I. CAPITOL OBSERVATIONS

Making History Again: Montgomery Elects First Black Mayor

In a city that regularly makes history, there was another milestone last month, when Montgomery, Alabama, elected its first black mayor. Montgomery County Probate Judge Steven Reed defeated businessman David Woods in a runoff election. Mayor-elect Reed captured 67% of the vote, with a total of 48,979 ballots cast. He replaces current Mayor Todd Strange, who was first elected in 2009 and who did not seek reelection.

While some feared the election would become a racial battleground, Judge Reed emphasized his plans to represent all people in Montgomery. After learning he won on election night, the mayor-elect said:

"If there was any doubt about what we can do when we come together, when we unify this city, let the record show tonight, above all, show what we can do when we come together in this city and we build around positivity, around opportunity and all the things that tie us together. It's not going to be about the first. It's not even going to be about the best. It's going to be about the impact that we make on the lives of others."

His agenda going forward may not be focused on firsts, but breaking new ground is not new to Steven Reed. He made history in 2012 when he became Montgomery County's first black probate judge, as well as the youngest person ever elected to the county's highest office.

Judge Reed is proud of his work to improve mental health outcomes through court reform of the involuntary commitment process. He helped in the creation of the Alabama Healthy Minds Network, which has helped hundreds of people get the treatment and services they need instead of spending time in jail.

Steven Reed was born and raised in Montgomery. He earned his Bachelor of Arts degree, cum laude, from Morehouse College where he also lettered in football. He holds a Master of Business Administration from Vanderbilt University’s Owen Graduate School of Management. Judge Reed and his wife Tamika are the proud parents of three children.

Judge Reed is active in the community as well. He is an alumnus of Leadership Alabama and serves on the board of the River Region United Way. He is very active with the YMCA, serving on the board of the Britton YMCA, volunteering as a YMCA football coach and a member of the Metro Board of the Montgomery Area YMCA. He has been recognized for his public service as a recipient of the Alpha Phi Alpha Fraternity, Inc. Dr. Martin Luther King Leadership Award for Governmental Service, and was chosen as a New Deal Leader.

Montgomery is known as both the Cradle of the Confederacy and the Birthplace of Civil Rights. It is the site from which the telegram was sent to fire on Fort Sumter, beginning the war between the states.

It is where Rosa Parks refused to give up her seat on a city bus to a white passenger and was arrested, sparking the Montgomery Bus Boycott. The boycott is regarded as the first large-scale demonstration against segregation and led to the federal ruling Browder v. Gayle and a U.S. Supreme Court ruling declaring the segregation of buses as unconstitutional.

The Capital City also is the location from which Dr. Martin Luther King, Jr., called for peaceful protests to segregation and led the fight for civil rights. Dr. King led the Selma to Montgomery marches held in 1965, including the first march on March 7, which became known as Bloody Sunday when unarmed marchers were attacked by state troopers, beaten with clubs and assaulted by tear gas. Marchers finally arrived in Montgomery on March 25, where Dr. King spoke about voting rights to the assembled crowd from the same State Capitol steps where Jefferson Davis years before took the oath of office as the first President of the Confederate States.

While some might say progress has been slow, last year Montgomery saw the opening of the Legacy Museum (From Enslavement to Mass Incarceration) and National Memorial for Peace and Justice. Developed by the Equal Justice Initiative, the museum and memorial present a frank and stark look at the history of racial injustice in America, and its legacy. The hope is that by confronting the past, people of all races can find unity and justice.

That’s a heavy burden for a young mayor. But he is certain it isn’t one he’ll carry alone, saying on election night:

"We have been focused from day one about the things that make us better, the things that unite us. And this is what I see in this crowd, and this is what I see in the results of tonight is a unified Montgomery. And let the record show that."

Steven Reed will be sworn into office on Nov. 12. I predict that he will be an outstanding mayor and that the City of Montgomery will prosper socially and economically in such a manner that it will be a beacon of light on a hill for all to see. That light will be one of hope and purpose.

Sources: WSFA, AL.com, Vox

II. AN UPDATE ON THE TALC LITIGATION

J&J Baby Powder Recall Confirms Asbestos In Product

Lawyers at Beasley Allen have been pursuing litigation on behalf of ovarian cancer

IN THIS ISSUE

I. Capitol Observations .................................... 2
II. An Update On the Talc Litigation ..................... 2
III. Update On the Boeing Litigation .................... 4
IV. An Update On the Opioid Litigation ............... 7
V. An Update On the Whistleblower Litigation ...... 8
VI. Product Liability Update .............................. 9
VII. Mass Torts Update .................................. 10
VIII. An Update On the JUUL Litigation ............. 12
IX. More On the Vaping Litigation ...................... 13
X. An Update On Securities, Insurance and Finance Litigation .................. 14
XI. Transportation Litigation ............................ 16
XII. Premises Liability Update ......................... 17
XIII. Workplace Hazards ................................... 19
XIV. Toxic Torts Litigation Concerns ................. 20
XV. An Update On the Roundup Litigation .......... 21
XVI. Update On Nursing Home Litigation .......... 22
XVII. An Update On Class Action Litigation ........ 22
XVIII. The Consumer Corner ............................ 25
XIX. Current Case Activity at Beasley Allen .......... 26
XX. Resources To Help Your Law Practice .......... 31
XI. Practice Tips Of the Month For Trial Lawyers .......... 31
XXII. Recalls Update ................................ 32
XXIII. Firm Activities ................................ 35
XXIV. Special Recognitions ............................. 37
XXV. Favorite Bible Verses .............................. 38
XXVI. Closing Observations ........................... 38
XXVII. Parting Words ................................ 39

BeasleyAllen.com
injuries for a number of years. Johnson & Johnson (J&J) recently announced a recall of more than 30,000 bottles of its Baby Powder sold in 2018 due to asbestos contamination. This recall is a stunning admission by Johnson & Johnson after years of denial about the cancer risks from talc powder.

Various retailers of baby powder are also taking action in response to this recall. Thus far, CVS, Walmart, Rite Aid and Target have all pulled J&J baby powder from their shelves. Additionally, upon news of the recall and the retailers’ response, J&J shares tumbled and will continue to fall as more information becomes available.

The U.S. Food and Drug Administration's (FDA) tests confirm the presence of cancer-causing asbestos. Lawyers at Beasley Allen have known for several years that J&J’s internal documents reveal the company has known about this danger for decades. Had J&J acted responsibly and removed talcum powder from the market in the 1970s, or at the very least, warned about the cancer risk, the lives of thousands of women would have been saved.

Ted Meadows, Leigh O’Dell and Sharon Zinns are leading our firm’s battles with J&J. Ted has handled the state court litigation, and Leigh is co-lead counsel of the Plaintiffs’ Steering Committee in more than 10,000 cases currently consolidated in the multidistrict litigation (MDL) in New Jersey. Sharon is leading a team of lawyers pursuing cases on behalf of people who were diagnosed with mesothelioma after exposure to asbestos-containing baby powder.

For decades, dozens of studies have examined the link between genital talc use and ovarian cancer, consistently finding a 30% increase in ovarian cancer among women who used talcum powder for feminine hygiene. The research indicates that talc particles can migrate into the ovaries, causing inflammation and leading to the growth of malignant cells. Thus, in and of itself, talc is a dangerous, cancer-causing mineral.

Similarly, the science is very clear that no amount of asbestos exposure is safe. Asbestos and talc are natural minerals that co-exist and can’t always be separated in the manufacturing process for Baby Powder. According to its own internal documents, J&J has never attempted to separate them. This announcement, and the ongoing investigation by the FDA, should signal a turning point in this tragic saga.

Coincidently, an article published last month in the Journal of Occupational and Environmental Medicine identified household talcum powder contaminated with asbestos as the root cause of malignant mesothelioma in 33 long-term users. The study, co-authored by Dr. Jacqueline Moline of the Institute of Health Innovations and Outcomes Research at The Feinstein Institute for Medical Research, states that the research subjects had no other known exposure to asbestos, and tissue analysis revealed the presence of asbestos. We will write on this study in more detail below.

J&J faces thousands of lawsuits related to products containing talc, and Beasley Allen lawyers expect to try at least three other individual claims involving ovarian cancer during the next six months in courts in Missouri, Illinois and Pennsylvania.

**Talc Powder Exposure Linked to Mesothelioma**

As stated above, Dr. Jacqueline Moline and her colleagues have identified household talcum powder contaminated with asbestos as the root cause of malignant mesothelioma in 33 long-term users. This research was published in the Journal of Occupational and Environmental Medicine.

Dr. Moline, who is well respected and recognized as an expert in her field, reviewed data, medical records, and sworn testimony of individuals with malignant mesothelioma who were all exposed to consumer talcum powder products. The research published includes six case studies detailing decade-long use of talc powder, often starting from childhood, along with tissue digestion samples.

The patients had no other known exposure to asbestos, and in the six detailed, the tissue analysis revealed the presence of asbestos commonly found in talc and not found in other commercial products such as automobile brakes or home insulation materials. It was determined that the 27 other individuals in the study were also linked to contaminated talcum powder, as they had no additional exposure to asbestos. Dr. Moline, a nationally recognized expert in World Trade Center health effects, asbestos exposure, occupational lung disorders and heavy metal toxicity, stated:

_The history of mesothelioma and workplace asbestos exposure has been well documented, but never has there been an investigation of the users of household talcum powder and malignant mesothelioma. Cosmetic talc still remains unregulated and on store shelves. Our findings show that these products, often used every day, were contaminated with dangerous asbestos, which has led to deadly health effects._

Asbestos is silicate mineral fibers that, if breathed, can lead to long-term health problems, including mesothelioma. Asbestos contamination of consumer talc, including body powder, baby powder and facial cosmetics, occurs when talc is mined from areas in which talc deposits overlap with naturally occurring asbestos deposits. Manufacturers of household talc are not legally obligated to register cosmetic products with the U.S. Food and Drug Administration (FDA) and are essentially unregulated on store shelves.

Kevin J. Tracey, MD, president and CEO of the Feinstein Institutes, stated: “Dr. Moline’s leadership in occupational health research furthers our understanding of the dangers of asbestos exposure.” Dr. Moline added: “This study shows that it is important to take a comprehensive exposure history when evaluating patients presenting with cancers like mesothelioma.”

If you need additional information, contact Sharon Zinns, a lawyer in our Atlanta office, at 800-898-2034 or by email at Sharon.Zinns@beasleyallen.com. As mentioned above, Sharon leads our firm’s mesothelioma litigation.

**Fulton County, Georgia—Brower Trial Concludes**

The first talcum powder trial to be tried before a jury in a Georgia state court ended in a mistrial. Fulton County State Court Judge Jane Morrison presided over the case. The trial of the case went extremely well for the Plaintiff and, without any doubt, it was a very strong case.

After receiving instructions from the judge, the jury deliberated for about three full days. The jury asked several questions during deliberations that seemed favorable to the Plaintiff. Eventually the jury ended up being hung 10-2 in favor of the Plaintiff. The judge, on a motion filed by J&J, declared a mistrial. Interestingly, the jury was 12-0 in favor of the Plaintiff on the important issue of liability or fault in the common vernacular. The two jurors who held out were hung up on the question of causation. We will try this case again when it’s reset for trial.

In addition to the Brower case, several talcum powder cases are currently pending in Gwinnett County State Court. Beasley Allen lawyers are looking at a trial date in St. Louis the first week of December and additional trials in Philadelphia and Illinois at the start of the new year. We are also involved in thousands of additional claims against Johnson & Johnson throughout the country including cases at both the state and federal level.

In Federal Court the multidistrict litigation (MDL) judge gave an early October deadline for submission of the briefs in response to the Daubert hearings that took place in late July. Plaintiffs believe the work done on these briefs was exemplary and are...
A Missouri appellate court has reversed and vacated the $110 million jury verdict in favor of a woman who blamed Johnson & Johnson’s talcum powder products for her ovarian cancer. The court of appeals said the trial court didn’t have the authority to hear the case. The appeals court panel said the trial court didn’t have personal jurisdiction to hear Lois Slemp’s suit, applying the U.S. Supreme Court’s 2017 decision in Bristol-Myers Squibb Co. v. Superior Court of California, which established new and strict jurisdictional standards. The panel noted that Ms. Slemp is not a Missouri resident and that the products she used were made in Georgia and bought in Virginia.

Following the 17-day trial in St. Louis, a jury in May 2017 returned a verdict in favor of Ms. Slemp on all of her claims—including conspiracy, breach of implied warranty and negligence—against J&J and its talc supplier, Imerys Talc America Inc.

Ms. Slemp was diagnosed with ovarian cancer in August 2012 after using J&J’s baby powder and Shower to Shower products on her genital area on a daily basis for 40 years. J&J subsequently filed a host of post-trial motions claiming the court lacked jurisdiction following the Bristol-Myers ruling, which said nonresident Plaintiffs must establish “an independent basis for specific personal jurisdiction over the Defendant in the state.”

Following a hearing on these various post-trial motions, including a motion to reopen discovery on personal jurisdiction filed by Ms. Slemp, the trial court signaled its intent to reopen the record to allow Ms. Slemp to present additional evidence to establish the trial court’s personal jurisdiction over J&J.

The Missouri state court judge in November 2017 determined the verdict in favor of Ms. Slemp met the stricter jurisdictional standards established in the Bristol-Myers case because J&J used a Missouri-based company to “manufacture, mislabel and package” the products at issue. However, the Missouri appellate court ignored this additional evidence of personal jurisdiction by determining that the trial court did not have the authority to supplement the record. We believe this was clearly an incorrect application of law and are planning an appeal to the Missouri Supreme Court. It should be noted that the appeals court did not rule on the merits of the case. We expect the Supreme Court to rule favorably on the jurisdiction issues.

$40.3 MILLION TALC VERDICT IN CALIFORNIA

In one of the latest asbestos-in-talc trials against Johnson & Johnson (J&J), a California jury awarded $40.3 million to a woman who said her use of J&J Baby Powder caused her mesothelioma, a fatal form of cancer directly linked to asbestos exposure.

Nancy Cabibi and her husband Phil, of Hasuer, Idaho, filed suit against J&J following Mrs. Cabibi’s 2017 diagnosis of pleural mesothelioma and extensive medical treatment including surgery, chemotherapy, radiation and immunotherapy. The suit alleged J&J’s Baby Powder and Shower to Shower Products were contaminated with asbestos and subsequently caused Mrs. Cabibi’s mesothelioma.

Testing of Mrs. Cabibi’s body tissues revealed the presence of tremolite and amphibolite asbestos, both of which have been previously identified as contaminants of J&J’s Baby Powder and Shower to Shower and products that Mrs. Cabibi used regularly for years. These findings provided the basis for the jury to find J&J’s Baby Powder defective due to its contamination with asbestos. The jury further determined that the defective, asbestos-containing Baby Powder contributed to Mrs. Cabibi’s cancer diagnosis.

Lawyers for J&J argued that Mrs. Cabibi’s exposure to asbestos actually stemmed from her living in a Los Angeles industrial area. But Mrs. Cabibi’s lawyers offered proof that she had never worked, lived or entered any facilities in the area that would have exposed her to friable asbestos.

Mrs. Cabibi’s case is just one of thousands of other mesothelioma and ovarian cancer claims against J&J in state and federal courts nationwide. J&J still contends that there is no detectable asbestos in the company’s products and has been challenging large numbers of talc verdicts in appeals courts. Recent studies have clearly proved the company’s contentions to be false.

For more information on this case, or if you have any questions concerning asbestos-related diseases such as mesothelioma, contact Beasley Allen’s team of mesothelioma lawyers. Our firm’s lead mesothelioma lawyer, Sharon Zinns, can be reached at Sharon.Zinns@beasleyallen.com and Ashytn Traylor, another Beasley Allen lawyer working on these cases, can be reached at Ashytn.Traylor@beasleyallen.com. Each can be reached by phone at 800-898-2034.

III. UPDATE ON THE BOEING LITIGATION

BOEING OPENS FINANCIAL ASSISTANCE FUND FOR FAMILIES OF MAX CRASH VICTIMS

After making a public relations splash in the international media over the summer promising to pay out $100 million to families and communities of those affected by the two fatal crashes of its MAX aircraft, Boeing has opened a $50 million financial assistance fund to uphold part of that promise.

The fund was opened in late September and will be managed by Ken Feinberg and Camille S. Biros. The fund began accepting claims immediately from family members of the 346 victims who perished in the two flights—Lion Air flight 610 that occurred in November 2018 and Ethiopian Airlines flight 302 that occurred less than five months later. Family members’ claims must be postmarked no later than Dec. 31. Fund administrators expect to pay $144,500 for each victim and explained that families participation in the fund will not be conditioned on waiving their rights to pursuelitigate.

The company says it plans to spend an additional $50 million to support education and economic initiatives in communities also impacted by the crashes. While Boeing CEO Dennis Muilenburg has expressed the company’s “deepest sympathies” as the investigations of the two deadly crashes has progressed, more details reveal that a corporate culture of greed within Boeing contributed to the defective aircraft’s green light to take to the skies.

The MAX has been grounded since the second of the two crashes, which occurred in March. Boeing has been working on a “fix” for the aircraft since the first crash, but has been plagued by additional problems that have arisen along the way. The Federal Aviation Administration (FAA) must approve the changes before the aircraft can be cleared to fly, at least in the U.S. Unfortunately, the FAA’s credibility has been diminished due to its role in initially certifying the defective aircraft.

Neither Boeing nor the FAA have confirmed a timeline for approving the updated MAX and lifting the ban, yet Boeing has consistently pushed to get the aircraft back in the air as quickly as possible. Global regulators have criticized Boeing’s rush to return the MAX to the air, along with the FAA’s “cozy relationship” with the aircraft manufacturing giant.
One of the key global regulators, the European Union Aviation Safety Agency (EASA) declared it would break from a decades-long tradition of following the FAA’s lead on aviation safety-related decisions and will independently examine the MAX’s updates. Other global regulators are likely to take the same approach.

Sources: Reuters

FAA Leadership To Blame For Agency Deception, Oversight Failures

The Boeing 737 MAX tragedies have revealed more than just a dangerously defective aircraft and the lengths an aircraft manufacturing giant like Boeing will go to in order to maintain its competitive advantage. These tragedies have revealed a breakdown in safety oversight processes and deception perpetrated by some of the highest-ranking officials at the Federal Aviation Administration (FAA), as noted by independent federal investigators.

FAA Deception Exposed

The National Transportation Safety Board (NTSB), although not leading the investigation, has been conducting its own probe of the two separate Boeing 737 Max 8 crashes, one involving Lion Air and the other Ethiopian Airlines, which together killed 346 people in a span of less than five months. The agency recently announced its findings and recommendations as a result of the investigation, reaffirming what has become apparent over the last year. Boeing and the FAA followed development and approval processes that were woefully and disastrously inadequate regarding the MAX.

The NTSB findings noted that Boeing failed to test “specific failure modes that could lead to uncommanded MCAS activation.” The malfunctioning MCAS was part of the flight-control system that investigators believe is a leading factor in bringing down both planes. Tests were conducted only to determine how pilots would react if there was an uncommanded activation. The NTSB explained that despite Boeing’s determining that a pilot’s response to an uncommanded activation was a “major” hazard, it failed to test each system that supports the MCAS. The systems that support the MCAS can create underlying causes of uncommanded activation as well as multiple alerts and indications in an emergency. Boeing simply based much of its assessment on assumptions about pilots’ responses. These assumptions were significantly deficient when presented to the FAA and were never fully analyzed by the agency.

The report further explained that “[m]ultiple alerts and indications can increase pilots’ workload…” Federal investigators noted that pilots on the two flights that crashed, as well as pilots on a third flight that landed safely, experienced similar uncommanded activations of the MCAS yet all their responses differed. The responses also “did not match the assumptions of pilot responses to unintended MCAS operation on which Boeing based its hazard classification… that the FAA approved and used to ensure the design safety accommodates failures.”

Boeing misled regulators, lawmakers and the traveling public about the 737 MAX and the NTSB report gets to the very heart of the deception. It advised that such safety assessments should not rely on human input, but rather work to limit the consequences of human error. Among the NTSB’s recommendations was that the FAA require Boeing and all other type-certificated transport-category airplane manufacturers ensure all flight deck alerts and indications are included in the system safety assessments for the 737 MAX.

The NTSB also recommended that tools and methods used in validating assumptions about pilot recognition and response during emergencies should be improved and that the FAA should revise its regulations and guidance to incorporate the new tools and methods.

The NTSB can only advise on safety recommendations, but Boeing and the FAA would be wise to take the agency’s recommendations to heart and implement them immediately.

Similarly, the U.S. Office of Special Counsel (OSC) revealed more deception on the FAA’s part. The OSC launched an investigation after a whistleblower “alleged serious deficiencies in ASI [aviation safety inspector] training and certifications, which affected their ability to participate in Flight Standardization Boards (FSB),” the OSC explained in a letter sent to President Donald Trump and members of Congress.

The OSC’s investigation confirmed that “numerous Federal Aviation Administration (FAA) safety inspectors were not sufficiently trained to certify pilots.” It also found that “responses by FAA to congressional inquiries regarding these allegations appear to have been misleading in their portrayal of FAA employee training.”

The FAA safety inspectors participate in FSB, which is charged with ensuring pilot competency “by developing training and experience requirements.” The inspectors are required to have formal classroom and on-the-job training, according to FAA policy. The OSC explained that the FAA’s independent Office of Audit and Evaluation (AAE) “determined that 16 out of 22 safety inspectors, including those at the Seattle Aircraft Evaluation Group, had not completed formal training.” Safety inspectors assigned to the 737 MAX were among those who had not completed training. Despite these internal findings, the FAA reported to Congress that “all of the flight inspectors who participated in the Boeing 737 MAX Flight Standardization Board certification activities were fully qualified for these activities.”

The revelations about the FAA’s deception and how Boeing profited from the agency’s deception has also heightened friction between U.S. and global aviation safety regulators as described in an earlier edition of this Report. Patrick Ky, head of the European Union Aviation Safety Agency (EASA) told the FAA’s top safety official, Ali Bahrami, that EASA “wasn’t satisfied that FAA and Boeing officials had adequately demonstrated the safety of reconfigured MAX flight-control computers,” the Wall Street Journal reported.

Flight testing in June revealed new problems with the flight-control system, which had been modified to address problems with the system that have been identified as contributing to the two deadly MAX crashes. The additional problems uncovered in June are separate from the MCAS but “related to an emergency procedure” pilots can use should the aircraft malfunction as it did just before each of the two deadly crashes.

The EASA has previously declared that it plans to independently test the MAX. The move would be a break from a decades-long tradition of global regulators following the FAA’s lead regarding aviation safety. It would also be additional evidence that global regulators have lost confidence in the agency’s ability to lead in aviation safety.

FAA Deception and Systemic Failure Rests In Agency Leadership

The essence of the FAA’s deception and failure of its internal safety oversight processes lies in part with the agency’s leadership, including Bahrami. Despite the 346 needless deaths caused by Boeing’s 737 MAX, Bahrami has defended the FAA’s procedures in certifying the aircraft and supported Boeing as the MAX fiasco has unfolded over the last year. His bolstering is not surprising. In fact, Bahrami’s career unfolded over the last year. His bolstering clearly demonstrates the persistent unraveling of the country’s aviation regulatory framework over the years.

In 2004, Bahrami became a manager of the Transport Airplane Directorate in Renton, Washington, the Seattle Times reported. In this position, he oversaw the safety of U.S. commercial aircraft and the certification of new airplane models. During his time as manager in Renton, he spearheaded efforts to delegate more inspection and certification work to the industry including outsourcing a significant amount of safety analysis of Boeing aircraft to the manufacturer’s own employees. For example, in 2005 the FAA adopted new rules under the agency’s Organizational
Designation Authorization (ODA) program that further relaxed oversight and gave manufacturers like Boeing more control.

The ODA was initially designed, barring unforeseen circumstances, to allow the FAA to run more efficiently. Aircraft manufacturers “lend” their experts to the FAA. The company experts are supposed to conduct detailed and technical evaluations to determine if their employer is complying with safety standards. These experts are working on behalf of the FAA, assessing their employer’s safety, all while still being compensated by their employer, the aircraft manufacturer. The FAA technically retains the responsibility of ensuring a company’s approval meets federal standards but doesn’t actually perform the work.

Before the 2005 ODA rules were adopted, the agency decided which company employees would conduct work on its behalf. The 2005 rule changes gave aircraft manufacturers more power, allowing them to choose their own employees who would act as FAA Authorized Representatives.

Also, during Bahrami’s time as manager in Renton, the FAA department that was in charge of approving the MAX became known as The Boeing Aviation Safety Oversight Office. The New York Times reported that “[m]any FAA veterans came to see the department...as a symbol of the agency’s close relationship with the manufacturer.” Bahrami officially created the office in 2009 but found it difficult to recruit FAA engineers to join the office. Some of the employees even filed a complaint with the National Air Traffic Controllers, the union that represents FAA engineers, to resist changing jobs. Bahrami left others no choice but to join the department.

Some of those engineers believed Bahrami intentionally placed managers in the office who he knew would defer to Boeing. Mike McRae, a former Boeing engineer, told the Times that Bahrami “didn’t put enough checks and balances in the system” and that “[h]e really wanted abdication. He didn’t want delegation.”

In 2012, Bahrami made clear his allegiance was with the aircraft manufacturers. He was serving as the only government representative on the nine-person Aircraft Certification Process Review and Reform Aviation Rulemaking Committee, which was reviewing the airplane certification process. The committee, including Bahrami, recommended increasing the amount of certification work delegated to plane manufacturers. Months later, Bahrami left the FAA and the problematic Dreamliner behind for greener pastures as a highly paid lobbyist for an industry trade group, the Aerospace Industries Association (AIA).

While serving as an industry lobbyist, Bahrami testified before Congress requesting “maximum use of delegation” and offering the excuse that the FAA was moving too slowly due to limited funding and resources. The request was officially granted when Congress passed the FAA’s Reauthorization Act just weeks after the first 737 MAX tragedy in October 2018. However, increased reliance on delegation had become the FAA’s “go to” solution even before Congress passed the Reauthorization Act. The Department of Transportation’s Office of Inspector General in 2015 warned that the agency was not prioritizing oversight of high-risk safety areas such as new aircraft designs and wasn’t ensuring adequate staffing for safety oversight.

One FAA engineer, Nicole Potter, a propulsion and fuel systems engineer with the agency who worked on the MAX, confirmed the agency’s increasing reliance on self-certification. She told The New York Times that by 2018 Boeing was certifying 96% of its own work.

Four years after leaving the FAA, Bahrami returned to the agency as its top safety official. When questioned about the efficacy of the self-certification process, Bahrami defended the system he spearheaded, saying “[FAA] staff remains engaged throughout the certification process.” He even claimed the U.S. aviation system “has never been safer.”

In July, Bahrami once again appeared before Congress. This time, he appeared before the Senate Appropriations Committee, which continues examining the FAA’s oversight, including its role in the MAX’s development and certification. When questioned about a Wall Street Journal story reporting that “regulators found high risk of emergency after the first Boeing MAX crash,” and yet the agency failed to ground the plane, Bahrami responded unapologetically. He said, “Based on our risk assessment, we felt we had sufficient time to be able to do the modification, and get the final fix.”

It’s no wonder families of Ethiopian Airlines crash victims called for Bahrami’s ouster during that congressional hearing. Yet, he remains in place and the FAA hasn’t announced any plans to improve its certification process that put a plane in the sky and virtually sentenced 346 people to their deaths. Only time will tell if the FAA will return to its focus of protecting the flying public or if it will continue as the industry’s puppet, pandering to the intense lobbying efforts of manufacturers like Boeing.

Beasley Allen has filed a number of lawsuits for families of victims of the Ethiopian Airlines crash. Mike Andrews in our Personal Injury & Products Liability Section focuses much of his practice on aviation litigation. He is representing a number of families in this litigation. Currently, Mike is also investigating other potential cases. He has visited the crash site and surrounding areas several times this year and was overwhelmed at the carnage left behind after Flight 302 hurled itself and passengers 30 feet into the earth. If you would like to have more information on the Boeing litigation, or any other aspect of aviation litigation, contact Mike at 800-898-2034 or by email at Michael.Andrews@beasleyallen.com.

Mike also has written a book on litigating aviation cases to assist other aviation lawyers, “Aviation Litigation & Accident Investigation.” The book offers an overview to the practitioner about the complexities of aviation crash investigation and litigation.

Sources: National Transportation Safety Board, U.S. Office of Special Counsel, Wall Street Journal, Seattle Times, Federal Register

**BOEING PILOT WARNED OF ‘EGREGIOUS’ SAFETY ISSUE TWO YEARS BEFORE 737 MAX CRASHES**

A high-ranking Boeing pilot complained about a faulty safety alert making the 737 MAX difficult to fly more than two years before crashes involving the same issue killed 346 people. The pilot said the anti-stall system was making it difficult to control the plane in a flight simulator—telling a colleague in 2016, “Granted, I suck at flying, but even this was egregious,” The New York Times reported on Oct. 18. “It’s running rampant in the sim,” pilot Mark Forkner said. He was referring to the simulator.

The 737 MAX was grounded after the two crashes in Indonesia and Ethiopia when the MCAS system malfunctioned. As we all know, the planes in each crash went into nose dives. Boeing acknowledged in May that it became aware the safety alert was not working correctly several months after the MAX had already been in flight.

Boeing handed over the internal messages between the two employees to lawmakers on Capitol Hill who are conducting a criminal investigation, according to the recent report.

The Federal Aviation Administration (FAA) confirmed Boeing only disclosed the messages to it on Oct. 17 after it had discovered them “some months ago”—suggesting the airplane maker misled the government body. The FAA said it found the messages concerning—prompting Administrator Steve Dickson to send a letter to Boeing chief Dennis Muilenburg demanding an explanation of why the messages weren’t provided earlier. Muilenburg will testify at congressional hearings and that should be most revealing.

Source: New York Post
**Southwest Pilots Union Sues Boeing Over Grounding of 737 Max**

The Southwest Airlines Pilots Association (SWAPA), the union representing Southwest Airlines pilots, has filed suit against Boeing in a Texas state court. SWAPA says the aerospace giant’s misrepresentations about the safety of its 737 Max jets have cost the pilots tens of millions of dollars in lost wages. The union said the Boeing Co. is responsible for lost work following the global grounding of the 737 Max following the two disastrous crashes, which killed 356 people. It’s alleged in the suit:

**Boeing’s false representations, made directly to SWAPA, caused SWAPA to agree, despite its initial reluctance, to include the 737 MAX as a term in its collective bargaining agreement with Southwest. The aircraft’s grounding is now causing SWAPA pilots to lose millions of dollars each month because the 737 MAX was removed from Southwest’s flight schedule, and from SWAPA pilots’ paychecks as well.**

SWAPA said in a news release on Oct. 7 that the grounding has led to the cancellation of 30,000 flights by Southwest, which they said is the biggest user of the 737 Max. The union said:

**This is expected to reduce the airline’s passenger service 8% by the end of 2019, resulting in compensation losses for SWAPA pilots in excess of $100 million.**

SWAPA is suing for fraudulent and negligent misrepresentation, interference with contractural and business relationships, negligence and fraud by nondisclosure. The union wants Boeing to pay the pilots’ lost wages as well as legal expenses and other costs. SWAPA President Jonathan L. Weaks said in a statement that while Boeing needs to fix the issues with the 737 Max that have been blamed for the deadly crashes, pilots shouldn’t have to shoulder the financial burden of lost work during the process.

SWAPA is represented in-house by Kwanyu Helen Yu, J. Paul Davidson and Stella L. Dulanya, as well as by Anthony U. Battista, Diana Gurfel Shapiro, Evan Kwarta and Mary Dow of Condon & Forsyth LLP, and Jeffrey W. Hellberg Jr. of Wick Phillips. The case is Southwest Airlines Pilot Association v. The Boeing Co., (case number 37433878) in the District Court of Dallas County, Texas.

Source: Law360.com

---

**IV. AN UPDATE ON THE OPIOID LITIGATION**

**An Update On The Opioid Bellwether Trial**

The first bellwether trial in the Opioid MDL, which was scheduled to begin Oct. 21, has settled. The plaintiffs, two counties in Ohio, and five of the six remaining Defendants, reached a settlement on the eve of trial. It should be noted that the settlement only applies to this case and does not resolve claims globally.

The settlement, agreed to by plaintiffs Summit County and Cuyahoga County and Defendants Cardinal Health, AmerisourceBergen, McKesson Corporation, Henry Schein, Inc, and Teva, is valued at $260 million. The three major distributors—McKesson, Cardinal, and AmerisourceBergen—will combine to contribute $215 million in cash. Teva, the sole manufacturer still remaining in the case, will contribute $20 million in cash and $25 million in treatment drugs. Henry Schein, Inc., a smaller distributor, settled separately for $1 million. Walgreen Co., which has not settled, had claims against it severed from the bellwether.

Other Defendants had settled with the two bellwether counties in recent months. Johnson & Johnson agreed to pay $20.4 million to resolve claims earlier in the month. This is unusual for Johnson and Johnson, which has taken a “litigate all claims” approach and faces thousands of lawsuits related to talcum powder, opioids, antipsychotic drug Risperdal, and other products. Johnson and Johnson is accused of falsely marketing Duragesic fentanyl patches, and also faces liability for its role in supplying raw opioids to other opioid manufacturers and engaging in aggressively pro-opioid marketing to increase the size of the opioid market in the US.

Other settling Defendants are Endo, which agreed to pay $10 million and donate up to $1 million in prescription drugs to exit the bellwether; Allergan, which promised the counties a total of $5 million; and Mallinckrodt, which said it would pay $24 million and contribute up to $6 million in generic drugs to exit the trial.

Purdue Pharma, the maker of Oxycontin, avoided the first bellwether trial. That was because Purdue and its owners, the Sackler family, reached a tentative agreement to settle roughly 2,000 opioid suits brought by local governments, states and tribes, with the Sacklers agreeing to pay $5 billion from their own fortune via a structure bankruptcy. However, any settlement is subject to the other 46 States.

It was reported that almost half of the proposed settlement amount, $23 billion, will be contributed by TEVA, in the form of treatment drugs. The value of the drugs is based off of the wholesale acquisition cost, not the manufacturing cost, so it severely overstates the value of this proposal.

Another $18 billion would be contributed in cash by the three largest pharmaceutical distributors—AmerisourceBergen, McKesson, and Cardinal Health—over 18 years, which if discounted to present value, is much less than $18 billion. Johnson and Johnson was to contribute $4 billion under this framework.

**An Update On The Purdue Bankruptcy**

Purdue Pharma, the maker of Oxycontin, also avoided the first bellwether trial, as Purdue and its owners, the Sackler family, reached a tentative deal to settle roughly 2,000 opioid suits brought by local governments, states and tribes, with the Sacklers agreeing to pay $5 billion from their own fortune via a structure bankruptcy. It is unclear at this point when the next bellwether trial will occur. Cabell County, West Virginia, and City of Huntington, West Virginia, are currently designated Track Two cases and are expected to be next up for trial. However, the court has not yet ruled on the Defendants’ motions to dismiss in those two cases and it is unknown how ready the West Virginia cases are for trial.

---

**JereBeasleyReport.com**
Columbia also oppose the stay of their suits proposed by Purdue and the Sacklers. A bankruptcy court may forbid other legal proceedings against the debtor's estate, but there is an exception for state law enforcement actions. The objecting states assert that their cases fall within this exception. The states also assert that the suit against the Sacklers, who have not filed for bankruptcy, should proceed for that reason. The Sacklers assert that their tentative agreement to fund some portion of Purdue's settlement of claims via the bankruptcy proceedings justifies postponing the states' suits against them. The states argue that continuing the discovery process against the Sackler family may disclose unknown Sackler and Purdue assets and further develop important legal issues, such as fraudulent transfers by Purdue to the Sacklers, which may in turn lead to a larger bankruptcy estate to pay the legal claims of governments and individuals that constitute the vast majority of claims against Purdue's estate.

**THE BEASLEY ALLEN OPIOID LITIGATION TEAM**

The opioid litigation is changing daily and I am sure the public is having difficulty keeping up. Because of the enormity of the opioid litigation, and the obvious need that existed, our firm put together an “Opioid Litigation Team,” which includes these lawyers: Rhon Jones, Parker Miller, Roger Smith, Ryan Kral, Rick Stratton, Will Sutton and Jeff Price. This team of lawyers represents the State of Alabama, the State of Georgia, and numerous local governments, as well as representing other entities in the multidistrict litigation (MDL), and individual claims on behalf of victims. If you need more information on the opioid litigation contact one of these lawyers at 800-898-2034 or by email at Rhon.jones@beasleyallen.com, Parker.Miller@beasleyallen.com, Roger.Smith@beasleyallen.com, Ryan.Kral@beasleyallen.com, Rick.Stratton@beasleyallen.com, William.Sutton@beasleyallen.com or Jeff.Price@beasleyallen.com.

**V. AN UPDATE ON THE WHISTLEBLOWER LITIGATION**

There have been several settlements recently in False Claims Act (FCA) litigation around the country. There is still some confusion as to where the Department of Justice (DOJ) stands on the need for whistleblowers to report corporate wrongdoing so as to protect U.S. taxpayers. In any event, the following are some of the settlements.

**MEDICAL DEVICE COMPANIES SETTLE WHISTLEBLOWER LAWSUIT FOR $9.5 MILLION**

Recently, the United States Government settled a civil fraud lawsuit brought under the False Claims Act (FCA) against Avalign Technologies, Inc., and its subsidiary Instrumed International Inc. The two medical device companies agreed to a $9.5 million settlement to resolve claims that they (Avalign and Instrumed) manufactured and sold medical devices that were not approved by the U.S. Food and Drug Administration (FDA).

Since 1976, when certain FDA rules and regulations were amended, certain types of medical devices must be approved or cleared by the FDA based on the degree of potential risk to the patient. The FDA provides a grandfather exception for certain “pre-amendment devices.” To be eligible for the “pre-amendment” exception, however, the medical devices at issue must have been marketed prior to May 28, 1976.

In the False Claims Act lawsuit against Avalign and Instrumed, the Government alleged that the medical device companies falsely claimed that medical devices were exempt from the FDA's approval or clearance because the devices were marketed prior to May 1976. In reality, the devices did not qualify for the pre-amendment exceptions and although the Defendants knew that their medical devices were not exempt, they continued to market and sell them without the requisite clearance or approval.

According to the Department of Justice (DOJ) the non-FDA approved medical devices sold by Instrumed were used by healthcare providers in spinal surgeries, circumcisions and other medical procedures. Geoffrey S. Berman, the United States Attorney for the Southern District of New York said:

> It is critical that the devices used in some of the most consequential medical procedures have the required FDA approval or clearance. Unapproved or uncleared devices used in medical procedures present a significant public health and safety risk, and this office will continue to hold manufacturers of medical devices accountable for

**GENETIC TESTING COMPANY TO PAY $42.6 MILLION IN SETTLEMENTS OF FCA CLAIMS**

Genetic testing company UTC Laboratories Inc. and its three principals have agreed to collectively pay $42.6 million to settle claims they violated the False Claims Act (FCA) by paying physicians kickbacks in exchange for laboratory referrals.

Pursuant to the agreement, UTC, previously known as Renaissance RX, will pay $41.6 million, and principals Tarun Jolly, Patrick Ridgeway and Barry Griffith will pay $1 million. The company is also banned from participating in federal health care programs for 25 years, according to a statement from The U.S. Department of Justice (DOJ).

The settlement resolves six whistleblower suits in Louisiana federal court claiming that between 2013 and 2017, the New Orleans-based company offered and paid remuneration to physicians to get them to order pharmacogenetic tests, which assess how a patient will respond to specific types of medication based on the patient’s genetic makeup. The alleged kickbacks were ‘purportedly in return for their participation in a clinical trial known as the Diagnosing Adverse Drug Reactions Registry,’ the DOJ said. The DOJ said in its statement:

> The government also alleged that UTC and its principals offered and paid remuneration, including sales commissions, to entities and individuals as part of the scheme, and furnished pharmacogenetic tests that were not medically necessary and billed the Medicare program.

U.S. Attorney Peter G. Strasser of the Eastern District of Louisiana said in the statement:

> health care fraud, in any incarnation, hurts patients, honest medical practitioners and all of the nation’s taxpayers. The favorable resolution of this False Claims Act matter illustrates the collaborative efforts and firm commitment by our federal partners to use all avail-

BeasleyAllen.com
able remedies, both civil and criminal, to address signs of waste and abuse by providers in our health care markets.


Fresenius To Pay $5 Million To Settle Medicare Fraud Case

Dialysis services company Fresenius has agreed to pay $5.2 million to settle Justice Department claims set out in a whistleblower complaint that the company billed Medicare for unnecessary tests on patients. Fresenius allegedly conducted three unnecessary hepatitis B tests on patients it knew to be immune, and then charged Medicare for the cost, in violation of the False Claims Act (FCA). According to the government, the tests were ineligible for Medicare reimbursement and the bills for the tests were falsified. Andrew Lelling, an attorney with the DOJ, said in a statement:

Providers are expected to closely follow Medicare rules and bill properly—nothing more, nothing less. When that obligation is violated, government health care programs—and American taxpayers—pay the price.

The case dates back a decade, to when a whistleblower named Christopher Drennen, a former area manager for Fresenius in Alabama, filed suit in 2009 accusing the company of falsely billing Medicare beginning in February 2003. For his part in the case, Drennen will receive 27.5% of the $5.2 million deal, according to Wednesday’s announcement. “This settlement is an example of how whistleblowers and government can work together to recoup and deter overbilling practices,” Lelling said.

The U.S. is represented by Assistant U.S. Attorneys Kriss Basil, Jessica J. Weber, Abraham R. George and Steven Sharobem. The whistleblower, Drennen is represented by Charles H. Thronson of Parsons Behle & Latimer; and James A. Johnson. The case is Christopher Drennen v. Fresenius Medical Care Holdings Inc., (case number 1:09-cv-10179), in the U.S. District Court for the District of Massachusetts.

Source: Law360.com

VI. PRODUCT LIABILITY UPDATE

Keyless Ignition Blamed In Carbon Monoxide Poisoning Death

A wrongful death lawsuit has been filed against Toyota involving the death of a man caused by carbon monoxide poisoning in his home. On the night in question, Ross Emery did what the widower always did: He parked his Toyota in his attached garage, placed his key fob on the kitchen counter and sat down for dinner. He later went to sleep and he never woke up. As his family would later learn—and an autopsy would show—Emery died of carbon mon-
oxide poisoning. His mistake that night is not uncommon, dozens have died that same way. When he existed his car, Emery forgot to push the button on the keyless ignition to turn off the car. It quietly kept running.

Unlike many vehicles equipped with similar keyless ignitions, Emery’s 2015 Avalon did not have an automatic safety shutoff. As a result, the car quietly ran non-stop for 10 hours, filling Emery’s home with the colorless and odorless fumes and robbing his brain and heart of oxygen. Autopsy records revealed that he had CO levels in his blood that are considered 2,000 times more than what is safe. The car’s engine only stopped when the gas tank—that Emery had filled earlier that night—ran empty.

Emery’s next-door neighbor, with only a wall separating the two condos, had a carbon monoxide alarm in his unit go off twice. The neighbor didn’t recognize a problem since he didn’t feel sick and there were no obvious signs of distress. The source of the alarms was actually on the other side of a wall. Despite two alarms, no one checked next door, and sadly those fumes were slowly killing 94-year-old Ross Emery in his home.

What tragically happened to Ross Emery has happened before and often. Reports show 34 people with keyless ignitions dying of CO poisoning since 2006 after failing to turn off their vehicle. Another 46 have been injured.

Nicholas Phillips, who is representing the Emery family in a wrongful death lawsuit against Toyota, said drivers have been conditioned to believe their cars are off when the keys are taken inside. Emery’s key fob, which is needed to start the vehicle, was inside his condo. The separation of the key fob, however, does not affect an engine. A button must be pressed to stop the motor. Phillips said:

Well, it’s absolutely, totally avoidable because there’s no reason a car should be running for 10 hours without interruption and allowing these gases, these lethal gases, being generated. There was no need at all for him to die on that day that he died. It’s a very serious thing, obviously, and it has an inevitable result.

Toyota said it plans to change its keyless ignition system in 2020 and introduce auto-shut off systems. Most Toyota current and older models with keyless systems do have an audible alarm when the driver exits with the motor still running. Toyota said in a statement:

Toyota’s Smart Key System meets or exceeds all relevant federal safety standards and provides multiple layers of visual and auditory warnings to alert occupants that the vehicle is running when the driver exits.

For the Emery family, the changes by Toyota are too late. Michael Emery said: “I could’ve lost my entire family because of this. But how many more will lose their lives?” That is a question that must be answered both by the automobile industry and by the National Highway Traffic Safety Administration (NHTSA). Nicholas Philips with the Ohio firm Phillips & Mille represents the family in the lawsuit.

Source: WKYC-TV

**Family Sues Fisher-Price After Death Of Infant**

A lawsuit has been filed against Fisher-Price by the father of an infant who died while in a sleeper made by the company. Let’s see what tragically happened to 6-month-old James R. “Tre” Weigand III. It was a Saturday that seemed like any other when the infant settled into his Rock ’n Play Sleeper for a nap. But the child never woke up. Tre died because the Fisher-Price sleeper he was in was not safe for babies to sleep in. That is the claim made in the lawsuit filed by James R. Weigand Jr. against Fisher-Price and its parent company, Mattel.

Fisher-Price, an East Aurora company, recalled nearly 5 million of the Rock ’n Play Sleepers in April after they were linked to the deaths of 10 babies nationwide. Two pending class action lawsuits filed in Buffalo in federal court blame the company’s sleeper for the deaths of 32 babies nationwide.

The American Academy of Pediatrics recommends that babies sleep on their backs on a flat surface. But the sleeper Tre died in was designed to hold a baby at a 30-degree incline.

The Rock ’n Play Sleeper, which has been sold for a decade, was designed to gently rock babies weighing 25 pounds or less, according to the instructions that came with it. On April 5, Fisher-Price and the Consumer Product Safety Commission (CPSC) issued a joint statement warning consumers about the Rock ’n Play Sleeper, noting that 10 infants had died in it. The joint statement said:

*Because deaths continue to occur, CPSC is recommending consumers stop use of the product by three months of age, or as soon as an infant exhibits rollover capabilities.*

One week after that statement was issued, Fisher-Price and the CPSC issued a recall of the 4.7 million Rock ’n Play Sleepers that the company had sold. All of the infants who died were at least 3 months old—around the age when babies can start rolling over. Babies can roll forward, then don’t have the strength to roll back, so they asphyxiate themselves.

In the recall notice, the number of infant deaths cited had increased to 30. They had died in the sleepers “after the infants rolled over while unrestrained, or under other circumstances,” according to the recall notice.

Those warnings ran contrary to the way the Rock ’n Play was marketed. Jed Dietrich, a lawyer from Buffalo, New York, who represents the family, said:

The advertising was marketing it as an overnight sleeper, which would imply that an infant could be in it without being watched over the entire night. Fisher-Price knew this was a danger, and they ignored that danger for profits.

The company also was named in two class-action lawsuits filed in late April that link the sleeper to the deaths of 32 babies. Those suits allege that Fisher-Price knew about the dangers of the sleeper years before the recall, but ignored them.

Source: Buffalo News

**Possible Link Between Zantac and Cancer Leads To Multiple Recalls**

In early September, the Food and Drug Administration (FDA) released a statement that N-nitrosodimethylamine (NDMA) was detected in at least one manufacturer’s version of ranitidine, a common over-the-counter heartburn drug known as Zantac. In the following weeks, some manufacturers voluntarily recalled their own versions of the drug, and some of the nation’s largest retailers pulled Zantac/ranitidine from their shelves entirely.

NDMA is classified as a probable human carcinogen and is found in low levels of cigarettes, most foods, and even drinking water. The FDA has publicly stated that the levels of NDMA found were “low” and suggested that the risk posed to humans was inconclusive as of now.

The acceptable amount of NDMA for human consumption is believed to be 96 nanograms. But unlike the highly publicized recall of angiotensin receptor blockers (ARBs) in 2017, which involved low levels of NDMA contamination as a result of the manufacturing process, some researchers believe the NDMA in Zantac/ranitidine is actually a natural by-product of the molecular structure of the drug and leads
to NDMA levels in the human body greater than 2.5 million nanograms.

A lawsuit recently filed in a Colorado Federal Court noted that “a person would need to smoke at least 6,200 cigarettes to achieve the same levels of NDMA found in one 150 mg dose of Zantac” and the manufacturer knew this at least as early as 1981.

Beasley Allen lawyers Frank Woodson and Matt Munson are actively investigating potential claims involving regular Zantac/ranitidine use that may have led to cancer of the stomach, colon, intestines, kidneys, bladder or pancreas. If you or a loved one may have been affected, contact Frank or Matt at 800-898-2034 or Frank.Woodson@beasleyallen.com or Matt.Munson@beasleyallen.com.

Sources: fda.gov, fiercepharma.com and webmd.com

J&J TO PAY STATES $117 MILLION TO SETTLE PELVIC MESH SUITS

Johnson & Johnson (J&J) and its Ethicon unit have agreed to pay almost $117 million in a multistate settlement to end litigation over allegedly deceptive marketing of their transvaginal surgical mesh devices.

Ohio Attorney General David Yost said in a statement that a multistate investigation found the companies had violated consumer protection laws through their misrepresentations of the safety and efficacy of the devices and failed to disclose risks associated with their use. Forty-one states and the District of Columbia are participating in the settlement.

The investigation found the companies either misrepresented or failed to adequately disclose possible adverse effects of the mesh devices, including incontinence and vaginal scarring, according to Attorney General Yost. He said in a statement:

Patients can't make the best decision for their health unless they and their health care providers know all the pros and cons of a product. These companies didn't paint a clear picture of the device's medical risks, preventing patients from making well-informed decisions.

The attorney general said J&J and Ethicon knew about the possibility of serious medical complications, but didn't provide sufficient warnings to consumers or the surgeons who implanted the devices.

The states' investigation began in October 2012, according to a spokesman for the Ohio attorney general's office. Interestingly, J&J says it has done nothing wrong.

According to the complaint filed in Ohio state court, Ethicon didn't conduct human trials before its initial sales of the mesh devices, which were cleared through the U.S. Food and Drug Administration's 510(k) process. Manufacturers going through the 510(k) pathway usually rely on comparisons to older devices already on the market, known as predicate devices, to show that a new device is as safe and effective as that older product. In 2016, the FDA raised the approval bar for transvaginal pelvic mesh devices, reclassifying them as high-risk devices that need a safety evaluation before they can be sold.

Ethicon marketed its devices to doctors and patients as minimally invasive with minimal risk, and better than traditional methods of treatment. The state said in the complaint:

In marketing its surgical mesh devices, Ethicon misrepresented and failed to disclose the full range of risks and complications, as well as the frequency and severity of those risks and complications, including misrepresenting the risks of surgical mesh as compared with native tissue repair and other surgeries including pelvic floor surgeries.

Under the terms of the settlement, J&J and Ethicon also agreed to change how they market surgical mesh products. The companies agreed:

• not to describe the mesh products as being approved by the FDA when that is not the case;
• that J&J and Ethicon will also disclose that the risks associated with pelvic mesh products include fistulas and inflammation, as well as the risk that the mesh will extrude into other organs;
• that the companies will also disclose that surgery may be needed to treat complications, and that those surgeries may not be successful and may also have a risk of adverse reactions.

Source: Law360.com

$8 BILLION VERDICT AGAINST J&J IN RISPERDAL CASE

A Philadelphia jury returned an $8 billion verdict on Oct. 8 against Johnson & Johnson (J&J). The jurors found the company had recklessly ignored the risks that the antipsychotic drug Risperdal could lead to breast growth in adolescent boys as it pushed the medication for use in children. The jury found that J&J subsidiary Janssen Pharmaceuticals Inc. had downplayed the risks of abnormal breast growth, a condition known as gynecomastia, associated with Risperdal and had pressed ahead with aggressive efforts to market the powerful antipsychotic drug.

The case was the first time since Risperdal trials started in Philadelphia nearly five years ago that a jury was allowed to consider a punitive damages award against the company. The issue came as part of a case brought on behalf of Nicholas Murray, a Maryland resident who grew breasts after he started using Risperdal as a 9-year-old in 2003 to help control symptoms related to autism.

A jury in a prior trial had awarded Murray $1.75 million in compensatory damages, finding that warning labels at the time he used the drug failed to adequately warn doctors about the risk of abnormal breast growth in adolescents. That award was later reduced, to $680,000, because of a cap on non-economic damages under Maryland law.

At the time, however, the jury was barred from considering a potential punitive damage award by virtue of a global order in a mass tort program established to coordinate 7,000 Risperdal cases pending in Philadelphia County. After that global order was overturned by a state appeals court in January 2018, the case was set for a new trial on punitive damages and it began in mid-September.

The medication was originally approved by the U.S. Food and Drug Administration (FDA) in the 1990s for treating schizophrenia in adults, but evidence presented to jurors showed that Janssen had a keen interest early on in trying to win the agency's blessing to sell the drug to children. After several failed attempts to earn a pediatric indication—during which the FDA pointed to what it said was "meager" safety data and concerns that the drug could be used as a "chemical straightjacket" for children with behavior disorders—Janssen finally won approval in October 2006 to sell Risperdal for treating symptoms of autism in children.

At the time of the autism approval, the drug's warning labels—which had previously indicated that gynecomastia occurred in fewer than one in 1,000 patients—were updated to show a 2.3% rate of gynecomastia in adolescent patients. But jurors were shown clinical studies during trial that reflected a much greater potential rate of gynecomastia—as high as 12%—in children who used the drug.

Janssen had pushed the drug on the pediatric market in the years before it was approved for use in children. Internal company documents revealed that sales representatives had made thousands of calls to doctors treating adolescent psychiatric patients in 2001 and 2002.

The next Risperdal trial in Philadelphia, which would give jurors a chance to award both compensatory and punitive damages at once, is scheduled for December.

Plaintiff Murray is represented by Tom Kline and Christopher Gomez of Kline & Specter PC, Jason Itkin and Cory Itkin of Arnold & Itkin LLP and Stephen Sheller of Sheller PC. The case is Nicholas Murray v.
Janssen Pharmaceuticals Inc. et al., (case number 130401990) in the Court of Common Pleas of Philadelphia County, Pennsylvania.
Source: Law360.com

**GILEAD PUTS PROFITS AHEAD OF PATIENTS BY SUPPRESSING NEW DRUG DATA**

There is a great deal of litigation against Gilead, manufacturer of the HIV drug Viread. Several lawsuits have been filed. This is a drug that has to be given in high doses to be effective. It is alleged in the lawsuits that the company failed to warn that Viread could cause damage to the kidneys and bones. The lawsuits also claim that Gilead delayed the development of a less-toxic and more effective HIV drug called tenofovir alafenamide fumarate (TAF) in order to extend the number of years where patents shielded their drugs from competition, allowing it to charge high prices.

TAF is an HIV drug used to control and prevent the virus from multiplying inside the body, which allows those infected with the HIV virus to live longer, more productive lives. European scientists discovered the drug back in the 1980s, and the original formulation had to be administered intravenously.

The pharmaceutical manufacturer Gilead bought the rights to sell TAF in 1997 and then reformulated the drug's chemical composition so it could be taken orally, which would make it more profitable. Gilead's reformulated version of tenofovir, tenofovir disoproxil fumarate (TDF), was approved by the Food and Drug Administration (FDA) in October 2001 and sold under the brand name Viread.

TDF is not easily absorbed by the body and increasingly higher doses are required for the HIV treatment to be effective. The Los Angeles Times reports that Gilead scientists were aware early on that these higher doses of TDF could cause serious damage to the bones and kidneys. However, Gilead failed to warn about these risks in Viread's drug label. At the time of Viread's release to the market, Gilead scientists were already working on a less toxic version of the drug, which was TAF.

In April 2001, the results of an animal study performed by Gilead that used TAF showed that the drug had a thousand-fold greater activity against HIV than the original TDF formulation, raising the possibility that it would have far less toxicity. According to the recently filed lawsuits, Gilead then paid doctors across the country to give TAF to patients in small clinical trials, which showed extremely positive results. However, the results of those clinical trials were not published for years in order to maintain secrecy that the claims in the lawsuits were "an act of extreme malice."

In October 2004, Gilead announced that the company was ending all research on the less-risky TAF-containing medications after an "internal business review." Despite that claim, Gilead continued to apply for new TAF patents. According to two TDF-based drug lawsuits filed in California, Gilead delayed revealing study results related to TAF, waiting until TDF's patent ran out. Gilead's patent for TDF expired in 2018. In a news release from the AIDS Healthcare Foundation (AHF), the Plaintiffs said that Gilead "deliberately and mali- ciously suppressed from the market its alternate and newer formulation of the drug, TAF, in order to extend the patent life—and sales—of its existing medications that included TDF."

Several scientific studies have shown that TDF is toxic to the kidneys and can also negatively affect bone growth. Despite Gilead's awareness of the risks associated with TDF, the company falsely and misleadingly promoted its TDF-based drug Viread, which resulted in the FDA issuing two warning letters to Gilead concerning its marketing of Viread. Based on reporting from the Los Angeles Times and recently filed lawsuits, it's clear that Gilead sought to maximize its profits from TDF-based drugs until its patent expired while suppressing scientific data from its own studies and clinical trials that showed TAF-based drugs had fewer risks and were more effective at treating HIV. In short, Gilead chose to put profits over safety for people. Shame on the bosses at Gilead!

Source: Los Angeles Times

**VIII. AN UPDATE ON THE JUUL LITIGATION**

**JUUL MDL CREATED AND SENT TO CALIFORNIA**

With a growing number of JUUL e-cigarette related injuries and class action lawsuits being filed throughout the federal court system, Juul Labs, Inc. filed a motion to transfer with the U.S. Judicial Panel on Multidistrict Litigation (JPML) on July 29. The JPML heard arguments on the issue on Sept. 26. Juul Labs asked the panel of federal judges to consolidate and centralize the litigation in one court for coordinated discovery and pretrial proceedings. The JPML issued the transfer order on Oct. 2, sending lawsuits alleging that Juul Labs marketed its vaping devices to teens and downplayed the risks of nicotine addiction to a California federal court. The panel rejected a proposal to create two multidistrict litigations (MDLs).

The JPML consolidated 10 suits. Five suits were originally filed in California federal court, with the others coming from Alabama, Florida and New York. The JPML noted in the order that it has been informed of more than 40 suits that could be related. The lawsuits include both potential class actions and individual personal injury cases involving claims that embattled Juul Labs mislead consumers into thinking its product is less addictive than traditional cigarettes.

The suits include claims that Juul's vaping products contain 20% more nicotine than the product labeling states. The consumers allege this false advertising and labeling influenced them to buy and use the products in the hopes of quitting smoking but, in reality, the products gave them more nicotine than if they had continued smoking cigarettes.

The JPML assigned the MDL to U.S. District Judge William H. Orrick, who has been presiding over most of the California lawsuits. The MDL is in In Re: Juul Labs Inc., Marketing, Sales Practices, and Products Liability Litigation (case number 2913) in the U.S. District Court for the Northern District of California.

If you need more information on the MDL, contact Joseph VanZandt or Soo Seak Yang, lawyers in our firm, at 800-898-2034 or by email at Joseph.VanZant@beasleyallen.com or SooSeak.Yang@beasleyallen.com.

Source: Law360.com; Aboutlawsuits.com

**SCHOOL DISTRICTS IN THREE STATES FILE VAPING LAWSUITS AGAINST JUUL LABS**

Beasley Allen lawyers, along with co-counsel from other law firms, have filed lawsuits on behalf of school districts in Kansas, Missouri and New York against JUUL Labs. The school districts are seeking to protect their students and hold the vaping manufacturing giant accountable for diverting resources—time and public funding—from education. The lawsuits claim that JUUL's alleged deceptive marketing practices targeted youth and it knowingly designs its products to increase the risk of addiction.

The Plaintiff school districts say that JUUL's actions created a public nuisance and a threat to public health and safety. The Plaintiffs are represented by Beasley Allen lawyers Andy Birdfield, the firm's Mass Torts Section Head, and Joseph VanZandt, along with lawyers from Wagstaff Cartmell, Goza & Honnold, and Gacovino, Lake & Associates.

Source: Law360.com; Aboutlawsuits.com

BeasleyAllen.com
JUUL's reckless actions have forced schools to spend their already limited funding to battle the nicotine addiction epidemic it reignited. This lawsuit puts JUUL and other vaping manufacturers on notice that they cannot unleash such an immense threat to the public's health and safety with impunity.

Beasley Allen lawyers are working with our co-counsel at Wagstaff Cartmell, Goza & Honnold, and Gacovino, Lake & Associates to ensure JUUL and others responsible for this epidemic pay to remedy the consequences of their irresponsible actions. The Plaintiffs school districts include:

- **Olathe Public Schools USD 233** is the second-largest district in Kansas, serving more than 30,000 students. Olathe Public Schools has experienced 53 consecutive years of growth. “The top priority of Olathe Public Schools is the safety and well-being of its students and staff. Its Superintendent John Allison recently said, “Vaping has caused a serious disruption in our buildings.” The case is filed in the U.S. District Court for the District of Kansas, case number 2:19-cv-02608.

- **Francis Howell School District** is one of the largest school districts in Missouri, encompassing more than 150 square miles in the southeast corner of St. Charles County and serving nearly 18,000 students. The district includes St. Peters, Cottleville, Weldon Spring, Dardenne Prairie, Harvester, New Melle, southern portions of St. Charles City, and eastern portions of O’Fallon. The school district’s mission is to prepare students today for success tomorrow. The case is filed in the U.S. District Court for the Eastern District of Missouri, case number 4:19-cv-02713.

- **Three Village Central School District** serves more than 6,000 students and includes Arrowhead Elementary, Mncesauke Elementary, Nassakeag Elementary, Setauket Elementary, W.S. Mount Elementary, P.J. Gelines Jr. High School, R.C. Murphy Jr. High School, Ward Melville High School, and The Three Village Academy. Three Village is committed to providing an educational environment, which will enable each student to achieve a high level of academic proficiency and to become a well-rounded individual who is an involved, compassionate, responsible citizen. The case is filed in the U.S. District Court for the Eastern District of New York, case number 2:19-cv-05662.

School districts have been uniquely and disproportionately impacted by JUUL's conduct. Educators are being forced to expend significant resources to combat JUUL use by students. The JUUL use by students during school presents both a danger to students and increases the resources necessary to educate the students who use JUUL. It also detracts from the limited time and resources the educators have to educate their student population generally. Schools have installed sensors in bathrooms, removed bathroom doors, and banned USB flash drives, to name just a few of the steps taken in attempts to curtail use. However, more action is needed as the epidemic intensifies, affecting more communities across the country.

Beasley Allen lawyers have filed lawsuits against JUUL Labs on behalf of individuals who are suffering from severe nicotine addiction and other physical injuries related to the use of JUUL vaping devices. Yet, schools are on the front lines in fighting this new epidemic. After decades of success in curbing nicotine use among America's youth, it is once again sharply on the rise. According to the Centers for Disease Control and Prevention (CDC), data shows that high school students using vaping devices soared from 1.5 percent to 15.4 percent between 2011 and 2014. The rate jumped to 21 percent in 2018. During the same time period, vaping among middle school students increased from 0.6 percent to 3.9 percent.

Although JUUL wasn’t alone in creating the epidemic, it holds 75% of the vaping market. It has essentially launched a nicotine arms race by offering fruit-flavored products that would appeal to younger people, increasing the level of nicotine and improving the nicotine delivery systems. This stealthy combination established a new industry standard for other vaping product makers to follow if they wanted to compete with the giant.

If you need more information on the JUUL litigation, contact Joseph VanZandt, who is heading up the JUUL litigation for our firm, at 800-898-2034 or by email at Jospeh.VanZandt@beasleyallen.com.

IX. **MORE ON THE VAPING LITIGATION**

**CDC AND FDA RAMP UP VAPE ALARMS AS LUNG INJURY CASES TOP 1,000**

Officials from the U.S. Centers for Disease Control and Prevention (CDC) and the Food and Drug Administration (FDA) now say the agencies have identified more than 1,600 cases as of mid-October in a very concerning outbreak of lung ailments related to vaping. There have been at least 34 deaths confirmed and reported to the CDC from 24 states, with additional deaths under investigation.

Lung injuries have been reported from 49 states, the District of Columbia, and the Virgin Islands, and there are additional cases being identified each week, including new patients and updated diagnoses on existing patients.

The CDC’s website said most patients reported a history of using THC-containing products, and that the latest findings suggest that such products play a role in the outbreak. Roughly 70% of identified patients are male and approximately 79% of patients are younger than 35, and another 15% are younger than 18. The median age of deceased patients was 44 years and ranged from 17 to 75 years.

The FDA has collected more than 725 samples, including devices and cartridges, directly from consumers, hospitals, and from a number of state offices. The samples are being analyzed to determine the presence of a broad range of chemicals, including nicotine, THC and other cannabinoids, along with cutting agents/diluents and other additives, pesticides, opioids, poisons, heavy metals and toxins. To date, the analysis of the samples does not appear to show that any one product or substance is involved in the reported illnesses.

The FDA and CDC are working to standardize information collection at the state level to help build a more comprehensive picture of these incidents. This includes investigating the brand, manufacturer and types of vaping products, whether any of them are products that would fall within the FDA's regulatory authority, as well as where they were obtained. At this time, FDA and CDC have not identified the cause or causes of the lung injuries in these cases, and the only commonality among all cases is that patients report the use of vaping products.

If you need more information, contact Will Sutton, a Beasley Allen lawyer working on the vaping litigation, at 800-898-2034 or by email at William.Sutton@beasleyallen.com.

**FDA PROPOSED RULE ON E-CIGARETTE DEVICES**

In the wake of the vaping epidemic and particularly the continued rise in youth e-cigarette usage, the U.S. Food and Drug Administration (FDA) has announced a set of proposed rules, setting the requirements for premarket tobacco product applications (PTMAs). This announcement came only two days after the FDA targeted JUUL for purportedly promoting its vaping devices as safer than standard tobacco products without approval from the FDA.

The FDA is acting within its authority to regulate the sale and manufacture of...
tobacco products pursuant to the Family Smoking Prevention and Tobacco Control Act, which provides that before a new tobacco product of any form can be placed into the market, it must be pre-approved by the FDA.

This rule will set the standard for reviewing applications and help make sure that those applications contain the appropriate details—such as the potential public health risks and benefits of the product, as well as detailed information regarding the physical aspects of the product and its manufacturing and packaging. The rule states specifically what it requires to better evaluate each application.

Ned Sharpless, Acting FDA Commissioner, in a statement, said:

Our review of premarket product applications will help evaluate the public health benefits and harms of a tobacco product to ensure that those authorized for marketing are appropriate for the protection of public health.

This rule will help to codify the standard procedures the FDA would follow when vetting PMTAs. The rule does contain some flexibility for applicants in that it would create post-market reporting requirements for those applicants that do receive marketing orders. It would allow for applicants to submit these applications in alternative formats in specific cases to make it easier to submit applications for modifications to a product that had already received a marketing order or that needed to be resubmitted for deficiencies.

The rule also contains other requirements to safeguard the public health from a marketing standpoint. The rule contains a provision that manufacturers must keep records establishing that their products were legally marketed, even those without a PMTA.

The FDA has given the public until Nov. 25, 2019, to submit comments in electronic or written form regarding the proposed rule. If you have questions contact Sydney Everett, a lawyer in our firm, at 800-898-2034 or by email at Sydney.Everett@beasleyallen.com.

Rite Aid, Wal-Mart, Kroger and Walgreens Discontinuing Sales of E-Cigarettes

Major retailers Walmart Inc. and Rite Aid have been joined by Kroger and Walgreens in discontinuing the sale of electronic cigarettes at U.S. locations. Walmart discontinued the sale of electronic nicotine delivery products at all Walmart and Sam’s Club U.S. locations. This is just one example in a line of strikes against e-cigarettes. Reports of electronic cigarette related illnesses and deaths have prompted a criminal investigation by the U.S. Food and Drug Administration (FDA) and executive action by several state governments.

The FDA recently sent a warning letter to JUUL regarding marketing its products as safer than tobacco absent FDA approval. JUUL employed this marketing tactic during a school presentation. Acting FDA Commissioner Ned Sharpless said:

Regardless of where products like e-cigarettes fall on the continuum of tobacco product risk, the law is clear that, before marketing tobacco products for reduced risk, companies must demonstrate with scientific evidence that their specific product does in fact pose less risk or is less harmful. JUUL has ignored the law, and very concerning, has made some of these statements in school to our nation’s youth.

The recent announcements come as litigation continues to progress against vape products manufacturer JUUL. The Judicial Panel on Multidistrict Litigation (JPML) announced on Oct. 2, 2019, the creation of a multidistrict litigation (MDL) in California under U.S. District Judge William H. Orrick.

X. AN UPDATE ON SECURITIES, INSURANCE AND FINANCE LITIGATION

Investor Recovers $21.7 Million Judgment For Private Equity Firms Breach Of Fiduciary Duty

The MapleWood private equity group of companies and its managing member, Robert Glaser, have been ordered by Judge Robert R. Reed to pay $21.7 million to Casita, LP, an investor. The judgment comes after a jury found that MapleWood’s directors breached their duty to the fund and its investors by selecting investments with affiliated companies based on the higher management fees they generated for MapleWood, at the expense of higher returns for investors.

Casita brought the claim as a shareholder derivative action on behalf of investors in MapleWood Equity Partners Offshore, Ltd. The award is comprised of a $15 million judgment, plus approximately $6.7 million in pre-judgment interest that has accrued since the decade-old case was originally filed in early 2007.

MapleWood Equity Partners Offshore was supposed to invest in mid-market companies. These are companies that, measured by size or revenue, are larger than small businesses but smaller than big blue-chip companies. Such companies account for about one-third of business revenue in the United States. Casita invested up to $25 million in MapleWood Offshore, which was entitled to receive a share of profits only after their investments exceeded an 8% rate of return. When the 8% threshold was never reached, meaning MapleWood’s managers were not entitled to profits, the managers began directing investments with the goal of maximizing management and consulting fees.

As stated in the complaint, “...[b]ecause Defendants cannot share in the company’s profits, their only remaining interest in the company is to maximize the management, advisory and consulting fees that the company pays.” This administration of fund assets for the benefit of fund managers instead of investors is a major conflict of interest, and a breach of the fiduciary duties MapleWood’s managers owed to their investors.

Investment fund managers owe fiduciary duties to their clients. These duties of loyalty and care command them to keep the clients’ interests ahead of their own, and to diligently work to grow the clients’ investments. The law defining what the fiduciary duty is in the United States primarily comes from case law, with most of that law focusing on to whom the duty is owed.

Rules better defining and expanding fiduciary duty in the investment world were proposed and implemented during the Obama Administration, but have been largely frozen or rolled back since Donald Trump took office. However, under current and former law, if a person is acting in an investment advisory position, which includes managing a hedge fund, then they undoubtedly owe that care to their clients.

At MapleWood, managers sacrificed greater returns for their clients in order to keep them in less profitable investments that provided higher management fees. Managers held certain investments in the fund, even when they could have sold them for a reasonable value, simply to collect the higher fees generated by those investments. This evidenced the higher priority placed on making money for themselves rather than on making money for their clients, which violated their duty of care. Beyond that, the duty of loyalty owed to the clients commanded that managers make them aware of the conflict of interest in their management practices.

Not everyone has the time, experience or expertise to manage their own investments. In investing, it is always vital to
make sure that whoever is directing where your funds are placed has your best interests in mind, and that they make you fully aware of any situation in which they will somehow profit more at the expense of your pocketbook. Everyone should be diligent in monitoring their managed investments to make sure this is happening.

The case is Casita LP v. Robert V. Glasser et al., (case number 600782/2007) in the Supreme Court of the State of New York, County of New York.

Source: Law360.com

**AdvoCare Sets $150 Million Claims For Pyramid Scheme**

The Federal Trade Commission (FTC) announced last month that it had reached a settlement with wellness company AdvoCare International LP for violations of the U.S. Federal Trade Commission Act. Pursuant to the settlement AdvoCare has agreed to pay $150 million to the FTC to be used to repay consumers harmed by AdvoCare’s conduct. The company also agreed to be prohibited from certain marketing practices, namely “Ponzi scheme or chain referral schemes.” Compensation practices such as payments based on sales made by others, which AdvoCare ended in July, are also prohibited.

AdvoCare was founded in Texas in 1993. Since that time, the company has grown dramatically selling wellness products such as supplements, energy drinks, energy bars, and shakes. Much of AdvoCare’s rapid growth was due to its marketing strategy, which is precisely what led to the FTC complaint and ultimate settlement. Instead of marketing its products directly to stores or consumers, AdvoCare instead used a “multi-level marketing” program to sell its products. The corporate marketing model was a typical pyramid scheme.

Through this program, persons signed up to sell AdvoCare as distributors called “Advisors.” In order to become an Advisor, those persons had to purchase product from AdvoCare totaling approximately $1,200 to $2,400. Afterward, the compensation of Advisors was not based solely on the products that they sold, but primarily on the next level of Advisors that they recruited to also sell for AdvoCare: their so-called “downline.” Every Advisor was required to purchase a certain volume of product in order to maintain their status, which entitled them to certain downline-based compensation.

The AdvoCare marketing model was undoubtedly operated as a pyramid scheme. Pyramid schemes are profitable to participants based more on their ability to recruit participants below them as opposed to the actual sale of a product. By their nature, the vast majority of participants at the bottom of these schemes will make nothing, while those very few at the top will reap large profits based solely on their “downline.”

Andrew Smith, director of the Bureau of Consumer Protection, said in a statement that “legitimate businesses make money selling products and services, not by recruiting.” Smith further said “[t]he drive to recruit, especially when coupled with deceptive and inflated income claims, is the hallmark of an illegal pyramid.”

While it is commendable that the FTC has hit AdvoCare with a penalty for its conduct, one can’t help but wonder if it is too little too late. AdvoCare wasn’t held to account for its practices until more than 20 years after they began. During that time, AdvoCare grew exponentially in size, to the point where it sponsors college football kickoff games, racecar teams, an MLS soccer team, and tennis tournaments. AdvoCare generates enough income to hire Drew Brees, quarterback for the New Orleans Saints, as its national spokesman.

The $150 million settlement payment is large, but it comes at a time when AdvoCare, and the persons who perpetuated it for 26 years, can afford to pay it and move on to keep doing business. After changing its marketing strategy in July, AdvoCare has noted its “sales remain strong and we continue to invest in new products and to work with our distributors to provide the best possible customer experience.” The length of time to bring this action has permitted AdvoCare to buy its way out of any liability for its ill-gotten success and enjoy the fruits of that endeavor.

AdvoCare is not the only multi-level marketing company out there. If someone approaches and proposes a “business opportunity” to you, make sure you study it in detail and see where the earnings really come from. If they come in large part from your ability to recruit other persons behind you, you have two questions to ask yourself. One, does the person recruiting me have my best interest at heart or theirs? And two, if I am willing to risk becoming a victim to this, will I be able to live with the responsibility of finding the next one?

The case is Federal Trade Commission v. AdvoCare International LP et al., (case number 4:19-cv-00715) in the U.S. District Court for the Eastern District of Texas.

Source: Law360.com

**GREENBERG TRAURIG AGREES TO $65 MILLION SETTLEMENT TO END STANFORD PONZI SUIT**

Greenberg Traurig has agreed to pay $65 million to settle claims related to its alleged involvement in a $7 billion scheme run by convicted Ponzi scammer R. Allen Stanford. The receiver for Stanford’s estate, Ralph S. Janvey, asked the court to approve a proposed settlement under which Greenberg Traurig LLP would pay $65 million to be distributed to customers of the convicted scammer’s Stanford International Bank Ltd.

Stanford was sentenced in June 2012 to 110 years in prison for orchestrating a $7 billion financial scam that affected about 30,000 investors and was described by the receiver, Janvey, as the “second largest securities fraud scheme in U.S. history.”

In the suit, a group of investors led by Janvey sued Hunton & Williams LLP and Greenberg Traurig in 2012, contending that the Ponzi scheme could not have gone on for so long without Stanford’s team of “skilled and complicit” lawyers, including former Greenberg Traurig and Hunton & Williams partner Carlos Loumiet. Hunton & Williams settled and was dismissed from the suit in a $54 million settlement that was approved last year.

Janvey stated he did not have to prove that Greenberg Traurig was aware of the Ponzi scheme in order to prevail on his claims that the firm breached its fiduciary duty to the Stanford entities. Instead, Janvey said he had “overwhelming evidence” that Greenberg Traurig knew Stanford was selling unlicensed and uninsured certificates of deposit to unsuspecting investors and advised that he could do so without registering them in the U.S.

Additionally, the company was aware that Stanford was selling these CDs using fraudulent misrepresentations and provided him with “sham memorandums arming Stanford with excuses not to comply with law,” Janvey said.

Janvey also said there was evidence that Greenberg Traurig helped Stanford move his bank to Antigua and use investor money to bribe Antiguan officials with “loans” that would never be repaid, allowing his scheme to operate through the Caribbean nation without scrutiny from its government or regulators.

Janvey is represented by Edward C. Snyder and Jesse R. Castillo of Castillo Snyder PC, Douglas J. Buncher of Neligan LLP and Judith R. Blakeway of Clark Hill Strasburger.

The case is The Official Stanford Investors Committee et al. v. Greenberg Traurig LLP et al., (case number 3:12-cv-04641) in the U.S. District Court for the Northern District of Texas.

Source: Law360.com

**MYLAN AGREES TO $30 MILLION SEC SETTLEMENT RELATING TO EpiPen PROBE**

Mylan NV will pay the U.S. Securities and Exchange Commission (SEC) $30 million to resolve claims that it failed to warn inves-
tors about potential losses tied to an investigation into the drugmaker’s EpiPen classification. The settlement relates to the U.S. Department of Justice’s (DOJ) civil investigation into whether the company misclassified the EpiPen as a generic drug in an attempt to pay lower rebates under the Medicaid Drug Rebate Program.

Mylan knew of the investigation in late 2014, but didn’t tell investors about the probe or any related losses until its October 2016 disclosure of a $465 million settlement, according to the SEC complaint. Antonia Chion, associate director in the SEC’s enforcement division, said in a statement:

It is critical that public companies accurately disclose material business risks and timely disclose and account for loss contingencies that can materially affect their bottom line.

Toward the end of 2014, the Centers for Medicare and Medicaid Services told Mylan it had been misclassifying its EpiPen as a generic drug. The DOJ started an investigation into the matter within a week. Mylan attempted to settle with the DOJ for $50 million in July of 2016, but the government rejected the offer. The parties, after a period of negotiating, reached an agreement for a settlement of $465 million in October 2016. Mylan disclosed the investigation and its liability for the first time on Oct. 7, 2016, the same day it announced the settlement, despite knowing losses stemming from the investigation were “reasonably possible” since at least the third quarter of 2015, according to the SEC. Mylan therefore filed inaccurate financial reports before reaching the settlement, while also making misleading disclosures about risk factors, according to the SEC.

The SEC is represented in-house by Daniel Maher, Lisa Weinstein Deitch and Ian Dattner. The case is SEC v. Mylan NV, (case number 1:19-cv-02904) in the U.S. District Court for the District of Columbia. Source: Law360.com

PILGRIM’S PRIDE INVESTOR SUIT SETTLES FOR $42.5 MILLION

A $42.5 million settlement has been reached that will resolve a minority stockholder derivative suit in Delaware Chancery Court against the controlling shareholder of chicken producer Pilgrim’s Pride Corp. The litigation involved the $1.3 billion acquisition of an affiliated company. Under the stipulated settlement, controlling shareholder JBS SA and Pilgrim’s Pride directors, named as Defendants in the litigation, will pay the company in return for claims being dismissed. The settlement will require court approval.

In January 2018, shareholder Matthew Sciabacucchi filed suit against JBS; its founder and CEO, José Batista; and Pilgrim’s Pride’s board over the $1.3 billion acquisition of the U.K. poultry farm Moy Park from JBS. The suit said the transaction had been vetted by a special committee that was not independent and put through a process that “did not seek or obtain approval of the company’s minority shareholders.” A subsequent suit by the Employees’ Retirement System of the City of St. Louis was consolidated with the Sciabacucchi suit. Block & Leviton, Heyman Enerio Gattuso & Hirzel LLP, and Bernstein Litowitz Berger & Grossmann LLP were appointed co-lead counsel.

Vice Chancellor Laster had ruled that the Chancery Court had jurisdiction over the claims against it under a forum-selection bylaw adopted by the board. The Vice Chancellor said in his opinion that JBS had appointed and exercised control over a majority of the Pilgrim’s Pride board of directors, which approved the forum-selection rules on the same day it approved the Moy Park transaction.

The shareholder suit arises from Pilgrim’s Pride’s acquisition of Moy Park in 2017 in a deal allegedly pushed by JBS. The parent company of JBS put Moy Park up for sale that year to raise cash in order to satisfy a $3.2 billion fine levied by the Brazilian government in response to an investigation of bribes paid to government officials.

According to the complaint, the board approved the Moy Park transaction, but did not subject the deal to the cleansing framework required in controller-led transactions created by the M&F Worldwide decision in the Chancery Court. A ruling in the M&F case calls for the approval of a controller-led deal by a majority of minority shareholders, something that the complaint said did not happen in the Moy Park acquisition. If that step is taken, then the more lenient business judgment standard applies.

The Plaintiffs are represented by Kurt M. Heyman and Melissa N. Donimirski of Heyman Enerio Gattuso & Hirzel LLP; Jason M. Leviton and Joel A. Fleming of Block & Leviton LLP; and Mark Lebovitch and Edward G. Timlin of Bernstein Litowitz Berger & Grossmann LLP. The case is In re: Pilgrim’ Pride Corporation Derivative Litigation, (case number 2018-0058) in the Court of Chancery of the State of Delaware. Source: Law360.com

BeasleyAllen.com
Another aspect of autonomous trucks is they do not have drivers who get tired or who text, and that they say, would save lives. In the United States, more than 4,000 people die in crashes involving trucks every year, and many of the crashes result from human error. The American Trucking Association has embraced the new technology, recently issuing its first autonomous vehicle policy.

The Association is calling for uniform federal laws that they say could help developers and researchers make automatic and connected vehicles safer than humans. The teamsters are less enthused and have pushed against the inclusion of the technology in commercial vehicles. It appears the teamsters have won the first round in Congress. The bill that was pending in Congress did not come out of committee during this last term.

The companies that are testing this technology say they are continuing to refine it, but do not be surprised if one day you see a commercial truck cruising down an interstate highway with no one in the driver’s seat. During the 2019 legislative session, Alabama passed a law aimed at regulating the use of these vehicles in the state. However, the statute related to a specific type of autonomous truck that has a remote driver, similar to technology used on military drones. For now, these trucks will have a driver in the truck to monitor systems, but the plan is to eventually eliminate onboard drivers.

Currently, there are 29 states that have enacted autonomous vehicle legislation, according to the National Conference of State Legislatures. Most all of the states that have enacted such statutes have double or triple the amount of minimum mandatory insurance coverage that is required by the Federal Motor Carrier Safety Administration. Alabama’s new statute has minimum insurance requirements as well.

This will continue to be a developing area of the law as the technology is tested and rolled out into the public domain. Legislative efforts are expected to provide immunity for manufacturers of these vehicles and the software providers. That would be a tragic mistake and a setback on safety issues. The technology most likely hasn’t kept pace with the urgency by the companies involved to get their product on the market. It appears the companies are pushing the envelope in a race to be first to market.

Sources: Wired.com and Transportationnews.com

Is The Public Ready For Driverless Commercial Trucks?

It is hard to fathom an 80,000-pound commercial truck would be operating on a public highway without a person behind the steering wheel. Believe it or not, there are several companies, including Uber, Tesla, Embark, Amazon, Volvo, and Daimler, already testing autonomous trucks. Currently, the technology is being tested on interstate highways. If that appears to be risky and dangerous, it certainly may well be. I am not sure we are ready for this development.

Since October 2008, Embark, a technology company in California, has been operating autonomous trucks it built from El Paso, Texas, to Palm Springs, California, on Interstate 10. Embark is one of many companies that believe commercial trucks, not personal cars, are the smartest use of autonomous technology.

One argument is that a robot that can drive itself on highways, where trucks spend nearly all of their time, is relatively easy. Apparently, they do not have to account for pedestrians, cyclists, traffic lights, and other variables. The big rig just has to stay in the same lane most of the time and keep a safe distance from fellow travelers on the highways.

XII. PREMISES LIABILITY UPDATE

Georgia County Settles Wrongful Death Claim With Family Of 12-Year-Old Boy For $1.5 Million

Rob Register, a lawyer in our firm’s Atlanta office, has reached a settlement with Augusta-Richmond County, Georgia, for the wrongful death of Melquan Robinson, Jr., a 12-year-old boy who died after being electrocuted on a baseball field at Fleming Athletic Complex, in Augusta, Georgia, on Oct. 15, 2018. The park was owned and operated by the county.

Last October, Melquan was playing with friends in the right-field of a baseball field at Fleming Park when he touched the outfield fence, not knowing it was charged electrically. The fence and the area around it were electrified due to a ground fault event that had occurred inside the right field light pole. The surging electricity killed him and injured four other children who attempted to help him.

An investigation revealed that a live wire within the metal light pole was touching the inside of the pole causing it to route high voltage electricity into the ground. The electricity emanated out from the light pole into the outfield fence. Experts found no equipment grounding conductor (EGC), a very basic component of any electrical wiring system that is required by the National Electric Code as well as the Augusta Building Code. The EGC is a mechanism that serves to provide a ground-fault current path by connecting normally non-current-carrying metal enclosures of electrical equipment to the system grounded conductor. This protects people in the event of a short circuit, or an accidental diversion of the electrical current by shutting off flow of the electricity. If the park had an EGC, this incident would not have occurred.

This was not the first time someone was injured by the fence. County records, discovered through open record requests, revealed that other children were shocked after touching a fence at the same park on at least two other occasions in 1991 and again in 2014.

A significant legal obstacle in the Robinson family’s quest for justice was the county’s sovereign immunity under Georgia law. Georgia courts have ruled that the State of Georgia, as well as its counties and cities, hold wide sovereign immunity and cannot be sued unless they waive that right by statute.

The State of Georgia has statutorily waived its immunity for personal injury
claims, but capped the damages a Plaintiff can recover at $1 million. Currently, there is no similar waiver of county immunity. Therefore, counties cannot be sued directly for the wrongful death of a citizen in this type of incident. The only way to pursue a claim is to sue individual county employees personally. In such situations the employees themselves are also entitled to official immunity for any discretionary actions. The narrow exception to immunity is for ministerial acts performed by county employees. Georgia courts have repeatedly found most actions by county employees to be discretionary and therefore immune to any lawsuit. Rob had this to say:

While we firmly believe that employees of Augusta-Richmond County had a ministerial duty to maintain the wiring at Fleming Park in compliance with the National Electric Code, there was a substantial chance that a court could find the decisions as to bow and when to do the work were discretionary in nature. If the court found the employees’ actions discretionary, the Robinsons’ lawsuit would be dismissed and they would have recovered nothing for the death of their son.

The Robinson family did not want Melquan’s death to be in vain. The most important term of any potential settlement was to make sure all the parks in Augusta were safe for children. As part of this settlement, Augusta-Richmond County agreed to the following:

- Ensure that all the electrical systems at its parks have been inspected, and any necessary responsive measures taken to ensure the safety of these parks.
- Renaming of the adjacent street to Melquan Way.
- Erecting an appropriate memorial to the life of Melquan Robinson, Jr. at Fleming Park.

This settlement with Augusta-Richmond County is more than twice the largest amount ever paid for any claim in the history of the county. Rob observed:

_In most cases that we handle, payment is made by large corporations or insurance companies. There was no insurance for this loss. We were mindful that this payment would come from taxpayer dollars. We believe the settlement indicates that Augusta recognizes the need to take responsibility for what went wrong and to continue working diligently to resolve it so that this tragedy never happens again. As Melquan’s family has said all along, no amount of money will bring him back or reverse the tragic circumstances. Yet, by raising awareness about their son’s needless death, the tragedy has served as a catalyst for change._

For Chinnika Jackson and Melquan Robinson, Sr., they will remember their son as a kind, hard-working, energetic boy who was gifted at sports and loved by all. They hope their fight for justice will keep other parents from living out the same nightmare that started for them nearly a year ago.

Rob Register did outstanding work in this case. If you have any questions about this case, contact Rob, who is in our Atlanta office, at 800-898-2034 or by email at Rob.Register@beasleyallen.com.

**KANSAS CITY MASS SHOOTINGS**

Four people were shot to death and five others injured on Oct. 6 in a mass shooting at a bar in Kansas City, Kansas. The shooting came after a disgruntled patron was denied service and kicked off the premises. The man returned later with another man—both with guns—and the incident accelerated. Witnesses said trouble began at the private members-only Tequila KC bar when the bartender, Jose Valdez, refused to serve a man who had previously caused problems at the bar. The man threw a glass at the bartender and started arguing with another individual before bar employees escorted him out of the bar.

Shortly thereafter, the man who had been escorted out and another man returned to the bar with handguns. They slipped in through the back door and assessed the crowd before opening fire, Valdez told CNN. The mass shooting claimed the lives of four Hispanic men. Five other people were taken to nearby hospitals with gunshot wounds and other injuries. All were in stable condition at press time.

The owner of Tequila KC bar told KCTV5 News that when the suspect was being escorted out of the bar, he told people inside that he was going to return and shoot everyone. The owner said he called the police to report the threat, but there was no response after 20 minutes. He said he called again and asked: “Why is it taking so long? ‘This guy could shoot anybody, he could have a gun and could be shooting anybody.’” According to Valdez, the police told him that they were having problems somewhere else.

Valdez stated that the bar’s security guard didn’t show up on that Saturday night. Valdez says he isn’t sure he will reopen the bar, but if he does, he said the bar will not stay open without a security guard again.

Beasley Allen lawyer Parker Miller, who works in the firm’s Atlanta office and heads up the firm’s negligent security practice, notes that under negligent security law, owners of establishments owe a duty to patrons and guests to ensure that their premises are reasonably safe and secure from anticipated dangers.

Cases involving negligent security law normally take the form of shootings, fights, stabblings, or other physical violence (including sexual assault) where severe injury or death occurs due to the establishment owner’s failure to take reasonable safety measures.

While originally applied to apartment complexes, retail locations, and other places where innocent people are victimized by crime, the huge increase in mass shooting events has placed new scrutiny on what establishment owners can do to curb the risk to patrons and guests. Parker says:

_Mass shootings are happening with such regularity, and in so many places, that establishment owners cannot turn a blind eye to them. This is particularly true in confined areas, such as schools, venues, events, entertainment districts, and the like. There are a variety of reasonable security measures—such as an alert, armed security guard, that could greatly mitigate the security threat of a mass shooter. Those in a position to profit from these locations need to be mindful of security risks to their guests. Otherwise, they risk being held accountable by the public. Jury verdicts are clearly reflecting the public’s demand that safety and security be a top priority._

The epidemic of mass shootings in the U.S. isn’t just senseless and tragic, it’s incredibly costly in the loss of human life. Nearly every day in the U.S. the families of victims of gun violence are mourning the loss of loved ones, while survivors are forever maimed and traumatized.

Until the U.S. can get a handle on its gun violence problems, Americans’ expectations for safety and security will continue to increase and businesses like the Tequila KC bar will have to step up their security game. Failure to do so could result in lawsuits that press premises liability concerns, including negligence for inadequate security or lapses in existing security measures. If you have any questions or need help with a potential claim, contact Parker Miller, a lawyer in our Atlanta office, at 800-898-2034 or by email at Parker.Miller@beasley-allen.com.

Sources: KSHB 41 Kansas City and The Kansas City Star

BeasleyAllen.com
Three Lawsuits Filed Over Shootings At West Palm Beach Apartment Complex

Two men who were injured and the family of a man who was killed in shootings at an apartment complex in Palm Beach County, Florida, have filed suits against the managers and a security company that were supposed to keep residents and visitors at the site safe. In separate lawsuits, 25-year-old Rashad Brown and the family of the late Bernard Jones accuse Lake Mangonia Apartments and Optimus Protection Services of negligence in an April shooting that also left 41-year-old Alan Bernard Newman dead. In the third lawsuit, 37-year-old John Haliburton, who was the victim of a November 2016 shooting at the complex, is making similar claims.

It’s alleged in the lawsuits that if adequate security had been in place, the shootings could have been averted. Each of the men and their families are suing for an unspecified amount in damages. The lawsuit in connection with Jones’ death was filed on behalf of the 26-year-old man’s 2-year-old daughter and his mother, Lashunda Peterson. Two men — Antwuan Nelson and Varnard Albury — are being held in connection with the double homicide.

Cambridge Management Inc., based in Tacoma, Washington, manages roughly 170 apartment complexes across the nation, including Lake Mangonia Apartments and nine others in Palm Beach County, according to its website. Spencer Kuvin, a lawyer with Craig Goldenfarb, P.A., represents the Plaintiffs.

Source: Palm Beach Post

MGM To Pay Up To $800 Million To Settle Las Vegas Shooting Litigation

MGM Resorts International will pay up to $800 million to settle the lawsuits arising from the 2017 mass shooting in Las Vegas that killed 58 people. MGM, which owns the hotel where shooter Stephen Paddock launched his attack, said in a release that, depending on the number of claimants who participate in the settlement, the total settlement amount is expected to be between $735 million and $800 million. The settlement process is expected to be completed by the end of next year, the company said.

Claimants have until February of next year to decide whether to opt out of the settlement. It will be up to a court-appointed special administrator to decide on the amount of payouts to victims and their families. The victims and their families have accused MGM’s Mandalay Bay Resort and Casino of having lax security that allowed Paddock to open fire on concertgoers from his room on the 32nd floor of the hotel, among other claims. Paddock killed himself after the shooting.

MGM noted in a filing with the Securities and Exchange Commission (SEC) that its insurance carriers have agreed to pay for the vast majority of the potential settlement, up to $751 million.

The claimants are represented by Mark P. Robinson and Daniel S. Robinson of RobinsonCalcagnie Inc., Robert T. Eglet and Robert M. Adams of Eglet Prince, Adam H. Braun and Joshua M. Moonesinghe of Braun & Braun LLP, Kevin R. Boyle of Panish Shea & Boyle LLP and Andrew A. August and Kevin E. Rooney of Browne George Ross LLP. The case is MGM Resorts International et al. v. David Aase et al.

U.S. Judge Rejects EPA’s Motion To Escape Flint Water Crisis Claims Under Interlocutory Appeal

The U.S. Environmental Protection Agency (EPA) must face and defend billions of dollars in negligence claims brought by thousands of Flint, Michigan, residents who were harmed by the city’s water crisis, a federal judge has ruled.

U.S. District Judge Linda Parker in the United States District Court for the Eastern District of Michigan, in Detroit, rejected the EPA’s request for an interlocutory appeal, finding that there were too many factual issues at play in the claims that needed to be sorted out at the trial court level. The EPA argued that the Federal Tort Claims Act shielded it from liability for “discretionary” actions.

Judge Parker ruled in April that Flint residents could sue the EPA for its alleged role in the Flint water crisis, which started in April 2014 when government officials switched Flint’s water supply from Lake Huron to the heavily contaminated Flint River.

The new water wasn’t initially treated to prevent lead from leaching out of older pipes. Subsequently, thousands of Flint residents drank tap water that in some cases contained several times the maximum level of lead considered safe. As many as 12,000 children were exposed to the contaminated water and may have been permanently harmed by the lead, a potent neurotoxin.

Plaintiffs say the EPA was negligent for waiting too long to intervene. EPA employees “negligently responded to the water crisis by failing to utilize the agency’s enforcement authority … to investigate, obtain compliance and warn Flint residents of the health risks posed by the water,” the original complaint says.

According to Law360, Judge Parker cited evidence in rejecting the motion to appeal that the EPA knew Michigan environmental regulators and city officials weren’t telling residents the truth about lead contamination in their drinking water.

Judge Parker also said that the litigation has dragged on long enough due to the issues raised in the United States’ motion to dismiss. Now that its request has been denied, the judge said the government might be forced to seriously engage in mediation.

Sources: Law360, MLive.com

XIII. Workplace Hazards

The Industry’s Adoption Of A New Safety Standard

In the firm’s Product Liability Section, our lawyers represent clients who have been injured by defectively designed machines and products. In the event of a death, the lawyers represent the heirs of the deceased. The overwhelming majority of product designers/sellers are corporations or non-human entities that cannot be sentenced to jail time. Since incarceration is off the table, monetary damages are our recourse. More often than not, cases handled by Beasley Allen lawyers end in a verdict or a settlement resulting in monetary compensation to our clients.

Sometimes, manufacturers of machines involved in litigation will voluntarily modify the design of their products following an injury or death. More often than not, however, the manufacturers never admit their machine was defective and will continue to sell the product to secure profits. Every so often, litigation will force an entire industry to adopt a safety change. In these instances, the lawyers at our firm and our clients take pride in knowing they were instrumental in promoting safety and preventing future injuries and deaths.

Earlier this year our firm, in conjunction with our friends at Morgan & Morgan, resolved a case against an RV manufacturer following a gruesome injury and death caused by a defectively designed Murphy bed or wall bed. A Murphy bed is a bed that is stowed until it is pulled down to be used. RVs commonly use Murphy beds to conserve space.

Our clients purchased a brand-new RV to travel the country and to spend more time with family in New York. While in the process of starting their new life, they delivered some items to their RV in Florida.

After their cat went under and behind the Murphy bed, both of our clients climbed onto the bed to coax the cat out. With both of their weight forward of the Murphy bed’s pivot point, the bed snapped closed, entrapping both clients behind the
bed. They yelled and screamed for help, but no one could hear them in the RV park.

After about 30 minutes, the client on the bottom suffocated due to mechanical asphyxia because of the pressure exerted on her by the bed and another person on top of her. The surviving client on top was forced to remain stuck behind the bed with a dead body for another five hours. A neighbor walking by heard a call for help. The local fire department had to destroy the bed with an ax to free the survivor.

Kendall Dunson from our firm filed suit on behalf of the survivor and the heirs of the deceased. His primary claim focused on the design of the Murphy bed given the manufacturer’s knowledge of the propensity of the bed to shut closed when weight is exerted north of the pivot point. Before our client’s fatal incident, the manufacturer had knowledge of at least three prior incidents of Murphy bed closing on people situated on the Murphy bed, including a mother breast feeding her child. Despite this knowledge, the manufacturer failed to address the hazard. Before suit was filed, we consulted with a design engineer who opined the RV Murphy bed needed a latch to keep the bed in the down position given its propensity to close on people properly using the bed.

The Murphy bed manufacturer hired its own expert to support its decision not to supply a latch to secure the bed in the down or sleep position. During litigation, the Murphy bed manufacturer took the position that the product was reasonably safe and blamed the incident on our clients.

Shortly before the case was to go to trial, the parties reached a settlement. The manufacturer never accepted responsibility for its poor design; however, the National Highway Traffic Safety Administration (NHTSA) took note of our case, the underlying facts and the design of the subject RV Murphy bed. Following NHTSA’s inquiry, the RV Industry Association (RVIA) submitted a proposed change to the NFPA 1192 RV Standard.

Even before Kendall resolved the litigation, the RVIA approved a change to NFPA 1192 by requiring RV manufacturers to add “a self-acting latch or mechanism that will secure the bed in the deployed/down position until the bed is purposefully moved to the stored position.” The new safety standard adopted the design change Plaintiff said should have been in use when the Murphy Bed was first sold.

Anytime our lawyers are able to get substantial monetary compensation for our clients because of an injury or death caused by a defective product, there is a strong presumption that a design change is necessary. However, when an entire industry is forced to accept the very design change our lawyers promote, Beasley Allen, along with our clients, can take pride in knowing they were instrumental in protecting people they will never meet. Promoting safety and preventing future injury to consumers and workers is the primary reason our firm participates in product liability litigation.

If you have questions or need help with a case, contact Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

XIV. TOXIC TORTS LITIGATION CONCERNS

STATE'S ADDRESSING HIGH LEVELS OF PFAS IN WATER SYSTEMS

Previous issues of the Report have discussed how numerous states are bypassing the Environmental Protection Agency (EPA) and enacting their own, more stringent regulations and guidelines limiting levels of PFAS chemicals found in drinking water. This approach is needed now more than ever because of how the Trump Administration has weakened already weak regulation.

New Hampshire is the latest to join this trend and enacted the nation’s most stringent limits for PFOA (12 parts per trillion), PFOS (15 ppt), PFNA (11 ppt), and PFHXS (18 ppt). Local water utilities are required to test for these chemicals every quarter and if levels are above the applicable limits the utilities are required to switch to a different water source or install a filtration system capable of removing these chemicals.

The same day these rules became effective, New Hampshire was sued by PFOA PFAS in drinking water.

Massachusetts Attorney General Maura Healey has sued ExxonMobil for deceiving investors and consumers about climate change-related risks. This suit is similar to a suit filed by New York’s attorney general against the oil giant that is currently on trial. The suit, filed in Massachusetts state court, is the culmination of the Attorney General’s three-year investigation into Exxon. The oil giant vigorously fought the investigation in both state and federal court.

The complaint alleges Exxon deceived investors about climate-related risks to its business, deceived consumers about how its fossil fuel products contribute to climate change, and misled consumers with “greenwashing” advertisements that promote the company as environmentally responsible. Healey’s suit is actually broader than the one being pursued by New York Attorney General Letitia James, which only alleges that Exxon duped investors about climate-related risks to its business. The trial in the N.Y. case started on Oct. 22 in Manhattan. Attorney General Healey’s office said its investigation revealed much broader deception than just the deception of investors—that Exxon was extensively targeting consumers as well. Healey said the suit is the first state climate suit that alleges consumers were duped by a fossil fuel company. The lawsuit asserts four claims under the state’s broad and powerful consumer protection laws, divided equally between investors and consumers.

As to investors, the suit alleges Exxon misrepresented and didn’t disclose systemic climate change risks that would have been material to investors. The company is accused of applying one set of proxy greenhouse gas emissions costs to its business—essentially, approximating the costs of a range of government-related climate change actions—while using a second set of lower proxy costs in its internal business planning and, in some instances, not using proxy costs at all. The latter claim is the core of the New York attorney general’s case against Exxon.

As to the consumer-related claims, the Attorney General alleges that Exxon deceived Massachusetts consumers through the sale of products it marketed as environmentally friendly and failed to disclose their climate change risks.

Attorney General Healey’s office is represented by Chief Legal Counsel Richard A. Johnston and Assistant Attorneys General Melissa A. Hoffer, Christophe G. Courchesne, Glenn Kaplan, Shennan Kavanagh, I. Andrew Goldberg and Timothy Reppucci. The case is Commonwealth of Massachusetts v. ExxonMobil Corp., (case number 19-3333) in the Suffolk County Superior Court, Commonwealth of Massachusetts.

Source: Law360.com

XIV. TOXIC TORTS LITIGATION CONCERNS

CLIMATE SUIT FILED AGAINST EXXON

Massachusetts Attorney General Maura Healey has sued ExxonMobil for deceiving investors and consumers about climate change-related risks. This suit is similar to a suit filed by New York’s attorney general against the oil giant that is currently on trial. The suit, filed in Massachusetts state court, is the culmination of the Attorney General’s three-year investigation into Exxon. The oil giant vigorously fought the investigation in both state and federal court.

The complaint alleges Exxon deceived investors about climate-related risks to its business, deceived consumers about how its fossil fuel products contribute to climate change, and misled consumers with “greenwashing” advertisements that promote the company as environmentally responsible. Healey’s suit is actually broader than the one being pursued by New York Attorney General Letitia James, which only alleges that Exxon duped investors about climate-related risks to its business. The trial in the N.Y. case started on Oct. 22 in Manhattan. Attorney General Healey’s office said its investigation revealed much broader deception than just the deception of investors—that Exxon was extensively targeting consumers as well. Healey said the suit is the first state climate suit that alleges consumers were duped by a fossil fuel company. The lawsuit asserts four claims under the state’s broad and powerful consumer protection laws, divided equally between investors and consumers.

As to investors, the suit alleges Exxon misrepresented and didn’t disclose systemic climate change risks that would have been material to investors. The company is accused of applying one set of proxy greenhouse gas emissions costs to its business—essentially, approximating the costs of a range of government-related climate change actions—while using a second set of lower proxy costs in its internal business planning and, in some instances, not using proxy costs at all. The latter claim is the core of the New York attorney general’s case against Exxon.

As to the consumer-related claims, the Attorney General alleges that Exxon deceived Massachusetts consumers through the sale of products it marketed as environmentally friendly and failed to disclose their climate change risks.

Attorney General Healey’s office is represented by Chief Legal Counsel Richard A. Johnston and Assistant Attorneys General Melissa A. Hoffer, Christophe G. Courchesne, Glenn Kaplan, Shennan Kavanagh, I. Andrew Goldberg and Timothy Reppucci. The case is Commonwealth of Massachusetts v. ExxonMobil Corp., (case number 19-3333) in the Suffolk County Superior Court, Commonwealth of Massachusetts.

Source: Law360.com
variety of health issues. Their replacement chemicals, such as Gen-X and PFBS, however, also pose similar health risks according to certain studies.

A new scientific review finds “unequivocal evidence” that firefighters using foams made with PFAS have “unacceptably” high levels of two toxic PFAS chemicals in their blood, PFOS and PFHxS. The study finds that firefighters can be exposed to PFHxS and other PFAS from firefighting foam as well as exposure from contaminated personal protective equipment, handling of contaminated equipment, managing PFAS foam wastes and occupation of contaminated fire stations.

The study also bolsters efforts by Congress to quickly end the military’s use of firefighting foams made with PFAS. Both the House and Senate versions of the National Defense Authorization Act for FY 2020 end the use of these foams by 2023. The House and Senate versions of the NDAA also end the military use of PFAS in food packaging, end PFAS discharges into water supplies, set a deadline for a PFAS drinking water standard, and require the cleanup of legacy PFAS pollution.

In late 2018, a multidistrict litigation (MDL) was formed in the District Court of South Carolina to handle the growing number of lawsuits filed against the manufacturers of the firefighting foam. The MDL does not, however, oversee individual PFAS contamination cases that do not involve the use of firefighting foam.

Our firm, along with Roger H. Bedford of Roger Bedford & Associates, has 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.

STERIGENICS PLANTS HAVE SERIOUS HEALTH AND SAFETY ISSUES

Sterigenics, the Oak Brook, Illinois-based company that sterilizes medical tools and lab equipment using ethylene oxide (EtO), has announced plans to permanently close its Willowbrook, Illinois, plant following backlash for emitting a cancer-causing pol lutant in neighborhoods surrounding the plant. The company has announced that it was unable to reach an agreement to renew its lease in the west suburban village. This announcement was released after a recent agreement allowing the facility to reopen.

In February, the Illinois Environmental Protection Agency prohibited Sterigenics from using the chemical process involving EtO, effectively shutting down the plant. The agency later said Sterigenics could reopen the facility if it installed equipment to reduce ethylene oxide emissions.

Sterilization facilities say alternative methods, including hydrogen peroxide, steam and gamma radiation, are not compatible with certain medical products like surgical gowns.

The U.S. Environmental Protection Agency last year investigated the relationship between EtO emissions from Sterigenics and high cancer risks in the surrounding area. The chemical has been classified by the agency as a human carcinogen since 2016.

Illinois Governor J.B. Pritzker signed two bills in June that placed additional pressure on companies using EtO. The bills also require facilities to capture 100% of all emissions within the plant and also reduce emissions to the atmosphere by 99.9%.

Emissions from the Willowbrook facility generally declined during the past 25 years, company records show. However, Sterigenics and its corporate predecessors legally released more than 254,000 pounds of EtO into surrounding neighborhoods between 1993 and 2017, according to state records. At public meetings during the past year, speakers repeatedly cited federal records showing a former owner of the Sterigenics facility released nearly 170,000 pounds of ethylene oxide in 1987 alone.

Even after Sterigenics improved its pollution controls, an EPA study found ethylene oxide from the Willowbrook facility increased the risk of developing cancer for people living as far as 25 miles away.

Sterigenics also has a facility in Cobb County, Georgia, which has been inoperable since late August. Sterigenics has been prohibited by the County to engage in any construction and sterilization activity at its facility near Smyrna pending county approval of fire marshal and building code requirements. Sterigenics responded on October 10, threatening legal action if the County does not allow the company to resume operations and complete its planned emission improvements.

The Georgia facility also uses EtO to sterilize more than a million devices each day. The facility is currently subject to increased scrutiny and investigation by the Cobb County government, the Georgia Environmental Protection Division and Gov. Brian Kemp’s office. It is also the target of a grassroots opposition group called Stop Sterigenics Georgia, which aims to have the plant shut down unless it can prove its emissions are not harmful to the public.

If you have any questions about ethylene oxide exposure or believe you or a loved one may have been exposed and developed cancer as a result, contact our team of toxic torts lawyers who are working on these cases. Sharon Zinns and Ashtyne Traylor can be reached at Sharon.Zinns@beasleyallen.com and Ashtyne.Traylor@beasleyallen.com. They can also be reached by phone at 800-898-2034.

XV. AN UPDATE ON THE ROUNDUP LITIGATION

BEASLEY ALLEN ROUNDUP CASE SENT BACK TO NORTH CAROLINA FEDERAL COURT

One of Beasley Allen’s Roundup clients, Randall Seidl, recently had his case transferred from the multidistrict litigation (MDL) in San Francisco, California, back to North Carolina Federal District Court where his case was originally filed. The transfer was part of an MDL pre-trial order (PTO 150) to allow certain Plaintiffs’ cases to be sent back to their home district for trial. Beasley Allen lawyers John Tomlinson and Rhon Jones are representing Mr. Seidl in this matter and are preparing the case for trial. March of 2020 marks the close of fact discovery in this case with trial to be set sometime in late 2020.

Mr. Seidl used concentrated Roundup products for approximately 10 years on his personal property in two different states. He was then diagnosed at 57 years of age with non-Hodgkin’s lymphoma (NHL) as a result of his Roundup exposure. Mr. Seidl has alleged claims against Monsanto for Products Liability, Negligence, Breach of Express and Implied Warranty, Negligent Misrepresentation and/or Fraud, Unfair and Deceptive Trade Practices, and Punitive Damages.

The case is Randall Dean Seidl v. Monsanto Co. (N.C. USDC case number 3:17-cv-00519) (MDL No 3:16-md-02741). John Tomlinson, who is the lead lawyer, and Rhon Jones are handling this case.

MONSANTO'S FINAL ROUNDUP TRIAL OF 2019 POSTPONED INDEFINITELY

A St. Louis judge has indefinitely continued what was to have been the final trial this year against Monsanto over the alleged
cancer-causing properties of Roundup. The court’s order came roughly a week before it was to start. St. Louis Circuit Court Judge Michael Mullen announced in an order on Oct. 4 that the trial of Plaintiff Walter Winston set for Oct. 15 had been delayed. Winston, like others in both federal and California multidistrict litigation (MDL), claims that Roundup can be injurious to its users. The court said in the order: “the parties ... have requested that the court take the trial ... off calendar.” The judge set a status conference for February 2020.

The postponement means that the next expected trial in the closely watched litigation will take place in January in a case brought by Jake Bellah, a minor with non-Hodgkin’s lymphoma, in California’s Lake County. The Roundup litigation saga has so far seen three large number verdicts, all of which were subsequently reduced by judges. In July, a California state judge reduced a couple’s earlier $2 billion jury verdict win to $86.7 million. The same month, a California federal judge reduced an $80 million verdict to $25 million in the second suit to go to trial. And in the first trial over Roundup’s links to cancer, a San Francisco jury’s $289 million verdict was cut down to $78 million.

Winston is represented by Weitz & Luxenberg PC. Monsanto is represented by Husch Blackwell LLP, Thompson Coburn LLP and Hollingsworth LLP. The case is Winston et al. v. Monsanto Co., (case number 1822-CC00515) in the Circuit Court for the City of St. Louis.

Other Developments In The Roundup Litigation

While the litigation side of Roundup continues to move forward, special master Kenneth Feinberg has been working behind the scenes to broker a global settlement. In early August, Feinberg dismissed media reports that Bayer was offering billions to end the claims as “pure fiction.” Feinberg, who is recognized as one of the very best in the mass torts mediation business, was hired in May to begin settlement talks and those talks continue.

Meanwhile, two retailers, Home Depot and Lowe’s, have also been hit with failure-to-warn class claims over glyphosate, one of the ingredients in Roundup’s cocktail. The International Agency for Research on Cancer, the cancer arm of the United Nation’s World Health Organization, classified glyphosate in 2015 as “probably carcinogenic” to humans and said non-Hodgkin’s lymphoma was the type most closely linked, according to Plaintiff-side filings.

Roundup Litigation Team

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

XVI. Update on Nursing Home Litigation

CMS Tool Helps Consumers Better Identify Nursing Homes With Patient Care Violations

Nursing homes and assisted living facilities provide necessary round-the-clock care for elderly and frail consumers. However, according to the National Ombudsman Reporting System, there were 14,258 reports involving abuse, gross neglect, or exploitation at nursing homes in 2014. Ensuring loved ones are safe in long-term care facilities is paramount.

Beginning Oct. 23, the Centers for Medicare and Medicaid Services (CMS) is updating its Nursing Home Compare website to make it easier to identify which nursing homes have been cited for patient safety violations.

Nursing home inspection reports were already accessible on the agency’s website, which spell out specific violations, including allegations of resident abuse or neglect. But this information was difficult to access. CMS is adding a new icon to make it easier for consumers to find out if a facility has any abuse citations.

The icon will alert consumers of any reports of a resident being harmed within a nursing home over the past year as well as reports of potential harmful abuse of a resident over the past two years. The data will be updated monthly.

The abuse icon is a supplement to CMS’s five-star rating for nursing homes, which ranks nursing homes based on health inspection scores, nurse staffing, and resident quality measures based on percentage of patients with urinary tract infections, bedsores, or who were physically restrained to prevent falls.

The abuse icon and five-star ratings are part of CMS’s effort to increase transparency. Other measures include requiring hospitals to post list prices. The agency also hopes to require hospitals to post their payer-negotiated rates starting in January 2020.

Sources: ModernHealthcare.com, National Center on Elder Abuse, U.S. News & World Report

The Beasley Allen Nursing Home Litigation Team

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

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

XVII. An Update On Class Action Litigation

There has been a great deal of activity in class action litigation around the country since the October issue. The following are some of the more significant settlements that have occurred.

Class Action Settlement Valued at $40.7 Million Reached With Banner and William Penn

Subject to the United States District Court for the District of Maryland’s final approval, Banner Life Insurance Company (Banner) and William Penn Life Insurance Company of New York (William Penn) have reached a settlement valued at $40,749,525 with the named Plaintiffs in two class actions and a proposed settlement class consisting of more than 12,000 policyholders of Banner and William Penn universal life insurance policies.
Plaintiffs and the proposed settlement class are represented by Beasley Allen lawyers Dee Miles, Rachel Boyd, and Paul Evans, along with Wally Walker and Geoff McDonald & Associates PC, as well as local counsel Christopher T. Nace of Paulson & Nace, PLLC.

On Oct. 15, 2019, the District of Maryland preliminarily approved the proposed settlement, preliminarily certified the proposed settlement class, and appointed Dee Miles and Wally Walker as co-lead class counsel. The court ordered the dissemination of class notice to proposed class members.


Plaintiffs’ class action complaints asserted claims for breach of contract and fraud against Banner and William Penn, alleging the companies unjustifiably increased the cost of insurance (COI) charges on certain universal life products in 2015. These COI increases in 2015 affected approximately 7,631 universal life policyholders, who are included in the proposed settlement class definition. Another 4,482 universal life policies were considered by Banner and William Penn for future COI rate increases, and the policyholders that currently own such policies are also included in the proposed definition of the settlement class.

The settlement agreement reached with Banner and William Penn, which is subject to final approval by the District of Maryland, provides the proposed class members with several valuable benefits.

- Banner and William Penn will create a common settlement fund in the amount of $22.5 million. This fund will be distributed to settlement class members, pro rata, based on the proportion of COI collected for each Class Policy after the 2015 cost of insurance rate increases. The distributions will go to in-force policyholders by an increase to the account value of each in-force policy owned by the Settlement Class Member; terminated policyholders will be paid their share by check.
- The proposed settlement provides that Banner and William Penn agrees not to impose any COI rate increases on policies of class members for five years, unless ordered to do so by a state regulatory body.
- Policies that received cost of insurance rate increases to the guarantee maximums set for in their policies will be provided with an additional forty-five days added to the length of their grace period if their policy is subject to lapse.
- Banner and William Penn agree to not seek to void, rescind, cancel, have declared void, or otherwise deny coverage or death claims submitted by settlement class members based on any alleged lack of insurable interest or misrepresentations made in connection with the original application process.
- Following the final approval of the settlement, Banner and William Penn will provide proposed class members with a free illustration upon request depicting the impact of the proposed settlement benefits on the anticipated future performance of their policies.

In total, the collective value of the proposed settlement benefits amounts to $40,749,525. This total value is comprised of the $22.5 million Common Settlement Fund and the valuation of the other relief detailed above at $18.2 million, which is supported by formal and informal discovery as well as valuations by Defendants' and independent actuaries that were confirmed by Plaintiffs' experts.

Subject to the requirements of any orders entered by the court, the Settlement Administrator will send a Class Notice by first-class mail to the last known address of each reasonably identified person and entity in the Settlement Class. Settlement Class Members will have 45 days after notice is sent to either exclude themselves from the Settlement Class by sending a written Request for Exclusion to Co-Lead Class Counsel, or object to the proposed Settlement by filing a written statement of objections with the Court. If you have any questions, contact Rachel Boyd or Paul Evans at 800-898-2034 or by email at Rachel.Boyd@beasleyallen.com or Paul.Evans@beasleyalline.com.

**Vereit and Others Agree to $1 Billion Settlement to End American Realty Litigation**

Vereit Inc., AR Capital LLC and other Defendants have agreed to contribute to a settlement fund of more than $1 billion in order to resolve an investor class action involving what was described as "shady accounting practices" at the real estate business formerly known as American Realty Capital Properties (ARCP).

Investors led by Teachers Insurance and Annuity Association (TIAA) have asked a New York federal court to approve a $1.025 billion proposed settlement package aimed at resolving allegations that ARCP, Vereit’s predecessor, inflated a key metric used by real estate investment trusts for measuring income, causing a stock price crash when the truth came out.

Under the settlement, Vereit would pay $738.5 million into the fund, while AR Capital and others, including former ARCP CEO Nicholas Schorsch, would be responsible to pay $225 million. Former ACRP manager Grant Thornton would pay $49 million, and former ACRP CFO Brian Block would pay $12.5 million.

In a Sept. 9 statement previewing the settlements, Vereit also announced it had reached settlements to end so-called “opt-out” cases related to the class action.

Relatedly, Plaintiffs in a derivative suit in the same New York federal court have asked for approval of a settlement to resolve allegations ARCP wrongly refused to pursue claims against its own brass over the accounting issues and stock drop. TIAA and a host of other investors sued ARCP over a 36% drop in its stock price in October 2014 after the trust retracted information from about 18 months of financial reports and pushed out its chief financial officer and chief accounting officer for making intentional errors connected to an approximately $22.8 million overstatement of a metric known as adjusted funds from operations.

Ten putative class actions were consolidated in February 2015, and an operative third amended complaint was filed in September 2016. The derivative suit was filed in August 2015. AR Capital, its founder Schorsch and former ACRP CFO Block recently agreed to pay the equivalent of $60 million to settle securities and accounting fraud charges to settle a different legal action brought by the U.S. Securities and Exchange Commission. The settlement would resolve allegations they skimmed millions of dollars by inflating the incentive fee in two mergers of Real Estate Investment...
Trusts (REITs) they managed between late 2012 and early 2014.

The class action Plaintiffs were represented by Debra J. Wyman, Darren J. Robbins, Michael J. Dowd, Jonah H. Goldstein and Jessica T. Shinnefield of Robbins Geller Rudman & Dowd LLP. The derivative plaintiffs are represented by Robert Harwood, Matthew Houston and Benjamin Sachs-Michaels of Glancy Prongay & Murray LLP. Schorsch is represented by Theodore Wells Jr., Daniel Kramer, Lorin Reisner, Audra Soloray and Christopher Filburn of Paul Weiss Rifkind Wharton & Garrison LLP.

The cases are In re: American Realty Capital Properties Inc. Litigation, (case number 1:15-mc-00040), and Witchko v. Schorsch et al., (case number 1:15-cv-06043), in the U.S. District Court for the Southern District of New York.

Source: Law360.com

HYUNDAI AND KIA SET ASIDE $758 MILLION TO SETTLE SUITS OVER ENGINE FIRES

Hyundai and its affiliate Kia have earmarked up to $758 million to settle class actions over a defect that allegedly caused engines of cars in the U.S. and South Korea to burst into flames. The settlement will cover 4.17 million Hyundai and Kia models equipped with Theta II gasoline direct injection engines. It will provide a number of options for cash compensation, lifetime warranties and repairing the engines, the companies said in a statement. The companies also said they would install software in the cars to monitor the engines and will also cover expenses for past repairs, such as towing and rental cars.

One of the suits covered by the settlement was filed in December 2018, accusing the companies of failing to warn customers of a defect that can cause the cars to catch fire in “non-collision” circumstances, meaning drivers have an “increased risk of accident, injury or death.” In July, the Judicial Panel on Multidistrict Litigation passed on consolidating 10 proposed consumer class actions alleging certain Hyundai and Kia vehicles had defective engines that could catch fire, as a number of suits already centralized in California were nearing a settlement.

The consumers accused Hyundai and Kia of not disclosing the defects or issuing recalls until January, almost two years after the National Highway Traffic Safety Board (NHTSA) began investigating reports of engine fires in multiple car models and two months after company executives were asked to attend a Senate Commerce Committee hearing on the issue.

A California federal judge will review and must approve the settlement.

The cars included in the settlement include Hyundai model years 2011-2019 Sonata and 2013-2018 Santa Fe Sport vehicles, as well as 1.8 million Kia 2011-2019 model year Sportage, Sorento and Optima vehicles. The drivers are represented by Steve Berman of Hagens Berman Sobol Shapiro LLP, Matthew D. Schelkopf of Sauder Schelkopf, Adam Gonnelli of The Sultzer Law Group and Bonner Walsh of Walsh PLLC. Kia and Hyundai are represented by Shon Morgan of Quinn Emanuel Urquhart & Sullivan LLP. The cases are In re: Hyundai and Kia Engine Litigation, (case number 8:17-cv-00838), and Flaberty v. Hyundai Motor Company et al., (case number 18-cv-02223), both in the U.S. District Court for the Central District of California.

FACEBOOK AGREES TO $40 MILLION SETTLEMENT TO END SUIT OVER VIDEO AD METRICS

Facebook Inc. has agreed to pay $40 million to settle consolidated litigation in a California federal court alleging the company misled a proposed class of advertisers about how much time users spend watching paid video ads by using inflated video-viewing metrics.

If approved, the settlement would resolve litigation that was sparked after media reports revealed Facebook had purportedly touted inaccurate video ad metrics from May 2014 through September 2016.

In October 2016, multiple advertisers sued Facebook, claiming that the social media giant inflated those numbers by 60% to 80% and those misleading metrics indirectly impacted how much advertisers paid Facebook. The inaccuracies stemmed from Facebook not factoring in views by users who watched ads for less than three seconds when dividing watch time durations by the number of viewers, according to the lawsuits. This led to the average watch times being inflated, ultimately resulting in advertisers paying more for their video ads, the Plaintiffs claim.

In 2017, the advertisers filed a consolidated amended complaint that alleged unjust enrichment, violations of California’s Unfair Competition Law, breach of contract and fraud. After the consolidated litigation survived multiple motions to dismiss, the advertisers began preparing a motion for class certification, but the parties agreed to a settlement in principle in June. Under the proposed settlement, class members would automatically receive a pro rata share of the settlement based on how much they paid for a video ad, according to the motion for preliminary settlement approval.

Meanwhile, class counsel would receive $12 million, or 30 percent of the fund, for attorney fees and $750,000 for expenses. The settlement also allows the class representatives, LLE One LLC and Jonathan Murdough, to receive $15,000 and $10,000 service awards, respectively.

The motion seeks to conditionally certify a class of Facebook account holders in the U.S. who paid for video ads on the platform from Feb. 15, 2015, until Sept. 23, 2016. The motion also notes that the class is narrower than originally proposed in the complaints to reflect when the error actually occurred based on information revealed in discovery. A hearing on the motion is set before Judge White in Oakland on Nov. 8.

In 2015, Facebook’s advertising revenue was more than $17 billion, representing more than 95% of its overall revenue, according to the most recent rendition of the consolidated complaint.


Source: Law360.com

LUMBER LIQUIDATORS SETTLES DEFECTIVE FLOORING LITIGATION FOR $30 MILLION

Lumber Liquidators Inc. has reached a $30 million settlement in a California federal court with buyers who say the flooring they bought was defective.
Lumber Liquidators will provide cash payments and in-store credit to class members. The class asked the court to grant preliminary approval of the settlement, which will include a cash fund of $14 million and store credit of $14 million, with an additional $2 million in store credit if enough class members take that option.

The settlement broadens the classes that had previously been certified to encompass all U.S. residents who bought the allegedly defective flooring since 2012. According to the class, they anticipate between 10% and 20% of the 300,000 class members will make claims. The payouts of class members will be determined based on how much of the material they bought and any damages they incurred. If any of the $14 million fund is left after fees, awards and administration, class members who opted for a cash payout will receive an additional payment.

The class requested that any funds left after that be distributed cy pres to Habitat for Humanity. No part of the settlement fund will revert to Lumber Liquidators, according to the settlement.

The six class representatives are asking for awards of $7,500 each and for attorney fees of 33% of the settlement, or about $10 million, plus reimbursement for up to $879,409 in out-of-pocket expenses.

The suit was first filed by California resident Dana Gold in December 2014. She claimed she purchased Lumber Liquidators’ Morning Star Bamboo Flooring and hired a contractor to install it in her home. Even though the home was unoccupied, within weeks, the floors began to show signs of scratching and splintering. The suit has since gained five more named plaintiffs seeking to represent class claims for each of their states, bringing claims under the Consumers Legal Remedies Act, Unfair Competition Law and various state consumer protection laws. The suit survived a bid to dismiss in December 2015. In November 2017, the judge overseeing the case granted class certification.

As part of the settlement, the Plaintiff class asked the court for leave to file a sixth amended complaint to redefine the class. Currently, the court has certified classes for customers in California, Florida, Illinois, Minnesota, Pennsylvania and West Virginia who bought the flooring from 2008 to today. The settlement and the amended complaint would seek certification for a single class of individuals all across the U.S. who bought the bamboo flooring since Jan. 1, 2012.

The class is represented by Jeffrey B. Ceregino of Ceregino Law Group, Michael F. Ram of Robins Kaplan and Charles J. LaDuca, Brendan Thompson and Ralph Michael Smith of Cuneo Gilbert. The class is also represented by Beth E. Terrell and Jennifer Rust Murray of Terrell Marshall Law Group, Jordan L. Chaikin of Chaikin Law Firm PLLC, Daniel C. Calvert of Parker Waichman LLP, Michael McShane and Jonas P. Mann of Audet & Partners LLP, Robert K. Shelquist and Rebecca A. Peterson of Lockridge Grindal Nauen PLLP, Charles E. Schaffer of Levin Fishbein Sedran & Berman and Erica C. Mirabella of Mirabella Law LLC.

The case is Dana Gold v. Lumber Liquidators Inc., (case number 3:14-cv-05375) in the U.S. District Court for the Northern District of California.

Source: Law360.com

ALIBABA SETTLEMENT GETS FINAL APPROVAL

A New York federal judge has granted final approval to a $250 million settlement that resolves securities claims against Alibaba Group Holding Ltd. U.S. District Judge Colleen McMahon granted preliminary approval of the settlement order closes the book on a securities class action that claimed Alibaba concealed a July 2014 closed-door meeting with China’s commerce regulator, the State Administration of Industry and Commerce (SAIC), during which the agency allegedly ordered the Chinese e-commerce giant to stop illegal business practices, including the sale of counterfeit goods.

According to investors from seven since-consolidated suits, SAIC threatened significant penalties if Alibaba failed to address the misconduct, but the meeting was not disclosed to investors prior to the company’s completion of a record $25 billion IPO in September 2014.

When the meeting was eventually mentioned in a white paper in early 2015, the price of Alibaba’s American depositary shares declined, ultimately wiping out almost $33 billion in shareholder value, the investors said.

The action was dismissed in 2016, but the Second Circuit revived the allegations the following year. The settlement, disclosed in April, covers investors who bought Alibaba American depositary shares between its IPO on Sept. 19, 2014, and Jan. 28, 2015, around when the meeting was disclosed. Since the settlement’s preliminary approval in May, more than 1 million notice packets have been disseminated to potential class members, according to the court’s order, with only a handful of members opting out of the settlement and a sole objector, who has been unresponsive to class counsel since he filed his objection.

Judge McMahon praised the quality of representation for both the investors and Alibaba in handling a case of “unquestionable” magnitude. Class Counsel will receive $62.5 million in fees for handling this complex and lengthy litigation that lasted for more than four years. Considering the roughly 164,000 claims forms submitted thus far, relatively few opt-outs and only one objector who has not established his membership in the class, the reaction of the class strongly supports approval of the settlement, the judge concluded.

The investors are represented by Laurence Rosen and Phillip Kim of The Rosen Law Firm PA. The case is Chris - line Asia Co. Ltd. et al. v. Alibaba Group Holding Ltd. et al., (case number 1:15-md-02631) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

SCOOTING IN THE RIGHT DIRECTION ON ELECTRONIC SCOOTER SAFETY

Electronic scooters can be seen zipping all around Atlanta, including Buckhead streets not far from Beasley Allen’s Atlanta office. Riders use electronic scooters for everything from morning commutes to date night joyrides. Yet, their increasing use, and an increasing number of accidents, has caused state and local officials to ponder whether, and how, electronic scooters should be regulated across Georgia.

In September, a Georgia Senate study committee met for the first time to consider a sensible set of statewide regulations in which the scooter market can still flourish. Many believe the popularizing method of travel is an asset in larger cities, like Atlanta, that helps relieve pressure on already strained transportation networks. The machines also alleviate problems with
GE freezes pensions for thousands of U.S. employees

Thousands of General Electric (GE) employees have received news that the company is freezing their pensions in an effort to reduce its pension deficit and drive down its debt. About 20,000 GE employees will have their pensions frozen starting Jan. 1, 2021. That means they will no longer accrue benefits. The pension is still federally insured, and employees will receive whatever amount of money they did accrue, but they can no longer make employee contributions to the pension.

Approximately 700 employees who became executives before 2011 will have their supplementary benefits frozen, GE said. Retired employees will not be affected by the changes, and those who have not started drawing their monthly pension payments may opt to receive a lump sum. According to GE, the pension freeze will reduce GE’s pension deficit by about $5 billion to $8 billion and the company’s net debt by approximately $4 billion to $6 billion.

GE has been struggling to turn itself around after several months of tailspin that Fortune describes as a “swift and dramatic corporate meltdown.” According to Fortune, GE’s crisis was fueled by years of poor and costly decisions at the top. But it’s the workers who will now have to shoulder much of their company’s debt through lost earnings. “Returning GE to a position of strength has required us to make several difficult decisions, and today’s decision to freeze the pension is no exception,” said Kevin Cox, chief human resources officer at GE.

Yet, properly addressing electronic scooter safety concerns may require lawmakers to widen the scope of their considerations. Regulations may need to compel scooter companies to ensure that their machines are being adequately maintained for the safety of riders and the general public. Scooters are frequently left strewn about city streets corners in all sorts of conditions, and maintenance practices vary among companies—some hiring trained mechanics and some hiring independent contractor mechanics paid by the number of devices fixed. Scooter companies Lime and Bird have stated that due to the harshness of their treatment, most of their scooter users need to be replaced every one or two months.

If you have any questions, contact Dan Philyaw, a lawyer in our Atlanta office, at 800-898-2034 or by email at Dan.Philyaw@beasleyallen.com.

YAHOO DATA BREACH SETTLEMENT: ARE YOU ELIGIBLE FOR PAYMENT OF UP TO $358?

A pair of massive data breaches at Yahoo—the first in 2013 and the second in 2014—could result in payouts to millions of consumers. A settlement currently before the California courts would require Yahoo to establish a fund of $117.5 million to split among users whose names, email addresses and passwords were stolen during the hacks. Yahoo users are eligible under the settlement if they:

- Received a notice about the data breaches.
- Are a resident of either the U.S. or Israel.

Accounts covered under the settlement include traditional Yahoo email accounts, as well as accounts on other sites that were owned or operated by Yahoo, including Yahoo Fantasy Sports, Yahoo Finance, Tumblr, and Flickr. The settlement has several alternatives:

- Up to two years of free credit monitoring services.
- If you can verify you already have a credit monitoring service that you will keep for at least a year, you can submit a claim for a cash payment of $100.
- Cash payments can increase to as much as $358.80 per filer, though they can also drop depending on the number of claims.
- Filers who have documentation of out-of-pocket losses, including lost time, related to the breaches can file for reimbursement up to $25,000. Eligible users can submit claims at Yahoodatabreachsettlement.com. The deadline for filing a claim online is July 20, 2020. The final hearing on the settlement is April 2020 and, if approved, payments would begin after that date.

XIX. CURRENT CASE ACTIVITY AT BEASLEY ALLEN

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

Personal Injury & Products Liability Section

The personal Injury & Products Liability Section is handling cases in a number of areas. Currently, the Section has 18 lawyers and 31 support staff. Sloan Downes is the Section Director. The lawyers and support staff are working on the areas of litigation.
Boeing Litigation—Lawyers in the Section, led by Mike Andrews, are investigating and filing suits arising out of the two crashes involving Boeing planes that have received tremendous public interest and concern. The first suit was filed on June 13. Mike is handling the litigation and has filed several other lawsuits. Others are being prepared for filing. Contact: Mike.Andrews@beasleyallen.com.

Aviation Accidents—Aviation litigation can be extremely complex and often involves determining the respective liability of manufacturers, maintainers, retrofitters, dispatchers, pilots and others. In some circumstances, the age of the aircraft involved can limit or completely preclude an injured party from compensation.

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: Chris.Glover@beasleyallen.com or Cole.Portis@beasleyallen.com.

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

Defective Tires—Tire failure can result in a serious car crash and even a vehicle rollover accident, causing serious injury or death to vehicle occupants. Air, heat and sunlight can cause the rubber in tires to break down. When a tire is defective, potentially serious problems like detreads and blowouts can occur long before the tire would be expected to wear out. If the tire failure is the result of design or manufacturing defects, and the manufacturer is aware of the problem, they have an obligation to alert consumers to the potential danger. Contact: Ben.Baker@beasleyallen.com or Greg.Allen@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, uncured fixtures and furniture that falls or tips over, unsecured drainage that creates drowning or fall hazards, slippery surfaces, and inadequate maintenance. Beasley Allen has successfully handled a number of premises liability cases, and we would like to investigate any cases where severe injury or death results. Contact: Mike.Crow@beasleyallen.com, Ben.Locklar@beasleyallen.com or Warner.Hornsby@beasleyallen.com.

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

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

The Mass Torts Section

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

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

**JUUL vaping devices**—We have written in other sections on the JUUL litigation. There is a tremendous amount of activity nationwide relating to JUUL. The use of JUUL and other vaping devices has reached epidemic levels, especially among teenagers and young adults. JUUL and other vape device manufacturers fueled this epidemic by targeting and deceiving youth and adolescents with misleading social media marketing and sweet, fruit-flavored pods containing high levels of nicotine. Use of these products has been associated with numerous adverse health effects, such as seizures, nicotine addiction, nicotine poisoning, breathing problems, behavioral and psychological problems, and other serious health conditions. Contact: Joseph.Vanzandt@beasleyallen.com, Sydney.Everett@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

**Bone Cement**—The type of bone cement used during knee replacement surgery affects the outcome of that surgery. High viscosity bone cement (HVC) boasts shorter mixing and waiting times and longer working and hardening phases, meaning surgeons can handle and apply the cement earlier than with low- or medium-viscosity cements. Although HVC 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: Chad.Cook@beasleyallen.com, Ryan.Duplechin@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 Intestinal Nephritis (AIN), which is a condition where the spaces between the tubules of the kidney cells become inflamed. The injury appears to be more profound in individuals older than 60. While individuals who suffer from AIN can recover, most will suffer from some level of permanent kidney function loss. In rare cases, individuals suffering from PPI-induced AIN will require kidney transplant. Contact: Navan.Ward@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

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

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

**Opioids**—Opioid abuse has reached epidemic proportions in the United States. According to the Department of Health & Human Services, 12.5 million people misused prescription opioids and 33,091 Americans died from opioid overdose in 2015 alone. These medications provide important pain relief for many. However, over the years, drug companies inflated the effectiveness of delayed-release medications like OxyContin and downplayed their addictive properties, creating conditions ripe for abuse. We are investigating cases involving opioid-related deaths and overdose requiring hospitalization, as well as cases involving treatment for addiction to prescription opioids. Contact: Melissa.
Opioids and Infants—The opioid epidemic has also taken its toll on the most vulnerable among us. According to the National Institute on Drug Abuse, every 25 minutes, a baby is born addicted to opioids—a condition called Neonatal Abstinence Syndrome (NAS). Babies with NAS suffer painful symptoms of opioid withdrawal in the hours and days after they are born and are more likely to suffer long-term complications like developmental delays and hearing or vision impairment, compared to babies born to mothers who did not use opioids. We are investigating cases on behalf of children who were born with NAS after their mothers were prescribed opioids before or during pregnancy.

Contact: Lance Gould@beasleyallen.com, Larry.Golston@beasleyallen.com, Leslie.Pescia@beasleyallen.com or Tyner.Helms@beasleyallen.com.

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

Auto Defect Class Actions—We are continuing to work on numerous auto defect class actions against many of the major automobile manufacturers like VW, Toyota, General Motors, Ford and even some suppliers 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: Clay.Barnett@beasleyallen.com, Dee.Miles@beasleyallen.com, Leslie.Pescia@beasleyallen.com or Chris.Baldwin@beasleyallen.com.

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

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

Contact: Lance Gould@beasleyallen.com, Larry.Golston@beasleyallen.com, Leslie.Pescia@beasleyallen.com or Tyner.Helms@beasleyallen.com.

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

Health Care Fraud—We are looking into cases of fraud within the health care industry. These may include cases dealing with pricing, off-label prescriptions, or other health care abuse. Contact: Alison.Hawthorne@beasleyallen.com or Dee.Miles@beasleyallen.com.

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

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

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

Sexual Harassment—Sexual harassment is outlawed by Title VII of the Civil Rights Act of 1964 because it is a form of discrimination, as explained by the Equal Employment Opportunity Commission (EEOC). The agency defines sexual harassment as "[u]
State and Municipalities Litigation—Our firm is representing the States of Alabama and Georgia in the opioid litigation. We also represent states and certain local governments in environmental or toxic exposure claims. Many times, individuals are either barred from bringing an environmental claim or it is not a practical solution. These types of government cases may involve issues of environmental catastrophe, or some other type of pollution. One of the most notable cases handled by Beasley Allen on behalf of states for environmental issues is the BP Oil Spill litigation. For more information, contact Rhon.Jones@beasley-allen.com.

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

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

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

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

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

You should have no difficulty in getting through to a lawyer in our firm on a specific case. However, if you do have difficulty reaching any of the lawyers listed above as the primary contact for a specific case, you can contact one of our four Section Directors and she will put you in touch with a lawyer in her Section who is working on the specific case you are asking about.
The Section Directors do a tremendous job for our firm. They are Melissa Prickett, Mass Torts Section; Sloan Downes, Personal Injury & Products Liability Section; Michelle Fulmer, Consumer Fraud & Commercial Litigation Section; and Sandra Walters, Toxic Torts Section. They can be reached at 800-898-2034 or by email at Melissa.Prickett@beasleyallen.com; Sloan.Downes@beasleyallen.com, Michelle.Fulmer@beasleyallen.com; and Sandra.Walters@beasleyallen.com.

XX. RESOURCES TO HELP YOUR LAW PRACTICE

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

AVIATION Litigation & Accident Investigation

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

TIRE Litigation: A Primer

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

WHISTLEBLOWERS: A BRIEF HISTORY & A GUIDE TO GETTING STARTED

Lance Gould, a lawyer in our firm’s Consumer Fraud & Commercial Litigation Section, offers a brief history of whistleblower law and how it has evolved over the years. He also provides basic instruction on how to identify a whistleblower claim, in his latest publication, and advice about how to navigate these often-complex cases. Additionally, Lance speaks frequently to audiences across the nation on both the False Claims Act and the Fair Labor Standards Act.

NURSING HOME ABUSE & NEGLECT Brochure

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

Co-Counsel E-Newsletter

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

The Jere Beasley Report

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

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

XXI. PRACTICE TIPS OF THE MONTH FOR TRIAL LAWYERS

Practice Tip Of The Month Of November

Dee Miles, who heads up our firm’s Consumer Fraud & Commercial Litigation Section, has put together a short piece on an important part of any trial and that deals with voir dire. Let’s see what Dee has for us.

Don’t Lose Your Case In Voir Dire

Voir dire (jury selection process) is the very first opportunity a trial lawyer has to interact with potential jurors in a trial. Sizing up people is a primal human survival skill that we all possess and you can bet jurors are doing just that as soon as the Judge calls your name and your feet hit the floor in the voir dire process. We train all of our lawyers at the firm to be thoughtful, careful, courteous and nimble as lawyers, but during the voir dire phase of a trial it is critically important to listen and be sincere when interacting with potential jurors.

I recall a trial where we were in the voir dire phase of a trial and during the opposing lawyer’s voir dire the question was asked “have you ever been in a lawsuit before?” A nice lady raised her hand and explained, in front of the entire jury panel, that her son had died in an accident and there was a lawsuit that settled. The lawyer’s response was “thank you.” Nothing more.

When we had an opportunity to follow up, we started off with “Mrs. Smith, on behalf of the Plaintiffs, we are so sorry to hear about your son.” Then we truthfully asked a few questions about what happened, how the lawsuit affected her and her family and then ended with a sincere and genuine comment that we were sorry her family had to endure such a tragedy, but happy the court system had worked to bring her family some peace and comfort.

That kind lady not only ended up on the that jury in that case, we later learned she was a leader during the jury deliberations. The Plaintiffs won that case. My view has always been that opposing counsel lost that juror’s confidence during the voir dire phase of the trial and hence, lost the case during voir dire.
Trial tip: Be thoughtful, careful, courteous and nimble at all times as a lawyer and during the voir dire phase of a trial make sure you genuinely listen to the potential jurors answers and be genuinely responsive. At that single moment that you are interacting with a juror, that juror should feel as though they are the most important person in that room while you are engaging them during the voir dire process. Because they are.

If you have any questions, contact Dee at 800-898-2034 or by email at Dee.Miles@beasleyallen.com.

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

AUTOMOTIVE RECALLS:


Volkswagen Group of America, Inc. (Volkswagen) is recalling certain 2017 Volkswagen Passat, 2018 Tiguan LWB, 2007-2009 Jetta Sedan, 2011-2013, 2015 and 2019 Jetta, 2013 Jetta Hybrid, 2008-2009 Jetta Sportwagen, 2015 Golf Sportwagen, 2013 Golf, 2008-2010 and 2012-2013 Beetle and Beetle Convertible, 2008-2010 Beetle, and Beetle Convertible vehicles. Modifications made while the vehicles were in an internal evaluation period may cause the affected vehicles to not comply with all of the applicable regulatory requirements. If the vehicles do not meet all regulatory requirements, there could be an increased risk of a crash, fire, or injury.

Hyundai Motor America (Hyundai) is recalling certain 2020 Elantra vehicles. The lower control arm ball joint fasteners may have been insufficiently tightened allowing the ball joint to detach from the lower control arm. A detached ball joint can cause a loss of vehicle control, increasing the risk of a crash.

Hyundai Motor America (Hyundai) is recalling certain 2019 Ioniq Hybrid and 2020 Elantra vehicles. The right-side rear wheel lug nuts may have been insufficiently tightened, allowing the wheel to detach from the vehicle. A wheel detaching from the vehicle increases the risk of a crash.

General Motors LLC (GM) is recalling certain 2020 Chevrolet Equinox vehicles. The rear brake calipers may have been produced with an incorrect lubricant, potentially causing the rubber seals to swell and the brakes to drag. Brake drag may result in overheating of the brake pads, affecting the braking ability and increasing the risk of a crash.

BMW of North America, LLC (BMW) is recalling certain 2000-2002 325i and 325xi Sedan, and 323Ci, 325Ci, and 330Ci Convertible vehicles. This recall affects certain vehicles that may have had a driver-side air bag module installed as replacement equipment such as after a vehicle crash necessitating replacement of the original air bag, or as a remedy part for a prior recall. The frontal air bag inflator may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, temperature and temperature cycling. An inflator explosion may result in sharp metal fragments striking the driver or other occupants resulting in serious injury or death.

BMW of North America, LLC (BMW) is recalling certain 2020 X5 sDrive30i, X3 xDrive30i, and X3 M40i vehicles, X4 xDrive30i, and X4 M40i vehicles. The front axle swivel bearings may not have been properly heat treated during manufacturing, reducing their strength and possibly causing them to break. Broken swivel bearings can cause a loss of vehicle control, increasing the risk of a crash.

Ford Motor Company (Ford) is recalling certain 2019 F-250 and F-350 vehicles equipped with electronically locking rear differentials. The passenger side rear axle shaft may fail prematurely due to a material issue. A broken passenger side rear axle shaft could result in a loss of drive power and the inability to hold the vehicle still when in Park. If the parking brake is not applied, unintended vehicle movement can occur, increasing the risk of a crash.

Ford Motor Company (Ford) is recalling certain 2020 Ford Explorer vehicles equipped with 2.3L or 3.0L engines. The wiring harness may not have been properly secured and may contact the air conditioner compressor (A/C) pulley, potentially damaging the harness or the A/C belt. The A/C pulley may rub through the wiring harness insulation and contact the unfused battery positive wire, resulting in a short circuit, increasing the risk of a fire.

Mercedes-Benz USA, LLC. (MBUSA) is recalling certain 2019-2020 A 220 and A 220 4MATIC, 2020 CLA 250, CLA 250 4 MATIC, GLC 300 Coupe 4MATIC, GLC 300 and GLC 300 4MATIC vehicles. The driver's side front airbag modules may not have been properly bolted down. In the event of a crash necessitating deployment of the driver's front airbag, the airbag may not deploy properly, increasing the risk of injury.

Chrysler (FCA US LLC) is recalling certain 2011-2018 Jeep Wrangler right hand drive vehicles. The driver's seat belt buckle mounting strap may fracture and separate from the seat frame. A separated or severed seat belt buckle strap will result in an inoperable seat belt, increasing the risk of injury in the event of a crash.

Southeast Toyota Distributors, LLC (SET) is recalling certain 2018-2019 Toyota 4Runner vehicles. During installation, certain steering and suspension components may not have been properly tightened. Loose fasteners may cause a loss of vehicle control, or cause an accessory to detach from the vehicle and become a road hazard. Either of these scenarios can increase the risk of a crash or injury.

Daimler Trucks North America LLC (DTNA) is recalling certain 2014-2020 Thomas Built Saf-T-Liner EFX, Minotour, Saf-T-Liner C2, and Saf-T-Liner HDX school buses equipped with SynTec S3B or S3C seats. The seats may have been manufactured with styrene blocks that may not provide sufficient impact absorption in certain specific areas around the steel seat
frame of the back support. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 222, “School Bus Passenger Seating and Crash Protection.” The lack of impact absorption increases the risk of injury in the event of a crash.

Daimler Vans USA, LLC (DVUSA) is recalling certain 2018-2019 Mercedes-Benz and Freightliner Sprinter vehicles. The screw connection on the upper hood catch may have been improperly tightened. As a result, factors such as the vehicle’s speed, wind resistance and road conditions may cause the hood to open while the vehicle is being driven. A hood that opens while driving can reduce the driver’s visibility, increasing the risk of a crash.

Dorman Products, Inc. (Dorman) is recalling certain Accelerator Pedal Assemblies part numbers 699-114 and 825-5029-1, sold as replacement parts for 2003-2006 Acura MDX, 2004-2008 Acura TL and TSX, 2003-2007 Honda Accord, 2005-2006 Honda CR-V, 2007-2011 Honda Element, 2005-2008 Honda Pilot and 2006-2014 Honda Ridgeline vehicles. The rotating portion of the accelerator pedal assembly may bind. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 124, “Accelerator Control Systems.” If the accelerator pedal binds, the engine may not quickly return to idle after the pedal is no longer pressed, increasing the risk of a crash.

Outdoors RV Manufacturing (ORV) is recalling certain 2019-2020 Trail Series MTN TRX 22TRX toychauser travel trailers. The axles may be incorrectly mounted too far forward, potentially causing light tongue weight on the tow vehicle. Light tongue weight can lead to unsafe towing conditions including trailer sway and/or the trailer becoming separated from the tow vehicle, increasing the risk of a crash.

Jayco, Inc. (Jayco) is recalling certain 2019 Eagle HT and Eagle recreational trailers. The gas range does not vent outside, which can cause carbon monoxide to build up inside the trailer. If the range does not properly vent outside, it can cause a build up of carbon monoxide inside the trailer, increasing the risk of personal injury or death.

Motorcycle Recalls:

Honda (American Honda Motor Co.) is recalling certain 2019 CRF450L motorcycles. The horn mount may break, allowing the horn to detach from the motorcycle. An unsecured horn may interfere with the motorcycle while driving, affecting handling and control, or it may fall off and become a road hazard. Either of these scenarios can increase the risk of a crash.

Bombardier Recreational Products Inc. (BRP) is recalling certain 2019-2020 Can-Am Ryker motorcycles. The wheel nuts may crack, causing the wheels to loosen. Loose wheels may cause a loss of vehicle control, increasing the risk of a crash.

BMW of North America, LLC (BMW) is recalling certain 2020 S1000 RR motorcycles. The oil cooler hoses may not be attached properly to the oil pipes, possibly resulting in an oil leak. Leaking oil may drip in the path of the rear tire, increasing the risk of a crash.

BMW of North America, LLC (BMW) is recalling certain 2017-2020 K1600 GT and 2018-2020 K1600 GTL and K1600 B motorcycles. Certain transmission parts may not have been produced to the appropriate hardness level. This could affect the function of the transmission, possibly causing double engagement of two gears and/or the damage of transmission parts. Double gear engagement or transmission damage can cause the rear wheel to lock up, affecting the vehicle stability and increasing the risk of a crash.

Tire Recalls:

Cooper Tire & Rubber Co. (Cooper Tire) is recalling certain Roadmaster RM852 EM tires, size 295/75R22.5, with DOT date codes 4618 through 4818. The innerliner gauge may be too thin, allowing the tire sidewall to fail. A sidewall failure may cause the tire to rapidly deflate, increasing the risk of a crash.

Cooper Tire & Rubber Co. (Cooper Tire) is recalling certain size 235/65R18 Cooper Discoverer SRX, Evolution H/T, Discoverer HTP, Adventurer H/T CUV, Big O Big Foot A/S, Les Schwab Back Country QS3 Touring HT, and Mastercraft Courser HSX Tour tires. The tires may have been improperly manufactured with a ply cord distortion. For a full list of the Tire Identification Numbers (TIN) visit: https://static.nhtsa.gov/odi/rcl/2019/RCLRPFT-19T005-5639.pdf The distortion may cause parting of the lower sidewall compounds extending to the cord material, increasing the risk of tire failure and a crash.

Toyo Tire Holdings Of Americas Inc. (Toyo) is recalling certain Proxes A27 tires, size P185/60R16 86H, produced from Sept. 21, 2018, through Sept. 25, 2018, (DOT dates codes 3718 and 3818). Prototype rubber compound was mixed with production compound, which may result in sections of the tire tread detaching. Sections of the tire tread detaching can cause the tire to lose pressure, increasing the risk of a crash.

Yokohama Tire Corporation (Yokohama) is recalling certain Yokohama RY023 tires, size 295/75R22.5 (14G), that have DOT date code 2318. The rubber compound may be incorrect, possibly resulting in the tread separating from the casing. 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.” If the tread separates, the driver may experience a loss of control, increasing the risk of a crash.

Pt. Multistrada Arah Sarana, TBK (Multistrada) is recalling certain Ahiles Desert Hawk A/P LT tires, size LT215/85 R16 115/112R 10PR, with DOT date code 1915 through date code 3618. The lower sidewall of the tires may separate. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 139, “New Pneumatic Radial Tires for Light Vehicles.” A sidewall separation can cause loss of air pressure, increasing the risk of a crash.

Continental Tire the Americas, LLC (Continental) is recalling certain Conti Hybrid HS5 tires, size 11R22.5 L1 146/143, Load Range H with DOT codes A3TKWUY 0818 through A3TKWUY 1318. These tires may have cords visible through the innerliner. Tires that have cords visible through the innerliner can have sudden air loss, causing a loss of vehicle control, increasing the risk of a crash.

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 may 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 risk of a crash.

Achieva Rubber Corp. (Achieva) is recalling certain Innova Ultra Runner tires sizes 4.80-8, 4.80-12, 5.30-12, and 5.70-8 in 4 ply and 6 ply, and 5.30-12 and 5.70-8 in 8 ply with the date code rage of 0114 through 3917. The tires fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 119, “New Pneumatic Tires—Other Than Passenger Cars.” If the tires fail to meet the strength
test requirements, the tire may fail, increasing the risk of a crash.

**OTHER CONSUMER RECALLS**

**Carrier Recalls Carrier-And Bryant-Branded Heat Pumps**

Carrier Corporation, of Palm Beach Gardens, Florida, has recalled about 5,550 Carrier- and Bryant-branded 1.5-ton multi-zone, 4-ton multi zone and 4-ton single-zone ductless heat pumps. The fan motor on the heat pumps can fail, causing the units to overheat, posing a fire hazard. Carrier has received six reports of the heat pumps catching fire (one occurred in the United States and five in Canada). No injuries have been reported. This recall involves Carrier- and Bryant-branded 1.5-ton multi-zone, 4-ton multi-zone and 4-ton single-zone ductless heat pump outdoor units. The units are used for cooling and heating homes and light commercial facilities. The model number and product number can be found on the nameplate/rating plate on the side of the units.

The units were sold by Carrier and Bryant distributors, independent dealers and contractors nationwide from March 2015 through April 2019 for between about $600 and about $4,000. Consumers should immediately contact their installing service, dealer or contractor to arrange for a free repair. While awaiting repair, consumers should monitor affected units while they are being operated and keep foliage and other flammable items at least 24 inches away from the recalled units.

Contact the dealer locator on www.carrierductless.com (for Carrier-branded products) and www.bryantductless.com (for Bryant-branded products) and click on "Find a Dealer" at the bottom of the page or contact Carrier toll-free at 844-468-4501 from 8 a.m. to 5 p.m. ET Monday through Friday, for assistance in locating a Carrier or Bryant dealer in your area for more information.

**Ridgewood Recalls 1 Million Four-Drawer Dressers**

Ridgewood has recalled approximately 1 million four-drawer dressers due to critical tip-over and entrapment hazards. The recalled dressers, sold exclusively at Kmart, are unstable and can tip over if not anchored to the wall, creating a serious risk of entrapment. No injuries have been reported, but the CPSC says the threat posed by the dressers can result in death or injuries to children. It’s estimated that a child is taken to the emergency room every 24 minutes—and one child dies every two weeks—as a result of an injury from tipping furniture or a falling TV.

In addition to tip-over and entrapment hazards, models of the dresser over 30 inches tall “do not comply with the performance requirements of the U.S. voluntary industry standard,” according to the CPSC. Parents who own this dresser should stop using it immediately if it’s not properly anchored to a wall. The CPSC advises parents to place them in an area that children don’t have access to.

Consumers can contact Ridgewood to receive an anchoring kit, including a wall anchor strap, free of charge. Additionally, owners of the recalled dresser can also request a one-time, free in-home installation of the wall anchor strap. The dressers were sold in Kmart stores nationwide from April 2013 to November 2018 for about $40. The Belmont brand dressers have four drawers with plastic drawer glides, sold in two sizes and four colors. Each dresser has its own model number, which you can find on the instruction manual that came with it. The following are the recalled dresser colors, model numbers and dimensions:

- **White:** 5934015K, 29-3/4”H x 27-5/8”W x 15-5/8”D
- **White:** 63415KPM, 32-1/4”H x 27-5/8”W x 15-5/8”D
- **Black:** 5934026K, 29-3/4”H x 27-5/8”W x 15-5/8”D
- **Black:** 634026KPM, 32-1/4”H x 27-5/8”W x 15-5/8”D

- **Light Pine:** 5935080K, 29-3/4”H x 27-5/8”W x 15-5/8”D
- **Light Pine:** 63480KPM, 32-1/4”H x 27-5/8”W x 15-5/8”D
- **Brown Oak:** 5933102K, 29-3/4”H x 27-5/8”W x 15-5/8”D
- **Brown Oak:** 634102KPM, 32-1/4”H x 27-5/8”W x 15-5/8”D

You can contact Ridgewood directly by calling the company toll-free at 888-222-7460 Monday through Friday 8 a.m. to 5 p.m. CT, or by visiting ameriwood.com and clicking on “Support” for more information. The recall number is 20-003.

**T & R Enterprise USA Inc. Recalls Meat And Poultry Products**

T & R Enterprise USA Inc., a St. Louis, Missouri, establishment, is recalling approximately 118,000 pounds of meat and poultry egg roll products that were produced and packed under insanitary conditions, the U.S. Department of Agriculture’s Food Safety and Inspection Service (FSIS) announced. The meat and poultry egg roll items were produced on various dates from Aug. 1, 2019, to Sept. 26, 2019. The following products are subject to recall:

- **2-oz. cases containing 80 pieces of “SILVER LABEL PORK & VEGETABLE PROTEIN EGG ROLL.”**
- **2-oz. cases containing 120 pieces of “DAI KIN PORK & TEXTURED VEGETABLE PROTEIN EGG ROLL.”**
- **2-oz. cases containing 120 pieces of “TITA’S PORK & TEXTURED VEGETABLE PROTEIN EGG ROLL.”**
- **2-oz. cases containing 120 pieces of “TITA’S CHICKEN & TEXTURED VEGETABLE PROTEIN EGG ROLL.”**

The products subject to recall bear establishment number “EST. 33792” or “P33792” inside the USDA mark of inspection. These items were shipped to institutional locations in Georgia and Missouri. The problem was discovered while FSIS was conducting routine food inspection activities. There have been no confirmed reports of adverse reactions due to consumption of these products. Anyone concerned about an injury or illness should contact a health care provider.

FSIS is concerned that some product may be frozen and in consumers’ refrigerators or freezers or both. Consumers who have purchased these products are urged not to consume them. These products should be thrown away or returned to the place of purchase.

FSIS routinely conducts recall effectiveness checks to verify recalling companies notify their customers of the recall and that steps are taken to make certain that the product is no longer available to consumers. When available, the retail distribution list(s) will be posted on the FSIS website at www.fsis.usda.gov/recalls.

**GLOBAL ZAKII ENTERPRISES, LLC RECALLS PRODUCTS PRODUCED WITHOUT BENEFIT OF IMPORT INSPECTION**

Global Zakii Enterprises, LLC, a Houston, Texas, establishment, is recalling approximately 100 pounds of canned meat and canned poultry products that were not presented for import re-inspection, the U.S. Department of Agriculture’s Food Safety and Inspection Service (FSIS) announced Thursday, Oct. 17. Additionally, the products were imported from Jordan, a country ineligible to export products to the United States. The canned meat and canned poultry products were imported on or about September 20, 2019.

The recalled items were shipped to retail locations in Texas. The problem was discovered after a consumer complaint, and a subsequent investigation by FSIS. There
have been no confirmed reports of adverse reactions due to consumption of these products. Anyone concerned about a reaction should contact a health care provider.

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 some 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 beaselyallen.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@beaselyallen.com for more recall information or to supply us with information on recalls.

XXIII.
FIRM ACTIVITIES

EMPLOYEE SPOTLIGHTS

MICHAEL DUNPHY

Michael Dunphy is one of the newest lawyers in the firm’s Toxic Torts Section. Currently, he handles claims for individuals who developed non-Hodgkin’s lymphoma caused by exposure to Roundup. “Helping people solve their problems in a way in which I feel God has best equipped me,” is why Michael says he answered the calling to the legal profession.

The Samford University Cumberland School of Law graduated was on the Dean’s List, a finalist in the Cumberland School of Law Gordon T. Saad Moot Court Competition and a semifinalist the school’s Donworth IL Moot Court Competition while he was in law school. He was a member of school’s National Moot Court team, a semifinalist in the ABA National Appellate Advocacy Regional Competition and a quarterfinalist in the 68th Annual NYC Bar Moot Court Competition. Michael also served as an Associate Justice of the Henry Goode Jones School of Law Gordon T. Saad Moot Court Competition and was a law clerk in the section before she came on as a lawyer with the firm.

With a passion for serving others, Lauren says she was drawn to the legal profession. She says, “The greatest joy and privilege of being an attorney is being a voice for clients who wouldn’t otherwise have a voice.”

In 2015, Lauren earned her Bachelor of Science degree in Biomedical Sciences. Tucker earned his Juris Doctorate from the University of Memphis Cecil C. Humphreys School of Law where he continued his focus on health care, receiving a certificate in Health Law. During law school Tucker participated in the Medical Legal Partnership with Memphis Area Legal Services, which teamed with Le Bonheur Children’s Hospital to provide legal aid to hospital-referred clients in order to ensure greater health outcomes. Also during law school, Tucker worked as a legal extern for Baptist Memorial Health Care Corporation and Medtronic in Memphis, Tennessee. Further, he worked as a law clerk for...
Tucker said he became a lawyer because he loves “coming up with creative solutions to help people.” Similarly, he says his favorite part of practicing law is “communicating with clients and developing trust with each one.”

Currently, Tucker is a member of the Alabama State Bar and the organization’s Health Law, Litigation, and Young Lawyers Sections. The Birmingham native is carrying on his family’s legacy of practicing law. Tucker’s mother, Christy Glidewell, serves as Assistant General Counsel with Regions Bank. His grandfather Joel Holley is a retired District Court Judge from Chambers County, Alabama, and currently he serves as Assistant City Prosecutor in Huntsville.

Tucker attends the Church of the Highlands and enjoys spending time with his Australian Shepherd named Caddy. He also enjoys watching football and basketball, running in obstacle races, and playing golf.

Tucker says he particularly likes that “faith is woven into the fabric of the firm’s environment.” He says he looks forward to growing in his faith as he grows in his legal career and believes that practicing law at our firm allows him to do that.

Tucker is a hard worker who is dedicated to seeing that his clients receive justice. We are blessed to have Tucker at Beasley Allen.

LINDSAY SMITH

Lindsay Smith, a Legal Assistant in the Mass Torts Section, works with Section head Andy Birchfield and Leigh O’Dell. A vast majority of Lindsay’s work currently is in the Johnson & Johnson Baby Powder talc litigation, the Xarelto litigation, and most recently, the Juul e-cigarette litigation.

Lindsay, who is originally from Augusta, Georgia, is the youngest of three children. She has two older brothers. Lindsay’s mother works for the Richmond County District Attorney. Her father owned a construction business and had the privilege of restoring one of the most beautiful church cathedrals in Augusta.

Lindsay says she enjoys sunny days at the lake and in the water. She grew up playing tennis, so when the weather is good you can find her at the tennis court. Her first love has always been the Georgia Bulldogs. So in this fall, you will hear her yelling GO DAWGS!

Lindsay says that her favorite thing about working at Beasley Allen is “working with and for people who truly care” about her, as more than just another employee. She added: “My work family has dropped what they were doing to surround me and pray for me. I’ve heard staff members and attorneys from other firms say that Beasley Allen is different than most firms, and this makes me proud.” Lindsay is a hard worker who is dedicated to carrying out the firm’s mission to help folks who need help. We are fortunate to have Lindsay at Beasley Allen.

JENNIFER TANON

Jennifer Tanon, a Legal Assistant (a position also referred to as Paralegal), began working in the Atlanta Office in December 2017. She works with Rob Register on his cases.

Jennifer and her husband Ish have been together for six and a half years and have a son, Cameron, who turns 4 in October. Jennifer’s 14-year-old stepson, Isaiah lives in Orlando, but spends all breaks and holidays with his mother. Most of Jennifer’s family is in Orlando where she was born and raised.

Jennifer says she loves to watch football on the weekends and is a huge UCF Knight Alumni and New England Patriots fan. She is in four fantasy football leagues this year and actually runs a women’s league in her neighborhood. Jennifer enjoys spending time outdoors and exploring new places. She also loves the beach and going on cruises.

After working for a defense firm for five years in Orlando, Jennifer says that she had mixed feelings about switching over to the Plaintiff side. Now she says it has been the best decision she has ever made. Jennifer says:

Working at Beasley Allen has been very fulfilling and I have thoroughly enjoyed working for a firm that takes so much pride in making a difference in peoples’ lives. Working here has motivated me to be a better paralegal and the friends I have met are an added bonus.

Jennifer is an asset in our firm’s growing Atlanta office. She is a hard worker who is dedicated to seeing that clients she works for receive justice. We are fortunate to have Jennifer with us.

DANA TAUNTON

Dana Taunton joined Beasley Allen in 1998. Currently, she serves as the lead appellate attorney for Beasley Allen’s Personal Injury & Products Liability Section. Many of her product liability cases have resulted in multimillion-dollar verdicts and settlements for her clients.

Dana did not go to law school to be a practicing lawyer. Instead, she had her sights on pursuing a career in law enforcement on the federal level, such as with the Federal Bureau of Investigation or the Secret Service. “However, God had other plans for me,” she says. “He opened doors for me that I never thought would open.”

Dana was born and raised in Butler, Alabama, and received her law degree in 1993 from the University of Alabama School of Law. She had the privilege of clerking for Judge Ira Dement, who at the time was a federal judge in the Middle District of Alabama. Under his mentorship, Dana realized her desire to help and serve those less fortunate. So, she began to pursue a career in private practice, working for a prominent defense firm and, briefly, with the State of Alabama Attorney General’s Office, before eventually landing at Beasley Allen.

Dana says she has always felt a strong calling to help and serve others, which is her favorite part about practicing at Beasley Allen:

I think what makes Beasley Allen unique as a firm is that everybody here seeks to help each other because we all know that by doing so we are putting the client’s interest first by working as a team to achieve the best results possible. The firm understands that our clients seek our help during the most difficult time of their lives. Thus, it is a privilege to represent those who need help and put their trust in us. That is an awesome undertaking and it is one of the reasons why it has been an honor over the last 20 years to work at Beasley Allen.

Dana is a member of the Alabama Association for Justice, where she serves on the AMICUS Committee and on the editorial board for ALAJ Magazine; American Association for Justice; Montgomery County Bar Association; Montgomery County Association for Justice; Alabama State Bar; and Trial Lawyers for Public Justice. She is past chairperson of the Alabama State Bar Women’s Section. She is also aMartindale Hubbell AV Rated attorney and was selected for inclusion in the 2013 edition of Benchmark Appellate, a definitive reference guide recognizing the nation’s top appeals litigation firms and their attorneys.

Dana also is serving on the Alabama State Bar’s 19th Amendment Celebration Task Force, the Bench & Bar Relations Task Force (2019-2020), Improving the Image of Lawyers Task Force (2019-2020), and Diversity in the Profession.

Dana is married to Derrick Taunton, and they have two daughters, Betsie and Abigail. She is a member of Frazier Methodist Church in Montgomery, where she is serving a three-year stint as a member of the Board of Trustees.

Dana is an extremely talented lawyer and a very hard worker. She is dedicated to the rule of law and its application to the practice of law. We are blessed to have Dana at Beasley Allen.

MITCH WILLIAMS

Mitch Williams is a lawyer in the firm’s Consumer Fraud & Commercial Litigation Section. Mitch began his career in the same section at the firm as a law clerk in 2017 and he was recently hired as a lawyer. He practices complex and business litigation,
primarily focusing on consumer class actions.

In 2016, Mitch earned a Bachelor of Arts degree from the University of Alabama before attending Thomas Goode Jones School of Law where he graduated cum laude earlier this year. During law school, Mitch was on the Dean’s List, clerked for the Alabama Supreme Court as well as Beasley Allen. He also served as a senior editor of the Faulkner Law Review and won the J. Greg Allen Intra-School Mock Trial Competition.

Mitch explained that he became a lawyer to help people. He says:

*I became an attorney to help consumers who fall victim to large corporations. Corrupt corporations prey on everyday people for a profit and I want to give these consumers a voice to fight for their rights. My favorite part of practicing law is getting favorable results for his clients. There is nothing more rewarding than seeing a consumer get well deserved and needed relief.*

Mitch is a member of the Alabama State Bar and the organization’s Young Lawyers Section. He is married to Katie Williams, a first-grade teacher at Brewbaker Primary School in Montgomery, Alabama. The couple have a black lab named Lady and enjoy exploring Montgomery and trying new restaurants on the weekends. Mitch and Katie attend Saint James United Methodist Church, in Montgomery.

Mitch says the firm sets a high standard when it comes to putting a client’s interest first. He explained that law firms in general claim to prioritize client relations but at Beasley Allen lawyers Larry Golston, Lance Gould and Leon Hampton represent the firm’s Atlanta office, and are dedicated to making sure his clients receive justice.

**XXIV. SPECIAL RECOGNITIONS**

**Beasley Allen Selected To Elite Trial Lawyer List**

The National Law Journal has recognized Beasley Allen as an Elite Trial Lawyer award winner for its work representing Travis D. (Tre) Smith in his case against Ford Motor Company. The award recognizes lawyers and law firms that have demonstrated repeated success in cutting-edge work on behalf of Plaintiffs from January 2018 through April 2019. The winners were selected from more than 300 submissions across more than 20 categories.

It is an honor to be included among some of the top Plaintiff lawyers in the country. We are proud of the dedication, skill and passion of Beasley Allen lawyers and staff, which has positioned the firm as a leader in national consumer and product liability litigation.

During the last year, the firm helped secure more than $1 billion in verdicts and settlements for clients including the $151,791,000 jury verdict in the Smith case. In February, an Alabama jury found Defendant Ford Motor Company at fault for a roll-over crash of a 1998 Ford Explorer that left Tre Smith paralyzed. The award included $51,791,000 in compensatory damages and $100 million in punitive damages. The jury found that Ford failed to meet its own safety guidelines for the Explorer’s rollover resistance requirement and attempted to cover up the vehicle’s defective design. Beasley Allen lawyers LaBarron Boone, Greg Allen, Kendall Dunson, Dan Philyaw and Stephanie Monplaisir represented Smith in the case.

Additionally, four other Beasley Allen trial teams were recognized as finalists for the award. Those cases are set out below.

- **United States of America, ex rel., Barry Taul v. Nagel Enterprises Inc. individually and d/b/a Abanks Mortuary & Crematory, and Jed Nagel**
  
  U.S. District Judge Virginia Hopkins entered judgment in the amount of $14,708,630.06 on behalf of whistleblower Barry Taul, who uncovered and reported an illegal kickback and false billing scheme that defrauded the Alabama Organ Center and taxpayers. A jury found in favor of Mr. Taul in the whistleblower case in February 2018. For approximately eight years (2003-2011) the Alabama Organ Center (AOC) and Nagel Enterprises, Inc., d/b/a Abanks Mortuary & Crematory and its owner, Jed Nagel, defrauded taxpayers as much as $60,000 a month. The defendants created an elaborate illegal kickback and false billing scheme, going to great lengths to silence Barry Taul, including physical assault, death threats and death threats against Taul’s family. Beasley Allen lawyers Larry Golston, Lance Gould and Leon Hampton represented Taul.

- **Donald L. Dial, Personal Representative of Lacee Michaela Dial vs. Toyota Motor Corporation**
  
  In September 2012, high school senior Lacee Dial was killed when the rear axle of her 1999 Toyota 4Runner fractured, causing the vehicle to roll over and collide with a utility pole. Toyota attempted to blame Dial. It denied allegations of a defective rear axle. However, the trial team presented evidence showing Toyota knew about a defective part it manufactured, which led to the fatal crash. The case exposed Toyota’s defective axle and cleared Dial from any culpability. The jury awarded the Dial family $12 million in June 2018. Beasley Allen lawyers Chris Glover, managing attorney of the firm’s Atlanta office, and Ben Baker helped represent the Dial family.

- **John Dees v. Tenax Corporation; Tenax Manufacturing of Alabama, LLC; Onin Staffing, LLC; Tenax SPA**

  An Alabama jury awarded John Dees $774,000 for permanent injuries he suffered while working for Onin Staffing, LLC at Tenax Manufacturing Alabama, LLC. Dees was injured on a machine manufactured by Tenax SPA, an Italian Company. The jury determined Tenax SPA acted wantonly due to its failure to guard against the machine’s known defect. Tenax SPA designed the machine with an inadequate guard, prohibited by both U.S. and European design standards. Dees was represented by Beasley Allen lawyers Evan Allen and Kendall Dunson.

- **Commonwealth of Kentucky, ex. Rel. Andy Beshear, Attorney General v. Fresenius Medical Care Holdings, Inc., d/b/a/ Fresenius Medical Care North America**

  In 2016, the Kentucky Attorney General’s Office filed a lawsuit against Fresenius Medical Care Holdings Inc. The lawsuit claimed that the Massachusetts-based dialysis provider violated Medicaid guidelines and Kentucky law by failing to warn Kentucky dialysis clinics and doctors from 2003-2012 that its hemodialysis product, GranuFlo, could result in dangerously increased bicarbonate levels. AG Beshear alleged that clinics and doctors needed to know the risks of increased bicarbonate levels from GranuFlo to properly treat patients and prevent harm.

  Beasley Allen lawyers worked with the AG’s Office at every stage of litigation continuing to lead the national charge to recover billions of dollars in some of the nation’s largest Medicare fraud schemes. AG Beshear settled with Fresenius for $10.3 million in February 2019. The settlement will allow AG
on the coin: gives him hope and strength. This is he carries with him at all times. He said it the firm working in the mail room for 15 of this verse in high school and says over her favorite Bible verse. She became aware be weary; walk, and not faint. "Worship, supplied his favorite scripture for Pastor of Fresh Anointing House of XXV. FAVORITE BIBLE VERSES

My friend Bishop Kyle Searcy, Lead Pastor of Fresh Anointing House of Worship, supplied his favorite scripture for this issue. Kyle says: “This scripture talks about what happens when we connect with God through faith. The word WAIT means to braid or wrap yourself around, to latch on to God by faith. He will then renew our strength so we can run, and not be weary; walk, and not faint.”

But they that wait upon the Lord shall renew their strength; they shall mount up with wings as eagles; they shall run, and not be weary; and they shall walk, and not faint. Isaiah 40:31

Vicki Mozingo sent in Proverbs 25:11 as her favorite Bible verse. She became aware of this verse in high school and says over time it has come to mean more and more to her. Vicki says:

As a female, my tongue can be more sharp than I intend at times and on occasion I tend to have a somewhat sarcastic nature. This verse reminds me that a right word at the right time can be a beautiful thing. The image of apples of gold and settings of silver paints a beautiful picture and our words should be kind and encouraging as well. But also, just the opposite is true—brash words can be an ugly, painful thing. We must choose them wisely because once they are spoken, we can never “unspeak” them. We can apologize all day long but they are never forgotten.

A word aptly spoken is like apples of gold in settings of silver. Proverbs 25:11

Willie Fred Gamble, who has been with the firm working in the mail room for 15 years, has a coin with this on it that he says he carries with him at all times. He said it gives him hope and strength. This is on the coin:

Belt of truth, breastplate of righteousness, feet fitted with readiness, shield of faith, helmet of salvation sword of spirit, praying in the spirit. Eph 6:11-18

Michael Dunphy, a Beasley Allen lawyer, furnished Matthew 11:28-30 for this issue. He said: “I love this passage so much and for many reasons. Like most people, my life has had its share of suffering and heartache. The world has continually beaten so many of us to our knees, to the point when we feel like we can’t continue. How wonderful it is that we have a Holy Father in heaven who has conquered this world. This passage calls me to not only be thankful for Jesus’ sacrifice, but also to keep my eyes on Him and to learn from His example. It is only through His loving, fatherly guidance that we may find salvation and rest for our souls.”

Come to Me, all you who are weary and burdened, and I will give you rest. Take My yoke upon you and learn from Me, for I am gentle and humble in heart, and you will find rest for your souls. For My yoke is easy and My burden is light. Matthew 11:28-30 (NIV)

XXVI. CLOSING OBSERVATIONS

STATES SUED TRUMP ADMINISTRATION OVER ROLLBACK OF FUEL EFFICIENCY PENALTIES

The Trump administration’s rollback of penalties automakers must pay for fuel efficiency violations has triggered a multistate lawsuit challenging the move as a “wrong-headed” assault on clean air standards.

The lawsuit, brought by the attorneys general of 12 states and the District of Columbia, centers on the Corporate Average Fuel Economy, or “CAFE,” which are miles-per-gallon targets vehicles must achieve. The standards were enacted in 1975 in response to the nation’s first oil crisis. Over time, they evolved as a tool to create incentives for automakers to reduce tailpipe emissions of carbon dioxide and other greenhouse gases known to build up in the atmosphere and contribute to climate change.

Automakers that fall short of CAFE targets pay a $5 50-per-tenth-of-a-mile penalty multiplied by their total annual production. In 2015, the Republican-led Congress boosted the penalties for overshooting CAFE emission standards to $14 per tenth of a mile, adjusting for inflation.

The Trump administration suspended the higher penalty in 2017, dropping it back to $5.50. The higher penalty was reinstated after a multi-state appeal but nixed again by the administration through a National Highway Traffic Safety Administration (NHTSA) rulemaking process that was finalized over the summer. The current lawsuit challenges the NHTSA rule.

NHTSA says it rolled back the higher penalties because they “will have a negative economic impact.” But the states and other groups say the rollbacks prioritize corporate profits over serious health and safety concerns and will have even greater costs in the future. David Cooke, senior vehicles analyst with the Union of Concerned Scientists, told Law360:

The agencies have ignored the latest scientific data and analysis, the results of which will be tangible negative impacts on the environment, consumers’ pocketbooks, and, as this report shows, on innovation, technology deployment, and jobs.

The auto industry and its “political friends” in Washington are some of the leading opponents of clean energy measures and other actions that would help curb the climate crisis. While automakers often publicly say they support cleaner, more energy efficient cars, they continue to funnel millions of dollars every year into lobbying efforts that undermine fuel efficiency and the push to zero emissions.

Some automakers, such as Volkswagen and Fiat Chrysler have gone so far as to install emissions cheating technology in their vehicles while touting their dedication to policies and initiatives that promote a cleaner, greener earth.

The states suing the Trump Administration in the Second Circuit Court of Appeals are New York, California, Connecticut, Delaware, Illinois, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont and Washington.

The Trump Administration has shown no concern for health and welfare of the American people in a number of areas. This is certainly one area where the peoples’ interest is virtually ignored.

Sources: Law360.com, The Guardian and Reuters

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

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

Vincent Lombardi

Kindness is a language which the deaf can hear and the blind can see.

Mark Twain (1835-1910)

"I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country...corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed."

U.S. President Abraham Lincoln, Nov. 21, 1864

"The opposite of poverty is not wealth; the opposite of poverty is justice."

Bryan Stevenson, 2019

In his December 1902 State of the Union address, Theodore Roosevelt said of corporations: "We are not hostile to them; we are merely determined that they shall be so handled as to subservie the public good. We draw the line against misconduct, not against wealth."

President Teddy Roosevelt, 1902

The 'Machine politicians' have shown their colors. I feel sorry for the country however as it shows the power of partisan politicians who think of nothing higher than their own interests, and I feel for your future. We cannot stand so corrupt a government for any great length of time."

Theodore Roosevelt Sr., December 16, 1877

XXVII. PARTING WORDS

I have been asked recently by several of my close friends if I am planning to retire anytime soon. My response to each query has consistently been a definite "NO." Usually the follow-up question is "Why do you keep working—you are well past 65 and can afford to retire." I just say that I like what I do and that working for Sara Beasley and the firm has had a definite role in my decision to keep working and not think about retirement. So I discarded my notes and was prepared to make a talk followed by a question and answer session. But after having to really think hard on why at my age I am still working as a trial lawyer, I realized I needed to talk at Troy University on what really motivated me to keep working and not think about retirement. So I discarded my notes and spoke to the group on what keeps me working as a trial lawyer.

As I look back over my career, I realize that Beasley Allen has had a definite role and influence on Corporate America when it comes to health and safety issues. Our firm has handled cases that resulted in significant changes in corporate culture and safety practices. Those include cases that resulted in defective products of all kinds being recalled—a case that forced the tractor industry to install "ROPS" protection on tractors—a case that discovered a silent recall of vehicles known by the automaker to be defective and dangerous—a case that discovered a cover-up of defects in vehicles that involved sudden, uncontrolled accelerations resulting in deadly crashes—a case that discovered a defective ignition switch that was causing vehicles to stall and crash—and the list of significant cases goes on.

Currently our firm is involved in massive litigation against drug companies that involve corporate greed, corruption and cover-ups with thousands of innocent people, including children, dying as a result. In all of these cases the federal government had failed in its mission, leaving the job of regulation to the judicial system.

So this answers the question of why I am still actively working as a trial lawyer! So long as God allows me to stay active at Beasley Allen, I plan on being involved in making sure that folks who need help from Beasley Allen, a firm I started as a sole practitioner in 1979, receive justice. God has given me the desire and ability to help others. He has also let me know that I am never the smartest person in any room, including the courtroom.

I believe there is more for me to do, so I plan on working at Beasley Allen.

When I finally depart this life, I have left some specific instructions—a pine box for burial—a short informal funeral—and the following to be put on my tombstone: "Here lies Jere Locke Beasley, Sr., who did things the right way and for the right reason during his time as a trial lawyer."

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

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

JereBeasleyReport.com
On January 7, 1979, Jere L. Beasley established a one-lawyer firm in Montgomery, Alabama, which has grown into the firm now known as Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.

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

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

It has been more than 40 years since he began the firm with the intent of “helping those who need it most.” Today, Beasley Allen has offices in Atlanta and Montgomery, and employs more than 285 people, including more than 85 attorneys. Beasley Allen is one of the country’s leading firms involved in civil litigation on behalf of claimants, having represented hundreds of thousands of people.

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