson Huntsman, said the company violated USERRA

by letting pilots accrue sick leave when they took leave for bereavement, union duty and jury duty, but not when they went on STML. It's claimed that the company also violated the law by not telling workers how much they would have earned for purposes of 401(k) matching had they not taken leave. For example, if a pilot earned \$150,000 in a given year, but would have earned \$155,000 had he or she not taken leave, the pilot did not know the company would match up to a certain percentage of the larger figure.

The pilots, whom the motion says number as many as 2,000, will be paid retirement contributions based on how long they spent on STML for each year between 2001 and 2013, when the company started telling workers about their full matching eligibility. They will also be given all the sick leave they should have earned dating back to 2008 and most of the leave they should have earned between 2001 and 2007, according to the motion.

Southwest says the sick leave portion of the settlement is worth far less than the \$13 million-plus the workers estimate because they can only use it while sick and cannot cash out unpaid benefits at retirement. Many retired pilots will be paid \$1,000 in exchange for their sick leave claims, while "a small subset" who have opted to use unpaid sick time to extend their health care coverage through a company policy will be paid in benefits. The Northern District of California is urged to approve the settlement. The proposed class is valid and the deal is fair, the pilots argue.

The workers are represented by Peter Romer-Friedman, Jahan Sagafi and Rachel Dempsey of Outten & Golden LLP, Thomas Jarrard of the Law Office of Thomas Jarrard PLLC and Matthew Crotty of Crotty & Son Law Firm PLLC. The case is *Huntsman v. Southwest Airlines Co.* (case number 3:17-cv-03972) in the U.S. District Court for the Northern District of California.

Source: Law360.com



# XI. PREMISES LIABILITY UPDATE

## **JURY AWARDS \$44 MILLION FOR BEAUMONT REFINERY DEATH**

A jury in Jefferson County, Texas, has awarded \$44 million to the family of Miguel Barron, the worker who was killed at Beaumont's Exxon Mobil refinery two years ago. The wrongful-death lawsuit, filed in state District Court, alleged that Exxon Mobil Oil Corp., B&G Crane Service, LLC and AltairStrickland, LLC were all responsible for the 37-year-old man's death.

Prior to the trial, in April AltairStrickland and Exxon Mobil settled with the family, with the terms being confidential. The trial involved only B&G Crane Service, which will be responsible for paying 45 percent of the \$44 million awarded.

Miguel Barron and his two brothers, Hector and Jorge, were employed by AltairStrickland and they were working at the refinery during turnaround operations. Sadly, the two brothers watched Miguel die. The men were working together on the same crew when Miguel was hit by a heavy pipe that fell from overhead. Miguel left behind three daughters and his parents.

Due to deficiencies in Exxon's rescue plans, Exxon's on-site medics were not able to reach Miguel Barron within a reasonable time to render initial first aid. The death was caused by "negligence" on the part of the three companies. Bryan C. Alfred, a lawyer with Vujasinovic & Beckcom LLP, in Houston, Texas, represented the Plaintiffs in the case.

## **OSHA FINES CONTRACTORS FOR DEADLY BRIDGE COLLAPSE IN FLORIDA**

Five contractors who worked on the design and construction of a pedestrian bridge that collapsed in Miami in March, killing six people, have been issued citations and fines by the federal Occupational Safety and Health Administration (OSHA). The agency issued seven violations and a total of \$86,658 in proposed penalties against Figg Bridge Engineers Inc., Munilla Construction Management LLC, Bolton Perez & Associates, Structural

Technologies LLC and The Structural Group of South Florida Inc.

OSHA's investigation, which focused on worker safety issues related to the March 15 accident near the campus of Florida International University (FIU), found that the companies failed to protect their employees after signs of a potential collapse arose. The violations included exposing employees to risk of falling or being crushed and allowing multiple employees to connect to an improperly installed lifeline. OSHA Regional Administrator Kurt A. Petermeyer said in a statement:

*Collectively, these employers failed to take appropriate action and provide the necessary protections to their employees while they were working on the bridge on the day it collapsed.*

A construction worker who was on the bridge when it fell was among the six people who died in the collapse. The other victims were all in their cars stopped at a red light under the bridge. Several others individuals suffered varying degrees of injuries, including several workers.

Figg was the designer of the bridge, MCM was its lead builder, Bolton Perez provided construction and engineering inspection services, Structural Technologies specializes in post-tensioning in bridges and buildings and The Structural Group of South Florida specializes in concrete form work. The companies had 15 business days to respond or contest the findings and proposed penalties before the independent Occupational Safety and Health Review Commission.

The pedestrian bridge was supposed to provide a safe way to connect FIU students who live in apartments across Southwest Eighth Street—which is eight lanes wide at that point—to the campus after pedestrians had been killed trying to cross the street in recent years. The project was a recipient of an \$11 million grant from the U.S. Department of Transportation in addition to \$2.2 million in other federal funding, \$2.9 million in local funding and \$57,000 from the Florida Department of Transportation.

The innovative concrete bridge was being built using a technique known as accelerated bridge construction, which involved building the span on the side of Eighth Street and then moving it into place. The bridge had been installed less than a week before the collapse and

workers were in the process of adjusting post-tensioning cables before the bridge failed.

The bridge had not yet opened to pedestrians, but traffic flowed freely underneath on the day of the collapse. Earlier in the day on March 15, a Figg engineer reviewed a report of cracks in the structure and concluded there were no safety concerns, according to a complaint filed by two insurers for the engineering firm.

The OSHA penalties could be just the first in a series for the involved parties. The National Transportation Safety Board is leading the investigation into the collapse. At least 15 civil lawsuits have been filed against the various companies. The claims against the builders, engineers and others involved with the bridge has been estimated to be between \$500 million and \$1 billion.

Source: Law360.com

## **GAS LINE EXPLOSIONS ARE A NATIONAL PROBLEM**

Utility companies supply natural gas to millions of homes across the United States every single day. Accidents caused by problems in the delivery of natural gas happen regularly. Significant gas leaks that result in injury, death, and serious property damage happen about 286 times per year, resulting in an average of \$133 million in property damage annually.

The gas line explosions problem was brought to the attention of the public recently after a series of blasts outside Boston, Massachusetts. One person was killed and more than 20 others injured. At least 70 locations across four cities reported fires, explosions, and strong gas odors, making it the largest U.S. gas line accident in nearly a decade. More than 8,600 other area residents had their electricity shut off or were forced to evacuate their homes shortly after the first explosions. Some were without gas service for a week while safety checks were being completed on their properties.

Industry experts and state officials investigating the explosions initially identified over-pressurization of aging gas lines belonging to a local utility as the cause of the explosions. In Massachusetts and other states across the country, some local gas distribution and service lines are nearly a century old and made of cast and wrought iron. Many utility companies stopped using iron pipes in the 1950s in

favor of safer materials such as steel or durable plastics.

Gas explosions are typically caused by a combination of three simple factors: leaks, ignition and confinement. When lines carrying gas become damaged from over-pressurization, corrosion or other causes, they leak gas into the air. Even when gas lines are buried underground, gas can seep into homes through cracks in the building's foundation. After this happens, a small spark from ordinary household items and fixtures can be enough to ignite a fire and cause an explosion. The explosions are particularly severe when a large amount of gas is concentrated in a small area.

A class action lawsuit has been filed against NiSource Inc. and its subsidiary, Columbia Gas of Massachusetts, arising out of the gas explosions mentioned above. The lawsuit, filed in Massachusetts state court, seeks to hold the utility company responsible for the explosions. It's alleged in the lawsuit that the corporate Defendants have taken no action despite knowing last October that there were 150 leaks in the distribution system that needed fixing and that there were a huge number of shoddy pipes that also needed to be replaced. It's alleged that antiquated infrastructure, a lack of leak prevention and inadequate safety practices led to the explosions.

Beasley Allen lawyers have experience handling cases involving gas line explosions. If you have questions, contact Cole Portis, who heads up our firm's Personal Injury & products Liability Section, at 800-898-2034 or by email at Cole.Portis@beasleyallen.com.

A few safety tips can help keep you safe from harm. If you smell gas in your home, check to see if your gas-burning appliances are turned off. If all appliances are off and the smell persists, then the best practice is go outside and call emergency responders.

#### **A REVIEW OF SAFETY ON COLLEGE CAMPUSES**

As college students across the country resumed classes this year, safety advocates highlighted the importance of safety on campus during September—National Campus Safety Awareness Month (NCSAM). Throughout the month, advocates and higher education institutions participated in activities that encourage a public conversation about important safety topics, including violence preven-

tion. It is the public manifestation of the Clery Act, one law that helps regulate campus security.

The Clery Act mandates that colleges and universities receiving federal funding provide a public annual security report (ASR) to employees and students every Oct. 1 and must include data about campus crime for the previous three calendar years, as well as information about efforts taken to improve campus safety. It was enacted in 1990 in honor of Jeanne Clery who was raped and murdered in her college dorm in 1986 and is intended to provide transparency about campus security.

Additionally, higher-education institutions, similar to other establishment owners, are also governed by premises liability law. The law requires establishment owners to ensure the premises are reasonably safe and secure from anticipated dangers. If establishment owners fail to take reasonable safety measures they risk exposing guests to violent acts, such as shootings, fights, stabbings, or other physical violence (including sexual assault) where severe injury or death can occur. When this happens, the establishment owner, as well as those contractors charged with security, may be held responsible for the injuries suffered by individuals or groups of individuals on the premises.

Campus security involves more than the active shooter scenarios that immediately come to mind because of school mass shootings that often grab headlines. Schools and even third-parties such as Greek and other social organizations should be aware that they can also be held accountable for the harm that occurs at parties or other events they sponsor.

For example, six people who were shot while attending a fraternity party at Jackson State University in Mississippi in 2016 recently filed a lawsuit against the Upsilon Epsilon Chapter of Omega Psi Phi Fraternity. The victims' lawsuit claims there was inadequate security at an unsupervised party hosted by the fraternity and promoted as "open-invitation" on social media and other means.

Similarly, two University of Missouri freshmen filed a lawsuit in March seeking to hold the campus chapter of the Sigma Phi Epsilon fraternity accountable for negligence and three of its members liable for assault during an incident that occurred in September 2017. The students claim that Sigma Phi Epsilon Fraternity Inc., the national governing organization, had

opportunities to prevent the assault but failed to do so. The national governing body eventually closed the chapter and shuttered the fraternity house following the incident.

In 2009, lawyers at Beasley Allen represented a Plaintiff injured at a different chapter house for the same fraternity and for similar claims—failing to provide proper and adequate security. The firm represented Taylor G. Jones, who was injured at the Auburn University chapter of Sigma Phi Epsilon fraternity.

While student organizations promote fun and encourage students to enjoy college life, it is important they also uphold their duty to protect their patrons and guests.

*Sources: Clery Center, Clarion Ledger and Columbia Tribune*

## **XII. WORKPLACE HAZARDS**

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### **LAWSUIT FILED IN LOUISIANA OVER FORKLIFT FATALITY**

Plug Power, a Latham, New York, fuel cell manufacturer, was named as one of the Defendants in a lawsuit against six companies following the May death of a Procter & Gamble employee who was riding a forklift powered by a Plug Power fuel cell. The lawsuit was filed by eight individuals in the 9<sup>th</sup> Judicial District Court, Rapides Parish, Louisiana, according to a document filed by Plug Power with the U.S. Securities and Exchange Commission (SEC).

William Allen Kendrick, 56, was operating a forklift at a Procter & Gamble plant in Pineville, Louisiana. At around 3:00 a.m. on May 24, the forklift exploded and caught fire, causing the worker's death. No one else was directly injured in the accident; however, six people sought treatment for ringing ears or physical distress. The lawsuit alleges claims against Plug Power and the five corporate co-Defendants for defect in construction and composition, design defect, inadequate warning, breach of express warranty and negligence.

Plug Power makes hydrogen-powered fuel cells used to power forklifts in warehouses and distribution centers. Fuel cells are seen as an alternative to lead-acid batteries. The fuel cells replace lead-acid bat-

teries in the forklifts that often need to be changed out and replaced for recharging. On the other hand, Plug Power's fuel cells can be refueled with hydrogen, a process that is much quicker, getting the vehicles back into service. Plug has shipped more than 20,000 fuel cell units to dozens of customers including Amazon.com Inc., Walmart Inc. and Nike.

Source: *Albany Business Review*

## XIII. TRANSPORTATION

### **BEASLEY ALLEN FILES WRONGFUL DEATH LAWSUIT ON ANNIVERSARY OF PILOT'S DEATH**

On Sept. 10, 2015, Michael Moir took off from Gaylord Regional Airport in Gaylord, Michigan, headed to Atlantic City, New Jersey. The National Transportation Safety Board (NTSB) explained that approximately 16 minutes into the flight Moir read back the assigned altitude instructions from an air traffic controller and that was his last response during the flight. The aircraft was equipped with autopilot, and radar data showed that it remained at the altitude Moir had set prior to his last communication with air traffic control until approaching its destination.

Approximately five miles northwest of the intended destination the aircraft began descending until it impacted the Atlantic Ocean. Moir's body and the aircraft remains were recovered by the U.S. Coast Guard days later. When recovered, Moir was wearing the oxygen mask that was connected to the oxygen system on the aircraft. A post-crash inspection revealed a loose fitting in the oxygen line allowed the oxygen to escape the canister more quickly than Moir anticipated.

Records show that Lapeer Aviation, Inc., was responsible for maintaining Moir's Mooney M20T aircraft and failed to properly inspect and replace the aircraft's oxygen tank. Deprived of oxygen, Moir experienced hypoxia before becoming unconscious. The aircraft, which was set on autopilot, continued to fly across the country with its unconscious pilot until it crashed.

Beasley Allen lawyers filed a wrongful death lawsuit on behalf of the pilot's widow, Jean Moir, against Lapeer. There is no justification for the Defendant's conscious disregard and indifference that

cost the life of our client's husband. Aircraft are complex but, sadly, this tragedy doesn't involve some complex mechanical failure. Rather, it rests on the Defendants' failure to exercise even the smallest amount of diligence in inspecting and replacing the pilot's oxygen system—his lifeline. The Defendants robbed Michael Moir and his family of a future together and they must be held accountable for their wrongdoing.

The complaint includes counts of negligence, wantonness, fraud, willfulness, recklessness and wrongful death and is filed in The State Court of Lapeer County, Michigan. Mike Andrews from our firm is handling this case, along with local co-counsel Alan Wittenberg of Lopatin & Wittenberg.

Sources: National Transportation Safety Board

## XIV. TOXIC TORT CONCERNS

### **ASBESTOS CAN BE A REAL PROBLEM IN WHITE COLLAR PROFESSIONS**

After being diagnosed with mesothelioma, many of our clients who work in white-collar jobs wonder how they could have been exposed to asbestos when they have never worked a job traditionally associated with asbestos exposure such as an insulator or automotive mechanic.

Many individuals have been exposed to asbestos even through seemingly harmless jobs. For example, dentists and periodontists have been likely exposed to asbestos from their work. Asbestos was found from the 1930s until at least the 1970s in the lost-wax method of casting crowns, bridges, and other dental prosthetic devices. [Markowitz and Moline, *Malignant Mesothelioma Due to Asbestos Exposure in Dental Tape*, Am. J. of Industrial Med. January 2017.] Asbestos was also used in periodontal packings and dressings for some time. Those dressings were made from a powder that was mixed and hardened before being applied. [Report of Councils and Bureaus, *Hazards of Asbestos in Dentistry*, J of American Dental Assoc., Vol. 92, April 1976.]

Jewelers may also have been exposed to asbestos. At least one article attributes asbestos exposure to work soldering

jewelry. The individual was reportedly exposed to asbestos from mixing asbestos powder with plaster of paris and water to create soldering forms and then rubbing the dry forms together to eliminate blemishes. [Kern, et al, *Malignant Mesothelioma in the Jewelry Industry*, Am. J. of Industrial Medicine, 21:409:416 (1992)]

Finally, science teachers may also have been exposed to asbestos from their work with Bunsen burners. Media reports from the United Kingdom show that gauze mats used with Bunsen burners contained asbestos at least as far back as 1976.

The prevalence of asbestos in seemingly innocuous products remains today. Many mesothelioma patients report that their only possible exposure to asbestos was from the use of talcum powder products including Johnson & Johnson Baby Powder and Shower to Shower products, which have been shown to be contaminated with asbestos.

For more information about mesothelioma claims or any asbestos-related illnesses or products, contact Beasley Allen mesothelioma lawyer Sharon J. Zinns at Sharon.Zinns@beasleyallen.com. Sharon is in our Atlanta office and can be reached by phone at 800-898-2034. Her focus has been in this area of concern and she has successfully handled a large number of mesothelioma cases.

### **NEW JERSEY IS THE FIRST STATE TO ADOPT PFC REGULATIONS**

Previous issues of the *Report* have discussed the ongoing crisis impacting our nation's drinking water. Perfluorinated chemicals (PFCs) have been found in 28 percent of water systems nationwide that serve more than 10,000 customers. This is significantly higher than the 4 percent originally reported by the U.S. Environmental Protection Agency (EPA) in 2016 and means that millions more Americans could unknowingly be exposed to some levels of PFOA and PFOS, the two most well-known PFCs.

These unregulated chemicals were tested by the EPA between 2013 and 2015 as part of the Third Unregulated Contaminant Monitoring Rule. Until recently, studies have focused mostly on PFOA and PFOS, which have been linked to a number of health problems including testicular cancer, kidney cancer, ulcerative colitis, thyroid disease, high cholesterol, and pregnancy-induced hypertension. Consequently, the EPA set a lifetime

health advisory of exposure to PFOA and PFOS at 70 parts per trillion (ppt).

This level, however, may still be too high based on a report released by the U.S. Agency for Toxic Substances and Disease Registry recommending that the advisories be lowered to 7 ppt for PFOS, 11 ppt for PFOA and PFNA, and 74 ppt for PFHxS. Prior to the report's release, several states proactively set their own advisory levels lower than the EPA's initial 70 ppt limit.

Last year, New Jersey announced it would issue a standard of 14 ppt for PFOA and 13 ppt of PFNA. It has now become the first state to adopt regulations that require drinking water suppliers to monitor for these chemicals, include readings in the consumer confidence report issued to customers annually, and to remove these chemicals if they are tested above these levels. In response, water systems in New Jersey have had to install additional filters capable of removing these chemicals or switch to alternative wells.

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 our firm's Toxic Torts Section, at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com, or Ryan.Kral@beasleyallen.com.

Source: *Cape May County Herald*

#### **NEW STUDY SHOWS CONNECTION BETWEEN SOLVENTS AND RISK OF MULTIPLE MYELOMA**

A new study funded by the National Institute of Environmental Health shows that exposure to the aromatic hydrocarbon solvents benzene, toluene, and xylene was associated with increased risk of multiple myeloma. Multiple myeloma is a cancer formed by malignant plasma cells. Normal plasma cells are found in

the bone marrow and are an important part of the immune system. The study, titled *Pooled study of occupational exposure to aromatic hydrocarbon solvents and risk of multiple myeloma* (De Roos AJ, Spinelli J, Brown EB, et al. *Occup Environ Med* Epub.) was based on pooled data of 2,854 cases and 10,743 controls from nine different studies.

Benzene is a carcinogen that has been long known for its relationship with acute myeloid leukemia; however, its association with other lymphohematopoietic cancers was less clear. Several previous studies and meta-analyses had observed an association between benzene exposure and risk of multiple myeloma, but the evidence had been inconsistent. Other aromatic hydrocarbon solvents, such as toluene and xylene, had been studied very little as potential human carcinogens.

The current study's findings showed that the results for toluene and xylene were consistent between the studies included in the pooled analysis and in various subgroups of the study population, including men and women, and older and younger persons. For all three solvents, associations with multiple myeloma were strongest for exposures occurring within 20 years of diagnosis. This study provides important evidence for the role of aromatic hydrocarbon solvents, such as benzene, toluene, and xylene, in the causation of multiple myeloma.

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

Source: *Occupational Environmental Medicine*

#### **ROUNDUP MDL BELLWETHER TRIALS TO TAKE PLACE EARLY 2019**

U.S. District Judge Vince Chhabria, presiding over the nearly 900 Plaintiffs comprising the federal multidistrict litigation (MDL) over claims that Monsanto's Roundup weed killer causes cancer, has determined that the first bellwether trial will occur on Feb. 25, 2019, with the second trial to occur on May 6. However, at a recent case-management conference, Judge Chhabria asked the Plaintiffs to identify additional potential bellwether cases to ensure there were sufficient options remaining before the court by

early next year. Because Judge Chhabria is presiding over the MDL, the bellwether cases need to have been filed in the Northern District of California; so far, only four potential Plaintiffs have been identified, each of them with potentially terminal medical conditions.

The MDL court asked that any Plaintiff who is a California resident or who filed suit in California to alert him if their case could be transferred to the Northern District as an additional potential bellwether case. However, any such venue change raises potential jurisdictional issues because the U.S. Supreme Court's 1998 *Lexecon* ruling holds that a judge handling pretrial motions in an MDL can't transfer cases into his jurisdiction for trial.

Judge Chhabria indicated that he would take briefing from both sides on the issue, and would also require all California-based Plaintiffs to file briefs stating whether they were exposed to Roundup in the Northern District of California, whether they were ever treated for their cancer in that district, whether their case might have been properly filed there, and if they'd be willing to go to trial in San Francisco.

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

#### **GENERAL MILLS DROPS "100% NATURAL" LABELING AFTER ROUNDUP DETECTED IN CEREAL BARS**

General Mills has agreed to remove "Made with 100% Natural Whole Grain Oats" from the labels of its Nature Valley granola bars as part of a settlement in a lawsuit over the presence of glyphosate in its food products. The suit was filed by three consumer groups following recent independent testing that revealed the presence of glyphosate in a number of common food products. The Nature Valley granola bars in question were found to contain upwards of 0.45ppm of glyphosate, and the oats were the "most likely" source of the chemical contamination. The independent testing also found that Cheerios and Quaker Oats contained similar amounts of glyphosate.

While the Environmental Protection Agency has guidelines that allow for a maximum of 30 ppm glyphosate to be found in food such as granola bars, the

suit alleged that the labels were deceptive because no reasonable consumer would expect bars labeled “100% Natural” to contain anything unnatural. The word “natural” does not have a set legal meaning on food labels, creating a loophole that can allow for deceptive marketing tactics that can confuse consumers into buying unhealthy products. This settlement comes 13 days after a San Francisco jury awarded a groundskeeper \$289 million in a suit alleging that his exposure to Monsanto’s Roundup weed killer caused him to develop non-Hodgkin’s lymphoma.

If you would like more information about these cases, you can contact Grant Cofer, a lawyer in our Toxic Torts Section, who can be reached at 800-898-2034 or by email at [Grant.Cofer@beasley-allen.com](mailto:Grant.Cofer@beasley-allen.com).

#### **COLORADO SUES OXYCONTIN MAKER**

Colorado is one of the latest states to file a lawsuit against Purdue Pharma L.P., the maker of prescription painkiller Oxycotin. Attorney General Cynthia Coffman accused Purdue Pharma of violating the state’s consumer protection law, saying the company ignited the epidemic through “fraudulent and deceptive marketing of prescription opioids.”

Roughly 1,012 Coloradans died from drug poisoning in 2017. Of those deaths, 373 were from prescription opioids. In 2016, 912 people died from drug poisoning, including 300 from opioid medications, according to data from the Colorado Department of Public Health and Environment.

As the epidemic has continued to hit communities big and small, state governments have responded to the crisis by filing lawsuits against the pharmaceutical companies responsible for making and marketing opioids. Cities and counties also have turned to suing the companies, claiming they are to blame for the rise in overdoses and deaths from opioids.

The goal of such lawsuits is to reach settlements that will enable government entities to direct funds toward resources that will help communities combat the crisis, such as for treatment services. If you need more information on this subject, contact Will Sutton, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at [William.Sutton@beasley-allen.com](mailto:William.Sutton@beasley-allen.com).

Source: *Denver Post*

## **XV. UPDATE ON NURSING HOME LITIGATION**

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#### ***NURSING HOME RESIDENT SEVERELY INJURED IN FALL IN AN ALABAMA NURSING HOME***

Falls among residents of nursing homes are the leading cause of injury, hospital admissions, and lawsuits for nursing home operators. According to the Centers for Disease Control and Prevention (CDC), as many as 75 percent of elderly nursing home residents suffer at least one fall each year—this rate is twice as high as the rate of falls among elderly people living in the community. In fact, nursing homes report 100 to 200 falls each year per 100 facility beds. Approximately 20 percent of nursing home falls result in serious injury.

Nursing home falls occur for a variety of reasons, some of which relate to patient factors while others relate to failure of the facility to provide proper assistance to residents or to maintain the facility in a manner that minimizes the risk of resident falls.

Safety experts have said that falling is not a normal part of aging and the risk of falling can be minimized by nursing homes utilizing several proven ways to reduce falls. Despite these known ways to reduce the instances of resident falls, nursing home falls by residents continue to happen at alarming rates.

Lawyers in our firm are fighting to protect the safety and rights of nursing home residents by representing the injured in litigation to hold long-term care facilities accountable for their acts of negligent care, abuse, and neglect. Recently, the firm filed a lawsuit on behalf of an Alabama nursing home resident who suffered severe injuries as a result of falling in a DeKalb County nursing home.

The complaint, filed in DeKalb County, Circuit Court, alleges that our client was a known fall risk and despite this knowledge, Collinsville Nursing Home failed to take the proper precautions to prevent her fall, or to take measures to minimize her injury from a fall. Because of her fall, our client suffered a broken hip causing her tremendous pain and requiring surgery. Her prognosis leaves little hope that she will be able to regain her mobility.

Our lawyers are currently investigating other cases where residents have been injured or died as a result of suspected negligent care, abuse or neglect by nursing homes or other long-term care facilities.

#### ***HOW TO MONITOR THE CARE OF A LOVED ONE IN A NURSING HOME***

Long-term care facilities aren’t immune to negligent care, abuse, or neglect. Most nursing homes receive federal funding from Medicare. As a result, they must meet a number of Federal regulations; those include honoring resident rights. For example, “A facility must treat each resident with respect and dignity and care for each resident in a manner and in an environment that promotes maintenance or enhancement of his or her quality of life, recognizing each resident’s individuality.” It’s important for residents and families to know their rights.

When looking out for the best interests of a loved one, there is no substitute for visiting them. “The No. 1 thing to do is to visit as many times, and at different times, as possible,” says Robyn Grant, director of public policy and advocacy for The National Consumer Voice for Quality Long-Term Care. Ms. Grant recommends: “Vary the time of day that you go in.” In addition to daytime visits, she says to visit in the evenings, on weekends and holidays. Because if the facility is understaffed, those are particular times when you will see that.

Should an issue arise, the first step is to take it up with the nursing home. Nursing homes are required to have an official grievance procedure and residents, or their advocates, should be made aware of the procedure. According to regulations, the nursing home must respond in writing to every complaint.

If a response is not received, is not sufficient, or the problem is not resolved, residents and their loved ones can contact the state agency responsible for inspections or their state ombudsman program. Every state has a long-term care ombudsman program, and they act as advocates for residents in nursing homes and other long-term care facilities.

Ombudsman programs receive quite a range of complaints, says Amity Overall-Laib, director of the National Long-Term Care Ombudsman Resource Center. “The top complaint across the country, for at least the last five years, has been related

to discharge or eviction from the nursing home,” she says. “The second most common complaint is failure by staff to respond to a resident’s request for assistance—like when the resident would use a call light to request help.” The third most common complaint last year was related to staff attitudes, “basically not treating residents with dignity and respect and providing individualized care,” Ms. Overall-Laib says.

Ms. Grant recommends that even before an issue arises, be proactive in speaking with nursing home staff to ensure your loved one has a well-developed care plan. Insist on speaking to staff in different departments who interact with your loved one, including those who provide care, like nurses, CNAs, dietitians, and physical therapists. It is also helpful to link up with other families of residents in the facility, so you can provide support and be each other’s eyes and ears to look out for family, experts say.

While certainly the best nursing homes should already be looking out for residents, experts say it’s an involved job and it never hurts to have more eyes and ears to ensure the safety of a loved one.

Source: *US News & World Report*

#### **THE BEASLEY ALLEN NURSING HOME LITIGATION TEAM**

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

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

## **XVI. AN UPDATE ON CLASS ACTION LITIGATION**

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### **TWO LIDODERM CLASS ACTION SETTLEMENTS VALUED AT \$271 MILLION GET FINAL APPROVAL**

A California federal judge has approved what are described as “excellent” settlements and which end claims that Teikoku, Endo and Actavis violated antitrust laws by stalling the release of a generic form of the Lidoderm pain patch. The court’s appeal finalizes a \$104.75 million settlement with end payors and a \$166 million settlement with direct purchasers, including a combined \$85.6 million in attorneys’ fees.

End payors included employee health and welfare benefit plans, unions or individuals who purchased the drug from third parties. Judge Orrich had this to say about the settlement:

*The settlement amount you achieved is an excellent amount and is certainly approvable. With respect to the attorneys’ fees, you undertook serious risk in this case throughout the litigation. The lawyering on both sides—but for now I’m just talking to you, because your money was on the line—was excellent. This case involved complicated and novel legal issues.*

The litigation, consolidated in 2014, centered on claims that Teikoku Pharma USA Inc. and Endo Pharmaceuticals Inc. resolved an underlying patent suit against Watson Laboratories Inc.—which acquired Actavis Group, became Actavis PLC, then acquired Allergan Inc. and became Allergan PLC—with a \$266 million deal to stymie a generic version of the blockbuster anesthetic.

Purchasers asserted that the agreements amounted to illegal pay-for-delay arrangements that violated competition law. The settlements cover anyone who purchased brand or generic Lidoderm between August 2012 and May 2014, when an authorized generic version finally came online after having allegedly been delayed by seven and a half months.

At the hearing, end payor lawyer Dena Sharp of Girard Gibbs LLP said that more than 28,000 claims had come in so far, and that notice had reached an estimated

80 percent of the class. It was noted that third-party payers tend to wait until close to the deadline and that was borne out by the experience of most of the lawyers involved in the litigation. Judge Orrich capped off the hearing by telling all the lawyers involved in the case: “It has been a pleasure to have read what you write and listen to what you say. For me, this was a fascinating case and it was very well-litigated by all.”

The direct purchaser Plaintiffs are represented by Faruqi & Faruqi LLP, Hagens Berman Sobol Shapiro LLP and Garwin Gerstein & Fisher LLP. The end payor Plaintiffs are represented by Girard Gibbs LLP, Cohen Milstein Sellers & Toll PLLC, Heins Mills & Olson PLC, Shadowen LLP, Miller Law LLC, Motley Rice LLC, Robbins Geller Rudman & Dowd LLP, Cohen Placitella & Roth PC, Freed Kenner London & Millen LLC, Glancy Prongay & Murry LLP, Hach Rose Schirripa & Cheverie LLP, Kohn Swift & Graf PC, Krause Kalfayan Benink & Slavens LLP, Labaton Sucharow LLP, Law Offices of Robert W. Sink, Lockridge Grindal Nauen PLLP, Meredith & Narine, Pomerantz LLP, Shepherd Finkelman Miller & Shah LLP, Spector Roseman & Kodroff PC, Weinstein Kitchenoff & Asher LLC, Wexler Wallace LLP and the Joseph Saveri Law Firm Inc.

The case is *In re: Lidoderm Antitrust Litigation* (case number 3:14-md-02521) in the U.S. District Court for the Northern District of California.

Source: [Law360.com](http://Law360.com)

### **\$480 MILLION WELLS FARGO SECURITIES SETTLEMENT GETS INITIAL APPROVAL**

A California federal judge has certified a class of Wells Fargo shareholders who have reached a \$480 million settlement with the bank. U.S. District Judge Jon Tigar gave preliminary approval last month to the settlement that would end claims that Wells Fargo artificially inflated its stock value by opening as many as 3.5 million unauthorized customer accounts. Judge Tigar said the suit met all the requirements for class certification, since all the potential class members’ claims depend on whether the bank’s conduct violated the Exchange Act. The class members all allege the bank artificially inflated the value of its stock, which then dropped with revelations of Wells Fargo’s practice of creating unauthorized accounts.

Five billion shares of Wells Fargo stock on the market meant there were numerous class members, the judge said, and that allegations over the stock-price slump “can be jointly resolved as to all class members.” Judge Tigar said there was no evidence of collusion between class counsel and the bank, and that the \$480 million fund was “a good result for the class.” Judge Tigar said that if given final approval the settlement would give class members greater than 15 percent recovery.

The lawsuit, led by Union Asset Management Holding AG, alleged Wells Fargo executives adopted an aggressive cross-selling business model that emphasized pushing multiple products on existing customers rather than attracting new customers. To meet lofty sales targets, the bank’s employees opened millions of accounts for customers without their consent. In September 2016, the *Los Angeles Times* raised questions about the practice, and the bank was soon hit with \$185 million in civil penalties by regulators on Sept. 8, 2016. Its stock price fell 9 percent over the next week, closing at \$45.43 per share on Sept. 16, 2016. The securities suit was filed 10 days later.

In their class action complaint, shareholders said Wells Fargo and its executives spent years hyping the company’s focus on persuading existing banking customers to sign up for new products like credit cards, mortgages and retirement accounts, all while knowing that a “significant” number of the signups were fraudulent. The settlement between the bank and anyone who bought its common stock between Feb. 26, 2014, and Sept. 20, 2016, was reached in May. The settlement would distribute about \$381.5 million between thousands of class members based on the difference between the inflated price they paid for the stock and the price they sold it for.

After costs and a proposed \$96 million in attorneys’ fees are deducted from the settlement pot, the estimated recovery price should be 35 cents per share, and claimants who stand to make less than \$10 won’t get a payout, according to court documents. The settlement seeks a \$10,000 service award for each of the five class representatives. The judge noted that was “double the presumptively reasonable amount,” but said it wasn’t a roadblock to preliminary approval.

Judge Tigar also granted a motion to seal a confidential supplemental agreement that explains how many class

members can opt out before Wells Fargo is allowed to void the settlement. The bank argued that hiding that number was necessary to preventing shareholders from threatening to break up the settlement, hoping to get a higher payout.

The class is represented by Salvatore J. Graziano, Adam H. Wierzbowski and Rebecca Boon of Bernstein Litowitz Berger & Grossmann LLP. Other Plaintiffs are represented by Robert D. Klausner and Stuart A. Kaufman of Klausner Kaufman Jensen & Levinson, and Shawn A. Williams, Aelish M. Baig and Jason C. Davis of Robbins Geller Rudman & Dowd LLP. The case is *Gary Hefler et al. v. Wells Fargo & Company et al.* (case number 3:16-cv-05479) in the U.S. District Court for the Northern District of California.

Source: Law360.com

#### **DRIVERS REACH \$44.8 MILLION SETTLEMENT WITH TOYODA GOSEI IN PARTS MDL**

Toyota Gosei has agreed to pay \$44.8 million to end claims in multidistrict litigation (MDL) it was part of a conspiracy to fix the prices of six types of auto parts, drivers told a Michigan federal judge last month in their request for initial approval of the class action settlement. The six proposed settlement classes include customers who say the Japanese auto parts maker overcharged them for driveshaft housing, interior trim, brake hoses, other automotive hoses, sealants and safety systems such as air bags and seatbelts.

The proposed class said in this motion that the settlement with Toyota Gosei Co. Ltd. and four of its subsidiaries—Toyota Gosei North America Corp., TG Missouri Corp., TG Kentucky LLC and TG Fluid Systems USA Corp.—was “meaningful and substantial.” Toyota Gosei’s sales will still be used to calculate damages against other Defendants, and its cooperation will help the class litigate claims against other companies, or encourage them to settle as well. It was stated in the motion:

*Standing alone, the monetary recovery from Toyota Gosei is remarkable, but the settlement is also valuable to the [end-payor plaintiffs] in that it requires Toyota Gosei to provide comprehensive discovery cooperation in the form of ... attorney proffers, interviews and depositions of witnesses, and the production of certain documents. Toyota Gosei’s cooperation agree-*

*ment will greatly enhance the EPPs’ ability to prosecute their claims against non-settling defendants or any future non-settling defendants.*

The cases are part of an ongoing MDL filed after the U.S. Department of Justice (DOJ) launched its investigation into the auto parts industry. The DOJ inquiry has already resulted in more than \$1 billion in fines. The MDL has been divvied into separate proceedings for different automotive parts. Other parts makers have also settled with the consumer class. In April, Tokai Rika agreed to a \$34.2 million settlement to end claims over heating control panels, occupant safety restraint systems, switches and steering angle sensors. Also in 2014, TRW Automotive Holdings Corp. agreed to pay \$5.4 million to settle over its safety systems.

The motion in the case indicated the sealant class would take the lion’s share of the Toyota Gosei settlement, raking in \$27 million for customers who have bought the products since January 2000. The occupant safety system and automotive hose classes will each get more than \$5.4 million for claims dating back as far as 2003, and the interior trim class will get \$5 million for claims as early as 2004. The constant velocity joint boot class will get about \$716,000 for driveshaft parts bought as early as 2006, and the remaining \$659,000 will go to customers who bought brake hoses after 2004.

Toyota has agreed to help identify the make and model of vehicles that contained those parts. It will also identify its employees and directors who were accused of involvement in the price fixing and bid rigging scheme by the DOJ.

The end-payors are represented by Cotchett Pitre & McCarthy LLP, Robins Kaplan LLP, Susman Godfrey LLP and the Miller Law Firm LLP. Toyota Gosei is represented by Baker Botts PLLC. The cases are *In re: Automotive Parts Antitrust Litigation* (case number 12-md-02311), *In re: Occupant Safety Systems—End-Payor Actions* (case number 2:12-cv-00603), *In re: Automotive Constant Velocity Joint Boot Products* (case number 2:14-cv-02903), *In re: Automotive Hoses* (case number 2:15-cv-03203), *In re: Body Sealing Products* (case number 2:16-cv-03403), *In re: Interior Trim Products* (case number 2:16-cv-03503) and *In re: Brake Hoses* (case number 2:16-cv-03603) in the U.S. District Court for the Eastern District of Michigan.

Source: Law360.com

## XVII. ONGOING LITIGATION AT BEASLEY ALLEN

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We are including in this issue an update on the significant litigation and investigations in the various areas of our practice that are currently ongoing. This update will be set out for each of the firm's sections.

### **Personal Injury & Products Liability Section**

**Takata Airbag Recall**—The largest automotive recall in history centers on the defective Takata airbags found in millions of vehicles manufactured by Honda, BMW, Chrysler, Daimler Trucks, Ford, General Motors, Mazda, Mitsubishi, Nissan, Subaru, and Toyota. The defect results in shrapnel like metal shards and airbag components being propelled throughout the vehicle interior. This frequently results in lacerations and blunt force trauma that can cause injury or death. We would like to review any claim of injury or death. We are also handling Honda airbag cases with smaller injuries that normally would not qualify for claims under our usual review process, even an injury that does not appear to be permanent or life-threatening. Contact Cole Portis or Chris Glover at 800-898-2034 or by email at Cole.Portis@beasleyallen.com or Chris.Glover@beasleyallen.com.

**Truck Accidents**—There are significant differences between handling an interstate trucking case and other car wreck cases. It is imperative to have knowledge of the Federal Motor Carrier Safety Regulations, technology, business practices, insurance coverages, and to have the ability to discover written and electronic records. Expert testimony is of utmost importance. Accidents involving semi-trucks and passenger vehicles often result in serious injuries and wrongful death. Trucking companies and their insurance companies almost always quickly send accident investigators to the scene of a truck accident to begin working to limit their liability in these situations.

Our lawyers, staff and in-house accident investigators immediately begin the important task of documenting and preserving the evidence. We would like to review any case involving catastrophic injury or death. Contact Chris Glover or Mike Crow at 800-898-2034 or by email at Chris.Glover@beasleyallen.com or Mike.Crow@beasleyallen.com.

**Defective Tires**—Tire failure can result in a serious car crash and even a vehicle rollover accident, causing serious injury or death to vehicle occupants. Air, heat and sunlight can cause the rubber in tires to break down. When a tire is defective, potentially serious problems like detreads and blowouts can occur long before the tire would be expected to wear out. If the tire failure is the result of design or manufacturing defects, and the manufacturer is aware of the problem, they have an obligation to alert consumers to the potential danger. Contact Ben Baker or LaBarron Boone at 800-898-2034 or by email at Ben.Baker@beasleyallen.com or LaBarron.Boone@beasleyallen.com.

**On-the-job Product Liability**—Many times product liability claims arise from worker's compensation claims. After our lawyers and investigators investigate the circumstances that caused the injuries, many times they discover a defective machine may be the cause of the injuries. Contact Kendall Dunson, Evan Allen or Ben Locklar at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com, Evan.Allen@beasleyallen.com or Ben.Locklar@beasleyallen.com.

**Accident Cases**—Our lawyers continue to focus on accident cases involving automobiles, heavy equipment and consumer products. Some of these auto cases involve single-vehicle crashes, while others involve multiple-vehicle accidents that involve Product Liability claims. We would like to review any case involving catastrophic injury or death. Contact Greg Allen, Cole Portis or Graham Esdale at 800-898-2034 or by email at Greg.Allen@beasleyallen.com, Cole.Portis@beasleyallen.com or Graham.Esdale@beasleyallen.com.

**Heavy Truck Product Liability Claims**—Tractor trailers and other heavy trucks are not required to contain many of the same protections for occupants as smaller passenger cars. They can contain dangerous defects putting the truck driver or passengers at risk of serious injury or death. These trucks many times have particularly weak roofs that crush in rollovers. The passenger compartments are often not protected by effective cab guards, and this allows loads to shift into the truck cab. We would like to review any case involving catastrophic injury or death. Contact Ben Baker at 800-898-2034 or by email at Ben.Baker@beasleyallen.com.

**Aviation Accidents**—Aviation litigation can be extremely complex and often involves determining the respective liability of manufacturers, maintainers, retrofitters, dispatchers, pilots and others. In some circumstances, the age of the aircraft involved can limit or completely preclude an injured party from compensation. Soaring through the sky at hundreds of miles an hour, thousands of feet above the ground in an airplane or helicopter leaves little room for error. One small mechanical problem, misjudgment or faulty response in the air can spell disaster for air passengers and even unsuspecting people on the ground. We are handling cases involving all types of aircraft, military and civilian. Contact Mike Andrews or Cole Portis at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com or Cole.Portis@beasleyallen.com.

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



cases where severe injury or death results. Contact Mike Crow or Warner Hornsby at 800-898-2034 or by email at Mike.Crow@beasleyallen.com, or Warner.Hornsby@beasleyallen.com.

**Security Litigation**—Under the law, owners of establishments owe a duty to patrons and guests to ensure that the premises are reasonably safe and secure from anticipated dangers. These cases normally take the form of shootings, fights, stabbings, or other physical violence (including sexual assault) where severe injury or death occurs due to the establishment owner's failure to take reasonable safety measures. When this occurs, the establishment owner, as well as those contractors charged with security, may be held responsible for the injuries suffered by individuals or groups of individuals on the premises. While the laws vary from state to state, our firm is actively investigating and litigating these cases where severe injury or death results. Contact Parker Miller or Rob Register at 800-898-2034 or by email at Parker.Miller@beasleyallen.com, or Rob.Register@beasleyallen.com.

**Nursing Home Abuse and Neglect Claims**—Nursing homes are supposed to be in the business of providing skilled nursing care to elderly and disabled residents. Unfortunately, statistics indicate residents in nursing homes suffer abuse and neglect more and more frequently at the hands of nursing home corporations. In many cases residents have died or have been severely abused as a result of neglect. They may suffer physical abuse, emotional or psychological abuse, or neglect. We are investigating cases involving serious injury or death resulting from nursing home abuse or neglect. Contact Rhon Jones or Chris Boutwell at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or Chris.Boutwell@beasleyallen.com.

### Mass Torts Section

#### PHARMA AND MEDICAL DEVICES

**Opioids**—Opioid abuse has reached epidemic proportions in the United States. According to the Department of Health & Human Services, 12.5 million people misused prescription

opioids and 33,091 Americans died from opioid overdose in 2015 alone. These medications provide important pain relief for many. However, over the years, drug companies inflated the effectiveness of delayed-release medications like OxyContin and downplayed their addictive properties, creating conditions ripe for abuse. We are investigating cases involving opioid-related deaths and overdose, or symptoms of overdose requiring hospitalization. Additionally, we are investigating cases on behalf of babies who suffered from Neonatal Abstinence Syndrome. Contact Rhon Jones, Leigh O'Dell, Melissa Prickett, Roger Smith or Liz Eiland at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Leigh.Odell@beasleyallen.com, Melissa.Prickett@beasleyallen.com, Roger.Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

**Talcum powder and ovarian cancer**—As many as 2,200 cases of ovarian cancer diagnosed each year may have been caused by regular use of talcum powder. Talc is a mineral made of up various elements including magnesium, silicon and oxygen. Talc is ground to make talcum powder which is used to absorb moisture and is widely available in various products including baby powder and adult products including body and facial powder. Talc products used regularly in the genital area increase the risk of ovarian cancer. In February 2016, a jury found Johnson & Johnson knew of the cancer risks associated with its talc products but failed to warn consumers, and awarded the family of our client \$72 million. She died of ovarian cancer after using J&J talc-containing products for more than 30 years. Contact Ted Meadows or Melissa Prickett at 800-898-2034 or by email at Ted.Meadows@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**Xarelto**—Lawsuits filed against Johnson & Johnson subsidiary Janssen Pharmaceuticals and Bayer Corp. over the blood thinner Xarelto have been consolidated in Louisiana federal court. Xarelto has been linked to serious side effects including internal bleeding, gastrointestinal bleeding, brain bleed and death. The Xarelto lawsuits come on the heels of

the recent \$650 million Pradaxa settlement. Researchers linked Pradaxa, also a blood thinning medication, to more than 500 deaths. Xarelto blood thinner litigation has been consolidated before U.S. District Judge Eldon Fallon in the Eastern District of Louisiana, who presided over suits against Merck & Co. over its medication Vioxx. The Vioxx litigation resulted in a \$4.85 billion settlement in 2007. Contact David Byrne, Danielle Mason or Melissa Prickett at 800-898-2034 or by email at David.Byrne@beasleyallen.com, Danielle.Mason@beasleyallen.com, or Melissa.Prickett@beasleyallen.com.

**Testosterone Replacement Therapy (TRT)** products for men have been linked to an increased risk of death, heart attack and stroke. Researchers found men who used testosterone therapy were 30 percent more likely to have a heart attack, stroke, or die after three years of use. A second study found that men had a significant increase in risk of heart attack and stroke in just the first 90 days of testosterone therapy use. Furthermore, men who started the study with clear, unobstructed coronary arteries were just as likely to have a heart attack, stroke or die as men who entered the study with established coronary artery disease. Testosterone therapy, such as the prescription topical treatments Androgel, Testim and Axiron, are used to help boost testosterone levels in men who have a deficiency of the male hormone. Symptoms of low testosterone include decreased libido and low energy. Contact Matt Teague or Melissa Prickett at 800-898-2034 or by email at Matt.Teague@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**ATTUNE Knee Replacement**—Despite the overall high success rate in knee replacement surgeries, researchers have identified larger-than-usual failure rates with the DePuy Synthes ATTUNE® Knee System. Problems with ATTUNE include loosening of the tibial component at the implant-cement interface within the first two years after implant. Patients often present with pain on weight bearing, swelling, and decreased range of motion. Researchers believe that these fail-

ures are likely underreported, as competing companies cannot provide data on the revision components that they replace. We are currently investigating cases involving individuals who have undergone revision surgery due to loosening after a knee replacement using an ATTUNE device. Contact Roger Smith or Melissa Prickett at 800-898-2034 or by email at Roger.Smith@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**Bone Cement**—The type of bone cement used during knee replacement surgery affects the outcome of that surgery. High viscosity bone cement (HVC) boasts shorter mixing and waiting times and longer working and hardening phases, meaning surgeons can handle and apply the cement earlier than with low- or medium-viscosity cements. Although HVC may be more convenient to use, there is mounting evidence that the bond it produces is not as strong. Researchers have observed more early failures with the use of HVC, even when used in combination with a previously well-performing implant. Complications associated with knee replacements performed with HVC include loosening and debonding (where the implant fails to adhere to the cement interface on the shin or thigh bone), which requires revision surgery. Other reported problems include new onset chronic pain and instability. Contact Roger Smith, Liz Eiland or Melissa Prickett at 800-898-2034 or by email at Roger.Smith@beasleyallen.com, Liz.Eiland@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**Proton Pump Inhibitors**—Proton pump inhibitors (PPIs) such as Nexium, Prilosec and Prevacid were introduced in the late 1980s for the treatment of acid-related disorder of the upper gastrointestinal tract, including peptic ulcers and gastrointestinal reflux disorders, and are available both as prescription and over-the-counter drugs. Beasley Allen is currently investigating PPI-induced Acute Interstitial Nephritis (AIN), which is a condition where the spaces between the tubules of the kidney cells become inflamed. The injury appears to be more profound

in individuals older than 60. While individuals who suffer from AIN can recover, most will suffer from some level of permanent kidney function loss. In rare cases individuals suffering from PPI-induced AIN will require kidney transplant. Contact Navan Ward or Melissa Prickett at 800-898-2034 or by email at Navan.Ward@beasleyallen.com or Melissa.Prickett@beasleyallen.com

**Taxotere**—Taxotere (docetaxel) is a chemotherapy drug approved in the treatment of breast cancer along with other forms of cancer. It is administered intravenously through a vein, and is a member of a family of drugs called taxanes. In 2007, manufacturer Sanofi-Aventis issued a press release touting the efficacy of Taxotere based on a clinical study. However, Sanofi-Aventis failed to inform the FDA, health care providers, and the public that permanent hair loss was observed in a number of the patients taking Taxotere. In December 2015, the FDA announced it had ordered Sanofi-Aventis to change Taxotere's label to warn patients of the risk of permanent hair loss. While hair loss during chemotherapy is expected, patients undergoing chemotherapy with Taxotere were not warned they could potentially experience permanent hair loss. Permanent hair loss is an extremely debilitating condition, especially for women. We are currently investigating claims for women who suffered permanent hair loss following chemotherapy with Taxotere for breast cancer. Contact Beau Darley or Melissa Prickett at 800-898-2034 or by email at Beau.Darley@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**Risperdal**, an atypical antipsychotic drug used to treat schizophrenia and certain problems caused by bipolar disorder, has been linked to the development of gynecomastia in boys and young men. Gynecomastia is a condition that causes boys to grow breasts. The drug is manufactured by Johnson & Johnson. Contact James Lampkin or Melissa Prickett at 800-898-2034 or by email at James.Lampkin@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**Metal-on-Metal Hip Replacement parts**—The FDA has ordered a review of all metal-on-metal hip implants due to mounting patient complaints. Problems with metal-on-metal include, but are not limited to loosening, metallosis (ie: tissue or bone death), fracturing, and/or corrosion and fretting of these devices, which require revision surgery. Many patients that require revision surgery due to these devices suffer significant post-revision complications. We are investigating all cases involving metal-on-metal hip implants, including the DePuy Orthopaedics ASR XL Acetabular System and the DePuy ASR Hip Resurfacing System, recalled in August 2010; the Stryker Rejuvenate and ABG II modular-neck stems, recalled in July 2012; the Stryker LFIT Anatomic v40 Femoral Head (recalled August 29, 2016); the DePuy Pinnacle, the Zimmer Durom Cup, the Wright Conserve, and the Biomet M2A “38mm” and M2A-Magnum hip replacement systems, which have not been recalled. Reported problems include pain, swelling and problems walking. Contact Navan Ward or Melissa Prickett at 800-898-2034 or by email at Navan.Ward@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**IVC Filters**—Retrievable IVC filters are wire devices implanted in the vena cava, the body's largest vein, to stop blood clots from reaching the heart and lungs. These devices are used when blood thinners are not an option. Manufacturers include Bard, Cook and Johnson & Johnson. While permanent IVC filters have been used since the 1960s with almost no reports of failure, retrievable IVC filters were introduced in 2003, promoted for use in bariatric surgery, trauma surgery and orthopedic surgery. Risks associated with the retrievable IVC filters include migration, fracture and perforation, leading to embolism, organ damage and wrongful death. Contact Melissa Prickett or Matt Munson at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com or Matt.Munson@beasleyallen.com.

**Zofran**—Manufactured by GlaxoSmithKline, Zofran (ondansetron) was approved to treat nausea during chemotherapy and following surgery.

Zofran (ondansetron) works by blocking serotonin in the areas of the brain that trigger nausea and vomiting. Between 2002 and 2004, GSK began promoting Zofran off-label for the treatment of morning sickness during pregnancy, despite the fact the drug has not been approved for pregnant women and there have been no well-controlled studies in pregnant women. The FDA has received nearly 500 reports of birth defects linked to Zofran. Birth defect risks include cleft palate and septal heart defects. Contact Roger Smith or Melissa Prickett at 800-898-2034 or by email at Roger.Smith@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**Physiomesh**—Intended for hernia repair, Physiomesh is a flexible polypropylene mesh designed to reinforce the abdominal wall, preventing future hernias from occurring. Though there are several types of hernias, most occur when an organ or tissue protrudes through a weak spot in abdominal muscles. The condition often requires surgery where mesh, like Physiomesh, which is intended for laparoscopic use, is used to fill in a hole in the abdominal muscle or laid over or under it to prevent any further protrusions. Independent studies have found Physiomesh to lead to high rates of complications including hernia recurrence, organ perforation, mesh migration, sepsis and even death. In May 2016, Ethicon issued a market withdrawal of Physiomesh in the U.S. and recalled the product in Europe and Australia. We are currently investigating cases involving serious injury or death as a result of Ethicon's Physiomesh. Contact Melissa Prickett or Matt Munson at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com or Matt.Munson@beasleyallen.com

### **Consumer Fraud & Commercial Litigation Section**

**False Claims Act & Whistleblower Litigation**—We are handling and investigating whistleblower claims of government fraud ranging from Medicare/Medicaid to military contracts, and any other type of fraud involving a government contract. Under the False Claims Act (FCA) the whistle-

blower is entitled to a percentage of the recovery. Studies show that as much as 10 percent of Medicare/Medicaid charges are fraudulent. Common schemes involve double-billing for the same service, inaccurately coding services, and billing for services not performed. Additionally, the Commission on Wartime Contracting has warned that the lack of oversight of government contractors has led to massive fraud and waste. Contact Lance Gould, Larry Golston or Andrew Brashier at 800-898-2034 or by email at Lance.Gould@beasleyallen.com, Larry.Golston@beasleyallen.com, or Andrew.Brashier@beasleyallen.com.

**Auto Defect Class Actions**—Lawyers in the Section are continuing to work on numerous auto defect class actions against many of the major automobile manufacturers like VW, Toyota, General Motors, Ford and even some suppliers like Takata. These cases continue to be filed because of corporate misconduct in designing and manufacturing unsafe vehicles that are purchased by consumers, corporations and state agencies. We continue to investigate these automobile problems for class relief treatment. Contact Dee Miles, Archie Grubb or Clay Barnett at 800-898-2034 or by email at Dee.Miles@beasleyallen.com, Archie.Grubb@beasleyallen.com or Clay.Barnett@beasleyallen.com

**Life Insurance Fraud**—Our lawyers have uncovered alleged fraudulent accounting practices by life insurance companies concerning premium increases. The accounting method may result in the policyholder being charged excessive insurance premiums. A client that has a life insurance policy and has been notified of a substantial increase in premium payments, or if they have been told their policy's "cost of insurance" has increased, they may have a valuable legal claim that our firm would like to investigate. Contact Dee Miles, Andrew Brashier or Rachel Boyd at 800-898-2034 or by email at Dee.Miles@beasleyallen.com, Andrew.Brashier@beasleyallen.com or Rachel.Boyd@beasleyallen.com.

**Supplemental Disability Insurance Denial**—We have successfully litigated bad faith denial of benefits cases for years in the disability insurance area and we are interested in reviewing cases involving denial of Individual and Group disability insurance. These cases can be either employee sponsored benefit plan policies (ERISA), individually owned policies or non-ERISA governed supplemental insurance. Contact Larry Golston at 800-898-2034 or by email at Larry.Golston@beasleyallen.com.

**Self-funded Health and Pharmacy Insurance Plans**—Third Party Administrators and Pharmacy Benefit Managers may have been charging unauthorized fees to self-funded insurance health and pharmacy benefit plans. These extra fees may be in violation of the contracts with the self-funded plan and a breach of fiduciary duty under ERISA. We are looking into these cases on behalf of self-funded plans. Contact Alison Hawthorne at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com.

**Pharmaceutical Pricing**—Our lawyers are continuing to handle claims involving chain pharmacies falsely reporting their generic pricing transactions to state Medicaid agencies. This misconduct has led to millions of dollars in overpayments by Medicaid agencies for generic drugs to the chain pharmacies. Contact: Alison Hawthorne or Leslie Pescia at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com or Leslie.escia@beasleyallen.com.

**Antitrust**—The Section is handling claims related to the violation of federal and state antitrust laws. We are currently involved in claims alleging a wide array of anticompetitive conduct, including illegal tying, exclusive dealing, monopolization, and price fixing. Contact Archie Grubb or Alison Hawthorne at 800-898-2034 or by email at Archie.Grubb@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

**Health Care Fraud**—We are looking into cases of fraud within the health care industry. These may include cases dealing with pricing, off-label prescriptions, or other health care

abuse. Contact Alison Hawthorne at 800-898-2034 or by email at Alison.Hawthorne@beasleyallen.com.

**State and Municipalities Litigation**—Our lawyers have represented numerous states throughout the country. These cases have been handled through the attorneys general and have involved various civil actions. Many times, individuals are barred from bringing a consumer fraud type claim but the state government is not. We recently concluded litigation in six of eight states for a recovery dealing with medical fraud, with still two states remaining. For more information, contact Dee Miles or Alison Hawthorne at 800-898-2034 or by email at Dee.Miles@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

**Fair Labor Standards Act (FLSA)**—We are working on several cases involving Fair Labor Standards Act (FLSA) violations. The FLSA cases are brought on behalf of clients whose job title is misclassified by their employers so that employees are not compensated for overtime worked. Cases may also involve unequal pay, where women are paid less for doing the same job as men. Contact Lance Gould or Larry Golston at 800-898-2034 or by email at Lance.Gould@beasleyallen.com or Larry.Golston@beasleyallen.com.

**Employment Law**—Lawyers in the Section are handling employment cases. Situations that may be addressed in this area include minimum wage and overtime pay, unfair labor practices, all types of discrimination, employee benefits, and whistleblower claims. Contact Larry Golston or Lance Gould at 800-898-2034 or by email at Larry.Golston@beasleyallen.com or Lance.Gould@beasleyallen.com.

**Sexual Harassment**—Sexual harassment is outlawed by Title VII of the Civil Rights Act of 1964 because it is a form of discrimination, as explained by the Equal Employment Opportunity Commission (EEOC). The agency defines sexual harassment as “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct

explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.” We are looking at any claim involving extreme sexual harassment or sexual assault. Contact Larry Golston or Lance Gould at 800-898-2034 or by email at Larry.Golston@beasleyallen.com or Lance.Gould@beasleyallen.com.

### Toxic Torts Section

**Mesothelioma**—Mesothelioma is a highly aggressive and rare form of cancer usually affecting the lining of the lungs (pleural) or abdominal cavity (peritoneal). Occasionally, it also may affect the lining of the heart (pericardial). The only known cause of mesothelioma is exposure to asbestos. About 2,000 new cases of mesothelioma are diagnosed in the United States each year. For years, asbestos was widely used in many industrial products and in building construction for insulation and fire protection. When asbestos is broken or disturbed it can release microscopic fibers that can be inhaled or ingested, posing a health risk, including the development of asbestos diseases and mesothelioma. Contact Sharon Zinns or Rhon Jones at 800-898-2034 or by email at Sharon.Zinns@beasleyallen.com or Rhon.Jones@beasleyallen.com.

**Leukemia and Benzene exposure**—Benzene is widely used in a number of industries and products, yet many people remain unaware of the toxic danger of this chemical substance. Exposure to products containing benzene, whether through inhalation or skin absorption, can cause life-threatening diseases including Acute Myeloid Leukemia (AML), Myelodysplastic Syndrome (MDS), lymphomas and aplastic Anemia. Some of these diseases do not manifest themselves until several years after exposure to benzene. Due to certain statute of limitations for bringing a claim of this nature it is important to contact an attorney as soon as possible if you believe your condition is a result of benzene exposure. Contact John Tomlinson or Grant Cofer at 800-898-2034 or by email at John.Tomlinson@beasleyal-

len.com or Grant.Cofer@beasleyallen.com.

**Roundup / glyphosate**—Roundup is the most widely used herbicide in the world and the second-most used weed killer for home and garden, government and industry, and commerce. It was introduced commercially by Monsanto Company in 1974 and is used by landscapers, farmers, groundskeepers, and commercial gardeners. The primary ingredient in Roundup is glyphosate, a chemical that kills weeds by blocking proteins essential to plant growth. It has been linked to a type of cancer called non-Hodgkin lymphoma. We are investigating cases involving non-Hodgkin lymphoma related to the commercial application of Roundup/glyphosate. Contact Rhon Jones or John Tomlinson at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or John.Tomlinson@beasleyallen.com.

**Severe Lung Disease**—We are investigating numerous cases involving severe lung disease, including where a client has received any of the following diagnoses: any interstitial lung disease, pulmonary fibrosis (whether idiopathic or not), silicosis, black lung, bronchiolitis obliterans, sarcoidosis, berylliosis or chronic beryllium lung disease, metal lung disease, hypersensitivity pneumonitis, pneumoconiosis, and non-smoker’s lung cancer and emphysema. These are grave diseases that often times result in either death or a lung transplant, and they are frequently caused by exposure to dusts, fibers, metals, chemicals, vapors, food flavoring additives or other tiny particles in the workplace or as a result of a defective product. Often overlooked, these can be very good cases. Contact Sharon Zinns or Rhon Jones at 800-898-2034 or by email at Sharon.Zinns@beasleyallen.com or Rhon.Jones@beasleyallen.com.

**PFC Contamination in Water Systems**—In May 2016, the U.S. Environmental Protection Agency (EPA) issued new lifetime health exposure guidelines for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) in the water supply. After the EPA issued the new exposure limits, an advisory warning was provided to eight water systems in

Alabama and more than 50 nationwide. The EPA advisory focused on PFOA and PFOS, man-made chemical compounds that are used in the manufacture of non-stick, stain-resistant, and water-proofing coatings on fabric, cookware, firefighting foam, and a variety of other consumer products. Exposure to the chemicals over time, even in trace amounts, could promote serious health problems, the EPA warns. Contact Rhon Jones, Rick Stratton or Ryan Kral at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com or Ryan.Kral@beasleyallen.com.

**E-cigarette Explosions**—We are investigating cases involving severe injuries caused by exploding e-cigarette devices and exploding e-cigarette batteries. These explosions have been linked to faulty e-cigarette products, defective lithium-ion batteries, and insufficient warnings for users. Although these cases do involve personal injury including serious burn injuries, please contact our Toxic Torts section for assistance with cases you may have involving these devices. Contact Will Sutton at 800-898-2034 or by email at William.Sutton@beasleyallen.com.

**State and Municipalities Litigation**—Our firm is representing the State of Alabama in the opioid litigation. We also represent states and certain local governments in environmental or toxic exposure claims. Many times, individuals are either barred from bringing an environmental claim or it is not a practical solution. These types of government cases may involve issues of environmental catastrophe, or some other type of pollution. Some of the most notable cases handled by Beasley Allen on behalf of states and municipalities for environmental issues include the PFC water contamination and BP Oil Spill litigation. For more information, contact Rhon Jones at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com.

**Governmental Litigation**—In addition to individual cases of serious injury and death related to opioid abuse, Beasley Allen is representing multiple local governments in Alabama against both manufacturers

and distributors of opioids for increased costs faced by local governments related to the opioid epidemic. Providing city and county resources to battle the opioid crisis causes local governments to sustain economic damages and ongoing significant financial burdens. These lawsuits allege the crisis was created by the pharmaceutical industry, which instead of investigating suspicious orders of prescription opiates, turned a blind eye in favor of making a profit. They intentionally misled doctors and the public about the risks of these dangerous drugs, and municipal governments are left struggling to cope with the consequences. Contact Rhon Jones or Ryan Kral at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com or Ryan.Kral@beasleyallen.com.

In addition to the lawyers listed in each instance, you can reach other lawyers in a respective section by contacting the Section Administrator by phone at 800-898-2034 or by email listed below. Those persons are set out below:

- Sloan Downes, Personal Injury & Products Liability Section; Sloan.Downes@beasleyallen.com
- Penny Davies, Mass Torts Section, Penny.Davies@beasleyallen.com
- Sandra Walters, Toxic Torts Section, Sandra.Walters@beasleyallen.com
- Michelle Fulmer, Consumer Fraud & Commercial Litigation Section, Michelle.Fulmer@beasleyallen.com

Each of the Section Administrators can also be reached by phone at 800-898-2034. If you contact a Section Administrator you will be put in touch promptly with a lawyer working on cases in your specific area of concern.

## XVIII. THE CONSUMER CORNER

### ***AUTO DEALERS SEEK TO APPROVE \$115 MILLION PRICE-FIXING SETTLEMENT***

A group of auto dealers asked a Michigan federal court last month to approve a \$115 million third-round settlement with

23 different auto parts makers. The underlying suit alleged the Defendants conspired to fix prices on auto parts. Parts manufacturers, including Bridgestone, Diamond Electric and Mitsuba, also must continue to cooperate in the case and provide detailed information about their alleged anti-competitive conduct, pursuant to the settlement. The suit involves the alleged price fixing of 25 different car parts including anti-vibration rubber parts, bearings, windshield washer and wiper systems, and wire harness systems.

The litigation stems from a U.S. Department of Justice (DOJ) investigation launched in 2010 that uncovered a series of cartels to rig bids and fix prices for a broad range of auto parts. The probe resulted in 12 executives pleading guilty in connection with the charges, including 10 Japanese executives who surrendered to U.S. jurisdiction and were each sentenced to one or two years in prison.

The multidistrict litigation (MDL) against manufacturers, marketers and sellers was split into separate proceedings for different automotive parts. The following sets this out:

- Mitsubishi agreed in April 2016 to pay \$84.4 million to car buyers and auto dealers to resolve their claims that it conspired to allocate the supply of auto parts and sell them at noncompetitive prices in the U.S. and elsewhere, according to court filings. In April 2018, more than 3,400 eligible dealerships submitted claims for the first round of settlements, which amounted to approximately \$59 million, according to the proposed settlement.
- Round two saw an additional 1,260 dealerships submit claims, bringing the settlement amount to \$125 million.
- In August, lawyers for the car dealers asked for \$33 million in fees for their work, which would cover the time and money already spent on the case, saying they would also set aside 3 percent of the funds for anticipated future litigation expenses.

The lawyers said that “Counsel for the auto dealers litigated these cases on a contingent basis, some for more than six years, and have spent tens of thousands of hours in the cases in which settlements have been reached. Although the court awarded fees from the first settlement groups, the work done by counsel for the auto dealers still exceeds the fees awarded.”

The car dealers are represented by Gerard V. Mantese of Mantese Honigman PC, Jonathan W. Cuneo of Cuneo Gilbert & Laduca LLP, Don Barrett of Barrett Law Group PA, and Shawn M. Raiter of Larson King LLP. The MDL is *In re: Automotive Parts Antitrust Litigation* (case number 2:12-cv-00102) in the U.S. District Court for the Eastern District of Michigan.

Source: Law360.com

### **11<sup>TH</sup> CIRCUIT SAYS COURT SHOULD DECIDE CLASS ARBITRABILITY QUESTIONS**

The Eleventh Circuit has ruled that class arbitrability should be decided by a court if an arbitration clause is silent on the issue. However, the appeals court sent a dispute over class arbitrability between consumers and prison contractor JPay Inc. to an arbitrator after determining that the terms of service agreement clearly states that was the parties' preference.

In its first look at the issue, the Eleventh Circuit said when a contract is silent on whether class arbitration is an available option, a court should rule on the question, because it is the kind of "gateway question" that shapes the dispute that will be arbitrated.

This is consistent with the presumption that merits-related disputes should go to an arbitrator but questions of arbitrability are for the courts to decide, according to the court's opinion. The Eleventh Circuit said:

If class proceedings are available, the arbitration is fundamentally changed. Thus, we cannot read consent to arbitration and silence on the class availability question as necessarily implying consent to an arbitrator's deciding whether a very different 'type' of proceeding is available. As a result, class availability is a question of arbitrability."

In the instant dispute between JPay, a Miami-based company that provides fee-for-service amenities in prisons, and two JPay customers who used the service to send money to inmates, the appeals court said the contract's arbitration provision is clear in its preference for an arbitrator to determine all disputes, including those of arbitrability. The provision says all claims, disputes and controversies will be resolved through arbitration under the rules of the American Arbitration Association. The agreement also states that "the ability to arbitrate the dispute, claim or controversy shall likewise be determined in the arbitration."

Those statements together are "unequivocal" in their expression of intent to have the arbitrator determine arbitrability, according to the Eleventh Circuit. The dispute stems from the fees JPay charges for money transfers. The two Plaintiffs, Cynthia Kobel and Shalanda Houston, claim the fees are exorbitant and are used to fund kickbacks to corrections departments. They also allege that JPay dissuades users from sending money through free paper money orders by intentionally making that process slow and complicated.

The Plaintiffs Kobel and Houston filed a demand for arbitration in October 2015 alleging contractual violations and violations of a Florida consumer protection law and seeking to represent a class of JPay users who had paid fees for electronic money transfers. JPay responded with a lawsuit seeking to compel bilateral arbitration, arguing that it had never consented to arbitrate on a class basis.

A federal district judge determined that the class arbitrability question was for the court to decide and then granted summary judgment to JPay after determining that because the agreement is silent on class arbitration, it could not be implied as an available option. Kobel and Houston are represented by Karla Gilbride of Public Justice PC, Rachel Soffin and John A. Yanchunis of Morgan & Morgan PA, and Andrea Gold of Tycko & Zavareei LLP. The case is *JPay Inc. v. Kobel et al.*, case number 17-13611, in the U.S. Court of Appeals for the Eleventh Circuit.

Source: Law360.com

### **FDA LAUNCHES CRACKDOWN ON E-CIG SALES TO TEENS**

The Food and Drug Administration (FDA) recently announced a new round of enforcement actions designed to stop an "epidemic" of teen e-cigarette usage. The enforcement action is directed toward both retailers and manufacturers.

The FDA also sent 1,300 letters and fines to retailers across the country. In particular, the FDA sent almost 1,200 letters to retail stores including Walgreens and Walmart with warnings about the penalties. The agency also imposed fines on an additional 130 establishments for repeated offenses.

The FDA gave the five most popular e-cigarette manufacturers—JUUL, Vuse, Blu, MarkTen XL and Logic—60 days to

submit detailed plans to curb underage usage. These five companies, which represent approximately 97 percent of the market, had products that were purchased by kids in an earlier enforcement action by the agency. Juul, which is privately held, dominates the market, representing about 72 percent of sales.

Many public-health groups believe these companies use fruity flavors in their products to entice young people to try vaping. However, the companies insist that the flavors are critical to helping nicotine-addicted adult smokers switch from conventional cigarettes.

Overall this has been the largest coordinated enforcement action in the FDA's history. The FDA is also considering a slew of potential actions, including forcing brands to revise their sales and marketing practices, preventing distribution to retailers who have been found to sell to kids, and removing some or all flavored e-cig products from those companies.

The head of the U.S. Food and Drug Administration said on Sept. 25 that the agency is contemplating banning online sales of e-cigarettes as a step to curb the rise in vaping among minors. FDA Commissioner Scott Gottlieb said that while e-cigarettes can be a viable alternative for adult smokers to wean off combustible cigarettes, data shows there has been a sharp spike in youth use. Banning online sales is one of the measures the FDA is considering to address teen vaping, as the benefits to adults don't outweigh the risk of a new generation becoming addicted to nicotine, Gottlieb said at a panel hosted by Axios and aired on C-SPAN.

If you need more information on this subject, contact Will Sutton, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at [William.Sutton@beasley-allen.com](mailto:William.Sutton@beasley-allen.com).

Source: NPR

### **FTC WINS FALSE AD LAWSUIT AGAINST DIET PILL MAKER ROCA LABS**

A Florida federal judge has granted the Federal Trade Commission (FTC) summary judgment on all counts in its lawsuit accusing diet pill maker Roca Labs and its owners of deceiving consumers through false claims, undisclosed paid success stories and threats of lawsuits to discourage negative reviews. U.S. District Judge Mary S. Scriven granted the federal government's request for a permanent

injunction against Roca Labs Inc. owners Don Juravin and George C. Whiting and four related corporate entities for violations of the FTC Act. The judge also found that the FTC is entitled to a monetary judgment but gave the agency 21 days to provide additional information on how it reached its calculation of about \$25.2 million in net revenue for the company. Judge Scriven said:

*Based on defendants' extended history of deceptive and unfair practices and defendants' continued promotion of their products and comparisons to gastric bypass surgery, the FTC has proven that a cognizable danger of recurrent violation exists. Thus, a permanent injunction prohibiting defendants' deceptive and unfair practices is justified.*

According to the complaint filed in September 2015, Roca Labs promised that ingesting its products would substantially limit a user's stomach capacity and cause dramatic weight loss—with a 90 percent success rate—without disclosing the fact that it paid users to provide success story video testimonials, or that it issued gag clauses that kept users from writing negative product reviews. The agency claimed that Florida-based Roca Labs violated the FTC Act, which prohibits the use of false advertising, by making numerous unsubstantiated claims about weight loss and portraying the effects of its products as “scientifically proven” even though there was no such science showing the products were effective.

Since at least 2009, Roca Labs has been selling weight-loss products, such as its “Formula” and “Anti-Cravings” powder, to customers through its website, for anywhere from \$500 to \$1,500, according to the FTC. Additionally, the company has spent millions on advertising through Google, Bing and Yahoo. It has a significant social media presence as well. Almost all of the online advertisements led back to the company's website, where potential customers were inundated with “scientific” illustrations of how its “formulas” shrink the stomach and how it was a safe alternative to bariatric, or lap-band, surgery. The site included links to an alleged independent, third-party website that also touted the success of Roca Labs products over lap-band surgery.

Many of the claims found on the company's website are said to have been written by doctors and include references

to clinical trials of the products. Customers can also watch videos of people portraying how effective the product is, with the website touting the “real testimonials of 100,000 users.” But the company did not tell consumers that those videos and various positive blog posts and social media posts were paid for by the company and in some cases were written by employees, and that the third-party website, [gastricbypass.me](http://gastricbypass.me), was actually owned and run by Roca Labs. Both actions constitute violations of the FTC Act, the agency said.

The company also deceived its users by collecting personal information from its customers and claiming it kept that information confidential. In fact, Roca Labs shared that personal data in public court filings and with payment processors, banks and consumer health information agencies, according to the FTC.

Roca Labs also claimed that customers who purchased its products had agreed to terms saying they had received the products at a “discounted” price and had agreed not to post any negative reviews of the company or its weight-loss supplements. Doing so would subject them to having to pay additional money for the products or face a lawsuit. The court agreed with the FTC, which provided examples of customers who were aggressively threatened by the company after writing negative reviews or lodging complaints with the Better Business Bureau, that these gag clauses also violated the FTC Act.

Judge Scriven also ruled that Juravin and Whiting should be held individually liable for their company's deceptive and unfair acts, finding that the FTC had established that they operated as a common enterprise and either knew of, directly participated in or had control over the conduct.

Juravin, who the court found played a larger role in the business, testified that he has stopped using the Roca Labs brand but is selling the same formula through the brand “gastric.care,” the order said.

Judge Scriven agreed with the FTC's argument that monetary damages should be based on the Defendants' unjust gain measured through their net revenue. However, while the FTC provided sufficient evidence that their gross revenues were \$26.6 million during the relevant time period, she did not find evidentiary support for its “reasonable approximation” that customer refunds totaled \$1.35 million. The FTC is represented in-house

by Carl H. Settlemyer, Michael J. Davis and Paul B. Spelman. The case is *Federal Trade Commission v. Roca Labs Inc. et al.*, (case number 8:15-cv-02231) in the U.S. District Court for the Middle District of Florida.

Source: Law360.com

## XIX. RECALLS UPDATE

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

### Auto Recalls

**Mitsubishi Motors North America, Inc. (MMNA)** is recalling certain 2018 Mitsubishi Outlander Sport vehicles equipped with a Forward Collision Mitigation (FCM) system and 2018 Mitsubishi Outlander PHEV and Eclipse Cross vehicles and 2017-2018 Outlander vehicles equipped with an Adaptive Cruise Control (ACC) system and/or an Electric Parking Brake (EPB) system. The software for the Hydraulic Unit Electronic Control Unit (ECU) may be incorrect, possibly preventing the intervention of a safety system such as automatic emergency braking, Anti-lock Braking (ABS), Electronic Stability Control (ESC), or the Brake Auto Hold (BAH) function when any of these systems are in use.

**Mitsubishi Motors North America (MMNA)** is recalling certain 2018 Mitsubishi Outlander PHEV, Outlander Sport, 2018-2019 Eclipse Cross, and 2017-2018 Outlander vehicles equipped with a Forward Collision Mitigation (FCM) system that detects pedestrians. Due to incorrect software, the FCM-ECU (Electronic Control Unit) may apply braking for longer than needed, even after a pedestrian is no longer detected. If the FCM-ECU software activates the brake for longer than necessary, the driver may react by applying additional braking. The resulting rapid deceleration of the vehicle can increase the risk of a rear-end collision.

**Ford Motor Company (Ford)** is recalling certain 2018 Ford Edge and Lincoln MKX vehicles. These vehicles may have door striker bolts that are shorter than intended. Vehicles with shorter door striker bolts fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 206, “Door Locks and Door Retention Components” potentially resulting in the doors opening in the event of a crash.

**Ford Motor Company (Ford)** is recalling certain 120V Convenience charge cords that were supplied with and sold for use with 2013-2015 Ford C-Max Energi and Fusion Energi vehicles and 2012-2015 Ford Focus Electric vehicles. Cords with part numbers FM58-10B706-AA, FM58-10B706-AB, FM58-10B706-AC, FM58-10B706-AD, FM58-10B706-AE and FM58-10B706-AF were manufactured without thermistors, and during vehicle charging, increased resistance in the house’s outlet or wiring can cause the cord to overheat and melt.

**Ford Motor Company (Ford)** is recalling certain 2015-2018 Ford F-150 Regular Cab and SuperCrew Cab vehicles. If a front seat belt pretensioner deploys as the result of a crash, the sparks may ignite materials such as carpeting or insulation within the B-pillar area. A vehicle fire could result if materials ignite inside the vehicle.

**Ford Motor Company (Ford)** is recalling certain 2018 Ford Edge, Lincoln MKX, 2019 Ford Flex, and Lincoln MKT vehicles. The power supply cables at the starter and the alternator may not have been properly secured, possibly resulting in an electrical arc. An electrical arc can increase the risk of a fire.

**Nissan North America, Inc. (Nissan)** is recalling certain 2015-2017 Nissan Murano, 2016-2017 Nissan Maxima, 2017-2018 Nissan Pathfinder, and 2017 Infiniti QX60 vehicles. The Anti-Lock Brake (ABS) actuator pumps may allow brake fluid to leak onto an internal circuit board. A brake fluid leak on the circuit board may result in an electrical short, increasing the risk of a fire.

**General Motors LLC (GM)** is recalling certain 2015 Chevrolet Silverado 1500, Tahoe and Suburban, GMC Sierra 1500 and Yukon, and Cadillac Escalade vehicles. Electric power steering (EPS) assist may be lost momentarily, followed by a

sudden return of EPS assist. If EPS assist is lost and then suddenly returns, the driver may have difficulty steering the vehicle, especially at low speeds, increasing the risk of a crash.

**General Motors LLC (GM)** is recalling certain 2015-2016 Chevrolet Silverado 2500, 3500, 1500 Crew Cab Special Service, Tahoe Police Pursuit/Special Service, GMC Sierra 2500, and 3500 vehicles. The brake pedal pivot nut may loosen, causing the brake pedal to be loose or inoperative. If the brake pedal becomes loose or inoperative, the driver may be unable to stop the vehicle by using the brake pedal. Additionally, a loose pedal may also interfere with the accelerator pedal. Either condition may increase the risk of a crash.

**General Motors LLC (GM)** is recalling certain 2018-2019 Chevrolet Equinox, Impala, Cruze, Volt and Bolt EV vehicles, GMC Terrain vehicles, Buick Lacrosse and Regal vehicles, Cadillac XTS and XTS Professional vehicles and 2018 Chevrolet Malibu vehicles. The rear brake caliper pistons 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.

**Fabform Industries, Inc. (Fabform)** is recalling certain 2017-2018 Fabform Power Tilt dump trailers. The hinges welded on the bottom frame may fracture and the dump box may unexpectedly fall. If the dump box falls unexpectedly, it can increase the risk of injury or death.

**Toyota Motor Engineering & Manufacturing (Toyota)** is recalling certain 2016-2018 Toyota Prius vehicles. A portion of the engine wire harness connected to the hybrid Power Control Unit (PCU), could contact the cover at this connection and wear, causing an electrical short circuit. An electrical short can increase the risk of a fire.

**Toyota Motor Engineering & Manufacturing (Toyota)** is recalling certain 2012 Toyota Avalon vehicles. During a vehicle repair, the seat belt inner buckles may have been replaced with parts that may incorrectly tell the air bag management system that the seat belt is always buckled. If the seat belt is falsely interpreted as being buckled, in the event of a crash, the air bags may not deploy appropriately, increasing the risk of injury.

**Bridgestone Americas Tire Operations, LLC (BATO)** is recalling certain Firestone FS818 tires with date codes 2318-2418, Bridgestone M854 tires with date codes 2418-2518, Bridgestone M860A tires with date code 2518, and Bridgestone M864 tires with date codes 2318-2418, all of size 425/65R22.5. The sidewall steel body cords may be exposed, which can cause unexpected rapid air loss during use. As such, these tires fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 119, “New Pneumatic Tires—Other than Passenger Cars.” Rapid air loss can increase the risk of a crash.

**Daimler Trucks North America LLC (DTNA)** is recalling certain 2017-2019 Freightliner Cascadia, Coronado and 122SD, and Western Star 4900 trucks, equipped with Cummins ISX15 or X15 diesel engines. In certain driving conditions, such as on a long downhill grade, the fuel line may burst if the fuel pump cooling circuit screen becomes restricted. If the fuel line bursts, fuel may leak onto the road resulting in a roadway hazard for other motorists. The engine may also stall without warning, resulting in the vehicle’s inability to restart, increasing the risk of a crash.

**Daimler Trucks North America LLC (DTNA)** is recalling certain 2017-2019 Thomas Built Buses Saf-T-Liner C2 school buses, equipped with S3B 45” Restraint School Bus Seats. In the event of a crash, 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.” In the event of a crash, if the seat detaches from the floor, it can increase the risk of injury.

**Daimler Trucks North America LLC (DTNA)** is recalling certain 2015-2019 Thomas Built Buses Saf-T-Liner C2 and Saf-T-Liner HDX school buses, equipped with certain S-Series and K-Series Titanium Wheelchair Lifts, models K200, K201, K550, K551, S200, S2201, S550 and S551. The wheelchair lift positioning input cam may fail while the lift is in use, allowing the platform to travel higher than the vehicle’s floor height. If the wheelchair lift platform stops above the vehicle floor, the wheelchair user can tip inward toward the vehicle when exiting the lift, increasing their risk of injury.



**Kawasaki Motors Corp., U.S.A. (Kawasaki)** is recalling certain 2018 Kawasaki Ninja H2 SX SE (ZXT02BJ) motorcycles. The pin for the center stand spring may have been improperly welded, and, as a result, the pin may shift or fall off resulting in the spring detaching and the center stand dropping to the ground unexpectedly and dragging while riding. The dragging center stand can cause a loss of control, increasing the risk of a crash.

**Jayco, Inc. (Jayco)** is recalling certain 2018 Jayco Alante vehicles. The leveling system hydraulic hoses may become damaged due to their location, resulting in a hydraulic fluid leak. The leaking hydraulic fluid leak may spray onto the exhaust system, increasing the risk of a fire.

**Blue Bird Body Company (Blue Bird)** is recalling certain 2019 Blue Bird All American and 2019-2020 Blue Bird Vision school buses, equipped with certain NextGen School Bus seats with Integrated Child Restraint Systems. These seats may be missing a warning label on the lower restraint strap. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 213, "Child Restraint Systems."

**Dexter Axle Company (Dexter)** is recalling certain D44 trailer axles with a 4400 pound capacity. These axles may be missing inner bearing races on the hubs, which can cause the bearing to fail or the hub to overheat. The wheel hub may overheat and smoke, increasing the risk of a fire or the bearing may fail, affecting handling and increasing the risk of a crash.

**Fabform Industries, Inc. (Fabform)** is recalling certain 2018 EPT dump trailers. The hinges welded on the bottom frame may fracture and the dump box may unexpectedly fall. If the dump box falls unexpectedly, it can increase the risk of injury or death.

**Webasto Charging Systems, Inc (Webasto)** is recalling certain AeroVironment TurboCord and TurboDock/TurboDX electric vehicle charging systems. Capacitors within these charging systems may fail, possibly resulting in a shock hazard or a fire. An electrical shock or a fire can increase the risk of injury or death.

**Navistar, Inc. (Navistar)** is recalling certain 2015-2019 IC Bus CE school buses,

equipped with certain S-Series and K-Series Titanium Wheelchair Lifts, models K200, K201, K550, K551, S200, S2201, S550 and S551. The wheelchair lift positioning input cam may fail while the lift is in use, allowing the platform to travel higher than the vehicle's floor height. If the wheelchair lift platform stops above the vehicle floor, the wheelchair user can tip inward toward the vehicle when exiting the lift, increasing their risk of injury.

**Autocar Industries, LLC (Autocar)** is recalling certain 2018-2019 Autocar Xspotter vehicles. The brake pedal mounting plate may be incorrectly welded, possibly resulting in the brake pedal disconnecting. If the brake pedal becomes disconnected, the brakes may not be able to be applied, increasing the risk of a crash.

**BMW of North America, LLC (BMW)** is recalling certain 2017-2019 MINI Cooper Countryman vehicles. These vehicles may be missing a crash protection plate near the high pressure fuel pump, which may result in a fuel leak in the event of a crash. Without the crash protection plate, in the event of a crash, the fuel pump can become damaged, causing a fuel leak and increasing the risk of a fire.

**Chrysler (FCA US LLC)** is recalling certain 2018-2019 RAM 1500 trucks. The rear differential may have been insufficiently filled, possibly resulting in its failure. If the rear axle assembly fails, it can cause a loss of drive or the rear wheels may lock up. Either scenario increases the risk of a crash.

**PACCAR Incorporated (PACCAR)** is recalling certain 2016-2019 Kenworth C500, T660, T800, and W900 vehicles, equipped with 1.9M ISX15 engines. The engine harnesses may have been manufactured without check engine light (CEL) and stop engine light (SEL) circuits, preventing the driver from being warned of a serious engine problem. If the driver is not warned of a serious engine problem, the engine may unexpectedly fail, increasing the risk of a crash.

**Volvo Car USA LLC (Volvo)** is recalling certain 2019 Volvo XC40 vehicles. The brake pedals may not have been correctly riveted, allowing the pedal to move out of position, possibly reducing braking performance. Reduced braking performance can increase the risk of a crash.

**Volvo Trucks North America (Volvo)** is recalling certain 2019 Volvo VNL and VNR trucks equipped with Jost fifth wheel couplings. The fifth wheel may have an outboard slider bracket that is too narrow, possibly allowing the trailer to separate from the tractor. If the trailer separates from the tractor, it can increase the risk of a crash.

**Altec Industries Inc. (Altec)** is recalling certain 2017-2018 Altec LS63 Aerial Devices. The fuse for the battery was not installed to the guidelines. The incorrectly placed fuse may increase the risk for an electrical short. An electrical short can increase the risk of a fire.

**Altec Industries Inc. (Altec)** is recalling certain 2008-2018 Aerial Devices equipped with aluminum work platforms. The platform mounting holes may fail, causing the platform to move unexpectedly. If the platform moves unexpectedly, it can increase the risk of injury.

**Volkswagen Group of America, Inc. (Volkswagen)** is recalling certain 2018 Volkswagen Atlas vehicles. During production, the air conditioning system drain tube may have been twisted, causing water to drain into the air bag control module. The wet air bag control module may result in an unintentional deployment of the air bags, increasing the risk of injury or crash.

**Mack Trucks, Inc. (Mack)** is recalling certain 2019 Mack Anthem trucks equipped with Jost fifth wheel couplings. The fifth wheel may have an outboard slider bracket that is too narrow, possibly allowing the trailer to separate from the tractor. If the trailer separates from the tractor, it can increase the risk of a crash.

**Spartan Motors USA (Spartan)** is recalling certain 2018-2019 Spartan Specialty K2 vehicles. The park brake systems on these chassis may not be able to prevent the vehicles from moving unintentionally if parked on a grade. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 121, "Air Brake Systems." If the vehicle moves unintentionally while parked on a grade, it could increase the risk of a crash.

## Other Safety Recalls

### **CFMOTO RECALLS ALL-TERRAIN VEHICLES DUE TO FIRE HAZARD**

CFMOTO Powersports Inc., of Plymouth, Minnesota, has recalled 5,300 CFORCE all-terrain off-highway vehicles (ATVs). The fuel hose can crack and fuel can leak from the vehicle, posing a fire hazard. This recall involves 2016-2018 CFORCE 400, 2017-2018 CFORCE 500S and 2017-2018 CFORCE 500HO ATVs with 400cc to 500cc, 4-cycle engines. The “CFMOTO” logo is located on the front and rear grille, and a “CFORCE” decal is on each side of the fuel tank. CFMOTO CFORCE vehicles were sold in orange, blue, red and gray. The vehicle identification number (VIN) is located under the seat on the top of the right side, top frame rail.

The vehicles were sold at CFMOTO dealers nationwide from November 2015 through July 2018 for between \$4,200 and \$6,000. Consumers should immediately stop using the recalled ATVs and contact a CFMOTO dealer to schedule a free repair. CFMOTO is contacting all registered owners directly. Contact CFMOTO toll-free at 888-823-6686 from 8 a.m. to 5 p.m. CT Monday through Friday, email at [info@cfmoutousa.com](mailto:info@cfmoutousa.com) or online at [www.cfmoutousa.com](http://www.cfmoutousa.com) and click on Customer Care and then Vehicle Safety for more information. Photos available at: <https://www.cpsc.gov/Recalls/2018/CFMOTO-Recalls-AllTerrain-Vehicles-Due-to-Fire-Hazard>

### **HAWTHORNE HYDROPONICS RECALLS HUMIDIFIERS DUE TO FIRE AND SHOCK HAZARDS**

Hawthorne Hydroponics has recalled about 400 humidifiers. This recall involves Ideal-Air 175-pint industrial grade humidifiers. The recalled humidifiers are black and have the “Ideal-Air” logo printed near the bottom. The humidifiers can overheat while in use, posing fire and shock hazards. The company is aware of five incidents of the humidifier overheating. No injuries have been reported.

The humidifiers were sold at Green-Coast Hydroponics, Growers House, Hydro Pros, Urban Garden Center, Red Flag Products stores and other gardening stores nationwide from October 2017 through June 2018 for about \$500. Manufacturer(s): Ningbo Yichao Muffler Science and Technology Co. Ltd., of China. Importer(s): Sunlight Supply Inc., of Vancouver, Wash., Hawthorne Hydro-

ponics, of Vancouver, Washington, purchased Sunlight Supply’s assets on June 4, 2018. Manufactured in China. Consumers should immediately stop using the recalled humidifiers and return them to the place of purchase for a full refund of the purchase price in the form of store credit. Contact Sunlight Supply toll-free at 888-582-2762 from 9 a.m. to 5 p.m. ET Monday through Friday, e-mail at [RMA@sunlightsupply.com](mailto:RMA@sunlightsupply.com) or online at [www.sunlightsupply.com](http://www.sunlightsupply.com) and click on “Voluntary Recall” for more information.

### **TITAN RECALLS WEIGHT LIFTING SAFETY STRAPS DUE TO INJURY HAZARD**

Titan Manufacturing and Distributing Inc., of Collierville, Tennessee, has recalled about 970 Titan safety straps. The stitching in the strap can come loose causing heavy weights to fall on consumers, posing an injury hazard to the weight lifter. This recall involves Titan weight lifting safety straps with steel mount brackets to hold the weights. The straps are used to catch the weights if a user were to drop them during an exercise. The recall includes straps with model numbers 24T3STRAP, 26T2STRAP, 30X3STRAP, 36T3STRAP, X2STRAP24, 24X3STRAP, 36X3STRAP. The Titan logo and model numbers are contained on the product’s packaging. The safety straps were sold in packages of two. The company has received one report of a strap breaking when subjected to moderate weight and is aware of three other reports of strap failures. No injuries have been reported.

The straps were sold online only at Amazon.com, eBay.com, Sears.com, Walmart.com and [www.Titan.fitness](http://www.Titan.fitness) from August 2017 through March 2018 for between \$75 and \$100. Consumers should immediately stop using the recalled straps and contact Titan for a full refund or free replacement straps. Titan is contacting all known purchasers directly. Contact Titan at 800-605-8241 from 8 a.m. to 5 p.m. CT Monday through Friday, email [info@titandistributorsinc.com](mailto:info@titandistributorsinc.com) or online at [www.titan.fitness](http://www.titan.fitness) and click on “Product Recall” for more information.

### **BOY SCOUTS OF AMERICA RECALLS NECKERCHIEF SLIDES DUE TO VIOLATION OF FEDERAL LEAD CONTENT BAN**

About 110,000 neckerchief slides have been recalled by Boy Scouts of America, of Charlotte, North Carolina. The colored enamel on the neckerchief slides contains levels of lead that exceed the federal lead content ban. Lead is toxic if ingested by young children and can cause adverse health issues. This recall involves Boy Scouts of America’s neckerchief slides. The brass neckerchief slides were sold in four styles: red wolf, green bear, orange lion and blue Webelos. “Made in China” and P.O. number 200228276, 20023175, 200233281 or 200236630 are printed on a white label attached to the back of the neckerchief slide.

The slides were sold exclusively at Boy Scouts of America retail stores and authorized distributors nationwide and online at [www.scoutshop.org](http://www.scoutshop.org) from February 2018 through August 2018 for about \$6. Consumers should immediately stop using the recalled neckerchief slides, take them away from children and return them to any Boy Scouts of America retail store or distributor for a free replacement neckerchief slide, including shipping. Contact Boy Scouts of America at 800-323-0736 from 8 a.m. to 7 p.m. ET Monday through Friday, email at [customerservice@scoutshop.org](mailto:customerservice@scoutshop.org), or online at [www.scoutshop.org](http://www.scoutshop.org) and click on the Product Recall link at the bottom of the page for more information. Photos available at: <https://www.cpsc.gov/Recalls/2018/Boy-Scouts-of-America-Recalls-Neckerchief-Slides-Due-to-Violation-of-Federal-Lead-Content-Ban>.

### **GROUND BEEF RECALLED BY CARGILL MEAT SOLUTIONS**

More than 132,600 pounds of ground beef products made from the chuck portion of the carcass are being recalled because the meat may be contaminated with *Escherichia coli* O26 (*E. coli*), a bacteria that can cause potentially life threatening illness in some humans. At least 17 people have been sickened and one person has died between July 5 and July 25, 2018, after eating the meat.

The recall was initiated by Cargill Meat Solutions, a Fort Morgan, Colorado-based establishment. Affected ground beef products were produced and packaged on June 21, 2018, and bear the establishment number “EST. 86R” inside the USDA mark

of inspection. The products were shipped to retail locations nationwide and were sold under various brand names. A list of the affected products can be found on the company's product list.

The USDA is concerned that some people who purchased the meat may have frozen the meat for future use. Consumers should check their freezers for affected ground beef products. Anyone with recalled meat products should not consume them, but return them to the place of purchase.

An investigation by the United States Department of Agriculture (USDA) Food Safety and Inspection Service (FSIS) traced the illnesses and death to the consumption of ground beef products purchased at various retail stores that were supplied by Cargill Meat Solutions.

*E. coli* O26 is a variation of Shiga toxin-producing *E. coli*. People infected with this strain of *E. coli* typically become ill two to eight days after exposure to the organism. Most will develop diarrhea, which is often bloody, and vomiting. Some illnesses last longer and can be more severe. Most people recover within a week, but on rare occasions, some develop more severe infections, like hemolytic uremic syndrome (HUS), a type of kidney failure. HUS can occur in people of any age but is most common in children younger than 5, older adults, and people with weakened immune systems. Symptoms of HUS include easy bruising, pallor and decreased urine output. Anyone who experiences these symptoms should seek medical attention immediately.

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](http://BeasleyAllen.com) or on our consumer blog at [RightingInjustice.com](http://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](mailto:Shanna.Malone@beasleyallen.com) for more recall information or to supply us with information on recalls.

## XX. FIRM ACTIVITIES

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### EMPLOYEE SPOTLIGHTS

#### THERESA PERKINS

Theresa Perkins is marking her 19<sup>th</sup> year with the firm this month and is a Legal Assistant working with Graham Esdale in the Personal Injury & Product Liability Section. She drafts complaints, responds to discovery requests, communicates with clients and experts and spends a large amount of time organizing and preparing cases for trial. Theresa also coordinates the firm's Capitol Hill Nursing Home Angel Tree charity each year. She said she has been blessed to be part of this cause, which other employees are incredibly generous to support by buying Christmas gifts for a large number of residents at the local nursing home.

The Auburn University Montgomery graduate holds a Bachelor of Science degree in Justice and Public Safety and a Legal Assistant certificate. Theresa met her husband Scott while in college and they have been married 23 years. Scott is a senior officer with the State of Alabama, Board of Pardons and Paroles. Their daughter, Katie, is a Junior at Montgomery Catholic Preparatory School and has been co-captain of the color guard team for two years. She is also a member of the track and field team. The family also has two rescue dogs, Honey (8) and Rosie (3), they love spoiling.

Theresa and her family are members of Holy Spirit Catholic Church where she enjoys volunteering. In her spare time, Theresa enjoys running, bicycling and hiking. Her biggest passion is volunteering with her daughter at the Montgomery Humane Society where they help place abandoned animals into loving families and promote responsible pet ownership. And, this time of the year you can also find Theresa cheering on the Auburn Tigers!

Theresa is a very good, hard-working employee who is dedicated to the firm and the clients she and Graham represent. We are blessed to have her with the firm.

#### DONNA PUCKETT

Donna Puckett has been working in the legal field for more than three decades and has been with the firm for 17 of those years. She is Legal Assistant to Navan Ward, Jr. in the firm's Mass Torts Section

where she helps organize and maintain hip and knee replacement clients' files. Prior to working in the Mass Torts Section, Donna worked as a legal assistant in the firm's Toxic Torts Section.

In 1995, Donna obtained her Paralegal Certificate from Auburn University. She worked for a civil defense firm along with other Plaintiff and general practice firms before joining Beasley Allen.

A Montgomery native, Donna now resides in Eclectic, Alabama, with her husband, John. Donna and John have been married for 27 years and have three children. Their son, Dylan, is a worship leader in Savannah, Georgia. Their twin daughters, Leslie and Preslie, are registered nurses. The couple also has three fur babies—a cat, a German shepherd and a basset hound.

Donna enjoys visiting flea markets in her spare time but prefers spending time with her family over other activities. She especially loves spending time with her grandchildren, Emilyn (20 months) and Liam (15 months). She says, "Children are the rainbow of life while grandchildren are the pot of gold."

Donna is also a hard-working, dedicated employee who is valuable member of the Beasley Allen family. We are most fortunate to have her with us.

#### LAURA REAVES

Laura Reaves has been with the firm for 17 years and is the Legal Assistant working with Chris Glover, Managing Attorney for the Atlanta office. She is in the firm's Personal Injury & Product Liability Section. Previously, Laura worked in the firm's Insurance Fraud and Nursing Home Sections. Her current responsibilities include assisting Chris with every aspect of cases involving personal injury or death involving trucking and product liability cases. Specifically, she drafts pleadings and discovery, facilitates communications with experts and consultants, courts, clients and witnesses. Laura also manages clients' files, reviews medical records and helps with discovery review and assists at trials.

Laura earned an Associates of Science in Legal Studies from Faulkner University and a Bachelor of Arts in International Business from Huntingdon College. She is a Certified Paralegal through the National Association of Legal Assistants or NALA—The Paralegal Organization. She is a member of the Montgomery County Bar Association, Inc. Paralegal Division, NALA—The Paralegal Organization, and

serves as the Region II Director for the Alabama Association of Paralegals, Inc. Laura recently shared her knowledge and experience as a speaker at the Alabama Association of Paralegals, Inc. Winter Seminar in February 2018 where she presented information about "Electronic Filing in Today's Courts."

As a volunteer in the community, Laura serves as a mentor at Flowers Elementary school in Montgomery, Alabama. She also volunteers with the Information Table/Media Duplication Center at Centerpoint Fellowship Church in Prattville, Alabama, where she and her family are members.

Laura and her husband, Jamie, have been married for 16 years and they have a 12-year-old son, Hunter, who is a student at Edgewood Academy in Elmore County, Alabama. Hunter is involved in a number of sports including, football, baseball, and basketball. When she isn't working or volunteering, Laura loves spending time with her family, including their three rescue dogs. She said that she and her family most likely can be found at the ballfield, but they also enjoy an occasional lazy day on the river, kayaking or catching a movie.

Laura is another hard-working, dedicated employee who cares about the clients she and Chris represent. We are blessed to have Laura with the firm.

#### **GIBSON VANCE**

Although born in Troy, Alabama, Gibson Vance grew up in Fort Valley, Georgia, where his passion to help people was cultivated by witnessing the lives and, at times, struggles of the working-class people in his community. He soon realized that due to limited resources, quite often many folks in his community had few options for help. Watching lawyers on television and in movies, such as Perry Mason and Matlock, Gibson soon realized that lawyers have a unique opportunity to help folks who have nowhere else to turn for help. Gibson knew that when he grew up, he wanted to become a lawyer so that he could help folks like those in his hometown. Since joining our law firm 18 years ago, that is exactly what Gibson has been doing in and outside of the courtroom.

As a lawyer in both the firm's Personal Injury & Product Liability and Consumer Fraud & Commercial Litigation Sections, Gibson focuses on claims against those who negligently or intentionally harm others. His clients include individuals and small businesses. Gibson has participated

in dozens of jury trials in his legal career, many of which have resulted in large verdicts for his clients. He was appointed to serve on the Plaintiffs Steering Committee (PSC) for multidistrict litigation (MDL) surrounding a massive data breach affecting customers of Community Health Systems Inc. (CHS). The company admitted data from its affiliated physician practices and clinics was breached, affecting potentially 4.5 million patients. Gibson also received a \$2.9 million verdict for his client in a securities fraud case in Henry County, Alabama.

In addition to helping people, Gibson's favorite part of practicing law is trying cases. In fact, in his third year of law school, Gibson obtained a special license that would allow him to try cases. He began his active law practice even before graduation and tried three jury trials while still in law school. Gibson says:

*There is no greater level of excitement than representing a client in trial that really needs your help. Most of our clients have been seriously injured or mistreated and have no one else to turn to for help but our law firm.*

Gibson is an active member of several national organizations and is a leader within the profession. Currently, he is President of the Southern Trial Lawyers Association and represents the Alabama State Bar as its Bar Commissioner for the 15<sup>th</sup> Judicial Circuit. He also serves on the Alabama State Bar Elections, Ethics, and Government Relations Committee and the Alabama Legislative's Business Litigation and Complex Litigation Study Committee. Gibson previously served as President of the American Association for Justice (AAJ) and the Alabama Association for Justice (ALAJ). He is an active member of the Montgomery County Bar Association where he has served as President and President of its Young Lawyer's Section. Gibson also served as a member of the organization's Board of Directors for several years.

Gibson's experience, skill and leadership have been recognized and honored on numerous occasions. In January 2017, Gibson joined the Fellows of the Alabama Law Foundation and was inducted into the American Board of Trial Advocates (ABOTA) in November 2015. He is the recipient of the ALAJ's Spirit Sword/President's Award, the AAJ's New Lawyer's Division Joe Tonahill Award, and the AAJ's Wiedemann & Wysocki Award. Gibson

has also been selected to the invitation-only National Trial Lawyers: Top 100. Closer to home, his law partners awarded him the Beasley Allen Litigator of the Year (2010) and the Chad Stewart (2014) awards.

Gibson says the people who make up the firm are what he believes set Beasley Allen apart from other firms. He observes:

*Most people know that our firm has some of the best lawyers in the country. But what really makes our firm special is the fact that we have some of the best people in the world working here. From our receptionist all the way to those helping lead the firm.... they are just good people.*

Gibson is truly dedicated to helping folks who need help and he has a "servant's heart," which is his motivation for doing all that he does. Gibson is a tremendous asset to the firm and we are blessed to have him with us.

## **XXI. SPECIAL RECOGNITIONS**

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#### **SOO SEOK YANG, DOH AH KIM SELECTED FOR NEXT GENERATION KOREAN-AMERICAN LEADERS GROUP**

Soo Seok Yang is a Senior Staff Attorney in our firm's Mass Torts Section. His wife Doh Ah Kim is a lawyer and Senior Community Liaison Specialist at the Governor's Office of Minority Affairs for Alabama Governor Kay Ivey.

Soo Seok and Doh Ah have been selected by the Consul General and the Office of Consul General of South Korea in Atlanta, Georgia, as part of the Next Generation Korean-American Leaders. The Consulate sponsors the annual leadership group, which consists of 15 to 20 young Korean-American professionals from across the southeastern U.S. who are prominent in their professions and recognized as leaders in their communities.

Participants enjoy networking and leadership training opportunities, allowing them to grow together as a core group so that they can help promote and support Korean-American communities and activities in the U.S. The Consulate serves the jurisdictions of Georgia, Alabama, Florida, North Carolina, South Carolina and Ten-

nessee as well as the commonwealth of Puerto Rico and the U.S. Virgin Islands. There are an estimated 250,000 Koreans in The Consulate's jurisdiction. It promotes Korean companies' business environment in the Southeast, partnering with local and state governments in the region, and supports the activities of future generations of Korean-Americans.

Soo Seok says he feels a strong responsibility to serve as a bridge between the American and Korean communities in Alabama. Currently, he serves as Executive Director for the Korean American Association of Montgomery. His efforts have earned him three commendation awards by the Federation of Korean Associations of Southeast USA in 2011, 2012 and 2017. Soo Seok and Doh Ah are humbled by being selected to represent Alabama in this latest endeavor to combine their native and adopted heritages. Soo Seok said:

*It is an honor to be in this group and it is my hope that wherever we are and whatever we do, we all keep encouraging and inspiring each other by doing good works for the communities.*

The Consulate hosted a reception dinner for participants at the Consul General's mansion located in Atlanta. Soo Seok and Doh Ah met their fellow leadership group members including other lawyers, business leaders heavily involved in trade between the U.S. and South Korea, elected and appointed government leaders, including Representative Sam Park, a 32-year-old Korean-American Georgia State Representative; Michael Kim, Florida Department of Transportation District Materials Engineer; Caroline Um, President of the Korean American Coalition Metro Atlanta Chapter; Tae-woong Yoon, Director of the KOTRA (Korea Trade-Investment Promotion Agency)'s Korea Business Center in Atlanta; Michael Park, President of the Korean American Scholarship Foundation—Southern Region; Jung Hyun Lee, President of the Georgia Tech Korean Student Government Association; and Eunjung Nam, President of the Korean Graduate Student Association at Georgia State University.

Soo Seok also provides leadership in several areas of the legal profession. Last year, the Alabama State Bar selected him to be one of only 30 lawyers in the State Bar's 2017 Leadership Forum. The Alabama State Bar Leadership Forum is an

award-winning, highly competitive program designed to bring together and train tomorrow's leaders from across the state.

Outside of his work as a lawyer and an unofficial ambassador for the local Korean-American community, Soo Seok serves as a deacon, and a praise and worship leader for the international department at First Baptist Church in Montgomery where he and his family are members. He also enjoys singing, writing songs and playing the guitar and has participated in several professional Christian recordings. Soo Seok and Doh Ah have four children: Yookyum Abraham, Yoojin Johanna, Yooha Elijah and Yooeun Hannah Grace. Both their parents serve as missionaries in Taiwan. Soo Seok speaks Korean and conversational Chinese.

Sources: Consulate General of the Republic of Korea in Atlanta

## XXII. FAVORITE BIBLE VERSES

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LaBarron Boone, a lawyer in our Personal Injury & Products Liability Section, sent in several verses for the October issue. He said these verses have helped him and that they will help others.

*"And my God will meet all your needs according to the riches of his glory in Christ Jesus." Philippians 4:19*

*"But seek first his kingdom and his righteousness, and all these things will be given to you as well." Matthew 6:33*

*"For I know the plans I have for you," declares the Lord, "plans to prosper you and not to harm you, plans to give you hope and a future." Jeremiah 29:11*

*Be anxious for nothing, but in everything by prayer and supplication with thanksgiving let your requests be made known to God. And the peace of God, which surpasses all comprehension, will guard your hearts and your minds in Christ Jesus. Philippians 4:6-7*

*Therefore humble yourselves under the mighty hand of God, that He*

*may exalt you at the proper time, casting all your anxiety on Him, because He cares for you. 1 Peter 5:6-7*

*I can do all this through him who gives me strength. Philippians 4:13*

Danielle Mason, a lawyer in our firm's Mass Torts Section, supplied a verse for this issue. She says one of the hardest things for her is trying to make sense of things that do not always make sense, and trying to understand that which can't be understood. Danielle says this challenge was especially difficult for her recently as she and her family dealt with the tragic passing of her father. She says that God's grace and peace continue to get them through these hard times, and that this word from the Lord has always helped me in times of great confusion and stress:

*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*

Meredith West, a receptionist in one of our firm's buildings, furnished a verse for this issue. She says that she had to think long and hard before selecting just one verse. She said that's because as verses flooded her mind, each carried different memories, seasons of life when that verse spoke truth to her, upheld her, or revealed a new aspect of God in her life. But she kept coming back to one verse that has been the overture throughout all these years, a single verse that has become her life motto:

*One thing I ask from the LORD, this only do I seek: that I may dwell in the house of the LORD all the days of my life, to gaze on the beauty of the LORD and to seek him in his temple. Psalm 27:4*

## XXIII. CLOSING OBSERVATIONS

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### **A LOOK AT CONFLICT OF INTEREST ISSUES CONCERNING THE FDA**

There are some serious questions concerning possible conflicts of interest concerning the U.S. Food and Drug

Administration (FDA) and the agency's advisors. A recent article on this subject is set out below. This article is well-written and contains information that all American citizens need to know.

### **DO BIG PHARMA PAYMENTS TO FDA ADVISORS CONSTITUTE A CONFLICT OF INTEREST?**

A report conducted by *Science* magazine has raised red flags about a possible conflict of interest among the experts charged with advising the Food and Drug Administration (FDA) on whether a medication should be granted marketing approval. Specifically, investigators uncovered a concerning trend of compensation flowing from pharmaceutical companies to drug advisory panel members.

FDA Advisory Committees provide the agency with independent advice from outside experts—typically physicians and researchers, but also industry experts, consumers and occasionally a patient representative—on issues related to human drugs, vaccines and other biological products, and medical devices. Committee members review and discuss preclinical and clinical trial data detailing the drug's safety and efficacy profile, then vote whether to recommend the drug for approval. The FDA isn't required to follow the advice of the committees, but it usually does.

To identify suitable panel members, the agency first uses a well-established system to flesh out potential committee members with possible conflicts of interest that includes requiring them to reveal potential existing conflicts of interest such as details of investments, contracts, research support, or other payments from drug companies. But a loophole in this system allows prospects to keep mum about any support they may receive between the appointment to the committee and the actual panel meeting, as well as any financial incentives received after the committee votes to approve or reject a drug.

"The people who are asked to weight this evidence impartially often stand to gain tremendously in their further professional careers from a positive relationship with the (drug)

company," Vinay Prasad, hematologist-oncologist with Oregon Health & Science University Portland, told *Science*. Dr. Prasad studied financial conflicts in drug approvals and said that there may not be a spoken agreement between the panel member and the drug company, "but you don't have to evoke that to be very concerned. It's in their best interest to play nice with these companies."

The evidence is in the data, which *Science* pulled from physician disclosures in publications and Centers for Medicare & Medicaid Services records from 2013 to 2016 posted on the federal Open Payments website. The analysis focused on direct payments to physicians from companies whose pharmaceuticals were voted on as well as payments from companies selling competing drugs or researching drugs from the same class for the same indication. The analysis also looked at "associated research" funding by a drug company to an FDA advisor either directly or through their institution typically for research funding. These payments are vital to a scientist's career advancement and compensation.

What the analysis revealed was startling. During the four-year study period, 40 of the 107 physician advisors received more than \$10,000 in earnings or research support from the drug companies whose drugs they voted to approve or from competing firms. Twenty-six received more than \$100,000, and seven were given more than \$1 million each.

The vast majority (94 percent) of the \$26 million in personal payments or research support paid by the drug industry to the top 17 earning advisors came from manufacturers of drugs that advisors had either reviewed or from their competitors.

Furthermore, most of the top earners received payments from the same drug companies while they were serving on the committee or the year prior to serving. But the FDA never disclosed this information. *Science* obtained it through scholarly journals.

Weeding out bias

Genevieve Kanter, a University of Pennsylvania economist who has studied conflicts of interest in FDA drug evaluations, told *Science* that the FDA system for evaluating possible conflicts of interest could be strengthened in order to protect against possible bias.

But Carl Elliot, a medical ethicist at the University of Minnesota, suggested that, "Even in the best of circumstances, disclosure is a remarkably weak way of controlling conflicts of interest. A better way would simply be for the FDA to say, 'We are not taking anybody with any kind of conflict on an advisory committee.'"

It can be done. In fact, the European Medicine Agency (EMA), which holds a similar regulatory role in the United Kingdom to that of the FDA in the United States, prohibits the appointment of advisory committee members having any relationships with pharmaceutical companies three years prior to their service.

Sources: *Science* and the FDA

### **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

## XXIV. PARTING WORDS

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### **BEASLEY ALLEN HONORED TO RECEIVE THE JAMES LOEB AWARD FOR HISTORIC PRESERVATION**

Our Law Firm has received the annual James L. Loeb Preservation Award by the Landmarks Foundation of Montgomery. The award recognizes the firm's contributions to preserving Montgomery's historic

resources and heritage, specifically capitalizing on the distinctive architectural character of lower Commerce Street. The award was presented at the group's Preservation Awards Reception.

Our firm has invested millions in historic preservation and revitalization of downtown Montgomery. This includes purchasing and renovating historic buildings along Commerce Street, which is now considered a jewel of downtown Montgomery. The street was added to the National Register of Historic places in 1979 with boundary expansions in 1982 and 1987.

Greg Allen and this writer joined with the City of Montgomery in the development and creation of the downtown Alley Entertainment District area, which connects Commerce Street across from the Renaissance Montgomery Hotel & Spa at the Convention Center with Tallapoosa Street. We opened Alley Station in 2009, which serves as an anchor for the Alley. While preserving the area's architecture and charm, Alley Station serves as home to the Equal Justice Initiative's Ticket Booth, Jalapeños (Mexican-style restaurant), Saza (Italian restaurant), the Warehouse (event venue), The Flats (loft-style apartments), The Rooftop Terrace (rooftop garden event venue) and the Ballroom (event venue).

Our law firm was honored to have been selected for this award. It is very important to preserve buildings, monuments and other physical locations from earlier times because they bring life to a shared

history that we can reflect on with fondness, and remember lessons learned from past mistakes. Beasley Allen has been blessed with resources that have allowed us to restore tangible connections to Montgomery's past and build for our future.

The award's namesake, James Loeb, a World War II veteran, founded Loeb & Company, Inc., a cotton exchange business, in Montgomery in 1969 after working in the business for more than 20 years. Loeb was committed to making Montgomery, both the community and civic life, all it could be and had a deep passion for historic preservation. In 1967, he established the Landmarks Foundation to foster, encourage and lead the historic preservation movement in Montgomery. He also founded what is now Old Alabama Town and served as its president for many years.

It has been great to see the transformation of Montgomery's downtown area over the years and Greg and I are highly pleased that Beasley Allen was able to have been a part of that important transformation. All of us at Beasley Allen enjoy the revitalization projects. These projects allow us to restore the beauty of once-forgotten and neglected landmarks. The economy in Montgomery, as well as all parts of the River Region, are benefiting from the restoration and revitalization of Montgomery. Beasley Allen has been blessed over the years and we believe that we have a strong obligation to invest in and promote the Capital City.

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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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