**I. CAPITOL OBSERVATIONS**

**2020 Census To Make Big Difference For Alabama**

This year Alabamians have a huge opportunity to affect the state’s future in a major way. The 2020 Census will dictate the distribution of more than $675 billion in federal funding to local and state governments. This funding supports schools, health care, infrastructure, community assistance, and more. Its impact can last for decades and will affect the state in more ways than one.

The census, which dates all the way back to 1790, counts every person—both adults and children—living in the United States. The information gathered is then used to monitor changes in communities, identify and address public service needs such as health care, education, public safety, housing, food, and rural access to broadband. The Census Bureau also uses the data to determine the number of seats each state has in the U.S. House of Representatives. That is of critical importance.

Starting March 12, each Alabama household will receive a postcard from the U.S. Census Bureau. It will contain instructions for how to complete the census. Residents can respond online, by phone or via traditional paper form. The survey takes less than 10 minutes to complete. Each participant’s information is protected by law.

The Alabama Counts! 2020 Census Committee, an organization dedicated to the Census and its importance to the state, is leading the effort to ensure Alabamians are prepared to complete and return the form. The committee was created by Gov. Kay Ivey in an executive order in August 2018.

Participation in the census is of the highest importance, since the next 10 years of federal funding will be determined by the survey. It is estimated that in 2016 more than $13 billion was allocated to the state of Alabama from programs affected by the previous census. The 2020 census will have even more money at stake for families in Alabama. Government employees, teachers, church leaders, business owners, and residents alike have much at stake. Alabama Counts! encourages everyone to talk to those in their communities about the 2020 Census and its importance to them and their families. More information is available at www.census.alabama.gov.

Source: ADECA

**II. UPDATE ON THE BOEING LITIGATION**

**More Trouble For Boeing And Its 737 MAX**

An audit of the Boeing 737 MAX in December revealed more safety issues and concerns over the plane’s design. The internal audit was conducted at the request of the Federal Aviation Administration (FAA) after European Union Aviation Safety Agency (EASA) regulators rejected Boeing’s documentation regarding its latest proposed software fix late last year. Findings from the audit were released last month revealing previously unreported problems with wiring that helps control the aircraft’s tail, according to The New York Times. It also identified weaknesses in one of the engine’s rotors and a manufacturing defect that left the plane vulnerable to lightning strikes.

Additionally, last month, Boeing released more than 100 pages of documents exposing damning internal conversations among employees regarding the 737 MAX to congressional investigators, The New York Times also reported. The documents were released just days after Boeing said it would recommend simulator training for 737 MAX pilots before the aircraft resumes service. The move on Boeing’s part was a complete reversal of its previous efforts to discourage airline customers from demanding additional pilot simulator training and to deceive regulators into agreeing to no additional training requirements.

As discussed in previous editions of this Report, 737 MAX planes were globally grounded last March after two of the aircraft crashed in separate incidents killing a total of 346 people. Both MAX crashes were linked to problems with the MCAS, a flight control software, that caused it to misfire and inadvertently sent the planes into a nosedive shortly after takeoff. Congress launched investigations into the development and certification of the MAX following the second of the two deadly crashes involving the aircraft. The U.S. Department of Justice (DOJ) is also conducting a criminal probe.

**New safety risks uncovered.**

The additional safety risks regarding the wiring that were previously unreported involve two bundles that may be too close together. Boeing is trying to determine if the close proximity of the bundles could cause a short circuit and how likely it is that this scenario could occur during flight. If a short circuit occurred in this area of the plane and pilots didn’t respond correctly, it could cause a crash. The company may be required to separate the bundles before the aircraft can be cleared to resume service depending on the company’s findings. The wiring issue could also affect the MAX’s predecessor the 737 NG, which may also require repairs on the 6,800 planes in service.

Further, the MAX engines are manufactured by CFM International (a joint venture between General Electric and Safran). The company told the FAA it discovered a weakness in one of the engines’ rotors that could cause the part to shatter. The FAA told Boeing to inspect as many MAX engines as possible before its service resumes but hasn’t required an immediate fix for the weakened rotors yet. However, the agency

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will require Boeing to address the manufacturing defect that exposes the aircraft to lightning strikes and therefore exposes the fuel tank and fuel lines to increased risk of catastrophic fire. The New York Times reported that Boeing workers at its Renton, Washington, plant “ground down the outer shell of a panel that sits atop the engine housing in an effort to ensure a better fit into the plane.” This step removed the coating that protects the fuel tank and fuel lines in the event lightning strikes the aircraft while in flight.

**Internal documents embarrassing and damaging to Boeing.**

Clearly, those with inside knowledge of the MAX knew it was dangerous even before the latest audit’s findings. In one of the recently released internal documents, a Boeing employee tells another that they would not put their family on the 737 MAX. Yet, no adequate steps were taken to address the danger or warn the flying public. In fact, the messages demonstrate the willingness of some employees to deceive Boeing customers and regulators. The documents reveal a corporate culture gone awry.

Several messages detail conversations about requiring additional pilot training and specifically on simulators, according to Forbes. From the beginning, Boeing rejected the idea of providing pilots with additional training because increasing pilot training requirements would ultimately reduce the company’s profits.

Boeing’s former 737 Chief Technical Pilot Mark Forkner wrote an email in March 2017, saying:

> I want to stress the importance of holding firm that there will not be any type of simulator training required to transition from NG to MAX. Boeing will not allow that to happen. We’ll go face to face with any regulator who tries to make that a requirement.

In previously released messages, Mr. Forkner also boasted that he was “jedi-mind tricking regulators into accepting the training that I got accepted by F.A.A.”

A separate set of messages between Mr. Forkner and Lion Air representatives in June 2017 just before the airline received the aircraft shows that Mr. Forkner talked the airline out of additional pilot training. Mr. Forkner stated:

> I am concerned that if [Lion] chooses to require a MAX simulator for its pilots beyond what all other regulators are requiring that it will be creating a difficult and unnecessary training burden for your airline, as well as potentially establish a precedent in your region for other MAX customers.

Lion Air flight 610 was the first of the two fatal MAX crashes. Shortly after the crash, information about the new flight control software MCAS, which has since been determined defective and a major contributor to both crashes, surfaced along with the fact that no one outside of Boeing was informed about the software. In 2016, Mr. Forkner convinced the FAA to remove mention of the MCAS from the pilot’s manual, leading the regulatory agency to believe the system would engage in only rare cases.

There is no way to determine if additional training would have prevented the Lion Air crash. Likewise, there is also no way to determine if additional pilot training could have helped the pilots better navigate the deadly situation created by Boeing’s defective aircraft. Boeing took that option off the table for its customers.

**Boeing’s about-face on simulator training.**

Boeing finally conceded and recommended to the FAA additional simulator training for 737 MAX pilots before the aircraft resumes service, The New York Times reported. The cost of one simulator is $6 million to $8 million dollars and an additional $400-$500 per hour of training due to labor and maintenance costs, according to the Financial Times. The FAA will make the final decision but is expected to approve the recommendation.

The release of the damning internal communications showing employees attempting to protect Boeing’s bottom line combined with recent flight tests where pilots for a number of U.S. and international airlines failed to use prescribed emergency procedures to overcome MCAS problems likely encouraged the company’s about-face. Now that Boeing is committed to increased training it and regulators will have to contend with the limited number of available MAX simulators. Originally, because Boeing didn’t plan on such required additional training, it created few training simulators. Currently, there are only 34 simulators worldwide and with thousands of pilots needing the additional training, the scheduling constraints could likely cause further delays for the MAX’s return to service.

Still, international regulators are more likely to agree to software and other changes and approve the MAX’s return to service now that Boeing supports requiring simulator training. In the months following the Ethiopian Airlines crash, many global regulators broke from the decades-long tradition of following the FAA’s lead regarding aviation safety. The agency has been the subject of intense scrutiny over its role in approving the MAX for service. One of the more contentious areas of concern was the need for increased pilot training. Foreign regulators favored simulator training and indicated they would not allow the MAX’s return to service in their respective countries without such a requirement.

Also last month, regulators from various countries outside the U.S. were scheduled to travel to Seattle. The company planned to test the new software in a flight simulator. The regulators’ visits signaled to industry insiders that the regulators may be ready to give the MAX’s changes a serious evaluation.

**Boeing’s newer leadership.**

The company’s new CEO, David Calhoun, took the reins last month and has tall order for fixing the defectively designed MAX, as well as repairing the reputation of a once highly respected company in the U.S. Mr. Calhoun has served on the company’s Board of Directors since 2009 so he is not exactly an outsider, nor is he new to the company’s leadership. Regardless, he has implemented changes and shifted the company’s public tone to one of a more conciliatory nature compared to the demanding tone under its previous CEO, Dennis Muilenburg, who was fired in December. The exiting CEO, despite the crisis he plunged the company into and two of the deadliest crashes occurring on his watch, walked away with a $62-million compensation package. It was yet another devastating blow to families of victims killed in the two MAX crashes.

Beasley Allen lawyers have filed a number of lawsuits for families of victims of the Ethiopian Airlines crash. Mike Andrews, a lawyer 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 visited the crash site and surrounding areas several times last 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 Mike.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: The New York Times, Forbes, Financial Times and NPR

JereBeasleyReport.com
III. AN UPDATE ON THE TALC LITIGATION

UPDATE ON TALCUM POWDER LITIGATION

As we start the new year, Beasley Allen lawyers are anticipating Daubert rulings from Judge Freda Wolfson in the multidistrict litigation (MDL) to come down at any time. In Federal courts, along with many state courts, Daubert rulings are used by the trial court to act as a sort of “gatekeeper” to the admission of expert scientific testimony. The trial court uses these rulings to ensure that scientific testimony is not only relevant, but reliable. Under Daubert, experts’ conclusions must have been arrived at “in a scientifically sound and methodologically reliable fashion,” and this is what the judge will be looking at when it comes to our experts. While awaiting these rulings, new studies have been published. Those additional supportive studies have also been submitted to Judge Wolfson for consideration.

In the meantime, Beasley Allen lawyers are moving ahead with more state court trials throughout the country. Our firm currently has a case in Philadelphia with a pre-trial conference scheduled for Feb. 7. Ideally, we will try this case in the first half of the year. We should have a firm date shortly. The Philadelphia case will be the first trial that includes Rite Aid, a Pennsylvania-based retailer, as a Defendant. Rite Aid made its own talcum powder products for years but has now completely swapped out these products for cornstarch. Even after changing its own products, Rite Aid has played a key role in the conspiracy to continue selling a known or suspected dangerous product in J&J’s Baby Powder.

Spring 2020 looks to be a busy time for our talcum powder litigation team. Beasley Allen lawyers have a wrongful death case set to start trial in Illinois in early Spring. In this case, we have also named Walgreens as a Defendant and have been conducting substantial discovery against them as the local retailer. Walgreens has partnered extensively with J&J over the years and it continues to advertise and sell its talc-based products.

Finally, the Bower case in Georgia has been reset for the later this Spring. As you may recall, this is the case that our firm tried last fall in Fulton County that ultimately resulted in a hung jury. We anticipate trying all three of the cases discussed above in the first half of this year. In addition to these cases, we are also moving toward additional trial settings in St. Louis and Florida in the second half of 2020.

For additional information on these cases, contact Brittany Scott or Melissa Prickett at 800-898-2034 or by email at Britanny.Scott@beasleyallen or Melissa.Prickett@beasleyallen.com.

JOHNSON & JOHNSON SETTLES TALC CASE MIDTRIAL

Johnson & Johnson (J&J) ended one of its latest talc trials last month with a mid-trial settlement. The jury had been one of the first to hear about the U.S. Food and Drug Administration’s (FDA) October finding of asbestos in a bottle of talcum powder. J&J made sure the jurors wouldn’t have a chance to weigh in on that information and return a verdict against the company. The jury was told that the case had been settled before the trial was to resume on Jan. 6.

The Plaintiffs, Linda and Mark O’Hagan, said Linda’s mesothelioma, a cancer of the lining of the lungs, was caused by asbestos in J&J baby powder. The trial began Dec. 2 but took a lengthy break for the holidays starting Dec. 20, and the trial was to resume on Jan. 6. The jury heard during opening statements about the FDA’s October announcement that a blind test of J&J talc had found chrysotile asbestos in one sample. As previously reported, the FDA and J&J each announced on Oct. 18 that the company would voluntarily recall a large lot of the powder.

The O’Hagan jury had been expected to be one of the first that would be able to directly weigh that information in its deliberations. Linda O’Hagan was diagnosed with mesothelioma in August 2018, was given an estimated year and a half to live and has since undergone multiple rounds of chemotherapy and immunotherapy without managing to stop the spread of the cancer.

The midtrial settlement signals an increased trial risk Johnson & Johnson faces from the FDA’s recent finding of asbestos in its talc. J&J has consistently told juries that trustworthy sources like federal regulators have never found the carcinogen in its talc. However, one of J&J’s own litigation experts has found several fibers of chrysotile asbestos in a J&J baby powder sample while under contract with the U.S. Food and Drug Administration.

The O’Hagans are represented by Moshe Mainon of Levy Konigsberg LLP, and John Langdoc and Arcelia Hurtado of Kazan McClain Satterly & Greenwood APLC. The case is Linda O’Hagan et al. v. Johnson & Johnson et al., (case number RG19019699) in the Superior Court of the State of California, County of Alameda. Source: Law360.com

COLGATE AND AUTO PARTS COMPANIES SETTLE ASBESTOS CASE AND AVOID TRIAL

Colgate-Palmolive and several auto parts companies have settled claims that asbestos in Colgate’s talc products and auto parts caused a woman’s fatal mesothelioma. The settlement avoids a trial that had been set to begin last month.

The trial would have put the claims of surviving family members of Anne J. Levesque, who died of mesothelioma at the age of 81 in 2017, to trial against Colgate-Palmolive Co., AutoZone West LLC, Genuine Parts Co., Pneumo Abex LLC and Union Oil Co. of California.

Mrs. Levesque was exposed to asbestos from her daily use of the talcum powder beauty product Cashmere Bouquet made by Colgate and from asbestos brought into the family home by her husband and children, who worked with asbestos-containing auto parts.

Colgate over the last few years has shown a willingness to settle cases alleging its talc contains asbestos before they get to trial, a contrast with Johnson & Johnson—the other primary Defendant in such cases.

The Levesque family is represented by David Amell, a lawyer from Maune, Raichle, Hartley, French & Mudd LLC. The case is Robert Levesque et al. v. Colgate-Palmolive Co. et al., (case number RG17884440) in the Superior Court of California for Alameda County. Source: Law360.com

J&J CEO MADE TO TESTIFY IN TALC TRIAL WEIGHING PUNITIVE DAMAGES

Johnson & Johnson CEO Alex Gorsky has testified in a New Jersey state trial weighing punitive damages, but only because Superior Court Judge Ana C. Viscomi ordered him to testify. The case involved four people who claimed J&J talcum powder was contaminated with asbestos and caused them to develop a deadly form of cancer. In September, a separate jury ordered J&J to pay the Plaintiffs $37.3 million in compensatory damages.

Judge Viscomi found that previous statements made by the chief executive indicated he had personal knowledge that would help jurors better evaluate whether Johnson & Johnson acted maliciously or disregarded Plaintiffs’ rights. For example, during a December 2018 interview on CNBC’s “Mad Money,” Gorsky denied that the company’s talc-containing products contained asbestos. Judge Viscomi said:

The court does not view this as ending with the time period of use by the Plaintiffs, but rather at issue in a
punitive damages phase is whether the conduct is ongoing.

As widely published, on Oct. 18, 2019, Johnson & Johnson recalled one lot of its iconic Johnson’s Baby Powder after the Food and Drug Administration (FDA) found the powder was contaminated with trace amounts of asbestos, a known carcinogen. The company has since rejected the test results, and still claims its talc products are safe.

Gorsky has repeatedly defended the safety of Johnson & Johnson’s talcum powder products, but refused to testify under oath at a U.S. congressional hearing to address the FDA’s findings.

Interestingly, Alex Gorsky told the jury in his testimony in the ongoing punitive damages trial that he had not read all the internal J&J documents related to potential asbestos contamination in J&J’s Baby Powder. Asked by one of the plaintiffs’ lawyers whether he read all documents linked to the damaging Reuters report, Gorsky replied, “I did not read all the documents but I would rely on the experts in these fields.”


Sources: Law360.com and National Law Journal

IV. AN UPDATE ON THE OPIOID LITIGATION

New data shows 100 billion opioid pills flooded U.S. over nine years

Data previously available only to federal agencies shows that opioid industry distributors and pharmacies unleashed 100 billion pain pills across the country over a nine-year span. The 100 billion figure adds another 24 billion pain pills distributed nationwide in 2013 and 2014 to previous data showing 76 billion pain pills spread between 2006 and 2012. The updated information was released on Jan. 15 by the Plaintiffs’ executive committee in the Opioid multidistrict litigation (MDL).

The public now has online access as of Jan. 15 to the two additional years of data on the U.S. Drug Enforcement Administration’s (DEA) system to monitor the flow of controlled substances, called the Automation of Reports and Consolidated Orders System (ARCOS).

Alabamians received more prescribed opioids per person than residents of any other state in 2018, according to data recently released by the U.S. Centers for Disease Control and Prevention. Patients in Alabama received 97.5 prescriptions per 100 people. The national average was 51.4 prescriptions per 100 people, according to the most recent surveillance data.

Several states have enacted even stricter regulations on prescription opioids. Fifteen states imposed seven-day limits on prescriptions for acute pain, including Oklahoma, Louisiana, South Carolina and Missouri. Some states have imposed five-day limits. These limits are not intended for patients already taking opioids long-term for chronic pain.

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

Source: Law360.com

Large Pharmacies Must Disclose 14 Years of Opioid Data

Some of the nation’s largest pharmacy chains must turn over an unprecedented 14 years’ worth of nationwide opioid prescription records to cities and counties that have filed suits against them over their role in the opioid epidemic. Judge Dan Aaron Polster, the Ohio federal judge overseeing the multidistrict litigation (MDL), ordered Walgreen Co., CVS Health Corp., Rite-Aid Corp., Walmart Inc. and other pharmacy retailers to produce records dating back to 2006 that will show how many customers obtained opioids from them and what safeguards were in place to ensure those prescriptions were legitimate, medically necessary and complied with the Controlled Substances Act, among other things.

The order mandating unprecedented levels of pharmacy data disclosure sets the stage for massive production both in the 2020 bellwether lawsuit in Cleveland involving these chains and for potentially thousands of similar cases across the U.S. That case, by the way, was continued and reset for Nov. 9, 2020.

Judge Polster told the pharmacies to first turn over records for Cuyahoga and Summit Counties, the two Ohio jurisdictions currently leading the charge in the MDL. Those counties are scheduled to conduct the first trial in the MDL in October, against the pharmacy Defendants. An earlier trial against drug manufacturers that had been scheduled for October 2019 was avoided when those Defendants settled with the counties for $260 million.

Judge Polster told the pharmacies to produce records for all of Ohio next, followed by Kentucky and West Virginia, two other states that figure prominently in the next bellwether trials. The judge said the pharmacies should then turn over complete nationwide records as soon as they can, although the Cuyahoga and Summit trial will be “limited to Ohio data.”

Special Master David Cohen on Jan. 27 outlined what data pharmacies have to turn over to local governments in the litigation, including information on non-opioids that are associated with “doctor-shopping.”

Special Master Cohen said that the pharmacies have to produce data for 14 benzodiazepines and four muscle relaxers, along with the prescription data for opioids. According to the Ohio Board of Pharmacy, the most glaring “red flag” combinations involve mixing opioids with a benzodiazepine and a muscle relaxer, Cohen said.

AmerisourceBergen Loses Bid To Shield Opioid Documents

In a potentially far-reaching decision, on Jan. 13 the Delaware Chancery Court ordered AmerisourceBergen Corp. to provide stockholders with records on its compliance with opioid drug distribution controls. Vice Chancellor J. Travis Laster rejected company claims that investor demands were too broad and lacked a “proper purpose.” The decision concluded that the investors representing two worker benefit funds had ample right to seek and inspect formal board materials under Section 220 of Delaware’s corporation laws.

Further, the court authorized a deposition to scope out other potential sources of information not yet identified because of the company’s refusal to cooperate. The Vice Chancellor wrote in his order:

In this case, the flood of government investigations and lawsuits relating to AmerisourceBergen’s opioid-distribution practices is sufficient to establish a credible basis to suspect wrongdoing warranting further investigation.

AmerisourceBergen is the nation’s second-largest drug distributor. There is a wave of public, regulator and political concern over addiction and deaths caused by the types of drugs that flooded the nation for more than a decade. The company was recently named as a Defendant in some of the more than 1,600 lawsuits now consolidated in federal multidistrict litigation (MDL) in the Northern District of Ohio. Vice Chancellor Laster said:

JereBeasleyReport.com
The plaintiffs have not approached AmerisourceBergen as part of an indiscriminate fishing expedition or out of mere curiosity. AmerisourceBergen is suffering a significant corporate trauma, as evidenced by its recent offer (along with the two other largest opioid distributors) to pay $10 billion to settle with the state attorneys general who are pursuing claims in the MDL.

Opioid misuse and addiction, the Vice Chancellor said, “is a matter of national significance. There is a credible basis to suspect that AmerisourceBergen’s situation did not result from an ordinary business decision that, in hindsight, simply turned out poorly.” But a responsible stockholder cannot identify all of the potential uses for books and records “before knowing what the books and records reveal,” the Vice Chancellor said, acknowledging that findings from the company’s initial releases of information could prompt additional demands. The Vice Chancellor said further:

“The record is inadequate to determine whether the plaintiffs can inspect any other materials because AmerisourceBergen refused to provide any discovery into what types of books and records exist, how they are maintained, and who has them.”

Strong circumstantial evidence suggests that, by various means, AmerisourceBergen moved opioids into distribution channels it knew, or should have known, would lead to diversion and improper use. “Whether a corporation has engaged in this type of wrongdoing is a legitimate matter of concern that is reasonably related to the Plaintiffs’ interests as stockholders,” the Vice Chancellor said.

Lebanon County Employees’ Retirement Fund and Teamsters Local 443 Health Services & Insurance Plan are represented by Samuel L. Closic and Eric J. Juray of Prickett Jones & Elliott PA, Eric L. Zagar, Michael C. Wagner and Christopher M. Windover of Kessler Topaz Meltzer & Check LLP and Frank R. Shirripa, Daniel B. Rehns and Hillary Nappi of Hach Rose Shirripa & Cheverie LLP.

The case is Lebanon County Employees’ Retirement Fund et al. v. AmerisourceBergen Corp., (case number 2019-0527) in the Court of Chancery of the State of Delaware. Source: Law360.com

**McKesson and Stockholders Reach $175 Million Settlement In Opioid Suit**

Stockholders suing pharmaceutical distributor McKesson Corp. have reached a $175 million settlement to resolve claims the company’s board failed in its oversight of opioid sales even after incurring millions in fines for previous compliance failures. The stockholders told Chancery Court Judge Sam Glasscock III, they had submitted the settlement to a California federal court for preliminary approval. A preliminary approval hearing was held on Jan. 21. A hearing on final approval was set for April 21. The settlement covers all the parties to both the Delaware and California suits.

McKesson also would implement a number of reforms, including separating the roles of CEO and chairman, term-limiting directors, and reforming “the composition, mandate, and training of McKesson’s compliance committee.” In addition, the company would undergo “improvements in reporting to the compliance committee and reporting by the compliance committee, revisions to the company’s compensation clawback policy, and enhancements to the company’s disclosures relating to lobbying concerning controlled substances and adjustments to executive compensation based on legal or compliance costs.”

A number of stockholders filed similar suits in California federal court in 2017, alleging McKesson did not have proper oversight mechanisms in place to identify suspicious orders of the powerful opioid painkiller it sold even after entering into regulatory settlements with federal authorities in 2008. Later, a similar suit was filed in Delaware Chancery Court and the California actions were consolidated.

The shareholder suits followed a 2015 settlement with the U.S. Drug Enforcement Administration (DEA), the U.S. Department of Justice (DOJ) and several U.S. Attorney offices. That resulted in a $150 million civil penalty for McKesson and new obligations to strengthen its programs for monitoring and reporting suspicious opioid shipments. Investors claimed the settlement, which followed several previous enforcement actions, harmed the company at the expense of investors.

The Plaintiffs were represented by Reed R. Kathrein, Steve W. Berman and Ronnie S. Spiegel of Hagens Berman Sobol Shapiro LLP and James S. Notis and Meagan Farmer of Gardy & Notis LLP. Plaintiff Vladimir Gusinsky is represented by Jeffrey C. Block and Joel Fleming of Block & Leviton LLP.

The case is In re McKesson Corp. Derivative Litigation, (case number 1:17-cv-01850) in the U.S. District Court for the Northern District of California. Source: Law360.com

**The Beasley Allen Opioid Litigation Team**

Because of the enormity of the opioid litigation, and Alabama’s personal involvement in the multidistrict litigation (MDL), our firm has put together an “Opioid Litigation Team,” which includes these lawyers: Rhon Jones, Parker Miller, 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 other entities in the 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, Ryan.Kral@beasleyallen.com, Rick.Stratton@beasleyallen.com, William.Sutton@beasleyallen.com or Jeff.Price@beasleyallen.com.

**V. LEGISLATIVE UPDATE**

**The Legislative Session In Alabama—What’s On The Agenda In 2020?**

By the time you receive this Report, the 2020 legislative session has already gotten underway. Alabama’s legislators returned to the State House on Feb. 4. As usual, they will have a full plate. It remains to be seen how much they can get accomplished. There are several critically important issues that will make prioritizing difficult.

Topping the list are issues of prisons and criminal justice reform, rural health care, mental health services, and of course education, which has also re-introduced the debate over a state lottery as a funding source. Drilling down, there are also a number of specific bills already proposed. These include a call to eliminate the grocery tax, which proponents say places an undue burden on the poor, and a bill that would establish law enforcement officers as a protected class under Alabama’s hate crimes law.

**Prisons and criminal justice reform**

Alabama Speaker of the House Mac McCutcheon told Alabama Daily News he has spoken to Gov. Kay Ivey about prioritizing prison reform issues, which include understaffing and the need to upgrade “decaying” facilities. McCutcheon says he hopes to get support for a bipartisan plan that would address prison reform in a similar fashion to the State’s successful passage of the gas tax increase for infrastructure. The Rebuild Alabama Act, which
included a 10-cent gas tax increase to repair roads and bridges was a focus of the 2019 legislative session.

But while legislators and the public can connect the dots between a tax on the gas that powers their vehicles and the roads they drive those vehicles on, the link between funding and prisons may be a harder sell. Especially when so much attention is focused on education. Prisons are a necessary part of infrastructure, but nobody wants to think about them—until there’s a problem. Can the legislature show the public that time is now?

Rural health care

Thirteen hospitals in Alabama have closed within about a decade, according the Alabama Hospital Association. Seven of those were in rural parts of the state. If a rural community cannot financially support a hospital, how do we fill the gap to ensure the folks who live in those communities receive adequate medical care? Proposed solutions include establishing smaller medical clinics within communities, utilizing telemedicine to allow patients to virtually connect with physicians in larger cities, and establishing a medical transportation system to bring people to hospitals for care.

While all this sounds easy enough, what about funding? There are a large number of people in rural communities who are uninsured, even with the Affordable Care Act—for as long as that lasts. Both McCutcheon and President Pro Tempore Sen. Del Marsh have said they do not intend to present Medicaid expansion as a solution. While Gov. Ivey could expand Medicaid, the legislature would have to vote to fund it. Alabama Hospital Association Executive Vice President Danne Howard told WSFA that most recent estimates say 350,000 Alabamians would receive health care coverage if Medicaid is expanded. And telemedicine? Many rural communities do not have the infrastructure to support the broadband connection required. Gov. Ivey signed two bills in the 2019 session under an “Internet for All” initiative to expand access to this technology, which is a step in the right direction, but it will take time.

Education

State Education Department Superintendent Eric Mackey has asked the legislature for nearly $50 million to implement the Alabama Literacy Act, which has the goal of helping students learn to read proficiently by the fourth grade by ensuring early learners get a solid foundation in reading. The act was passed last spring and will require third-graders to read on grade level starting with the 2021-22 school year. In Alabama, 52% of 57,000 third-graders did not reach proficiency in reading during the 2017-18 school year. Some educators have complained about the act, calling it an “unfunded mandate.”

The Education Department had hoped to secure a federal grant to fund a key part of the program—training approximately 3,000 teachers—but that didn’t happen. Mackey says about $21 million of the ask would go toward training every K-3 teacher in the state in the science of reading; $18.5 million to implement summer reading programs for K-3 students identified with reading deficiencies, and $7.7 million to improve mental health services in K-12 schools, in cooperation with the Alabama Department of Mental Health.

Other education requests before the legislature include investment in pre-K education, an increase for four-year universities, performance-based funding in higher education, and a funding increase for operations and maintenance in the Alabama Community College System.

The need for money to fund education once again raises the issue of a state lottery. The issue was before the legislature in 2019 but died over concerns by some legislators about legalizing gambling, as well as arguments about whether or not to allow electronic gambling machines at dog tracks to compete with casinos operated by the Poarch Band of Creek Indians.

Without any doubt, Alabama has underfunded public education for decades, which has contributed to the vast list of problems currently holding Alabama back economically and socially. It’s high time for this legislature to properly fund education. Hopefully, the legislators will meet the challenge.

Bills of note

The legislature will once again consider a proposal to eliminate the grocery tax. While a lot of people support this idea in theory, Rep. Steve Clouse (R-Ozark), the Chairman of the House Ways and Means General Fund Budget Committee, said the issue is a lot more complex than most people realize. The grocery tax makes up a portion of the total sales tax—4%—which is combined with other local sales taxes. Cutting the grocery tax in Alabama would leave a deficit of about $400 million in revenue. Right now, that money goes to the state education budget, which obviously will need to make up the funding somehow.

Sen. Chris Elliott, from Fairhope, is bringing back a bill he sponsored in the 2019 session, which would increase penalties for those who commit crimes against law enforcement officers. Senate Bill 44 would add officers as a protected class under Alabama’s hate crime laws. The bill was approved by the Senate Judiciary Commit-
Markkaya Jean Gullett, who died in 2015 in a rollover crash in Minnesota of a Ford Explorer. Similarly, the Montana high court ruled that as long as Ford advertises, sells and services vehicles in Montana, it can be sued in the state on any claim that involves a Ford vehicle. Ms. Gullett was driving her 1996 Ford Explorer along a Montana highway in May 2015 when the tread on one of her tires separated, causing Gullett to lose control of the vehicle and roll into a ditch. She died at the scene. Her estate representative, Charles Lucero, sued Ford in Cascade County, Montana, in 2018.

The law has always allowed injured victims to sue in the state where they were injured if the manufacturer of the alleged defective product did business in the state. However, Ford is attempting to take away those rights and asking the Supreme Court to require an injured party to sue the manufacturer only in the manufactures home state. If Ford were to prevail, injured parties seeking redress by defective products would be required to travel to the places where the products were manufactured to make a claim. Such a rule would be unworkable in the real world where many products are imported and manufactured abroad in places like China. Countries where injured parties may not have the consumer protection laws like those here in the United States.

Gullett’s estate is represented by Deepak Gupta and Gregory A. Beck of Gupta Wessler PLLC. Bandemer is represented by Kyle W. Farrar, Wesley Todd Ball and Mark Bankston of Kaster Lynch Farrar & Ball LLP. The cases are Ford Motor Co. v. Montana Eighth Judicial District Court et al., (case number 19-368) and Ford Motor Co. v. Bandemer, (case number 19-569) in the U.S. Supreme Court.

Source: Law360.com

VII. AN UPDATE ON THE WHISTLEBLOWER LITIGATION

$3 Billion Recovered In Fraud Cases By Department Of Justice

The Department of Justice (DOJ) recovered more than $3 billion in settlements and judgments from civil cases involving fraud and false claims against the federal government during the last fiscal year. Assistant Attorney General Jody Hunt of the Department of Justice’s Civil Division announced the multi-billion-dollar settle-
ments on Jan. 10. The more than $3 billion was recovered in the fiscal year ending Sept. 30, 2019, the DOJ said in a press release. The DOJ said recoveries since 1986, when Congress strengthened the civil False Claims Act, now total more than $62 billion.

Ms. Hunt said the number of settlements and judgments show that the agency has placed a high priority on deterring fraud and making sure that tax dollars are lawfully spent. She stated:

_The continued success of the department’s False Claims Act enforcement efforts are a testament to the tireless efforts of the civil servants who investigate, litigate, and try these important cases as well as to the fortitude of whistleblowers who report fraud._

Of the more than $3 billion recovered, $2.6 billion came from cases that involved the health care industry, including drug and medical device manufacturers, managed care providers, hospitals, pharmacies, hospice organizations, laboratories and physicians, the DOJ said. The amounts included in the total number reflect only federal losses, but in many cases there was also money recovered for state Medicaid programs.

Encompass Health Corporation, formerly known as HealthSouth Corporation, is the country’s largest operator of inpatient rehabilitation facilities (IRF). According to information from the DOJ, the company paid $48 million in June to settle claims that some of its IRFs provided inaccurate information to Medicare to maintain their status as an IRF, and to earn a higher rate of reimbursement. There were also claims that some admissions to those IRFs were not medically necessary.

The DOJ acknowledged in the press release that the False Claims Act is the government’s main tool for recovering federal funds and property. In 1986, Congress strengthened the Act by increasing incentives for whistleblowers to file lawsuits alleging false claims on behalf of the government. Hopefully, the DOJ will resist efforts from others in the federal government who apparently don’t share Ms. Hunt’s beliefs relating to the FCA.

_Quit tam_ whistleblowers continued to be the driving force behind FCA cases in fiscal 2019, as they have been since the mid-1990s. They helped the government recoup $2.1 billion and were collectively awarded $265 million for their role, the department said. Ms. Hunt says: “Whistleblowers continue to play a critical role identifying new and evolving fraud schemes that might otherwise remain undetected.” We will take a separate look below at the U.S. Securities and Exchange Commission (SEC) Whistleblower program.

Source: AL.com

SEC WHISTLEBLOWER PROGRAM AWARDS $60 MILLION IN 2019, NEARLY $400 MILLION SINCE INCEPTION, BUT FACES THREATS FROM WITHIN

In December, we wrote about the Commodity Futures Trading Commission’s (CFTC) 2019 annual report for its whistleblower program and described in some detail how the program works. This month we will look at the U.S. Security and Exchange Commission’s (SEC) whistleblower program and its results for 2019. The SEC’s 2019 annual report on its whistleblower program noted that the SEC paid awards totaling $60 million to eight individuals who provided key information for enforcement actions. Included in that total was a $37 million award to a single individual. Since 2011, the SEC has awarded more than $387 million to whistleblowers who helped the SEC recover funds in fraud actions.

Both the CFTC and SEC programs were created by the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, so they share a lot in common. Like the CFTC’s program, Dodd-Frank directed the SEC to make monetary awards to eligible individuals who provide information about fraud.

To qualify for an award, the whistleblower must voluntarily provide original information (i.e. information not already known to the SEC) about violations of federal securities laws. The information must lead to a successful enforcement action by the SEC or certain other “related actions” resulting in the collection of monetary sanctions over $1,000,000.

The related actions that qualify for award are those brought by other federal or state agencies, a self-regulatory organization like the Financial Industry Regulatory Authority (FINRA), and even actions brought by foreign securities and law enforcement authorities. However, in order to qualify for the whistleblower award, the information must still be given to the SEC, and then shared by the SEC with those other entities in their discretion.

Also like the CFTC program, a commonly unknown aspect of the SEC’s program is that the person giving the information does not have to be an “insider” to qualify for an award. Persons who have never worked with or for the subject of the eventual SEC action can provide information that exposes fraud and still be eligible for an award. The 2019 annual report notes recipients who have been victim investors, professionals working in the industry, individuals with a personal relationship
with the wrongdoer, and persons with special expertise in the market who provide analysis.

Finally, like all whistleblower laws, Dodd-Frank provides protections for SEC whistleblowers. If a whistleblower is fired, harassed, demoted, or discriminated against because of the information or help he or she provides, he or she can file an action seeking reinstatement, double back pay, and all costs of litigation, including attorneys’ fees. As an added protection, the program permits whistleblowers to make anonymous claims. Whistleblowers are also permitted to be represented by counsel through the process to protect their rights, however, if a whistleblower is making an anonymous claim, they are required to be represented by counsel.

If all qualifications are met, the whistleblower is entitled to a minimum of 10% of the recovery obtained by the SEC, and can receive up to 30% in the discretion of the SEC, which will consider the significance of the information, the degree of assistance provided by the whistleblower, the SEC’s deterrence interest in violations of the law involved, and other factors.

But the SEC whistleblower program as it has always been known is facing a potential rule change, proposed by the SEC, that could limit awards in certain cases. While Dodd-Frank mandates that the award must be between 10-30%, as noted above, the SEC has discretion where to place the award within that range.

The proposed rule would permit the SEC to consider the overall size of the recovery as a factor in deciding how much to award. Further, in cases where the SEC recovery is greater than $100 million, the award would be limited to $30 million, unless that would be below the 10% minimum set by Dodd-Frank.

Counterintuitively, the rule will reduce the percentage of award in larger cases: paying less to the whistleblower and permitting the SEC to keep more. Not a single public company, investor advocacy group, public interest group, expert or whistleblower has come out in support of such a change.

It’s significant that Senator Charles Grassley (R-Iowa), Chair of the Senate Finance Committee and Chairman of the Senate Whistleblower Caucus, wrote a letter to SEC Chairman Jay Clayton opposing the measure and stating the SEC “has not pointed to any compelling reason to veer from award levels that are working and that are comparable to other federal award programs.”

As Senator Grassley notes, “there would be no recovery at all...were it not for the whistleblower,” so they should be awarded over other priorities of the SEC. The main support of the rule change has come from the Center for Market Competitiveness of the U.S. Chamber of Commerce.

Like all other whistleblower and qui tam programs, the SEC framework is complicated and must be followed to entitle an individual to an award. Competent representation is invaluable in these cases and, as noted above, mandatory if an individual wishes to report misconduct anonymously. If you are aware of fraud in the securities industry or in a publicly traded company, you could be rewarded for reporting the fraud to the SEC.

If you have any questions about whether you qualify as a whistleblower, contact one of the lawyers on our firm’s Whistleblower Litigation Team for a free and confidential evaluation of your claim. A lawyer on the team will be glad to discuss the potential claim with you either in person or by phone.

**Some FCA Settlements Of Note**

The following are recent settlements that were reached under the FCA. These are indications of the importance of whistleblowers in the efforts to combat fraud against the government.

**Pharmaceutical Company Pays $54 Million To Settle FCA Kickback Allegation**

Teva Pharmaceuticals has agreed to pay $54 million to settle a False Claims Act (FCA) case. The FCA complaint was filed by former Teva sales representatives Charles Arinstein and Hossm Senous in 2013. The drug maker paid doctors to prescribe multiple sclerosis drug Copaxone and Parkinson’s medication, Azilect. Doctors were paid “sham” speaking fees to over-prescribe the medication. The settlement comes less than a year after the drug maker settled an Oklahoma opioid case for $85 million.

The whistleblowers alleged that many of the doctors were paid honorariums for presentations that were never made and events that never took place. It appears that doctors who refused to prescribe the medications at a high rate were taken off the speaker’s list. To get back on the list, the doctors would have to undergo a special training and start writing more prescriptions. Both medications were covered by a federal health care program, which made the unlawful payments a violation of the Anti-Kickback Statute and the False Claims Act. The complaint alleges that some doctors were paid as much as $210,000 yearly in speaking fees.

The U.S. government declined to intervene in the case, but the whistleblowers continued to take on the pharmaceutical company. On Feb. 27, 2019, Judge Colleen McMahon of the Southern District of New York denied Teva's motion for summary judgment. In denying the motion, the Court found that the “Relators… introduced substantial evidence that Teva did, in fact, track speakers’ prescription writing,” and that “sales representatives linked prescriber habits with their retention as paid speakers for Teva.” The parties reached a settlement only after extensive pre-trial motions were filed and trial preparation was underway.

Source: National Law Review & PRNewswire.com

**ResMed Settles FCA Suits Over Referral Fraud For $39.5 Million**

ResMed Corp., a California-based medical equipment manufacturer will pay $39.5 million to settle five False Claims Act (FCA) lawsuits claiming it paid suppliers, sleep labs and health providers illegal kickbacks to sell more of its products for sleep disorders. The settlement ends five qui tam lawsuits filed by whistleblowers in federal courts in California, South Carolina, New York and Iowa alleging the company violated the Anti-Kickback Statute by providing sleep labs with free airway pressure masks and diagnostic machines and non-sleep specialist physicians with free home sleep testing in exchange for patient referrals. All of those items were then charged to Medicare, Medicaid and TRICARE, giving rise to the FCA violations, according to the government. The government will receive $37.5 million while various states will get $2 million from the settlement.

Source: Law360.com

**$27 Million Recovered Under The False Claims Act For Illegal Transportation Of Materials In Iran**

Unitrans International Inc. (Unitrans), a Virginia defense contracting company, has agreed to pay $27 million to resolve a civil False Claims Act (FCA) suit filed by Rory Maxwell, John Bush, and Supreme Foodservice GmbH. Along with the FCA claim, Unitrans was separately charged with criminal obstruction. However, as part of the global resolution, Unitrans entered into a non-prosecution agreement with the Department of Justice (DOJ) to resolve the obstruction charges in exchange for agreeing to pay $31.5 million in criminal penalties and victim compensation. The $27 million civil settlement involving the FCA claims credits $13.5 million of Unitrans' $31.5 million payment under the non-prosecution agreement. As a result, Unitrans is required to pay an additional $13.5 million to resolve the FCA claims.

The case involves a government procurement contract award by Defense Logistics Agency (DLA) to Anham FZCO, a company that is incorporated under the laws of the United Arab Emirates, to provide logistical support and construction materials to United States troops in Afghanistan. The
DLA contract required Anham to certify compliance with United States laws that prohibit the shipment of materials through Iran. From November 2011 to May 2012, Unitrans provided the logistical services for Anham and transported construction materials through Iran to Afghanistan. The construction materials Unitrans shipped through Iran were for purposes of constructing a warehouse in Afghanistan used by Anham to perform troop support under the DLA contract.

The §27 million agreement with Unitrans resolves claims made pursuant to the FCA that alleged Unitrans, along with Anham, fraudulently induced DLA, as well as the United States Army, to award wartime contracts for certain materials, including trucks and food, by falsely certifying compliance with United States sanctions against Iran. The agreement also resolves multiple other claims that Anham falsely represented construction progress on its warehouse in order to induce the DLA to award the contract to Anham to supply food to United States troops in Afghanistan.

Source: www.justice.gov

THE BEASLEY ALLEN WHISTLEBLOWER LITIGATION TEAM

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

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

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

A lawyer on our Whistleblower Litigation Team will be glad to discuss any potential whistleblower claim with you either in person or by phone. You can reach these lawyers by phone at 800-898-2054 or by email at Larry.Golston@beasleyallen.com, Lance.Gould@beasleyallen.com, Paul.Evans@beasleyallen.com, Leslie.Pescia@beasleyallen.com, Leon.Hampton@beasleyallen.com, Tyner.Helms@beasleyallen.com and Lauren.Miles@beasleyallen.com.

VIII. PRODUCT LIABILITY UPDATE

IKEA TO PAY $46 MILLION TO SETTLE FURNITURE TIP-OVER DEATH SUIT

The family of a 2-year-old boy who died when an Ikea dresser fell on him has reached a $46 million settlement with Ikea. Attorneys for the family of Jozef Dudek believe it to be the largest wrongful death settlement for a child in U.S. history. The settlement resolves a 2018 suit filed in Pennsylvania state court by Dudek’s family, and nearly amounts to the $50 million Ikea agreed to pay in 2016 to the families of three young boys who died in similar incidents.

According to the suit, Craig Dudek found his son Jozef pinned between the drawers of a Malm dresser that had fallen on top of him in their California home in May 2017. Jozef was later pronounced dead at West Anaheim Medical Center. The Dudeks alleged that Ikea had known about tip-over hazards and incidents associated with their dressers for years, including the death of a 20-month-old girl as early as 1989.

The Dudeks further claimed that Ikea’s efforts to recall the dressers were too little and too late to prevent further tragedy. In June 2016, Ikea began recalling roughly 29 million chests and dressers with a propensity to tip over and trap children underneath, following the deaths of six children and nearly 30 injuries. The Dudek family said they never received word of the recall.

Under the terms of the settlement, Ikea will also meet with an advocacy group that pushes for mandatory stability standards. Additionally, Ikea has promised to broaden its outreach related to the recall. The Dudeks have stated they will donate $1 million from the settlement to consumer organizations advocating for more rigorous stability testing for dressers.

The case is Dudek v. Ikea U.S. Retail LLC, (Case No. 171204131) in the Court of Common Pleas of Philadelphia County, Pennsylvania.

Source: Law360.com

TAKATA RECalls 10 MILLION MORE AIR BAG INFllators

Takata is recalling 10 million more air bag inflators that could explode and shoot off shrapnel in what’s possibly the last phase of the largest recall in U.S. history. The recalled inflators were interim remedies installed in air bags until a more permanent solution could be found following the initial worldwide recall of about 50 million Takata air bags, according to a report posted on the National Highway Traffic Safety Administration (NHTSA) website.

The 10 million figure is an estimate of the amount of inflators made for the U.S. market, according to Takata. While the recalled inflators use the same chemical compound found in the faulty inflators that have killed at least 25 people worldwide and injured hundreds, Takata said it is not aware of any ruptures of the interim inflators. Takata said it does not know how many vehicles are affected by the most recent recall and that many of the interim inflators were never installed.

The inflators were sold to 14 automakers, including Audi USA, Subaru of America Inc. and BMW of North America. Some automakers have already announced their own recalls, according to NHTSA's report.

The cheap but volatile ammonium nitrate used by the company to inflate air bags was prone to misfire, especially in humid conditions. The deaths and injuries caused by the faulty air bags prompted the worldwide recall that, according to NHTSA, involved about 37 million vehicles and 19 automakers.

Along with the worldwide recalls, Takata pled guilty to wire fraud in 2017, agreed to pay $1 billion in fines and restitution and acknowledged it ran a scheme to use false reports and other misrepresentations to convince automakers to buy air bag systems that contained faulty, inferior or otherwise defective inflators.

Under the terms of the settlement, Takata also agreed to pay a $25 million criminal fine and to establish a $125 million restitution fund for people who were injured or will be injured by a malfunctioning Takata air bag inflator. The company also agreed to create an $850 million fund to benefit automakers who received the falsified data and reports or who purchased the potentially dangerous inflators.

In 2015, NHTSA also levied a $200 million fine on Takata—its largest ever—in a deal that saw the company admit that it failed to tell the agency about the defect, despite knowing about it, and withholding important information. The inflators sparked massive litigation, with consumers first filing suit against Takata and auto manufacturers in 2014. The company filed for
bankruptcy in Delaware and Japan in June 2018.
Source: Law360.com

**S$20 Million Pelvic Mesh Award Against Johnson & Johnson Upheld**

A Seventh Circuit Court of Appeals panel has upheld a $20 million judgment in favor of a woman who was harmed by the company’s Prolift pelvic mesh device. The panel rejected a “flurry of arguments” made by Johnson & Johnson (J&J) in its unsuccessful bid to convince the court to throw out the judgement. The three-judge panel described the appeal by J&J subsidiary Ethicon Inc. as a “broad-spectrum attack” on the judgment of the Indiana federal court that handed out the $20 million award in Aug. 2018, reducing the $35 million jury verdict in the case.

The unanimous opinion by U.S. Circuit Judge Diane S. Sykes first dealt with Ethicon’s contention that federal law trumps Indiana’s state product liability laws. The opinion said: “Federal law did not stop Ethicon from satisfying its state-law duties regarding Prolift’s design.”

The panel also addressed Ethicon’s argument that it was wrongly barred from presenting evidence from the U.S. Food and Drug Administration (FDA) that its pelvic mesh was safe and effective. Rejecting that argument, the judges said: “It was reasonable to conclude that the probative value of this evidence was minimal at best and that admitting it would precipitate a confusing sideshow.”

Finally, the panel found that the lower court judge had erred by using a federal standard rather than a state standard when reviewing the damages award. But the judges said “the error was harmless” because the award “was not excessive under Indiana law.” The judges also said there was “no basis to disturb the jury’s conclusion that Ethicon’s conduct warranted punitive damages.”

Indiana resident Barbara Kaiser filed the suit in 2012, alleging that contrary to Ethicon’s marketing to the medical community and patients, the Prolift device has high failure, injury and complication rates and has caused severe injuries to a “significant” number of women. Kaiser was implanted with the Prolift device in January 2009 to treat her pelvic organ prolapse, according to court documents. Two years later, she learned from a doctor that her complaints of low pelvic pain could be tied to the implant, she said.

An Indiana jury awarded Kaiser and her husband $10 million in compensatory damages and $25 million in punitive damages in March 2018, but the trial court judge reduced the punitive award by $15 million, finding it to be excessive and unreasonable.


Source: Law360.com

**Jury Absolves Ethicon in A Pelvic Mesh Suit In Florida**

A Florida federal court jury found last month that Johnson & Johnson subsidiary Ethicon wasn’t liable in a woman’s suit alleging a defective pelvic mesh caused her constant pain. The jury found that Charlotte Salinero had failed to show that the Artisyn Mesh was defectively designed. The Plaintiff had claimed that the pelvic mesh product was inserted in 2012 and had to be removed five years later because of fistulas, fecal incontinence and severe pain. It appears that the Plaintiff had other health problems and surgeries that could have affected the jury’s verdict.


Source: Law360.com

IX.
AN UPDATE ON THE JUUL LITIGATION

The litigation against vape device manufacturer JUUL continues to grow exponentially. This is an extremely important litigation for the health and safety of an entire generation of young people in this country. Beasley Allen is honored to be at the forefront of this important litigation.

There are several different types of state and federal lawsuits that constitute the JUUL litigation:

• Individual personal injury cases;
• Class action cases;
• School district cases;
• County or municipality cases; and
• Attorney general cases.

**The Federal MDL**

The JUUL multidistrict litigation (MDL) was formed on Oct. 2, 2019 and assigned to Judge William Orrick in the Northern District of California. The MDL consists of individual personal injury cases, school district public nuisance cases, county and municipality cases, and class action cases. Approximately 300 cases have already been filed in or transferred to the MDL; thousands of additional cases are expected. JUUL Labs, Altria, Phillip Morris, and PAX Labs are currently Defendants in the MDL. Judge Orrick recently appointed a 21-attorney Plaintiff Steering Committee—including Beasley Allen’s Joseph VanZandt—to lead the litigation on behalf of Plaintiffs nationwide.

JCCP—California State Court Litigation

JUUL also faces an active consolidated litigation in California state court. Judge Ann Jones of the Superior Court of Los Angeles County has been assigned to manage the California state court litigation against JUUL, which also contains dozens of individual, class action, and school district cases against JUUL. An active Judicial Council Coordination Proceeding (JCCP) litigation against JUUL in Los Angeles means that JUUL will likely face multiple trials in federal court in San Francisco and state court in Los Angeles. Judge Jones held an initial hearing on Jan. 28, 2020, and is expected to appoint Plaintiff leadership for the JCCP soon.

**School District Litigation**

In the past several months, Beasley Allen lawyers have been engaged in conversations with teachers, principals, superintendents and school boards about the impact of JUUL and vaping on our children and our schools. Universally, our public schools have a mandate to deliver educational services in an atmosphere that is safe, healthy and conducive to learning. Because JUUL has exposed a new generation of children to record levels of nicotine addiction, schools are being uniquely impacted and have been forced to incur a multitude of costs to address this problem and are also faced with the challenge of how to remedy and abate the situation.

Rather than continue to be victimized, dozens of school districts around the country have turned to the legal system to hold JUUL accountable for the harm inflicted upon our educational environment. Beasley Allen has already filed multi-
ple cases on behalf of school districts. The school district cases are poised to play a key role in both the MDL and California state court litigations against JUUL.

**STATE ATTORNEY GENERAL SUITS**

Similar to suits filed in the opioid litigations, JUUL Labs is facing claims from a growing number of state attorneys general, including in North Carolina, New York, California, Illinois and Washington D.C., in state court on behalf of state residents. In the suits, the AGs argue that JUUL’s aggressive advertising of its multi-flavored products contributed to a public health crisis that has left countless state residents, many of whom are teenagers, addicted to its products and fighting for their health. These suits point out the fact that in 2010, the U.S. Surgeon General concluded that nicotine has the same effect on the brain as cocaine and heroin. The suits further allege that even infrequent use of nicotine products is enough to put teens at risk for addiction due to the fact that their brains are still developing and are therefore prone to nicotine addiction at a much lower concentration than in adults older than 26. AG suits also point out that in 2016 roughly one-third of surveyed teens reported that they thought JUUL products were harmless. It is further argued that JUUL has seized upon Big Tobacco’s advertising and flavoring tactics allowing it to profit at the expense of the health of state residents.

The suits are:

- People of the State of New York v. Juul Labs Inc. in the Supreme Court of the State of New York, County of New York.
- People of the State of California v. Juul Labs Inc. in the Alameda County Superior Court.
- People of the State of Illinois v. Juul Labs Inc., Case No.: 2019CH14302, in the Circuit Court of Cook County.

Source: https://blog.counselfinancial.com/finance-corner/author/elizabeth-dinardo-esq-kelly-anthony-esq

**JUUL ACCUSED OF THEFT OF WORK PRODUCT**

Bonnie Halpern-Felsher, a Stanford professor, has spent more than 20 years of her career trying to prevent tobacco use. Her current focus is on the teen vaping epidemic. In 2016, Professor Halpern-Felsher developed a Tobacco Prevention Toolkit that is being used by educators in every state and five countries; reaching at least 300,000 youth throughout the 2018-2019 school year.

Professor Halpern-Felsher by 2018 had created an online prevention class and updated her toolkit to include the JUUL, the biggest vape manufacturer in the country. JUUL had just been publicly blamed by public health advocates and regulators for an entire generation’s new addiction. At the same time, JUUL was shopping around its own school curriculum, an anti-vaping campaign, and was offering schools thousands of dollars to implement it.

Professor Halpern-Felsher was shocked to discover JUUL had included some of her toolkit slides without permission. Not only were they being used without approval, JUUL was also using slides that downplayed the addictive quality of JUUL. Halpern-Felsher says that the slides did not present the chemicals contained in JUUL pods as harmful, nor did they include the information that one JUUL pod contains as much nicotine as a pack of cigarettes. JUUL also associated itself with the Stanford curriculum, giving the appearance that Professor Halpern-Felsher had helped it create its program.

Professor Halpern-Felsher said there’s nothing inherently wrong with teaching teens about nicotine addiction, “aside from the fact you can’t steal someone else’s curriculum and pretend it’s yours and push back when we tell you not to.” The real problem, in her view, was this:

*Even though the class acknowledged that nicotine is highly addictive, it failed to connect the dots to JUULing. It didn’t mention, for instance, that a single 5% Juul pod contains as much nicotine as a pack of cigarettes—more than many other e-cigarettes on the market, and almost triple the legal maximum for pods in Europe. If you’re really trying to prevent people from using your product, then your curriculum would be about the harms of your product. We know they do not make any of those connections.*

Stanford’s lawyers sent JUUL a cease-and-desist letter in April 2018, but JUUL continued to use versions of the school’s materials. JUUL has since abandoned the program, under scrutiny of health advocates and government regulators.

The Tobacco Prevention Toolkit and trainings are free of charge to parents and educators. Visit http://med.stanford.edu/tobacco prevented.html. Source: Buzzfeed News

**IT IS NOT ENOUGH TO ONLY RAISE THE LEGAL AGE TO 21 IN AN EFFORT TO STOP A FLAVOR BAN—THE TOBACCO INDUSTRY BACKS IT**

President Trump has signed into law a federal spending package that includes a provision that raises the legal age to purchase tobacco from 18 to 21. This law covers cigarettes, cigars, loose tobacco, vape devices and other electronic nicotine delivery systems (ENDS), nicotine gels and dissolvable pouches. The Tobacco 21 bill was originally introduced by none other than Senate Majority Leader Mitch McConnell, who has received financial backing from the tobacco industry and has been a staunch supporter of the industry.

You may be surprised to learn that Big Tobacco supported the legislation. Altria (Marlboro) and vaping giant JUUL lobbied hard for the bill. Critics surmise the support is to avoid harsher crackdowns on underage vaping, specifically flavor bans. President Trump previously announced plans to ban all flavors but has wavered after objections from vaping advocates and conservative groups.

Matthew L. Myers, President, Campaign for Tobacco-Free Kids is critical of the failure to ban flavors. In a statement, he said:

*Raising the tobacco age to 21 is a positive step, but it is not a substitute for prohibiting the flavored e-cigarettes that are luring and addicting our kids. Juul and Altria have hijacked the tobacco 21 issue for their own nefarious reasons as a shield to fight efforts to prohibit flavored e-cigarettes. It is deeply disappointing that the budget agreement gives these tobacco companies what they want without addressing the crisis caused by flavored e-cigarettes. To reverse the e-cigarette epidemic, policy makers must prohibit flavored e-cigarettes and cannot be limited by what the tobacco industry says is acceptable.*

The evidence is clear that flavored e-cigarettes are driving the youth epidemic. Most youth e-cigarette users use flavored products and cite flavors as a key reason for their use. As long as flavored e-cigarettes remain available, kids will find ways to get them and this epidemic will continue. Altria, Juul and other e-cigarette manufacturers know this, which is why they are pulling out all the stops to fight efforts to prohibit all flavored e-cigarettes.

Over 5.3 million kids now use e-cigarettes and this epidemic gets worse every day, with recent trends indicating that nearly 5,000 more kids start
using e-cigarettes each day. We will not solve this crisis without prohibiting flavored e-cigarettes.

Once the tobacco companies gave their blessing, other more aggressive bills that were supported by health advocacy groups suddenly lost traction. In nine months of 2019, JUUL spent more than $31 million in lobbying fees, nearly double the 2018 budget, and Altria spent approximately $4.7 million. American Lung Association (www.lung.org) says on its website:

“While Tobacco 21 is an important policy, because the youth vaping epidemic is at an all-time high, there is much more work to be done to save lives. In addition to Tobacco 21 we need to eliminate all flavored tobacco products, stop online (remote) sales and increase taxes on all tobacco products including e-cigarettes. In addition, [the U.S. Food and Drug Administration] FDA must begin its premarket review of all e-cigarettes, hookah, cigars and pipe tobacco.

Legal age restriction is a start, but it is not enough to bring an end to this epidemic. The American people are demanding action to put an end to the tobacco and now the vaping industry running the show in Congress and at the FDA.”

Sources: WTTW.com, CNN, TobaccoFreeKids.org and American Lung Association

New Vaping Laws Fail To Change Habits Of JUUL Employees

Based on Beasley Allen’s involvement in the JUUL litigation, we have learned without any doubt the JUUL products are highly addictive. However, some folks may not yet be totally convinced. If you are in the latter category, and wonder whether these products are addictive, consider the very real addiction of JUUL employees to their own product.

According to reports in the New York Post and the Wall Street Journal, JUUL employees continue vaping at their desks and in their office despite a wave of new laws in California and New York designed to prohibit the vaping in public places such as office buildings. According to these reports, vaping in the JUUL offices initially declined after passage of these laws, but did not last long.

Founders James Monsees and Adam Bowen are reported to vape “openly” at work while many other employees vape at their desk. One employee reportedly compared the scene at JUUL’s offices to those of the fictional advertising agency depicted in the once popular TV show Mad Men, where employees in 1960s New York smoked openly in their offices and throughout the building. The only difference is JUUL employees are using a more dangerous product than the cigarettes smoked by their fictional counterparts.

JUUL employees’ addiction to their own products is even more alarming considering the potential cost associated with vaping at their office. Reportedly, staffers receive a warning for a first infraction, followed by a cut to their bonus for second and third infractions, and could be fired for a fourth violation. These financial sanctions pale in comparison to the health risks JUUL use creates both to the public and to the user. The U.S. Surgeon General warned that vaping exposes bystanders to heavy metals and other substances that cause health risks. Other reports link vaping to lung disease.

Sources: New York Post and Wall Street Journal

X. MASS TORTS UPDATE

LONG-TERM USE OF ELMIRON LINKED TO RETINAL MACULOPATHY

In the last year, researchers have noticed an association between long-term use of Elmiron (pentosan) with an eye disease called retinal maculopathy. We will say more about this drug before discussing its association to a very serious eye disease.

Elmiron is a medication approved to treat bladder pain or discomfort associated with interstitial cystitis. Interstitial cystitis is a chronic condition where the nerves that communicate with the brain cause sufferers to experience the urge to urinate more often than most people. Interstitial cystitis can cause bladder pressure and pain, as well as pelvic pain. Symptoms range from minor discomfort to severe pain. Elmiron is one treatment. Other approaches to treating the symptoms of interstitial cystitis include physical therapy, nonsteroidal anti-inflammatory drugs, tricyclic antidepressants, and antihistamines.

In May 2019 a team of researchers from Emory University submitted a case series report at the American Urology Association’s Annual Meeting in Chicago. The series reported 10 patients with interstitial cystitis who had taken Elmiron and developed macular disease. These patients ranged in age from 38 to 68. The Elmiron group reported symptoms such as difficulty reading and difficulty adapting to dim lighting. On examination, the team noted symmetric pigmentary changes in the retina.

More advanced imaging showed that the abnormalities were primary in the retinal pigment epithelium. The Emory team noted that their clinic has seen 156 patients with interstitial cystitis not treated with Elmiron, and that those patients did not demonstrate the pigmentary maculopathy observed in the Elmiron group.

Later in the year, two larger studies were released, strengthening the association between Elmiron and retinal damage. In October 2019, researchers at Kaiser Permanente identified 140 Kaiser patients who had taken Elmiron for a minimum of five years. Ninety-one of those patients agreed to an eye examination. Researchers observed that 24% of these patients showed eye damage, with the level of damage increasing with increased exposure to Elmiron.

In November 2019, researchers at the Emory Eye Center used data from a U.S. medical claims database to identify long-term users of Elmiron. That team found that patients who took Elmiron for seven years or more had a significantly increased risk of developing atypical maculopathy. A case study published the same month by Dr. Rachel Huckfeldt describes the progression of retinal maculopathy in a patient who had been taking Elmiron for 18 years. Dr. Huckfeldt observed continued progression of maculopathy in her patient for up to six years after she discontinued use of Elmiron.

Researchers have emphasized an urgent need for additional research on this association. They encourage Elmiron users who are experiencing vision changes to consult with their health care providers and ask for an evaluation by an ophthalmologist.

Elmiron was first approved in September 1996. The new drug application (NDA) is currently held by Janssen Pharmaceuticals. The makers of Elmiron have never warned users about the risk of developing retinal maculopathy.

Beasley Allen lawyers are investigating cases involving individuals who have been diagnosed with retinal maculopathy after taking Elmiron. For more information, contact Frank Woodson, Liz Eiland or Melissa Prickett, lawyers in our Mass Torts Section, at 800-898-2054, or by email at Frank.Woodson@beasleyallen.com, Liz.Eiland@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

Sources: Mayo Clinic, IC-network.com, Review of Ophthalmology and FDA
XI. BUSINESS LITIGATION

CAPACITOR BUYERS SEEK APPROVAL FOR $63 MILLION SETTLEMENT WITH KEMET AND SHIZUKI

Direct purchasers have moved for preliminary approval of a $63 million settlement bundle with electronics companies Kemet Corp. and Shizuki Electric Co. This is in the fourth round of settlements to come out of price-fixing multidistrict litigation (MDL) in California federal court against capacitor manufacturers. In this settlement, Kemet will pay $62 million and Shizuki will pay $1 million. More than $200 million in settlements have already received preliminary or final approval in the case involving “22 different corporate families,” according to a motion filed on Jan. 6.

The buyers said that the latest settlements, which still leave direct purchaser claims pending against the likes of Panasonic Corp. and Sanyo Electric Co. Ltd., meet all the requirements necessary for approval and are in line with previous settlements in the case. It was stated in the motion:

[T]he $63 million in cash payments alone from this round of settlements is over 12% of the single damages estimate calculated by the class’ expert. The 11 settling defendants to date, including Kemet and Shizuki (out of 22 corporate defendant families), will have provided over 52% of the damages estimated by the class’ experts—with some of the most culpable parties not having yet settled.

The case continues against the remaining non-settling Defendants. The case is set for trial on March 2, 2020. Direct and indirect buyers have accused overseas manufacturers of conspiring to fix prices for aluminum, tantalum and film capacitors over a decade. U.S. District Judge James Donato agreed in November 2018 to certify a class of direct buyers, a certification currently under challenge based on claims of new evidence showing a large segment of the class can’t demonstrate any antitrust injury.

The litigation dates to July 2014, when Chip-Tech filed the first suit in the consolidated case, which has resulted in some settlements. The federal government has also taken an interest in the alleged price-fixing, conducting its own investigation and filing charges against eight manufacturers it alleged participated in the scheme. All pled guilty, according to the U.S. Department of Justice (DOJ), and received fines totaling up to more than $150 million.

The direct purchaser settlement with Kemet and Shizuki wasn’t the only settlement on the table on Jan. 6. The indirect purchasers moved for final approval on a nearly $31 million settlement bundle with Elna Corp., Matsuo Electric Corp., Nichicon Corp. and Panasonic.

Two Defendants are still actively fighting the indirect buyers’ side of the case: Shinyei Kaisha and Taitsu Corp. Two more, Nissei Electric Co. Ltd. and Toshin Kogyo Co. Ltd., are in default. “These settlements, if finally approved, resolve the electrolytic side of the case. Shiyei and Taitsu are alleged to have participated in the film capacitor industry.

The direct purchasers are represented by the Joseph Saveri Law Firm Inc. The indirect purchasers are represented by Cotchett Pitre & McCarthy LLP. The consolidated action is In re: Capacitors Antitrust Litigation, (case number 3:14-cv-03264), in the U.S. District Court for the Northern District of California. The master file is case number 3:17-md-02801, also in the U.S. District Court for the Northern District of California.

Source: Law360.com

WALMART KEEPS $800,000 BP PAYOUT FOR ‘STARTUP’ DAMAGE

The Fifth Circuit Court of Appeals ruled last month that Walmart is entitled to a more than $800,000 payout for a Mississippi Gulf Coast store that qualified as a “startup business” under a settlement program stemming from the 2010 explosion and spill aboard BP’s Deepwater Horizon oil rig. A three-judge panel decided 2-1 that a Louisiana district court didn’t abuse its discretion by denying BP PLC’s request that the court review whether the retailer’s Mississippi location qualified under the settlement program as a startup business. BP’s claims didn’t establish that the misapplication of the startup label to Walmart was a recurring issue, so the lower court was not obligated to review the case, U.S. Circuit Judge Stuart Kyle Duncan wrote for the majority.

The Mississippi store first opened in 2003 but was forced to close because of damage it suffered in 2005 from Hurricane Katrina. The store was rebuilt and eventually reopened in October 2009, just six months before the BP Deepwater Horizon disaster. Because of this pause in operations, the settlement agreement program qualified the store as a startup and awarded it $817,592.13. But BP argued it should have qualified as a normal business and received nothing. Judge Duncan wrote:

We find it difficult to believe that the parties intended to foreclose recovery by businesses that suffered spill-related losses mere months after finally resurfacing from the Gulf Coast’s previous catastrophe, Hurricane Katrina.

Normal businesses were granted awards if they could prove that profits during the spill year were less than profits from previous years. Under the settlement agreement, a startup business was defined as a business with less than 18 months of operating history at the time of the Deepwater Horizon disaster. The settlement agreement allows startups to receive awards if they could prove their profits during the spill year were less than their profits in subsequent years.

This is the second Fifth Circuit appeal battle that BP lost to Walmart in January. A panel had ruled earlier in the month that a Louisiana district court was right to refuse BP’s challenge to Walmart’s bid to collect $15 million from the Deepwater Horizon settlement plan. It said BP’s arguments that Walmart stores hadn’t provided enough accounting information to the claims administrator were unconvincing.

As we previously reported, the multibillion-dollar Deepwater settlement was reached in March 2012, nearly two years after the spill, to resolve hundreds of thousands of claims composing most of the property damage, economic loss and medical claims that became part of multistate litigation. BP challenged the settlement, but it was upheld in two split decisions by the Fifth Circuit. The U.S. Supreme Court in 2014 refused to take the case. Beasley Allen represented the State of Alabama, numerous other governmental entities and business owners in the BP litigation. We also represented lots of homeowners on the Gulf Coast.

Walmart is represented by J. Hoke Peacock III and Neal S. Manne of Susman Godfrey LLP. The case is BP Exploration & Production Inc. et al. v. Claimant ID 100541107, (case number 18-31275) in the Fifth Circuit Court of Appeals.

Source: Law360.com

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XII. AN UPDATE ON SECURITIES INSURANCE AND FINANCE LITIGATION

SUPREME COURT SENDS IBM STOCK DROP CASE BACK TO 2ND CIRCUIT

The U.S. Supreme Court has refused to hear the question of whether companies with their own stock in employee retirement plans have an ERISA-imposed obligation to act on insider information that could lower the stock’s price. But the ruling in a case involving IBM offers insight into how the court might answer in the future. In concurring opinions issued alongside a per curiam decision, which remanded the case to the Second Circuit due to inadequate development of the record, Justices Elena Kagan and Neil Gorsuch offered opposing takes on what the Employee Retirement Income Security Act (ERISA) requires of “insider-fiduciaries”—company executives who also manage employee stock plans.

Justice Kagan said that executives must act on insider information that could affect the plan when doing so wouldn’t violate securities laws. Justice Gorsuch said no such responsibility should exist and that insider-fiduciaries should keep their roles separate: Justice Gorsuch said if they learn information while wearing their “corporate officer hat,” they shouldn’t have to use it when they put on their “fiduciary hat.” He added:

Because ERISA fiduciaries are liable only for actions taken while ‘acting as a fiduciary,’ it would be odd to hold the same fiduciaries liable for ‘alternative action[s they] could have taken’ only in some other capacity.

But it was also telling that the Supreme Court didn’t reverse the Second Circuit’s opinion, which had invited claims that IBM insider-fiduciaries flouted ERISA by failing to disclose earlier that IBM’s microelectronics business was bleeding money.

Hopefully the Supreme Court will eventually rule on how the duties of corporate insiders under securities law intersect with their fiduciary duties. While the high court’s opinion didn’t provide a resolution to the question of how insider-fiduciaries should manage benefit plans, an answer may come later.

The Supreme Court sent the case back because the legal arguments hadn’t been addressed by the Second Circuit. The high court reminded all that it is “a court of review, not of first view.” “The Second Circuit did not address the[se] argument[s], and, for that reason, neither shall we,” the court wrote in its per curiam opinion.

The workers are represented by Samuel E. Bonderoff, Jacob H. Zamansky and James Ostaszewski of Zamansky LLC. The federal government is represented by U.S. Solicitor General Noel J. Francisco and Jonathan Y. Ellis of the U.S. Department of Justice. The case is Retirement Plans Committee of IBM et al. v. Jander et al., (case number 18-1165) in the Supreme Court of the United States.

Source: Law360.com

XIII. EMPLOYMENT AND FLSA LITIGATION

NINTH CIRCUIT AFFIRMS WALMART TRUCKERS’ $55 MILLION WAGE JURY VERDICT

The Ninth Circuit Court of Appeals has affirmed a $54.6 million jury verdict for truckers who accused Walmart of violating California law by failing to pay them during breaks and other work interruptions. A three-judge panel rejected Walmart’s contention that the Northern District of California lacked jurisdiction to hear the case and that the workers weren’t owed pay for layovers, rest breaks and inspections as a matter of law.

The panel said the lead Plaintiffs were adequate class representatives and that California law let the drivers seek pay for these interruptions under certain circumstances, which the jury found were present in this case. “It is improper for this court to play armchair district judge,” said Judge Eugene Siler, a member of the Sixth Circuit who sat on the Ninth Circuit panel by designation.

“In the end, while Wal-Mart makes some compelling points, Wal-Mart raises no reversible error.”

The panel was unanimous on most facets of the complex case, though Judge Darmuid O’Scaillan said the trial court should have let the jury resolve one dispute the court decided in the drivers’ favor.

Source: Law360.com

XIV. PREMISES LIABILITY UPDATE

PROPANE LEAK MISSED BY LOCAL GAS COMPANY CAUSES SEVERE BURN INJURIES TO ALABAMA MAN; GAS COMPANY SETTLES CASE ONE WEEK BEFORE TRIAL

Propane is a liquefied petroleum gas, also known as LPG. It is a gas that is normally compressed, stored and delivered as a liquid and is non-toxic, colorless and virtually odorless. Propane is a safe, reliable and clean energy source. Understanding how to properly use and store propane, as well as how to detect warning signs of a gas leak can significantly reduce the risk of a propane-related hazard in your home. It is important that homeowners are aware of basic safety tips.

One of the safety features of propane is its unique smell—rotten eggs, a skunk’s spray or a dead animal. Ethyl mercaptan, a sulfur-based compound, is added to propane so that it can be detected when propane is in use. If you are concerned that you or others in your home may have difficulty smelling propane, consider installing a propane gas detector. These detectors sound an alarm if they sense the propane concentration at the detector.

Though it is rare, one of the most important things a homeowner can do is to make sure that everyone in their home knows what do if they suspect a propane leak. If you suspect a leak in your home, verify there are no open flames, leave your home and go a safe distance away. Do not turn off/on lights, appliances or use a telephone or mobile phone as it could create a spark or ignition source.

If it is safe, turn off the main valve on your propane tank. Lift the lid of the tank and turn the valve clockwise to turn off the gas supply. From outside the home call 911 to report a suspected propane leak. Stay outside of your home and a safe distance away until a trained professional has indicated it is safe to re-enter your home. For peace of mind, have your system inspected by a trained technician to ensure your system is running safely and efficiently. If the gas has been turned off at your home, never turn it back on yourself. There are national safety codes that require qualified professionals to test your propane system before turning the gas back on and relighting pilots.

Another way to remain safe is to not run out of propane as it can cause a serious safety hazard. If an appliance valve or gas line is left open when there is no propane, a leak could occur when your tank is filled. Air and moisture can infiltrate into an
empty tank, which can cause rust build-up inside the tank. Rust can reduce the concentration of the odor of propane, making it harder to smell. If you run out of propane, pilot lights on appliances will go out. This can be extremely dangerous if not handled properly.

Propane delivery companies are trained to check for leaks in gas lines before delivering to a new customer, or one who has been without gas for some time.

Lawyers in our firm’s Personal Injury & Products Liability Section recently settled a case with a gas company that failed to follow this safety protocol when it delivered propane to our Alabama client in the early winter months of 2016.

In our case, the gas company admitted that it knew delivering gas without a proper check for leaks could cause an explosion. Labarron Boone, who led the litigation for Beasley Allen, deposed the company’s corporate representative and confirmed that a leak test should always be done before delivery of gas to a new customer. If the customer is not at home at the time of the delivery the system should be red-tagged and locked out until a complete safety check is done. This will prevent homeowners from attempting to light the pilot.

Beasley Allen lawyers produced expert testimony on behalf of the Plaintiff in our case that these policies are in line with industry procedure. However, the gas company did not comply with its own safety policies and delivered gas to our client’s house without checking for leaks. When our client tried to light the pilot, there was an explosion that threw him down the hallway and caused severe burn injuries all over his body.

The case was settled for a confidential amount after mediation, which followed a pretrial hearing. Labarron Boone, Kendall Dunson and Stephanie Monplaisir from Beasley Allen represented the Plaintiff, along with Paula Fringle Stokes, a McCalla, AL, lawyer. The Plaintiffs litigation team put together a compelling document trail of the company’s reckless misconduct.

Lawyers in our firm will continue to investigate any gas explosion and hold those who fail to follow safety protocols responsible for their actions. If you need more information, contact Labarron Boone at 800-898-2034 or by email at Labarron.Boone@beasleyallen.com.

Source: https://www.rhoadsenergy.com/propane-safety/

**Parking Lot Liability: Proven Safety Measures Lower The Risk Of Serious Injury**

When you get caught up in your busy day dropping the kids off at school, rushing to work, running to the bank, to the store, or to home again, parking lot safety may be the last thing on your mind. But the truth is, all these activities may involve making your way through some of the most notoriously crime-ridden and dangerous areas of your city or town: parking lots and parking garages.

According to the U.S. Department of Justice (DOJ) and the Bureau of Justice Statistics, about half a million crimes occur in parking lots every year in the U.S.—about 1,400 per day. In fact, parking facilities rank number three in places where crimes most often occur. Property crimes such as theft and vandalism are the most frequent crimes occurring in parking lots, but people are also vulnerable to more violent crimes such as robbery and assault, especially when the owners and operators of the parking facility don’t take adequate security measures. Countless more people are killed and maimed in parking lot vehicular accidents every year because of poorly designed and maintained parking lots.

Property owners put themselves at enormous risk of liability when they fail to ensure proper security and safety measures are in place to protect their guests and employees. Consider the parking lot or garage of a shopping area. What are some of the things owners of the property should have in place to protect people walking to and from their cars?

- **Adequate lighting:** Dimly lit or dark parking lots encourage criminals seeking to prey on people and property. In fact, darkness may be the most important accomplice for thieves and robbers, because it allows them to operate in silence. Poor lighting also increases the risk of accidents, especially during the busiest times of the day and year, because it affects depth perception and visibility of drivers and pedestrians.

- **Speeding:** Most of the time, when we think of speeding, we focus on the driver, but other factors are at play when it comes to parking lot safety. For instance, speeding can be greatly discouraged—if not eliminated entirely—by using traffic signs, well-marked and placed speed bumps, breaking up long straight runs, and controlling how traffic is funneled into pedestrian-sensitive zones. Most people do not want to speed in parking lots—but the lower speeds can make it hard to perceive how fast they are actually going and whether those speeds are safe.

- **Visibility:** Visibility is extremely important to parking lots. Pedestrians need to be able to see vehicles clearly so they can determine how fast or close a vehicle is to them. The same is true for drivers. If a driver cannot see pedestrians until the last minute, reaction time is greatly reduced, thereby increasing the chance of serious accident. All must be able to see traffic signs and crosswalks. Visibility can also reduce criminal activity. Criminals are less likely to victimize patrons if they can be monitored easily. For these reasons, the parking lot owner and designer should review the premises and determine if traffic signs are visible, and whether any structures could block pedestrian or driver from seeing each other. They should also survey the property to eliminate any hiding places that criminals could use to ambush unsuspecting patrons.

- **Surveillance:** Perhaps the most effective means of discouraging speeding, shoplifting, and criminal victimization is through a well-trained, onsite security guard. In addition, installing surveillance cameras to keep watch in key areas of the parking area can serve to discourage criminal activity and reckless behavior.

- **Signage:** Understandably, people can get caught up in their lives and forget basic safety measures that prevent accidents, so a little reminder can go a long way in preventing a serious incident. Reminding pedestrians and motorists to behave responsibly, to avoid distracted driving and walking, to yield to pedestrians, mind the speed limit, lock the car, and put valuables out of sight, can enhance parking lot safety.

- **Multiple entrances and exits:** Pedestrian accidents are commonly caused by poor traffic flow control in parking lots. When traffic flow is compromised, perhaps from limited entry and exit options, heavier congestion can lead to low visibility, more distractions, and ultimately, accidents. The danger is further compounded if this heavier congestion occurs in or near a pedestrian zone. Having multiple exits and entrances to a parking lot will help facilitate traffic flow.

Being proactive about parking lot safety and addressing any problems as they occur can drastically reduce the chance of crimes and accidents on your property while lowering your liability. Business owners may not associate parking lot safety with the reputation of their business, but they should. If a premise is considered unsafe, patrons may choose to avoid visiting altogether, thereby causing a reduction in business. Even worse, someone could be severely injured or killed, which could lead to serious business liability.

If you need more information, contact Parker Miller, a lawyer in our Atlanta office, at 800-898-2034 or by email at Parker.Miller@beasleyallen.com.

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Adequate for "its intended and foreseeable use," the poorly designed forklift and its disregard for safety. Equipment must be held accountable for workers' safety rather than address the product is dangerous, but chose to risk job opportunities. Crown Equipment knew the defendant's forklift have permanently disabled him and severely limited his future work opportunities. Crown Equipment knew the product is dangerous, but chose to risk workers' safety rather than address the defects in its product's design. Crown Equipment must be held accountable for the poorly designed forklift and its disregard for safety.

On the day of the crash, Mr. Johnson was moving the forklift in a forward direction. In what was a routine act, he lifted his foot off the forklift's accelerator expecting the machine to stop. However, the forklift did not stop. Instead, it threw Mr. Johnson off the forklift's accelerator and crushed him against a beam. Witnesses say the forklift continued at full speed, in Mr. Johnson's direction. Unable to move out of the way, Mr. Johnson was pinned against the beam by the forklift, which crushed his left leg, knee and foot. As a result of his injuries, Mr. Johnson remained in the hospital for a month. He has been unable to return to work following the incident and thus far has incurred more than $550,000 in medical bills and related costs.

The lawsuit alleges that the forklift is defective and "has an unreasonable tendency to injure operators in ordinary and emergency operation." The machine is sold to customers without a door, which could have prevented Mr. Johnson from being thrown from the machine. Further, it is equipped with a brake system that is not adequate for "its intended and foreseeable use." This combination of design defects led to Mr. Johnson's permanent and disabling injuries.

Lawyers in Beasley Allen's Personal Injury & Products Liability section often find when a worker is seriously injured or killed on the job, a defective product is involved. What may appear to be a worker's compensation claim may actually involve third-party liability claims for dangerous or defective machinery or other equipment. For more information on this case, contact Mike Andrews in our Montgomery office or Ben Keen in our Atlanta office. They can be reached by phone at 800-898-2034 or by email at Michael.Andrews@beasleyallen.com or Ben.Keen@beasleyallen.com. The Johnson case was filed in the U.S. District Court, Northern District Atlanta Division, case number 1:20-cv-00504-MLB.

**Workplace Electricity Related Injuries**

Electricity is our nation's most important source of power. However, contact with electricity will often result in serious injury or death. Hundreds of workers die each year and thousands more are injured due to exposure to electricity. Oftentimes, those who are fortunate enough to survive an electrical shock suffer injuries that affect their ability to work and enjoy life. Anyone working around electricity should respect the clear and present danger it presents. The best way to avoid injury or death associated with electricity is to recognize the hazard, follow safety procedures to prevent injury, and to utilize available safety equipment designed to eliminate or mitigate the hazard. Sometimes, however, even that is not enough.

Beasley Allen lawyer Kendall Dunson recently resolved the case of a client who worked as an electrician's helper responsible for cleaning electrical components at a power facility. For this job, the power facility owner followed all of the Occupational Safety and Health Administration's (OSHA) requirements. It hired a contractor experienced in this type of work. He coordinated with the contractor to implement a plan to prevent electrical contact and it participated in training all employees who would be involved in the cleaning process, including our client. Each entity and individual displayed a healthy respect for hazards posed by electricity. The safety plan consisted of the following steps:

- Each morning the owner and the contractor would identify which electrical components would be cleaned that day.
- Next, the owner would lead the contractor to the room where the components to be cleaned would be turned off. Then the owner, contractor and our client would all place their own locks on the on/off switch to ensure that power was isolated until the job was finished.

- Next, any components not scheduled to be cleaned would have red barrier tape placed around them to signal to our client and the other cleaners that his unit was on, electricity was flowing, and it was not to be touched.

- Finally, before our client cleaned inside the component, the contractor would use a device to ensure there was no electricity flowing.

Using this process, hundreds of units were cleaned without incident until the day our client was injured. That morning started like all the other mornings. Units to be cleaned were identified, power was turned off and locks were placed on the unit. Red barrier tape was used on components not intended to be cleaned. Our client reported because he had placed his lock on the units to be cleaned, he was certain he was safe.

Additionally, the worker saw no red barrier tape around the unit he was instructed to clean next. The supervisor had not used the detection device because he was occupied doing something else. After suit was filed on our client's behalf, the Defendants' primary argument was that our client contributed to his own injury by not waiting for the supervisor to use the device before he started cleaning the components.

Kendall countered with testimony from our client and other workers that a different procedure was established with respect to using the device. Sometimes the supervisor would use the device out of the present of the cleaners, and he would tell them it was safe to clean. On the day of the injury, the supervisor told our client the next one was ready to be cleaned and good to go. He interpreted his communication as an indication that no electricity was flowing. Additionally, our client had placed his lock and he saw no red barrier tape.

Our client's contact with live electricity resulted in thousands of volts of electricity traveling through his body. The doctors were amazed that he survived. Today, our client has permanent nerve damage affecting his physical ability to work, as well as a healthy fear of electricity rising to the level of PTSD preventing him from working around electricity. Due to his injuries, a vocational expert opined he could not return to his job as an electrician's helper and likely would not be able to find gainful employment in the future. Our client is now only 29 years old. Fortunately, we were able to resolve the case and provide him with sufficient funds to compensate him for his injuries and to replace his lost ability to earn income.
Lawyers in our Personal Injury & Products Liability Section have handled similar cases where no precautions were taken to protect workers. In this instance, precautions were taken but a serious injury occurred anyway. Contact with electricity must be taken seriously due to the likelihood of death or serious bodily injury. The expert Kendall hired to evaluate our client’s conduct and the conduct of the Defendants opined that the plan was solid, but the lack of execution of the plan resulted in the injury. The expert also opined our client was not at fault because he was not in control. He had no responsibility beyond placing his lock where he was told to place it and cleaning what he was told to clean.

The Defendants were responsible for putting up the red barrier tape and testing the units with the devices. After the case settled, Kendall asked our expert what facts would have changed his opinion about the conduct of our client. He stated only one: if our client was provided a detection device and failed to use it, his opinion would have changed. This expert works in the industry supervising cleaning crews and is an advocate of providing the cleaners with the detection devices to allow them to test the units before cleaning them. After all, it is the life of the worker that is on the line.

If you know of anyone working in this industry, the detection devices can be purchased online for less than $100.00. When dealing with electricity, it would be money well spent.

If you need more information on this subject, contact Kendall Dunson, a lawyer in our firm’s Personal Injury & Products Liability Section, at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com. Kendall has successfully handled a tremendous number of workplace cases involving both injuries and deaths of workers.

ON THE JOB INJURIES: BACKOVER INCIDENTS

Since 2011 between 57 and 81 lives have been lost each year due to backover incidents in the workplace, according to the Bureau of Labor Statistics. A backover incident is simply when a motor vehicle or piece of heavy equipment runs over or strikes a worker while being driven in reverse.

In 2016, the “Preventing Backover Injuries and Fatalities Standard,” was drafted and proposed by the Occupational Health and Safety Administration (OSHA). However, it, along with many other OSHA regulatory updates were blocked by the Trump administration.

Currently, there is only one OSHA regulation in effect relating to backover incidents (1926.601). That regulation requires only a backup alarm “audible above the surrounding noise level” on any vehicle with “an obstructed view to the rear.” Interestingly, the only regulation in place does nothing to address the underlying issue of the driver not being able to see behind them, and simply requires an alarm to alert workers to get out of the way.

Although this was a good measure at the time it was enacted, more can be done. The 1926.601 regulation is insufficient given modern technology. Just as has been done in passenger cars, back-up cameras should become standard on heavy trucks and heavy equipment.

It is somewhat countere intuitive that passenger cars, with relatively few blind spots, are now required to have back-up cameras, and heavy trucks and industrial machinery with completely obstructed views have no such requirement. While back-up alarms are certainly a good start, much more can be done. Back-up cameras would allow the driver to see the surroundings and prevent backover incidents.

Additionally, object sensing technology has come a long way in recent years. Just as back-up cameras have become standard equipment on passenger vehicles, rear sensing devices are becoming more feasible as well. Importantly, as rear-view cameras and object-sensing devices become more prevalent on passenger vehicles, the technology will become more inexpensive.

If rear-view cameras or object-sensing devices could cut the number of backover fatalities in half, that would be a drastic improvement. The technology is available and affordable. Accordingly, it is time for OSHA to push forward regulations that are on par with the times and save dozens of lives each year.

If you need more information, contact Evan Allen, a lawyer in our firm’s Personal Injury & Products Liability Section, at 800-898-2034 or by email at Evan.Allen@beasleyallen.com. Evan has successfully handled a number of cases involving workplace injuries and deaths.

Source: Safety and Health Magazine

XVI. AN UPDATE ON TRANSPORTATION LITIGATION

LAWSUIT FILED OVER GEORGIA SCHOOL BUS CRASH THAT KILLED A 6-YEAR-OLD

Beasley Allen lawyers filed a lawsuit on behalf of the family of a 6-year-old girl who was killed in a Georgia school bus crash. In January 2018 the child was ejected from her school bus, which then rolled over on her. Blue Bird Global Corporation’s disregard for human life resulted in a young child never returning home to her family. The company failed to make its product safe and failed to warn the public about the danger. Sadly, our client’s young daughter paid the price for the Defendant’s failures.

On Jan. 29, 2018, Arlana, a first-grader, was riding on a school bus on her way home from Parkwood Elementary School. The bus was heading downhill and approaching a curve. Despite the bus driver’s efforts to steer the 2000 Blue Bird All American school bus, its top-heavy design caused the bus to slide off the road and begin to roll over onto its right side. As a result of the bus rollover, Arlana was violently thrown from her seat and ejected through the bus front door. She was rushed to the hospital where she succumbed to her fatal injuries hours later just after midnight.

Blue Bird Global Corporation knew that the bus was dangerous and that it was unstable and prone to roll over due to its design. Prior to Arlana’s death, this Defendant had other similar lawsuits filed against it. The company was well aware that the dangerously designed bus was injuring and killing unsuspecting passengers. The company knew if the bus rolled over that unbelted students could be violently ejected from their seats, thrown out of the bus and rolled over by the bus. This is what happened in our case.

The family of Arlana Haynes is represented by Kendall Dunson and Donovan Potter, Sr. from Beasley Allen, along with two very good Macon, Georgia lawyers, David Dozier of the Dozier Law Firm and Rick Sizemore of Clark, Smith & Sizemore. The lawsuit is filed in The State Court of Bibb County, Georgia, (case number 20-SCCV-090917).
B CDL applicants are:

- Applying for a Class A or Class B CDL;
- Upgrading their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or
- Obtaining a Passenger (P), or School Bus (S) or Hazardous Materials (H) endorsement for the first time.

BTW and Theory training may be provided by different training providers so long as the trainer is listed on FMCSA’s TPR. The BTW portions however must be completed by the same training provider. (i.e. range and public roads portion must be by the same training provider). Although Theory training is required, there is no minimum number of hours that driver-trainees must spend on the theory instruction. The five areas of theory instruction and the training topics for Class A or Class B CDL applicants are:

1. **Basic Operation**
   - Orientation
   - Control Systems/Dashboard
   - Pre-Trip and Post-Trip Inspections
   - Basic Control
   - Shifting/Operating Transmissions
   - Backing and Docking
   - Coupling and Uncoupling (Class A only)

2. **Safe Operating Procedures**
   - Visual Search
   - Communication
   - Distracted Driving
   - Speed Management
   - Space Management
   - Night Operation
   - Extreme Driving Conditions

3. **Advanced Operating Procedures**
   - Hazard Perception
   - Skid Control/Recovery, Jack-knifing, and Other Emergencies
   - Railroad-Highway Grade Crossings

4. **Vehicle Systems and Reporting Malfunctions**
   - Identification and Diagnosis of Malfunctions
   - Roadside Inspections
   - Maintenance

5. **Non-Driving Activities**
   - Handling and Documenting Cargo*
   - EnvironmentalCompliances/Issues*
   - Hours-of-Service Requirements
   - Fatigue and Wellness Awareness
   - Post-Crash Procedures*
   - External Communications*
   - Whistleblower/Coercion*
   - Trip Planning*
   - Drugs/Alcohol*
   - Medical Requirements*

* On March 5, 2019, the FMCSA amended the level of theory training for individuals who are upgrading from a Class B to Class A CDL by removing eight topics within the area of “Non-Driving Activities.” However, Class B CDL holders upgrading to a Class A CDL are free to choose to complete the Class A theory instruction standard curriculum. This amended rule applies only to Class B CDL holders. Individuals obtaining a Class A CDL who do not already hold a Class B CDL must complete the full Class A theory standard curriculum.

Driver Trainees for Passenger Endorsement, School Bus Endorsement and Haz Mat Endorsement have their own topics that must be covered in Theory Training. Regardless of the endorsement the entry level driver is striving for, the rule requires that driver-trainees demonstrate their understanding of the material by achieving an overall minimum score of 80% on the theory assessment (written or electronic).

There is also no minimum number of hours that driver-trainees must spend on the BTW elements of the Class A, Class B, or P or S endorsement instruction. All BTW training must be conducted in the class of commercial motor vehicle the trainee intends to use for their CDL skills test. The rule does not permit BTW training to be conducted by using a driving simulation device, and a driver-trainee may not use a simulation device to demonstrate proficiency. However, simulators may be used in Theory training.

The instructor must cover all training topics listed in the Class A Or Class B CDL BTW curriculum, which includes:

1. **Range**
   - Vehicle Inspection Pre Trip/En Route/Post Trip
   - Straight Line Backing
   - Alley Dock Backing (45/90 Degree)
   - Off-Set Backing
   - Parallel Parking Blind Side
   - Parallel Parking Sight Side
   - Coupling and Uncoupling (Class A only)

2. **Public Road**
   - Vehicle Controls including: Left Turns, Right Turns, Lane Changes, Curves at Highway Speeds, and Entry and Exit on the Interstate or Controlled Access Highway
   - Shifting/Transmission
   - Communications/Signaling
   - Visual Search
   - Speed and Space Management
   - Safe Driver Behavior
   - Hours-of-Service (HOS) Requirements
   - Hazard Perception**
   - Railroad-Highway Grade Crossing**
   - Night Operation**
   - Extreme Driving Conditions**
   - Skid Control/Recovery, Jack-knifing, and Other Emergencies**

**These topics must be discussed during public road training, but not necessarily performed.** Driver-trainees are not required to demonstrate proficiency in these skills.

The instructor must engage in active two-way communication with driver-trainees during all active BTW public road training sessions. A driver-trainee’s proficiency is determined by the instructor providing the training. The instructor must also document the total number of clock hours each driver-trainee spends to complete the BTW curriculum. Additional and/or other requirements are required for a school bus endorsement and passenger endorsement.

The TPR will include all entities that register with FMCSA and self-certify they meet the curriculum, instructor and facility requirements for providing CDL training. FMCSA emphasizes, however, that merely because a training provider is listed on the TPR does not mean that the Agency certifies or otherwise “approves” that provider’s operations.

Therefore, prospective entry-level drivers are encouraged to perform their own due diligence before selecting a suitable training provider. This may be an avenue to pursue if an entity hires an entry level driver but did not act with due diligence in determining if training was done by an approved TPR.

If you need more information, contact Ben Keen, a lawyer in our Personal Injury & Products Liability Section and who is in our Atlanta office, at 800-898-2034 or by email at Ben.Keen@beasleyallen.com.

**Lithium Electric Car Batteries Pose Danger To Motorists**

On Dec. 19, 2019, the National Transportation Safety Board (NTSB) released a report on a fiery Tesla crash that killed two
Will Sutton, a lawyer in our firm, at 800-

more information on this subject, contact Lauderdale crash have sued Tesla. The
take up to 3,000 gallons of water to estab-
responders says a fire in the Model S can
parts. Tesla’s own documentation for first
aces for fighting lithium-ion-battery fires.
responders around the world the best prac-
unique challenge for rescue experts, who

Firefighters arrived at the accident scene four minutes after receiving the first emer-
gency call. They reported that the heat from the fire was intense and they could see electrical arcing. Despite attacking the blaze with 200 to 300 gallons of water and foam, the battery reignited twice.
The crash is one of several under review by the NTSB in which fires erupted in the highly flammable lithium-based batteries used in vehicles, namely Teslas. The reviews include the following:

• In April 2019, a Tesla Model S burst into flames while sitting in a parking garage in Shanghai.

• In February 2019, a Davie, Florida, man died after his Tesla crashed into a tree and ignited. First responders were reportedly not able to open the car’s extendable door handles.

• In December 2018, a woman in New Hampshire died after her car ignited follow-

According to Reuters, there have been at least a dozen more instances of Tesla cars catching fire since 2013, with the majority occurring after a crash.

Most of these Tesla fires seem to be caused by the electric vehicle’s battery suff-
fering some kind of trauma, sometimes by crashing at high speeds. This provides a unique challenge for rescue experts, who have ramped up efforts to teach first responders around the world the best prac-
tices for fighting lithium-ion-battery fires. Battery fires can burn hotter and longer than those of gasoline-powered counter-
parts. Tesla’s own documentation for first responders says a fire in the Model S can take up to 3,000 gallons of water to estab-
lish sufficient cooling for the battery.

Families of the teens killed in the Fort Lauderdale crash have sued Tesla. The safety board is planning to release a report on the battery fires in 2020. If you need any more information on this subject, contact Will Sutton, a lawyer in our firm, at 800-

898-2034 or by email at William.Sutton@beasleyallen.com.

Source: Local10.com komonews.com and ttnews.com

XVII. HEALTHCARE ISSUES

POTENTIAL PITFALLS TO FDA ACCELERATED DRUG APPROVAL

We have mentioned the term “fast track” in previous issues when discussing issues involving the pharmaceutical industry. This term may not be fully understood by lay persons who do not deal very often with this politically powerful industry. The term has a specific meaning in the approval of drugs by the government. “The United States Food and Drug Administration (FDA) defines Fast Track as a process designed to facilitate the development and expedite the review of drugs to treat serious diseases and fill an unmet medical need.” The intent and purpose of the Fast Track approval process was good, but on occasion the process has been abused by drug companies.
The broader questions is, does this Fast Track approval compromise patient safety? To many people who have a disease for which there is no approved treatment, the potential reward may outweigh the potential, unknown safety risks. Fast track drugs have shorter requirements for safety and efficacy testing, and some of the testing is not done in a clinical setting (i.e., in patients), but with blood tests and surro-
gates. Drugmakers only must show that the drug is “reasonably likely: to have any benefit.

While it is commendable to seek to treat patients with “orphan drugs” as they are called, there is a concern for a slippery slope. Which drugs make it into this cate-
gory, and are they truly novel? In 2019, 44% of the drugs cleared by the FDA were cate-
gorized as orphan drugs, and the percent-
age of orphan drugs approved continues to rise. However, not all of these new thera-
pies went to treat an incurable deadly disease with no or few treatment options. Though some did, others were treatments for osteoporosis, low sexual desire, low tes-
tosterone, and migraine headaches, just to name a few.

Though these conditions can be life alter-
ing, if not debilitating, are they worth the unknown risk? Is the general public aware of the shortcuts being taken in the approval process? According to Dr. Caleb Alexander from Johns Hopkins Center for Drug Safety and Effectiveness, “All too often, patients and clinicians mistakenly view FDA approval as [an] indication that a product is fully safe and effective...Nothing could be further from the truth. We learn tremendous amounts about a product only once it’s on the market and only after use among a broad population.”

In a 2017 study, researchers found that “Compared with standard pathway drugs, expedited pathway drugs had a 48% higher rate of changes to boxed warnings and con-
traindications, the two most clinically important categories of safety warnings.” While the drugs may be novel, the studies showing the risks of accelerated approval are not. In 2014, researchers determined that, since legislation was passed in 1992 to facilitate faster drug approval, there has been an increase in black box warnings and complete market withdrawal. Reason-
able minds could argue the rapid advance-
ment in science over the last 30 years could be part of the reason, but if our gold stan-
ard is complete safety and efficacy testing, where do we draw the line?
The motivation of manufacturers is, at least in large part, profit, so speed for them means a quicker pathway to revenue before expending the large resources required for a new drug approval. Though manufactur-
ers are required to do testing after a fast track approval, something Aaron Kessel-
heim, an associate professor of medicine at Harvard, calls a “grand bargain,” this is not always completed in a timely fashion. “[In] a study of 22 drugs fast-trackedy by the FDA between 2009 and 2013, Kesselheim and other researchers found that three years after the last drug’s approval, just half of the required post-approval studies had been completed.”

With these numbers, vigilance before selecting a therapy brings on another dimension. The FDA, probably one of the most dangerously misunderstood govern-
ment agencies in operation, is not the grand arbiter of safety and effectiveness that most believe it to be. It is an organiza-
tion that grants approval if certain boxes are ticked by a manufacturer. The DMV of the health care industry, it doesn’t guaran-
tee safety, just that one passed the minimum requirements imposed by an anti-
quated and underfunded system demon-
strating that the driver may be able to perform at the minimum levels of safety, but we really don’t know until they are out on the road.

If you need more information or have questions, contact Lisa Courson, a lawyer in our Mass Torts Section, at 800-898-2034 or by email at Lisa.Courson@beasley-
allen.com.

Sources: NCBI, BMJ, FDA, NPR, Public Radio International

BeasleyAllen.com
A Basic Lesson on Mesothelioma

Many people only know the term mesothelioma from television commercials, but few likely have a clear understanding of what it is. We believe it will be helpful to have at least a basic understanding of what this disease is. The following will provide a basic explanation of the disease mesothelioma.

Mesothelioma is a tumor that is caused by inhaling asbestos fibers and can form in a number of areas in a number of different areas of the body. Primary types of mesothelioma by location are pleural mesothelioma (lungs), peritoneal mesothelioma (abdomen), pericardial mesothelioma (heart), and testicular mesothelioma (testes).

Pleural mesothelioma is the most common mesothelioma. Approximately 70% to 75% of cases occur in this area. More research has been conducted on this type of tumor than any of the others. Peritoneal mesothelioma accounts for 10% to 20% of mesothelioma cases. There is less research available on peritoneal compared to pleural; however, the prognosis for this tumor type is better. Pericardial mesothelioma, developing in the heart, is extremely rare. Testicular mesothelioma develops in the lining of the testes. This form of mesothelioma is the most rare.

Primary types of mesothelioma by cell type are epithelioid mesothelioma (epithelioid cells), sarcomatoid mesothelioma (sarcomatoid cells), and biphasic mesothelioma (epithelioid and sarcomatoid cells).

Epithelioid mesothelioma makes up approximately 70% to 75% of all cases of asbestos-related mesothelioma cancers. This type has the best prognosis, tending to be less aggressive and not spreading as quickly as sarcomatoid and biphasic cell disease. About 50% of pleural mesothelioma and 75% of peritoneal mesothelioma is epithelioid.

Sarcomatoid mesothelioma is the least common mesothelioma cell category. It is the most aggressive and difficult to treat. It accounts for 10% to 20% of all mesothelioma diagnoses. About 20% of pleural tumors are sarcomatoid, while 1% of peritoneal mesothelioma are sarcomatoid.

Biphasic mesothelioma refers to tumors that contain epithelial and sarcomatoid cells. Life expectancy after diagnosis with biphasic mesothelioma depends upon which cell predominates in the tumor.

More epithelioid cells generally means a better prognosis. Around 30% of pleural and 25% of peritoneal tumors are biphasic cell.

The specific mesothelioma diagnosis will influence the treatment options. Different treatments may be available, depending on the location of the cancer and, possibly, the cell type, including surgery, chemotherapy and radiation.

While this elementary lesson on different types of mesothelioma may be of little to no importance to lawyers in their legal practice, it is important to their clients who receive the diagnosis. Just as each client is unique, so is each mesothelioma diagnosis.

If you need additional information, contact Sharon Zinns, a lawyer in our Atlanta office. Sharon handles asbestos litigation for the firm. She can be reached at 800-898-2034 or by email at Sharon.Zinns@beasleyallen.com.

Federal Defense Spending Bill Fails to Include Stringent PFAS Regulation

In the past few years, public concerns over per- and polyfluoroalkyl substances (PFAS) have grown significantly as people discovered how much of the nation’s drinking water was contaminated with these chemicals, which are used in numerous consumer products. They have been linked to a variety of health concerns including kidney and testicular cancer, thyroid disease, and pregnancy-induced hypertension.

Congress, feeling the heat, began to address the issue in a variety of ways through the more than 30 pieces of legislation that were introduced in the 116th Congress. The Senate and House versions were ultimately wrapped up in the National Defense Authorization Act (NDAA) because significant PFAS contamination of water supplies has been identified at or around numerous military installations. Unfortunately, the legislation that emerged from the House-Senate conference to reconcile the differences in PFAS provisions was far less ambitious than what many had hoped and expected. Specifically, two major provisions were left out of the bill: (1) designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act; and (2) requirements to promulgate PFAS drinking water standards.

On Dec. 20, 2019, 2020 NDAA was signed into law. It has the following provisions governing PFAS:

- Prohibits the use of firefighting foams that contain PFAS after Oct. 1, 2024;
- Authorizes the National Guard to use funds to address PFOA and PFOS exposure and contamination caused by Department of Defense (DOD) activities around military bases;
- Phases out PFAS in food packaging;
- Expands reporting of PFAS discharges through the Toxic Release Inventory; and
- Expands monitoring for PFAS in tap and ground water.

By including these PFAS requirements in the NDAA, Congress has forced the U.S. Environmental Protection Agency (EPA) to accelerate the pace of actions already under consideration in the agency’s PFAS Action Plan, which was released in early 2019. The NDAA represents Congress’ first major response to public concern about PFAS, and its provisions signal that much more is to come from Congress. Indeed, this month the House of Representatives will consider the PFAS Action Act (H.R. 555), which would designate PFAS as hazardous substances and regulate PFAS air releases.

Beasley Allen lawyers are currently investigating and handling PFAS 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.

Roundup Mediator Optimistic About Settlement

Washington, D.C.-based attorney Ken Feinberg, the mediator appointed to resolve the thousands of lawsuits filed against Monsanto Co. involving its Roundup weedkiller, says he is optimistic about settling the cases. Ken recently told members of the press:

There are talks with various lawyers around the nation who have significant inventories of Roundup cases. I’m optimistic we can reach a comprehensive settlement of this litigation.

While I have great confidence in Ken’s ability to get complicated litigation settled, there are some observers who see settlements by Bayer in a different manner. One
such person is Carl Tobias, a University of Richmond law professor who teaches about mass-tort litigation. Bayer may be trying to negotiate individual lawyers’ cases rather than dealing with all 42,700 cases in a structured settlement program to hold down the total payout, according to Professor Tobias.

As previously reported, German pharmaceutical giant Bayer acquired St. Louis-based Monsanto, the inventor and manufacturer of Roundup, for $63 billion in 2018. Chris Loder, a spokesman for Bayer, says “the mediation process is continuing diligently and in good faith to explore resolution under the auspices of Ken Feinberg.”

Their use of Roundup by the Plaintiffs in the cases caused them to develop non-Hodgkin’s lymphoma. Bayer—and Monsanto before it—was well aware of the dangers the chemical posed, but refused to warn consumers. In 2015, the World Health Organization’s International Agency for Research on Cancer classified glyphosate as a probable carcinogen based on studies of farmers exposed to glyphosate who developed non-Hodgkin’s lymphoma. Bayer lost the first three cases that went to trial, all in California, which resulted in a total of more than $2.4 billion in damages. Judges later reduced the damages, and Bayer has appealed the verdicts.

Major Bayer investors, such as U.S.-based billionaire Paul Singer’s Elliott Management Corp., have urged the company to drop its defend-at-all-cost approach to the suits and consider a settlement. Several trials in California and Missouri have been postponed, which lawyers said reflects the Bayer’s effort to resolve the massive litigation exposure it took on with the 2018 purchase of Monsanto.

A fourth Roundup trial scheduled to start on Jan. 21 in St. Louis was continued so that the medication process could proceed. We take that as a good indication for a global settlement because the case was in St. Louis, home territory for Monsanto.

Beasley Allen lawyers, led by John Tomlinson, a lawyer in our Toxic Torts Section, are currently representing thousands of clients who have been exposed to Roundup and developed non-Hodgkin’s lymphoma. One of those clients is a Montgomery resident whose case is set for trial in October of this year.

Source: Bloomberg

**XX. UPDATE ON NURSING HOME LITIGATION**

**Nursing Home Compare’s Abuse Icon Is Live**

In December, the Nursing Home Compare website received its first regular data update since the Centers for Medicare & Medicaid Services implemented its “abuse” alert icon, with a second update in January 2020.

In late October 2019, CMS began use of a new “abuse icon” on Nursing Home Compare. Consumers using the website will now be alerted when a nursing home has been cited for an abuse violation in the past year or during each of the past two years, depending on the level of harm.

CMS is advising consumers who come across this new icon to “ask the administrator or other staff about what they are doing to keep residents safe from abuse, neglect, mistreatment or exploitation.”

While CMS is making a great effort to help consumers identify nursing homes with a history of abuse, consumers need to be reminded that the absence of an abuse icon on Nursing Home Compare does not necessarily indicate the absence of abuse. Federal reports in the last few decades have documented that state survey agencies have missed problems and failed to cite violations. Moreover, violations indicating the existence of abuse or potential abuse may be cited under other federal tags, resulting in their exclusion from this initiative.

Providers have said they support efforts to improve transparency but decried the nature of the icon. A CMS spokesman responded, “Visual icons are a key transparency resource to alert patients to issues they may want to investigate while making critical decisions about their care.”

This critical move toward improved transparency is a way CMS is delivering on the Agency’s five-part approach to ensuring safety and quality in nursing homes, announced in April 2019 by CMS Administrator Seema Verma. By making this information accessible and understandable, CMS is empowering consumers to make the right decisions for themselves and their loved ones.

If you have any questions or need any additional information, contact Alyssa Baskam, a lawyer in our Atlanta office. Alyssa handles nursing home litigation for the firm. She can be reached at 404-751-1162 or by email at Alyssa.Baskam@Beasley-Allen.com.

**The Beasley Allen Nursing Home Litigation Team**

Alyssa Baskam 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, who says she became a trial lawyer so she could help people get through unimaginable hardships, is dedicated to representing the elderly and infirm who can’t fight back when they suffer at the hands of inadequate care and deficient inpatient facilities. If you have a case involving abuse or neglect at a nursing home or other inpatient facility, Alyssa would like to talk with you about working together on the case. You can contact Alyssa or Susan at 800-898-2054 or by email at Alyssa.Baskam@beasleyallen.com, or Susan.Anderson@beasleyallen.com.

**XXI. AN UPDATE ON CLASS ACTION LITIGATION**

There has been a great deal of activity around the country recently in the class action litigation. A good number of settlements have been reached in this litigation. We will discuss some of them below.

**$1 Billion Vereit Settlement Gets Approval**

U.S. District Judge Alvin K. Hellerstein has signed off on a $1.025 billion settlement between Vereit Inc. and investors who say the real estate investment firm lied about its books.

The judge heard a day of argument as lawyers for Vereit (formerly American Realty Capital Properties) and for lead class Plaintiff TIAA-CREF pushed to finalize stock-drop litigation settlements over
claims that the company and its principals defrauded investors.

The litigation was filed after American Realty Capital Properties disclosed in 2014 that some of its financial reporting was overstated. Subsequently, two of its top executives lost their jobs. The news reduced the company’s stock price by nearly 36%, leading to investor claims of fraud and mismanagement. The Real Estate Investment Trust’s (REIT) market meltdown also led to criminal charges.

Judge Hellerstein also approved a related $286.5 million settlement to end shareholder derivative claims against Vereit. That money will come from former Vereit principals including former CEO Nicholas Schorsch and from accounting firm Grant Thornton, and will help fund the main settlement. "Both the derivative settlement and the class action settlement are fair and reasonable," the judge said. "I approve them both."

The class action Plaintiffs are represented by Debra J. Wyman, Darren J. Robbins, Michael J. Dowd, Jonah H. Goldstein and Jessica T. Shinnfield 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. The case is In re American Realty Capital, (case number 1:15-mc-00040) in the U.S. District Court for the Southern District of New York.

The district court case is

**FACEBOOK AND ILLINOIS USERS REACH RECORD $550 MILLION BIOMETRIC PRIVACY SETTLEMENT**

Facebook has agreed to pay a record $550 million to resolve a biometric privacy class action by Illinois users. The settlement ends a dispute that was on the verge of a trial in California federal court.

Pursuant to the proposed settlement, Facebook would be required to establish a $550 million cash fund to compensate millions of Illinois users who claim the social media giant breached the state’s unique Biometric Information Privacy Act by using facial recognition without their consent to fuel its tag suggestion feature, according to the trio of Plaintiffs firms that led the suit.

The proposed settlement will be presented to U.S. District Judge James Donato for preliminary approval. The settlement, if approved by the court, would be the largest cash settlement ever resolving a privacy-related lawsuit. The settlement also includes injunctive relief that would require Facebook to obtain full consent from Illinois users before any collection of their biometric information takes place.


The district court case is **In re: Facebook Biometric Information Privacy Litigation**, case number 3:15-cv-03747, in the U.S. District Court for the Northern District of California.

Source: Law360.com

**FORD DRIVERS SEEK FINAL APPROVAL OF $77 MILLION SETTLEMENT**

Ford drivers have asked a California federal judge to approve a $77 million settlement over defective transmissions in certain models, saying that class members have already received more than $47 million in payments. The drivers said that under an arbitration program, class members have received more than $47.4 million for repurchase claims, which makes it reasonable to expect that many additional members will receive cash payments after final approval of the settlement. Under the arbitration process, drivers can receive up to $25,000 for returning a car and in some circumstances, they might not have to possess the car in order to receive a payment.

The settlement ends claims that PowerShift transmissions in 2011 to 2016 Ford Fiesta models and 2012 to 2016 Ford Focus models were defective, making the cars buck or jerk when accelerating. There is a separate cash payment that has a guaranteed minimum of $50 million. Overall, the settlement’s value was said to surpass $100 million.

Drivers who made three or more service visits to Ford dealers can receive payments for up to $2,325, or a discount certificate toward the purchase of a new Ford. U.S. District Judge Birotte initially approved the settlement in 2017, which was then valued at $35 million, but it was met by objectors who claimed the settlement was too small. Those drivers have now withdrawn their objections and support the settlement.

The amended settlement removed limitations under which drivers could receive money for repurchase claims, such as a previous requirement that allowed Ford to make one final try at a repair after receiving an arbitration notice from a driver who had made three or fewer attempts at repair, according to the motion. "Due to the settlement’s consumer-friendly rules and speed of resolution, most class Members would do better under the arbitration program rather than in court," the drivers said. Ford has already paid $47.4 million to class members for claims proceeding under the settlement’s repurchase remedy.

The drivers are represented by Ryan H. Wu of Capstone Law APC, Russell D. Paul of Berger & Montague PC and Thomas A. Zimmerman of Zimmerman Law Offices PC. The case is **Vargus et al. v. Ford Motor Co.**, (case number 2:12-cv-08388) in the U.S. District Court for the Central District of California.

Source: Law360.com

**EXPERIAN AGREES TO PAY $24 MILLION TO PAYDAY LOAN CUSTOMERS**

A class of more than 100,000 payday loan customers has reached a $24 million settlement to resolve claims that consumer-reporting giant Experian threatened customers’ credit history by reporting debts on disputed loans. The settlement appears to be “one of the largest in history relating to inaccurate reporting violations under the Fair Credit Reporting Act (FCRA).”

If approved, the $24 million settlement fund will be used to make automatic payments to each of the participating members of the class without the need to file a claim. Lead Plaintiff Demeta Reyes, a Georgia resident, first took out a $2,600 loan from tribe-affiliated Western Sky Financial LLC in 2012, but said she later stopped making payments after learning that Georgia’s Attorney General was bringing a consumer protection action against the company.

Western Sky Financial, which is owned by a member of the Cheyenne River Sioux Tribe, avoided state usury laws as a tribe-affiliated lender and charged higher interest rates. Delbert Services Inc. would service the loans issued by Western Sky Financial. Another company, Cash Call Inc., provided the financial backing.

Plaintiff Reyes sued Experian Information Solutions Inc. in 2016, claiming that the company purposefully failed to “follow reasonable procedures to assure maximum possible accuracy” in violation of the FCRA. She claims that Experian continued reporting delinquent loans serviced by Delbert even after Delbert shut down and asked the credit agency to stop using its data.

Plaintiffs Reyes contends that Experian’s failure to delete the Delbert accounts rendered consumers’ reports materially misleading and inaccurate. In 2017, Experian prevailed against Reyes on summary judgment. U.S. District Judge Andrew J. Guilford ruled that the agency’s credit reports weren’t “unduly misleading” and that the evidence presented didn’t appear to support that Experian “willfully” failed to
comply with the FCRA. But Reyes successfully revived the suit on appeal in 2019. In May, a Ninth Circuit panel reversed the lower court’s decision over doubts about whether Experian intentionally continued to report on the Delbert portfolio—containing more than 128,000 accounts—after the servicer urged the agency to delete the accounts.

Experian agreed to stop using the Delbert accounts in early 2015, but did not delete them until more than a year later, continuing to publish credit reports based on debts that were no longer verifiable, the appellate court wrote in its reversal. In October, Judge Guilford certified a class of more than 100,000 payday loan customers who claim Experian jeopardized their credit history when it reported debts on disputed loans. The proposed settlement class includes tens of thousands of people whose Experian consumer report contained an account from Delbert reflecting delinquency on a loan originated by Western Sky after Jan. 21, 2015.

Reyes and the class are represented by Norman E. Siegel and J. Austin Moore of Stueve Siegel Hanson LLP; Daniel S. Robinson of Robinson Calcagnie Inc. The case is Demeta Reyes v. Experian Information Solutions Inc., (case number 8:16-cv-00563) in the U.S. District Court for the Central District of California.

Source: Law360.com

HOSPITAL CHAIN REACHES $53 MILLION SETTLEMENT TO END STOCK DROP SUIT

Community Health Systems Inc. (CHS) has agreed to a $53 million settlement to resolve a class action brought by pension funds and other shareholders who claimed they lost $891 million when the company’s share price plummeted after allegations of Medicare fraud came to light. CHS and the lead Plaintiff in the case—a group of New York City pension funds collectively known as NYC Funds—have asked a Tennessee federal court to grant preliminary approval of the settlement. The trouble started in 2011, when CHS, one of the nation’s largest hospital companies, sought to acquire Tenet Healthcare Corp. Tenet rejected CHS’ offer, prompting CHS to initiate a hostile takeover. Tenet then filed a lawsuit in April 2011 alleging that the claims CHS was making in an attempt to win over Tenet shareholders were false and misleading.

That separate lawsuit pointed to what Tenet alleged was CHS’ real source of profit: its so-called Blue Book, a nonstandard guide it created to prompt doctors to treat Medicare patients in inpatient settings where other hospitals, following standard guidelines, might have treated them in outpatient settings.

After Tenet filed its lawsuit, CHS made a series of public statements attempting to “full” investors into thinking everything was fine, according to the allegations in the instant suit. But CHS Chief Financial Officer Larry Cash told an analyst that the hospitals actually did use the Blue Book. CHS’ stock fell 35% after the Tenet suit was filed and Cash made his statement. The company limped along through the summer before another incident in October 2011. At that time, the company issued a press release showing its revenues were lower as it was decreasing its inpatient treatments to closer match the hospital standard. The stock fell another 11% on Oct. 27, the day after that release.

The retirement funds filed a consolidated suit over the investors’ losses in July 2012 and amended that suit in 2015. In the instant case, the funds alleged that although CHS executives sold their shares before the stock fell sharply, the funds were stuck taking $891 million in losses once the Medicare fraud allegations came to light.

The district court dismissed the instant suit in 2016 after finding the shareholders hadn’t sufficiently shown that Tenet’s lawsuit caused the stock to drop and triggered their losses, but the Sixth Circuit revived the case in 2017. U.S. District Judge Eli J. Richardson granted class certification in July and appointed NYC Funds as class representative.

NYC Funds is represented by Barbara J. Hart, David C. Harrison and Scott V. Papp of Lowey Dannenber PC and Michael Hamilton of Provost Umphyre LLP.

The case is Norfolk County Retirement System et al. v. Community Health Systems Inc. et al., (case number 3:11-cv-00433) in the U.S. District Court for the Middle District of Tennessee.

Source: Law360.com

SCANA INVESTORS REACH $192 MILLION SETTLEMENT IN NUCLEAR PLANT SUIT

Investors in SCANA Corp. have asked a South Carolina federal judge to approve a $192 million settlement resolving class claims the company and its executives misled the public about long delays and massive cost overruns in a $9 billion nuclear reactor project. The $192.5 million settlement would be the largest securities class action recovery in the District of South Carolina, according to the investors’ motion. The settlement allocates $160 million in cash and $32.5 million in freely tradable Dominion Energy Inc. common stock or cash at the option of SCANA.

The investors, which include the West Virginia Investment Management Board, told the court in their request for class certification in July that SCANA concealed reports of problems with the nuclear reactor project, first estimated to cost roughly $5.4 billion. They said mismanagement forced the project past deadlines that prevented it from taking advantage of a $1.4 billion tax credit and other incentives.

As a result, the Virgi C. Summer Nuclear Generating Station in South Carolina project was halted in 2017. The project was meant to be one of the first new nuclear projects in the country, but when it ran into trouble, the problems were hidden even after Bechtel Corp. was hired to assess the project and found problems, the investors said. When the issues were belatedly revealed over time, the stock price correspondingly slid.

The proposed settlement class consists of all people and entities who purchased or otherwise acquired publicly traded SCANA common stock from Oct. 27, 2015, through Dec. 20, 2017, and were damaged.

During the proposed class period, the investors said more than 1 million shares of the company’s stock were traded each week, demonstrating how many investors were potentially involved. In addition, investors said the underlying issues that caused investor losses were common among the proposed class. They said misleading public statements inflated the price of the stock, which then took a hit when the truth trickled out.

The suit was filed in 2017 over the company’s “failed $9 billion decade-long effort” to build the reactors. SCANA contracted with Westinghouse Electric Co. and others to build the project, but the quality of that work was called into question.

On Oct. 22, 2015, Bechtel told SCANA that the project couldn’t be finished in time to qualify for tax credits and that “further delays and cost increases are inevitable.” Even with this report, the company higher-ups still told investors things would be OK.

Eventually, the problems were revealed to the public. For example, in March 2017, Morgan Stanley issued a report that said the cost for the project could be billions more than SCANA’s estimate. SCANA also announced “significant challenges” and eventually said the effort would be abandoned. When SCANA announced the project was scrapped, hundreds of Westinghouse workers lost their jobs, according to reports.

The investors are represented by Marlon E. Kimpson, William S. Norton and Joshua C. Littlejohn of Motley Rice LLC, James W. Johnson, Michael H. Rogers, Irina Vasilchenko, James Christie and Philip J. Leggio of Labaton Sucharow LLP and John C. Browne, Jeroen Van Kwawegen, Lauren Ormsbee, Michael M. Mathai and Kate W. Aufses of Bernstein Litowitz Berger & Grossmann LLP.

Source: BeasleyAllen.com
**Allergan To Pay $300 Million To Settle Birth Control Antitrust Case**

Allergan has agreed to pay several groups of Loestrin buyers a total of $300 million in settlement. This settlement will avoid a trial over claims that a pair of Allergan subsidiaries delayed generic alternatives to the birth control drug. A trial was set to commence in a Rhode Island federal court on Jan. 6 over claims that Warner Chilcott and Watson Pharmaceuticals violated antitrust law through patent settlements and other conduct that allegedly kept competing generic versions of Loestrin off the market.

The class told the Third Circuit in December that it had reached an undisclosed settlement with the Allergan subsidiaries to settle its claims. That class includes 47 members that bought the drug between 2009 and 2015, with classwide damages estimated to be $625 million, or nearly $1.9 billion after the automatic trebling that applies in federal antitrust cases. There is also a class of end payors and others with claims against Warner Chilcott and Watson that Allergan said are covered by this settlement.

A third drugmaker, Lupin Pharmaceuticals, was initially involved in the litigation, but it reached a settlement with a group of retailers in May and settled with end payors for $1 million shortly afterward.

Allergan said in a statement that the settlement covers classes of direct and indirect buyers, as well as direct buyers that opted out of the class. The class settlements will need court approval.

In October, Allergan agreed to pay $750 million in a separate litigation over claims that its Forest Laboratories unit used anti-competitive conduct to keep generic versions of Alzheimer’s drug Namenda off the market. Allergan is also currently seeking approval for a planned $63 billion merger with AbbVie Inc. that was announced last year.

The end payor class is represented by Hilliard & Shadowen LLP, Miller Law LLC, Motley Rice LLC and Cohen Milstein Sellers & Toll PLLC. The direct purchasers are represented by Hagens Berman Sobol Shapiro LLP, Kessler Topaz Meltzer & Check LLP, Berger Montague and Faruqi & Faruqi LLP. The case is Loestrin 24 FE Antitrust Litigation, (case number 1:13-md-02472) in the U.S. District Court for the District of Rhode Island.

Source: Law360.com

**Reliance Trust Agrees To Settle Stock-Buy ERISA Lawsuit**

Reliance Trust Co. has reached a settlement with a proposed class of RVNB Holdings Inc. workers who had accused the company of allowing them to grossly overpay for their employer’s stock. Reliance is the trustee for the RVNB stock ownership plan. The proposed class action was filed in June 2018. Former employees of the storage and moving company, Jessica Casey and Jason Coleman, alleged the company had violated its fiduciary duties under the Employee Retirement Income Securities Act (ERISA) by making workers pay too much—$85 million—for shares of the company’s stock.

The parties asked U.S. District Court Judge Amos L. Mazzant III, to stay all deadlines in the lawsuit for 60 days to allow them to “formalize the settlement agreement” that they reached in principle on Jan. 10. If they can formalize the settlement, they told the court they would be filing documents asking the court to approve it within 60 days.

In November, U.S. Magistrate Judge Caroline Craven recommended the case proceed in federal court, and not in arbitration as Reliance had urged in a March filing. Judge Craven held that the former employees had made the case that Reliance added an arbitration clause to their 2012 employee stock ownership plan without telling them. They learned about the clause after they filed the suit against Reliance in federal court.

Judge Craven ruled that the participants in the suit weren’t bound by the arbitration clause as a result of it being added after Reliance was sued. Reliance had argued in trying to compel arbitration that plan participants didn’t need to consent to the amendment to make it valid and that in accepting the plan’s benefits they were agreeing to its terms and any subsequent amendments. The workers had argued that just because they kept assets in the plan didn’t mean they consented to arbitration.

Casey and Coleman alleged in the lawsuit that Reliance violated its fiduciary duties under ERISA by failing to perform due diligence when the plan acquired 100% of RVNB’s common stock in 2012 for an $85 million note, which was later revalued at $24 million, according to the complaint.


Source: Law360.com

**VW’s $57 Million Suspension Defect Settlement With Drivers Gets Final Approval**

A Florida federal judge has given final approval to the $57 million settlement that ends a class action alleging Volkswagen knowingly sold CC model sedans with suspension defects.

U.S. District Judge Robert N. Scola Jr. granted final approval on the $57 million settlement that included free tire rotations and reimbursements for previous rotations for consumers. The certified settlement class includes more than 300,000 vehicle owners and lessees.

The settlement ends litigation that started in 2017 alleging certain 2009 to 2017 Volkswagen CC sedans were equipped with a defective suspension system that couldn’t be readjusted when the tires naturally crept out of alignment and caused the tires to quickly and unevenly wear down in an effect described as “cupping” or “feathering.”

Despite allegedly knowing about the problem, the drivers claimed Volkswagen ignored it and told dealerships and repair shops to simply replace the vehicles’ tires, which quickly wore down again. A 2017 amended complaint asserted claims under the Magnuson-Moss Warranty Act for common law fraud and breach of implied and express warranty, and also sought to form multiple state subclasses for claims under various state laws covering consumer protection, product liability, advertising, warranty and deceptive or unfair trade practices.

The drivers claimed that Volkswagen learned about the alleged defect when they complained to dealers, directly to the automaker, to the National Highway Traffic Safety Administration and on online message boards, as well as through its own maintenance records.

The consumers are represented by Peter Prieto, Matthew P. Weinshall and Alissa Del Riego of Podhurst Orseck PA, Peter J. Kreher and Francesco P. Trapani of Kreher & Trapani LLP, and Harris L. Pogust of Pogust & Braslow LLC.

The case is Wilson et al. v. Volkswagen Group of America Inc. et al., (case number 1:17-cv-23033) in the U.S. District Court for the Southern District of Florida.

Source: Law360.com
Hackers Terrorize Families Through Ring Security Devices

Ring camera devices are supposed to add a level of security to homes, but a mounting number of lawsuits claim the devices have opened Plaintiffs’ homes to intruders who spy on their children, taunt them, and threaten their families.

In a proposed class action filed in a California federal court Jan. 3, Mississippi Plaintiffs Ashley LeMay and Dylan Blakely say a hacker accessed the Ring device in their 8-year-old daughter’s bedroom that she shares with her two younger sisters, turning it into “a living nightmare.” The activity started just four days after they installed the device.

The hacker played the Tiny Tim cover of “Tiptoe Through the Tulips,” a song used in the horror film “Insidious” through the device. He also told the girl he was Santa and wanted to be her friend, encouraged her to misbehave, and shouted racial slurs at her. Footage of the incident shows the hacker may have been able to see everything going on inside the girls’ bedroom.

It’s alleged in the lawsuit against Ring:

**Ring has not disclosed the identity of this unknown hacker to the [family], who have no way of knowing the motives of the digital intruder or whether he still poses a threat to the safety of their family.**

Todd Craig and Tania Amador of Texas are also Plaintiffs in the proposed class action. They say a strange voice came through their indoor Ring camera, saying “I’m outside your front door.” The hacker than threatened them with “termination” if they didn’t pay a ransom, the complaint alleges.

In another class action against Ring, a unit of Amazon, Plaintiff John Baker Orange of Alabama says his kids were outside playing basketball when a voice came through the Ring speaker and told them to get closer to the camera.

All the Plaintiffs say Ring hasn’t gone after the hackers, revealed their identities, or taken any meaningful measures to fix the defect. The Plaintiffs say the problem potentially affects thousands of people who use the popular security device. They also propose a subclass of consumers whose Ring accounts were accessed by cybercriminals, alleging that “Instead of helping families protect their homes, Ring security devices have had the opposite effect.”

Ring devices have become a wildly popular target for hackers. After the Ring hack in Mississippi, Motherboard investigated and found hackers have made dedicated software for illicitly accessing Ring cameras and speakers. The blog reports that demand for the software is high.

Despite the ease with which hackers can breach the devices, Ring has “refused to implement even the most basic security precautions to secure their customers’ accounts,” according to the Jan. 3 lawsuit.

The Plaintiffs filed the lawsuit saying they want “to hold Ring responsible for its defective devices and systems, require that Ring take all necessary measures to secure the privacy of user accounts and devices, and compensate Plaintiffs and the class members for the damage that its acts and omissions have caused.” They seek unspecified damages, court costs and attorney fees.

Sources: Law360, WMCA News and Vice News

J&J Owes $344 Million for False Mesh Marketing

A California judge has ordered Johnson & Johnson subsidiary Ethicon Inc. to pay nearly $344 million in civil penalties. San Diego Superior Court Judge Eddie Sturgeon found that Ethicon had misled consumers about the true risks of its pelvic mesh products. The ruling came after a bench trial in the “trailblazing suit” brought by California Attorney General Xavier Becerra.

In his statement of decision, Judge Sturgeon sided with California Attorney General Becerra and found that J&J and Ethicon had violated the state’s false advertising and unfair competition laws.

Judge Sturgeon wrote that the state had “proven by a preponderance of the evidence that Defendants deceptively marketed their pelvic mesh products in the state of California and that their marketing was likely to deceive reasonable doctors and reasonable lay consumers, including potential patients and their friends and family, about the risks and dangers of these products.”

The judge found that the Defendants had lied to Golden State consumers and doctors about the safety of two lines of mesh products made with polypropylene: Tension-free Vaginal Tape or TVT, launched in 1998 to treat stress urinary incontinence, and the Prolift, launched in 2005 to treat pelvic organ prolapse. J&J stopped selling the prolapse-treating mesh in 2012.

In a statement relating to the decision, Attorney General Becerra said that J&J knew of the dangers of its mesh products, but had prioritized its profits over women’s health. He said:

**Johnson & Johnson intentionally concealed the risks of its pelvic mesh implant devices. It robbed women and their doctors of their ability to make informed decisions about whether to permanently implant the products in patients’ bodies. Today we achieved justice for the women and families forever scarred by Johnson & Johnson’s dishonesty.**

Judge Sturgeon wrote that J&J kept its knowledge of the most serious risks secret from doctors and patients, sending out “deceptively incomplete” information in the instructions for use that accompanied each Ethicon device, which was meant to help doctors understand the risks of the device. The judge wrote:

The evidence at trial shows that rather than disclose what it knew about some of the severe risks of pelvic mesh in its labeling and marketing materials, J&J has instead taken active, willful measures for nearly twenty years to suppress information and conceal serious risk and complication information from physicians and patients.

As for the state’s request for an injunction that would bar J&J from making deceptive statements about its mesh, Judge Sturgeon wrote that as the company is still selling the TVT and has not acknowledged or disavowed its deceptive marketing, an injunction may be necessary. Judge Sturgeon asked the parties to file supplemental briefs on the issue of injunctive relief by Feb. 18.

California is represented by Jinsook Ohta, Tina Charoenpong, Monica Zi, Daniel Osborn, Devon Mauney, Laurel Carnes, Jon Worm and Gabriel Schaeffer of the California Attorney General’s Office. The case is California v. Johnson & Johnson et al., (case number 37-2016-00017229-CU-MC-CTL) in the Superior Court of the State of California, County of San Diego.

Source: Law360.com

Undercover Investigation Shows Discrimination In Housing

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

Newsday conducted 86 paired tests in areas stretching from the New York City line to the Hamptons and from Long Island Sound to the South Shore. Thirty-nine of the tests paired African American and Caucasian testers, 31 matched Hispanic and Caucasian testers and 16 paired Asian and Caucasian testers. In 40 percent of the tests performed, evidence suggested that real estate brokers subjected minority testers to disparate treatment when compared to Caucasian testers.

African American testers experienced disparate treatment 49 percent of the time compared with 39 percent for Hispanic and 19 percent for Asian testers. In seven of Newday’s tests—8% of the total—agents accommodated Caucasian testers while imposing more stringent conditions on minorities that amounted to the denial of services for minority testers.

Further, in seven cases, real estate agents refused to provide house listings or home testers unless they met certain financial qualifications that weren’t imposed on their counterparts. In 24% of cases agents directed Caucasians and minorities to differing communities through house listings that essentially steered the buyers to areas based on race or ethnicity.

For example, one real estate agent told an African American customer a neighborhood known to have gang activity has some of the “nicest people” in order to persuade the customer to consider the neighborhood. In contrast, the real estate agent emailed the paired Caucasian about the same neighborhood and said, “please kindly do some research on the gang related events in that area for safety.”

If you are aware of fraud, abuse or waste being committed against the federal government or a state government and are interested in pursuing a whistleblower lawsuit, contact Larry Golston, a member of our firm’s Whistleblower Litigation Team. Larry can be contacted at 800-898-2034 or by email at Larry.Golston@beasleyallen.com.

The following is the January 2020 update on the types of cases that Beasley Allen lawyers are currently working on. The firm operates in four separate Sections with each Section focusing on a specific area of litigation. The four Sections are Personal Injury & Products Liability, headed by Cole Portis; Mass Torts, headed by Andy Birchfield; Toxic Torts, headed by Rhon Jones; and Consumer Fraud & Commercial Litigation, headed by Dee Miles. Information on the current litigation will be set out below for each Section.

**Personal Injury & Products Liability Section**

The personal Injury & Products Liability Section is handling cases in a number of areas. Currently, the Section has 18 lawyers and 31 support staff. Sloan Downes is the Section Director. The lawyers and support staff are working on the areas of litigation set out below. The primary lawyer contact will be listed for each type case. Following is the list of current activity in the Section.

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

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

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

**Negligent Security**—Under the law, owners of establishments owe a duty to patrons and guests to ensure that the premises are reasonably safe and secure from anticipated dangers. These cases normally take the form of shootings, fights, 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, Rob.Register@beasleyallen.com or Donovan.Potter@beasleyallen.com.

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

**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 viscosity bone cement (HVC) boasts shorter mixing and waiting times and longer

**The Mass Torts Section**

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

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

**JUUL vaping devices**—The use of JUUL and other vaping devices has reached epidemic levels, especially among teenagers and young adults. JUUL and other vape device manufacturers fueled this epidemic by targeting and deceiving youth and adolescents with misleading social media marketing and sweet, fruit-flavored pods containing high levels of nicotine. Use of these products has been associated with numerous adverse health effects, such as seizures, nicotine addiction, nicotine poisoning, breathing problems, behavioral and psychological problems, and other serious health conditions. Contact: Joseph.Vanzandt@beasleyallen.com, Sydney.Everett@beasleyallen.com or Melissa.Pricket@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 Rejuvante and ABG II modular-neck stems, recalled in July 2012; the Stryker LFIT Anatomic v40 Femoral Head (recalled August 29, 2016); the Zimmer Durom Cup, and the Biomet M2A “38mm” and M2A-Magnum hip replacement systems, which have not been recalled. Reported problems include pain, swelling and problems walking. Contact: Navan.Ward@beasleyallen.com or Melissa.Prickett@beasleyallen.com.

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

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

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

Opoids—Opoid 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 overdoses requiring hospitalization, as well as cases involving treatment for addiction to prescription opioids. Contact: Melissa.Prickett@beasleyallen.com, Roger.Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

Opoids and Infants—The opioid epidemic has also taken its toll on the most vulnerable among us. According to the National Institute on Drug Abuse, every 25 minutes, a baby is born addicted to opioids—a condition called Neonatal Abstinence Syndrome (NAS). Babies with NAS suffer painful symptoms of opioid withdrawal in the hours and days after they are born and are more likely to suffer long-term complications like developmental delays and hearing or vision impairment, compared to babies born to mothers who did not use opioids. We are investigating cases on behalf of children who were born with NAS after their mothers were prescribed opioids before or during pregnancy. Contact: Melissa.Prickett@beasleyallen.com, Roger.Smith@beasleyallen.com or Liz.Eiland@beasleyallen.com.

Consumer Fraud & Commercial Litigation Section

The Consumer Fraud & Commercial Litigation Section has 14 lawyers and 20 support staff. Michelle Fulmer is the Section Director. Lawyers and support staff in the Section are working on the litigation areas set out below. The primary lawyer contact will be supplied for each type case.

State and Municipalities Litigation—Our firm has represented numerous states throughout the country. These cases have been handled through the Attorneys General and have involved various civil actions. Many times, individuals are barred from bringing a consumer fraud type claim, but the state government is not. We recently concluded litigation in seven of eight states for a recovery dealing with Medicaid fraud. In addition, we are representing five states in related pharmaceutical pricing litigation. For more information, contact Dec.Miles@beasleyallen.com or Alison.Hawthorne@beasleyallen.com.

False Claims Act / Whistleblower: We are handling and investigating whistleblower claims of government fraud ranging from Medicare/Medicaid to military contracts, and any other type of fraud involving a government contract. Under the False Claims Act (FCA) the whistleblower is entitled to a percentage of the recovery. Studies show that as much as 10% 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.

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

Auto Defect Class Actions—we are continuing to work on numerous auto defect class actions against many of the major automobile manufacturers like VW, Toyota, General Motors, Ford and even some suppliers. These cases continue to be filed because of corporate misconduct in designing and manufacturing unsafe vehicles that are purchased by consumers, corporations and state agencies. We continue to investigate these automobile problems for class relief treatment. Contact: Clay.Barnett@beasleyallen.com, Dec.Miles@beasleyallen.com, Leslie.Pescia@beasleyallen.com or Mitch.Williams@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 poli-
cyholder 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.

**Property Insurance Fraud**—Insurance companies nationwide are unjustly deprecating labor costs on adjusted property claims (roof or fence damage for example). The depreciation of labor costs is contrary to many insurance policy forms and leads to policyholders either being undercompensated for their claims or not compensated at all as they fail to meet their deductible once labor costs are depreciated. If you have had an insurance claim on your property in the past six years, then we would like to review the adjuster’s estimate and your homeowner’s or manufactured home policy as you may have a case. Contact: Dee.Miles@beasleyallen.com, Rachel.Boyd@beasleyallen.com or Paul.Evans@beasleyallen.com.

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

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

**Antitrust**—We are handling claims related to the violation of federal and state antitrust laws. We are currently involved in claims alleging a wide array of anticompetitive conduct, including illegal tying, exclusive dealing, monopolization, and price fixing. Contact: Dee.Miles@beasleyallen.com, Alison.Hawthorne@beasleyallen.com, James.Eubank@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 states “[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.” We are looking at any claim involving extreme sexual harassment or sexual assault. Contact: Larry.Golston@beasleyallen.com, Lauren.Miles@beasleyallen.com or Leon.Hampton@beasleyallen.com.

**Employment Law**—We are handling employment cases. Situations that may be addressed in this area include minimum wage and overtime pay, unfair labor practices, all types of discrimination, employee benefits, and whistleblower claims. Contact: Larry.Golston@beasleyallen.com, Lauren.Miles@beasleyallen.com or Leon.Hampton@beasleyallen.com.

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

**Toxic Torts Section**

The Toxic Torts Section has a number of ongoing projects at present. Currently, the Section has 10 lawyers and 27 support staff.
new cases of mesothelioma are diagnosed in the United States each year. For years, asbestos was widely used in many industrial products and in building construction for insulation and fire protection. When asbestos is broken or disturbed it can release microscopic fibers that can be inhaled or ingested, posing a health risk, including the development of asbestos diseases and mesothelioma. Contact: Sharon.Zinns@beasleyallen.com or Rhon.Jones@beasleyallen.com.

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

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

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

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

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

The Section Directors at Beasley Allen do a tremendous job for our firm. The Directors are Melissa Prickett, Mass Tort Section; Sloan Downes, Personal Injury & Products Liability Section; Michelle Fulmer, Consumer Fraud & Commercial Litigation Section; and Tracie Harrison, Toxic Torts Section. The directors can be reached at 800-908-2034 or by email at Melissa.Prickett@beasleyallen.com, Sloan.Downes@beasleyallen.com, Michelle.Fulmer@beasleyallen.com; and Tracie.Harrison@beasleyallen.com.

XXIV. RESOURCES TO HELP YOUR LAW PRACTICE

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

AVIATION LITIGATION & ACCIDENT INVESTIGATION

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

TIRE LITIGATION: A PRIMER

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

NURSING HOME ABUSE & NEGLECT BROCHURE

Long-term care facilities, including nursing homes, are rife with abuse and neglect alarmingly high rates of under-reporting. 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.

XXV.
PRACTICE TIP OF THE MONTH FOR TRIAL LAWYERS

As previously stated, we have been asked to supply practice tips each month in this report. This month, David Byrne, a lawyer in our Mass Torts Section, will discuss some important things he has learned over the years. I believe this will help lawyers successfully try their cases.

Making It Personal

As trial lawyers, our ability to form personal connections with juries is our greatest courtroom weapon. These personal connections are often far more important than the facts of our case or the applicable law. That’s an easy truth to miss, even for veteran trial lawyers—and it’s the main reason why we should take off our “lawyer-hats” occasionally and try to see things from a juror’s perspective. Because unless we take the time to examine our cases (and ourselves) the way jurors do, we will never hope to make a personal connection with them at trial.

So how exactly do jurors view our cases and, more importantly, us as lawyers? The best explanation I’ve come across is in Herbert Stern’s fantastic trial advocacy book, Trying Cases to Win. There, the author points out that every juror, in every case, comes into the courtroom believing two basic things: First, that the lawyers know more about the facts, the evidence and the witnesses than they do; and, Second, that the lawyers are being paid (or, at least hope to be paid) for presenting their case. Let’s take a moment to examine both beliefs and the implications and opportunities they create for us as lawyers.

To begin with, it’s true that most jurors don’t have (and never will have) as much information about a case as the lawyers who try it. After all, lawyers spend months, if not years, preparing their cases for trial. And as the trial goes on, some witnesses are excluded; testimony may be cut short; and exhibits draw objections for a variety of reasons that only the lawyers seem to understand. So naturally, jurors are left to wonder whether they are getting the information they need to decide what’s true and what’s not—and, more importantly, which party (or lawyer) is doing the most to help them get that truthful information. This of course brings us to juror-belief number two; namely, the perception that lawyers have a financial incentive to overemphasize evidence that helps their side and down-play evidence that hurts their case. In other words, jurors are naturally skeptical about our motives and they wonder if they can ever believe in us as individuals—much less believe in what we say.

So how do we use personal advocacy to overcome these two juror concerns? I’ve thought about that question quite a bit over the years and the conclusion I’ve reached is that we don’t have to be superb orators or brilliant legal scholars to connect with jurors and to have courtroom success. But we absolutely must be straight shooters who fervently believe in our clients and the cases we try for them. Here are several tips and strategies that I’ve learned with the help of my mentors and partners at Beasley Allen:

- Pick Your Battles—For most of us, this advice seems to go against everything we’ve been trained to do (and think) as lawyers. We are taught to fight for our clients and present every possible argument we can to try to gain an advantage—no matter how flimsy the argument might be. But in the courtroom, it doesn’t always pay to fight the battles that don’t need to be fought—and it can seriously hurt your credibility if you fight battles that can never be won. So, decide right from the start which arguments and themes are critical to your client’s case and which ones aren’t. Then, be willing to concede non-essential points in front of the jury whenever possible. Don’t rattle off multiple objections to evidence and testimony if it doesn’t really harm the central themes of your case. Over time, the jury will begin to see you as a credible and fair-minded person who is worthy of their trust—and their verdict.

- Don’t Get Chummy with Your Opponent—One of the biggest mistakes a lawyer can make is to be overly friendly with opposing counsel in the presence of the jury. Treat the other side with respect, dignity and formality from the moment you enter the courthouse—but leave the back slapping and friendly conversation for another day in a less important setting. Remember, trials are about separating right from wrong and deciding what’s true and what’s false. Jurors must believe that a trial (especially your trial) is an important matter that deserves their careful attention. So never act in a way that would make them think your case isn’t serious or that you and opposing counsel are simply “play-acting.”

- Don’t Try to Impress with Lawyer-Speak—The language we choose to use or not use in the courtroom can play a huge role in how jurors view us and whether they feel connected to us. For example, how many of us have used the following “lawyerly” line when question ing a witness: “What, if anything, did you do next?” I’m sure most of us have at some point—and most of us learn over time that it’s a mistake to talk that way in court. There is no need to try and impress jurors with fancy legal jargon and technical or scientific terms. Instead, your job is to communicate your case in a way that every one of your jurors can understand it. Yes, there will be times in every trial when you and your witnesses (particularly expert witnesses) must discuss things that are complicated or difficult to grasp. But it’s your job to make that information understandable and manageable for each juror, without insulting their intelligence or “dumbing it down.”

- Be Committed to Your Client’s Cause—Last but not least, it is imperative that you always communicate in a way that drives home your personal belief that your client is right, and that their cause is just. I’m not suggesting that you violate the rules by expressing your own opinions in court on ultimate issues. Nor am I advising you to flail around the courtroom or to argue as loudly as possible. What I’m suggesting is that you speak and present your case with real passion from start to finish. Never forget that jurors always want to know whether you are saying what you are saying because it’s true, or because you simply want to win.

So, don’t be afraid to speak to your jurors in the most personal manner that the rules will permit. Use phrases like “I submit” and “I suggest” whenever possible and always refer to your clients as “Mr. ____” or “Ms. ____” rather than “My Client.” Above all, though, speak from the heart and let your jurors know that presenting this case is the most important thing in the world to you. In the end, if your jurors believe that you wouldn’t want to be anywhere else, doing anything else, they will feel a personal connection with you and with your client’s case.
XXVI.
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 January. 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.

MOTOR VEHICLE RECALLS:

Mercedes-Benz USA, LLC, (MBUSA) is recalling certain 2015-2018 CLA250 and CLA250 4MATIC, and 2017-2018 CLA45 AMG vehicles. The Occupant Classification System (OCS) may have been improperly calibrated, which may prevent the proper deployment of the front passenger air bag.

Chrysler (FCA US LLC) is recalling certain 2020 Jeep Renegade and Fiat 500X vehicles. The right rear brake caliper could have been fractured during the casting process.

Mazda North American Operations (Mazda) is recalling certain 2019-2020 Mazda3 vehicles. The Smart Brake System (SBS) can falsely detect an obstacle while driving, activating the automatic emergency braking system and suddenly stopping the vehicle.

Subaru of America, Inc. (Subaru) is recalling certain 2009-2013 Forester, 2003-2006 Baja, 2004-2011 Impreza, 2004-2014 WRX (STI included), 2003-2014 Legacy and Outback, and 2005-2006 Saab 9-2X vehicles originally sold, or ever registered, in the states of Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia or “Zone A.” These vehicles had their passenger frontal air bag inflators previously replaced under a prior recall using inflators of the same design. The inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, temperature, and temperate cycling.

Subaru of America, Inc. (Subaru) is recalling certain 2009-2013 Forester, 2003-2006 Baja, 2004-2011 Impreza, 2004-2014 WRX (including STI), 2003-2014 Legacy and Outback, and 2006 Saab 9-2X vehicles originally sold, or ever registered, in the states of Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Kansas, Kentucky, Maryland, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Virginia, and West Virginia or “Zone B.” These vehicles had their passenger frontal air bag inflators previously replaced under a prior recall using inflators of the same design. The inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, temperature, and temperate cycling.

Nissan North America, Inc. (Nissan) is recalling certain 2001-2003 Maxima, 2002-2006 Sentra, 2002-2004 Pathfinder, 2007-2011 Versa Sedan and Versa Hatchback, 2001-2004 Infiniti I30 and 135, 2002-2003 Infiniti QX4, 2003-2008 Infiniti FX35 and FX45 and 2006-2010 M35 and M37 vehicles. The vehicles are equipped with non-desiccated, frontal passenger air bag inflators containing phase stabilized ammonium nitrate (PSAN) propellant that were used as interim remedy parts for previous Takata recalls. These inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, high temperatures, and high temperature cycling.

Ferrari North America, Inc. (Ferrari) is recalling certain 2009-2011 California and 2010-2011 458 Italia vehicles equipped with non-desiccated, passenger frontal air bag inflators containing phase stabilized ammonium nitrate (PSAN) propellant that were used as interim remedy parts for previous Takata recalls. These inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, high temperatures, and high temperature cycling.

BMW of North America, LLC (BMW) is recalling certain 2008-2013 128i and 135i Convertibles, 128i, 135i, and M Coupes, 2007-2010 X3 30si and X3 xDrive30i, 2013-2015 X1 sDrive28i, X1 xDrive28i and X1 xDrive35i, 2007-2013 328i, 328i xDrive, 335i, 335is, 335i xDrive and M3 Coupes, 2006-2011 328i, 328xi, 328i xDrive, 325i, 325xi, 330xi, 335i, 335xi, 335i xDrive and M3, 2009-2011 325d, 2010-2012 325xi, 328i, 328i xDrive and 328i xDrive, 2010-2011 X6 ActiveHybrid, 2007-2013 328i, 335i, 335is, M3 Coupes, X5 30si, X5 xDrive30i, X5 xDrive35i, X5 48i, X5 xDrive48i, X5 xDrive50i and X5 M. 2009-2013 X5 xDrive50d and 2008-2014 X6 xDrive35i, X6 xDrive50i and X6 M and X6 M, 2007-2013 325i and M3 Series equipped with non-desiccated driver frontal air bag inflators containing phase stabilized ammonium nitrate (PSAN) that were used as interim remedy parts for previous Takata recalls. These inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, high temperatures, and high temperature cycling.

Toyota Motor Engineering & Manufacturing (Toyota) is recalling certain 2018-2019 4Runner, Highlander, Camry, Land Cruiser, Sequoia, Sienna, Tacoma and Tundra, and Lexus RX 350, RC 350, GS 350, GX 460, IS 300, LC 500, ES 500, LX 570, RX 350, and 2019 Toyota Avalon and Corolla, and Lexus NX 300, ES 350, and GS 200T vehicles. The low-pressure fuel pump inside the fuel tank may fail. If fuel pump fails, the engine can stall while driving, increasing risk of a crash.

General Motors LLC (GM) is recalling certain 2007-2008 Chevrolet Silverado 2500 and 3500 and GMC Sierra 2500 and 3500 vehicles equipped with non-desiccated, passenger frontal air bag inflators containing phase stabilized ammonium nitrate (PSAN) propellant that were used as interim remedy parts for previous Takata recalls. These inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, high temperatures, and high temperature cycling.

BMW of North America, LLC (BMW) is recalling certain 2008-2013 128i and 135i Convertibles, 128i, 135i, and M Coupes, 2007-2010 X3 30si and X3 xDrive30i, 2013-2015 X1 sDrive28i, X1 xDrive28i and X1 xDrive35i, 2007-2013 328i, 328i xDrive, 335i, 335is, 335i xDrive and M3 Coupes, 2006-2011 328i, 328xi, 328i xDrive, 325i, 325xi, 330i, 335i, 335xi, 335i xDrive and M3, 2009-2011 335d, 2006-2012 325xi, 328i, 328i xDrive and 328i xDrive, 2010-2011 X6 ActiveHybrid, 2007-2013 328i, 335i, 335is, M3 Coupes, X5 30si, X5 xDrive30i, X5 xDrive35i, X5 48i, X5 xDrive48i, X5 xDrive50i and X5 M. 2009-2013 X5 xDrive50d and 2008-2014 X6 xDrive35i, X6 xDrive50i and X6 M and X6 M, 2007-2013 325i and M3 Series equipped with non-desiccated driver frontal air bag inflators containing phase stabilized ammonium nitrate (PSAN) that were used as interim remedy parts for previous Takata recalls. These inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, high temperatures, and high temperature cycling.

BMW of North America, LLC (BMW) is recalling certain 2009-2012 X5 xDrive35d, 2008-2012 X6 xDrive35i, X6 xDrive50i and X6 M, 2007-2012 X5 30si, X5 xDrive30i, X5 xDrive35i, X5 48i, X5 xDrive48i, X5 xDrive50i and X5 M and 2010-2011 X6...
Actively hybrid vehicles equipped with non-desiccated, passenger frontal air bag inflators containing phase stabilized ammonium nitrate (PSPI-2) propellant that were used as interim remedy parts for previous Takata recalls. These inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, high temperatures, and high temperature cycling.

**BMW of North America, LLC (BMW)** is recalling certain 2000-2005 325iT, 325iT, 325xiT, 320i, 323i, 325i, 325xi, 328i and 330xi and 2000-2006 323Ci, 325Ci, 328Ci, 330Ci, M3 Coupe, 323Cic, 325Cic, 330Cic, and M3 Convertible vehicles equipped with non-desiccated frontal Takata PSAN inflators and PSPI passenger frontal air bag inflators containing phase stabilized ammonium nitrate (PSAN) propellant that were used as interim remedy parts for previous Takata recalls. These inflators may explode due to propellant degradation occurring after long-term exposure to high absolute humidity, high temperatures, and high temperature cycling.

**Isuzu Technical Center of America, Inc. (Isuzu)** is recalling certain 2020 Isuzu NPR HD, NPR XD, NQR and NRR and Chevrolet 4500HD, 4500XD, 5500HD and 5500XD and 2019 Isuzu NPR HD GAS, NPR GAS and Chevrolet 4500 and Chevrolet 5500 vehicles equipped with a dual mode belt locking mechanism seat belt assembly. Due to a manufacturing issue, the seat belt webbing locking mechanism may not properly restrain the occupant as intended.

**Honda (American Honda Motor Co.)** is recalling certain 2001-2002 Acura 3.2CL, 2000-2003 Acura 3.5RL, 2000-2001 Acura 3.2TL, Honda CR-V and Honda Odyssey, 2001-2002 Acura MDX and 2000 Accord Coupe, Accord Sedan, Civic Coupe, and Civic Sedan vehicles. These vehicles may have received a replacement driver frontal air bag module as part of a vehicle repair. Due to a manufacturing issue, the replacement NADI inflator may absorb moisture, causing the inflator to rupture or the air bag to underinflate.


**Toyota Motor Engineering & Manufacturing (Toyota)** is recalling certain 2011-2019 Corolla, 2011-2013 Matrix, 2012-2018 Avalon, and 2013-2018 Avalon Hybrid vehicles. During certain crashes, the air bag electronic control unit (ECU) may malfunction, possibly disabling the deployment of the air bags and/or seat belt pretensioners.

**Toyota Motor Engineering & Manufacturing (Toyota)** is recalling certain 1998-2000 RAV4, 1998-1999 RAV4 EV and Celica and 1997-1998 Supra vehicles. These vehicles were equipped with Non-Azide Driver air bag Inflators (NADI) and do not contain phase stabilized ammonium nitrate (PSAN) propellant. Due to a manufacturing issue, the NADI inflators may absorb moisture, causing the inflators to rupture or the air bag to underinflate.

**Mitsubishi Motors North America, Inc. (MMNA)** is recalling certain 1998-2000 Montero vehicles. These vehicles were equipped with Non-Azide Driver air bag Inflators (NADI) and do not contain phase stabilized ammonium nitrate (PSAN) propellant. Due to a manufacturing issue, the NADI inflators may absorb moisture, causing the inflators to rupture or the air bag to underinflate.

**Daimler Vans USA, LLC (DVUSA)** is recalling certain 2019 Mercedes-Benz Sprinter and Freightliner Sprinter vehicles. The lashing rails on the side walls may not have been properly installed, possibly resulting in the lashing rails detaching.

**PACCAR Incorporated (PACCAR)** is recalling certain 2020 Kenworth T800, T880 and W990 and Peterbilt 348, 367, 389, 520, and 567 vehicles. The forward rear axle output shafts may have been improperly heat-treated during manufacturing, possibly resulting in the shafts fracturing.

**Subaru of America, Inc. (Subaru)** is recalling certain 2016-2017 Outback vehicles. A replacement air bag control module may have been installed that is not compatible with the passenger air bag module, possibly affecting air bag deployment.

**SFI Trucks** is recalling certain vehicles built on 2019 Spartan Emergency Response MetroStar chassis. The brake relay valve may have an air flow restriction, which may result in an increased stopping distance. As such, these vehicles fail to comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) number 121, "Air Brake Systems."

**BMW of North America, LLC (BMW)** is recalling certain 2019-2020 330i and 330i xDrive vehicles. The outboard rear seat belt pretensioners may not lock as intended during a crash.

**Mercedes-Benz USA, LLC. (MBUSA)** is recalling certain 2018 S560 and S450 vehicles. These vehicles may be equipped with front brake components (brake discs, calipers, and pads) with different dimensions than specified for the vehicle.

**Autocar, LLC (Autocar)** is recalling certain 2015-2020 Xspedtor vehicles. The headlamp relay may disconnect from the fuse box, causing the headlights to shut off.

**Autocar, LLC (Autocar)** is recalling certain 2013-2020 Xpedtor vehicles. The ignition relay may fail without warning, causing the vehicle to stall.

**Chrysler (FCA US LLC)** is recalling certain 2014-2019 Ram ProMaster vehicles equipped with 3.6L engines. The transmission shifter cable may separate and disconnect from the transmission, causing the vehicle to not perform shifts intended by the driver and the gear shift lever position not matching the actual transmission gear.

**Tire recalls:**

**Michelin North America, Inc. (Michelin)** is recalling certain CrossClimate tires in size 225/60R17 104V XL tires with Department of Transportation (DOT) date code 4018. The tires are not marked with the required UTQG treadwear, traction or temperature gradings. In addition, on the designated outboard sidewall and on the inboard sidewall, the DOT certification symbol, which precedes the TIN (Tire Identification Number) has not been molded into the sidewall. 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.” Without the proper markings, the tires may not be used in the appropriate driving conditions, increasing the risk of a crash.

**Cooper Tire & Rubber Co. (Cooper Tire)** is recalling certain Cooper Evolution Tour, Mastercraft SRT Touring, Hercules Roadtour 455 Sport, Starfire Solarus AS and Mastercraft Stratus AS tires, all in size 225/50R17 and with DOT date code 3019. The subject tires were manufactured with an improper sidewall component. The improper sidewall component may cause tire deflation and tread separation, increasing the risk of a crash.

**Cooper Tire & Rubber Company Europe Ltd. (Cooper Europe)** is recalling certain Avon Cobra Chrome motorcycle tires, size 240/50R16, manufactured April 8, 2018.
through June 1, 2019 (DOT date codes 1418-2119). The innerliner gauge may be too thin, possibly resulting in a rapid deflation of the tire. Rapid tire deflation can reduce vehicle control and increase the risk of a crash.

Michelin North America, Inc. (Michelin) is recalling certain Crossclimate+ tires in size 225/60R17 105V XL tires with DOT date code 4618. The tires are not marked with the required UTQG treadwear, traction or temperature gradings. In addition, on the designated outboard sidewall, the DOT certification symbol, which precedes the TIN (Tire Identification Number) has not been molded into the sidewall. 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.”

**OTHER CONSUMER RECALLS:**

Four infant incline sleepers recalled due to suffocation risk. The federal Consumer Product Safety Commission (CPSC) along with four different companies have recalled more than 165,000 infant incline sleepers due to risk of suffocation. The companies impacted by the recall include: Summer Infant, Graco, Delta Enterprises Corp, and Evenflo. The recalled products include the following; Summer Infant’s SwaddleMe By Your Bed Sleeper, Model number 91394; Graco Little Lounger Rocking Seat, Model numbers; 1872054, 1875065, 1875102, 1877160, 1882081, 1886513, 1908957, 1914283, 2047754 and 1922809; Delta Enterprise Corp. Deluxe Incline Sleeper, Model numbers; 27404-2255, 27404-457, 27404-758, and 27404-942; and Evenflo Pillo Portable Napper, Model number 12132125. At this time no injuries or deaths have been reported with the current recall, according to the CPSC. The agency urges consumers to immediately stop using the products and contact the specific companies for refund options. The products included in the recall were sold nationwide online through merchant websites including Amazon and at various retail stores including Target and Walmart. The Graco Little Lounger Rocking Seat was also sold in Mexico.

PCNA Recalls Power Banks Due to Fire and Burn Hazards—This recall involves the Spare Power Bank used to charge electronic devices. They have a 10,000 mAh Grade A lithium-ion battery, LED indicator lights, and a flash-lights. The power banks are white and are decorated with various logos. PO number 1813582 is printed on the back of the power bank. The power banks measure about 5 1/2 inches long by 2 1/2 inches wide. The power bank's lithium-ion battery can overheat and ignite, posing fire and burn hazards.

STIHL Recalls Pressure Washers Due to Injury Hazard. This recall involves the spray wand supplied with STIHL RE 90 Pressure Washers. The pressure washer is gray and orange with “STIHL RE 90” printed on the front. The recalled spray wand measures 15 inches long and attaches to the spray gun. Interchangeable nozzles connect to the spray wand. The pressure washer nozzle can disconnect from the spray wand when under pressure during use, posing an injury hazard.

Varidesk Recalls Stand2Learn Stools Due to Fall Hazard. This recall involves adjustable-height stools designed for students of any age. The height ranges from 19 to 33 inches. The gray steel stools have a black padded seat, four stabilizing crossbars supporting the legs and adjustable footpads for leveling. The model number 42058 is located underneath the seat, and the UPC code is 8-13866-02350-7 is printed on the packaging. The foot support on the stool was improperly welded and can break, posing a fall hazard to consumers.

Baby Trend Recalls Tango Mini Strollers Due to Fall Hazard. This recall involves four models of black Tango Mini Strollers, each with its own model number and identifiable by a uniquely colored bonnet top sold in Quartz Pink (Model Number ST31D09A), Sedona Gray (Model Number ST31D10A), Jet Black (Model Number ST31D11A), and Purest Blue (Model Number ST31D03A). Model numbers are printed in black on a white sticker located on one of the stroller’s legs. Both of the stroller’s hinge joints can release and collapse under pressure, posing a fall hazard to children in the stroller.

The Thompson’s Company Recalls Aerosol Waterproofing Wood and Masonry Protectors Due to Fire Hazard. This recall involves Thompson’s WaterSeal waterproofing wood and masonry protectors in aerosol cans. The products are used to coat exterior wood to prevent water damage. The aerosol cans are 11 ounces and have a green or blue cap. “Thompson’s WaterSeal,” “Wood Protector” or “Masonry Protector,” the item number and UPC code are printed on the can. The contents of the cans can react with the package, causing rust to form along the can seam, which could spread to other areas of the can and create pinhole leaks. Leaking propellant poses a fire hazard when it comes into contact with sources of ignition. Leaking sealer can also result in property damage.

Libbey Glass Recalls Milk Bottles Due to Laceration Hazard. This recall involves the Libbey Glass 33.5 oz. Milk Bottles. They are clear colorless glass bottles with no logos. PO number 1813582 is printed on the back of the bottles. The bottles are white and are decorated with various logos. Libbey Glass 33.5 oz. Milk Bottles. They are clear colorless glass bottles with no markings that measure about 8½ inches in height by 3¼ inches in width at the base. The recalled bottles can be identified by their original packaging. Bottle cartons with item number 92129 and manufacturing dates of either Aug. 15, 2019, or Aug. 31, 2019. If your establishment received these bottles after Aug. 15, 2019, contact your distributor to determine if you received affected bottles. The bottles can break unexpectedly during use, posing a laceration hazard.

The Thesaurus Global Marketing Recalls Tricycles Due to Violation of the Federal Lead Paint Ban; Risk of Poisoning; Sold Exclusively at Amazon.com (Recall Alert). This recall involves Little Bambino 4 in 1 canopy children’s tricycles. The three-wheeled tricycles can be used as a push stroller or a push, training and classic tricycle. They were sold in blue, pink or red and have a back handle, an elongated back rest, a basket, a canopy and a bell on the front handle. The Little Bambino logo is on the front of the tricycle. Model BW204 and UPC code 653981740030, 653981740092, 653981740108, 656857123326, 656857123333 or 656857123540 can be found on the product packaging. Paint on the canny’s frame contains levels of lead that exceed the federal lead paint ban and tricycle components contain levels of lead that exceed the federal lead content ban. Lead is toxic if ingested by young children and can cause adverse health issues.

Boston Warehouse Trading Corp. Recalls Holiday Travel Mugs Due to Fire Hazard; Sold Exclusively at Meijer Stores. This recall involves Holiday Travel mugs with lids. They have a decal with “Let it Snow” or “Merry and Bright” in gold metallic lettering. The bottom portion of the mugs is red or green and the top half portion is white. The lids are black. They measure 7 inches tall. “Microwave safe” is written on the backstamp under the glaze and on the wrap band. The mugs are mislabeled as microwave safe. If microwaved, the metallic print on the mug can spark, posing a fire hazard.

As you can see, there have been a large number of recalls since the last issue. We included many of them in this issue. Those we felt to be of the highest importance and urgency are included. If you need more information on any of the recalls listed above, visit our firm’s web site at BeasleyAllen.com. We would also like to know if we have missed any significant recall that involves a safety issue. If so, please let us know. As indicated at the outset, you can contact Shanna Malone at Shanna.Malone@beasleyallen.com for more recall informa-

JereBeasleyReport.com
Abby James (8) who is in the 2nd Grade at Pike Road School. They also have a 1-year-old Maltipoo named Cricket.

Mary’s family attends Century Church in Pike Road where you can find her leading Welcoming Ministry Teams as well as co-leading a Life Group. Mary loves reading, traveling and hanging out with family and neighbors who are like family.

When asked what her favorite thing is about working at Beasley Allen, Mary says, “I love working with people, so interacting with our employees brings me a lot of joy. I also enjoy how diverse my job is and the different hats that I get to wear whether that is planning a firm event or helping someone with an insurance question. Working for a company that makes such a difference in our community brings me so much joy and I am thankful to be here.”

Mary is another hard worker who is dedicated to her work. Taking care of Beasley Allen employees requires both hard work and a dedicated effort. We are blessed to have Mary with us. By Design: Reconciling the AEMLD’s ‘Mixed’ Design-Defect Approach,” was also published in Volume 8, Issue 2 of the Faulkner Law Review. Ryan also authored pieces on the opioid litigation and FDA clinical trials for the Petrie-Flom Center for Health Law Policy, Biotechnology, and Bioethics at Harvard Law School.

Ryan is a member of the Alabama State Bar, where he currently serves as Co-Chair of the Membership Relations Task Force and as a member of the Executive Committee of the Young Lawyers Section. He is also a member of the Montgomery County Bar Association Young Lawyers Section, American Association for Justice where he serves on the Publications Committee for the New Lawyers Division, Alabama Association for Justice, the Montgomery Volunteer Lawyers Program and the American Inns of Court, Hugh Maddox Chapter.

Ryan is also active in his community. He was a volunteer coach of the Saint James School trial team. His team competed in the YMCA Youth Judicial, a statewide high school mock trial competition held at the Federal Courthouse in Montgomery. He is also a member of the YMCA Boys Work Committee, which is a group of young professionals in Montgomery who raise money for youth football.

Ryan says the environment of selflessness fostered at Beasley Allen along with the common goal of doing the right thing is what he believes sets the firm apart.

Ryan enjoys spending time with his family and friends, playing golf and visiting the beaches of the Florida panhandle.

Ryan is a very good lawyer who has a bright future with the firm. He is dedicated to the rule of law and to seeing that people receive justice. We are fortunate to have Ryan at Beasley Allen.

CARA MORALES

Cara Morales has been with the firm since May 2017. She is a Legal Assistant in the Mass Torts Section and currently is working on Talcum Powder Extremis cases. Cara says that she is driven to work hard on behalf of the women who have battled cancer because they have been through more than she can imagine.

Cara has a daughter, Joni, and a son, Matthew. Joni lives in Montgomery and has been with Montgomery Foot Care Specialists for 14 years. Matthew is a student at the University of South Alabama where he is studying to become a psychologist.

Cara says she enjoys spending time with family and friends and is an avid dog lover. Cara says, “as I have gotten older, I realize how fortunate we are to share our lives with those dearest to us, and I take advantage of every opportunity to spend time with my loved ones.”

When asked what her favorite thing is about working at Beasley Allen, Cara says,
“my favorite thing about working at Beasley Allen is the people. Although we come from different walks of life, we share the same objective that allows us to work well in unison.”

Cara is another talented, hard-working employee who is dedicated to assisting our clients receive justice. We are fortunate to have her with the firm.

**XXVIII. SPECIAL RECOGNITIONS**

**LARRY GOLSTON INSTALLED AS 91ST PRESIDENT OF MONTGOMERY COUNTY BAR ASSOCIATION**

Larry Golston, a lawyer in our firm’s Consumer Fraud & Commercial Litigation Section, has become the 91st President of the Montgomery County Bar Association (MCBA). He joins Tom Methvin (the firm’s managing attorney) and Kendall Dunson who also served in this important position. Larry is also the second African American to hold the office of President, Kendall being the first.

Larry previously served as President of both the Alabama Lawyers Association and the Capital City Bar Association. He is also the former chairman of the Adams-Shores Caucus of the Alabama Association for Justice and is a member of the Federal Bar Association.

As his first official act, Larry rolled out the MCBA Board of Directors’ agenda for the upcoming year. The theme for the year is “equipped to serve” and will focus on equipping the members of the bar with tools, resources and information they will need to serve the public, improve the interest of justice and increase the public’s understanding of and respect for the rule of law. Larry explained that the group plans to engage in several initiatives to help prepare its members to be successful in those areas.

Larry also serves on the Board of Directors for the Montgomery YMCA-Bell Road Branch and regularly serves as a volunteer head coach for youth football and youth basketball with the YMCA. Additionally, he volunteers his time to speak to high school and middle school students about the law, the importance of getting a good post-secondary education, and the importance of the judicial branch of government. The Birmingham, Alabama, native attended the University of Alabama and the University of Alabama School of Law. Larry is a talented lawyer who works hard to see that his clients receive justice. He will do an outstanding job in his role as president of the MCBA.

**BEASLEY ALLEN NAMES THREE NEW PRINCIPALS**

Three Beasley Allen lawyers have recently become principals in the firm. Our firm’s Managing Attorney Tom Methvin says: “These attorneys have demonstrated excellence in their commitment to the firm and its work. We are thankful for their hard work and dedication to pursuing justice and demanding accountability on behalf of our clients.” I was asked recently by a friend to explain exactly what a “principal” is at Beasley Allen. I told my friend it’s not like being the principal of a high school. Instead, it indicates ownership in the firm by an individual lawyer. The new Beasley Allen principals are Liz Eiland, Jennifer Emmel and Leon Hampton Jr.

**LIZ EILAND**

Liz Eiland joined the firm’s Mass Torts Section in 2012. She is currently handling cases for individuals harmed by opioids, including infant clients born with neonatal abstinence syndrome (NAS) and other opioid-related complications. Liz was recently named by The National Trial Lawyers to the Alabama Top 40 Under 40 and was selected for the Alabama State Bar’s Leadership Forum Class 15. She is a member of the Alabama State Bar, the Montgomery County Bar Association and the Alabama Association for Justice. Liz attended Troy University and Samford University’s Cumberland School of Law.

**JENNIFER EMHEL**

Jennifer Emmel joined us in 2013 and primarily focuses on cases consolidated in multidistrict litigation (MDL) in New Jersey federal court involving the link between talcum powder and ovarian cancer. She is a member of our Mass Torts Section. Jennifer is active in the American Association for Justice and serves on Southeast Alabama Area Health Education Center’s (AHEC) Board of Directors. Jennifer also volunteers for the Alabama State Bar as well as the Montgomery County Volunteer Lawyers Program. She attended the University of Wisconsin, University of South Carolina School of Medicine and Gonzaga University School of Law.

**LEON HAMPTON JR.**

Leon Hampton Jr. first joined Beasley Allen while in law school, working as a law clerk. He is now in the firm’s Consumer Fraud & Commercial Litigation Section having joined the Section in August 2017. Currently, Leon is working on class action, employment and whistleblower claims. He currently serves as the President-Elect of the Alabama Lawyers Association. Leon is also an executive board member for the Capital City Bar Association and a member of the Alabama State Bar and the Montgomery County Bar Association. Leon was recently selected for the Alabama State Bar’s Leadership Forum Class 15. He attended Alabama A&M University and Samford University’s Cumberland School of Law.

**TYNER HELMS BECOMES A BEASLEY ALLEN ASSOCIATE**

Beasley Allen also named a new associate in January. The firm named Tyner Helms, a lawyer in our Consumer Fraud & Commercial Litigation Section, as a new Associate in the firm.

**VERSES**

My friend Cecil Spear furnished one of his favorite verses this month. Cecil, an Auburn University graduate, is an engineer. He was an owner of a highly successful Montgomery-based Steel Fabrication Company, which was sold to Trinity Industries. Cecil is now retired and enjoying living in Auburn.

Jesus Christ is the same yesterday, today, and forever. Hebrews 13:8

Kristi Smith, a Legal Assistant in our Toxic Torts Section, supplied Joshua 1:9 for this issue. Krisi says this verse truly helps her anytime she is overwhelmed whether it is a health scare, worry or just life in general. Kristi says she reminds herself that God loves her and has created her in his
image to be strong and courageous and to lean on his protection always. She says God is with her always and that Joshua 1:9 was also her Dad’s favorite verse.

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

Brent Waren in our firm’s Technology Department sent in his favorite verse. He says this verse has stuck with him for years and years. Brent says: “I’ve loved this one since I first read it. When we delight ourselves in the Lord or pursue the Lord and His teachings over and above everything else we find great peace, joy, comfort and character (just to name a few) in our lives.”

*Delight yourself in the LORD and He shall give you the desires of your heart.* Psalms 37:4

Ryan Kral, a Beasley Allen lawyer, sent in Luke 14:11 as his favorite verse. He says “no matter our profession, our upbringing, or with whom we associate, we are all human beings. Humility is one of the most important virtues one can exhibit—it grounds us and reminds us that no accomplishment is too great as to put us on a higher pedestal than our fellow brothers and sisters in Christ. This verse exhibits that beautifully.”

*For be who exalts himself will be bumbled, and be who bumbles himself will be exalted.* Luke 14:11

XXX.
CLOSING OBSERVATIONS

**WORDS OF WISDOM FROM DR. DAVID G. BRONNER**

Dr. David G. Bronner, the Chief Executive Officer of Retirement Systems of Alabama, wrote an excellent piece for the latest issue of The Advisor. David is one of the most knowledgeable persons around when it comes to the State of Alabama’s problems, as well as the state’s potential. For the edification of our readers I will set out below what David had to say about 2020.

**2020: A CHANCE FOR MEANINGFUL CHANGE**

Alabama is a great state, but we have long ignored many problems facing our state, such as failing prisons, defi- cient mental health services, an inconsistent education system, an underfunded state police program, and the lack of adequate revenue to address these issues. I may sound like a broken record at this point, because I have been talking and writing about many of these issues for over forty years. The difference: I now have hope that we may do something to finally fix these problems.

I have this hope because of our strong current leadership. We have a governor who, as I pointed out last month, has already taken bold steps to address our infrastructure problems and seems poised to go even further in addressing Alabama’s long-standing problems. Governor Kay Ivey is not scared to make the tough decisions that will help to improve the state of Alabama.

Lieutenant Governor Will Ainsworth is determined to transform a somewhat powerless office into a platform to bring about change to the state. The President Pro Tem of the Senate, Del Marsh, is a seasoned leader with the skills and experience needed to navigate passing controversial legislation in the Senate. The Speaker of the House, Mac McCutcheon, uses his experience as a hostage negotiator to lead the 105 members in the House from diverse and opposed ways of thinking to points of common ground. There are many others in both the House and Senate that have exhibited great leadership in working towards the betterment of the state.

Alabama has had great leaders in various positions in the past, but this is the first time we have had so many leaders that are all working together. I encourage these leaders to keep moving forward. Work together to find ways to raise the revenue to fix Alabama’s broken systems.

But, the work does not rest solely with Alabama’s political leaders. We the people must get involved as well. Do what is necessary to support these leaders as they make the tough decisions necessary to better our great state, the great state of Alabama. It is time to stop talking about our state’s great potential, and attack the “historic old problems” of our state.

They can’t afford to fail to act, must do so in a timely and meaningful manner. It’s easy to identify the problems facing Alabama, but it will take courage to do that which is required to fix them. Our leaders must make some tough but necessary decisions, in order to get the job done. Gov. Kay Ivey has the desire, as well as the courage, required. This governor’s experience, knowledge, and talent will enable her to tackle and solve our state’s problems. I believe Gov. Ivey will act decisively with conviction. I also believe the leadership in the House and Senate will follow the governor’s lead. Hopefully, the people of Alabama will get actively involved and let our political leaders know that they must move Alabama forward without delay so that our state can reach its fullest potential.

Source: The Advisor

**OUR MONTHLY REMINDERS**

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

2 Chron 7:14

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

Edmund Burke

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

Isaiah 10:1-2

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

Martha Washington (1732—1802)

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

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

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

Martin Luther King, Jr.

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

Vincent Lombardi

Kindness is a language which the deaf can bear 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

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 subserve the public good. We draw the line against misconduct, not against wealth.”

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

“The opposite of poverty is not wealth; the opposite of poverty is justice.”

Bryan Stevenson, 2019

XXXI.

PARTING WORDS

REFLECTIONS ON THE REV. DR. MARTIN LUTHER KING

Alabama and much of the nation celebrated Martin Luther King Day last month. Having been around during the years when Dr. King was doing his good and badly needed work, I saw firsthand public reactions to this great man. Sadly, the reactions during those days in Alabama and other parts of the country were mixed.

The Rev. Dr. Martin Luther King is, no doubt, looked back upon as a courageous leader and a national hero who pushed against “the current” to bring about badly needed change in the treatment of African American citizens. According to a 1966 Gallup poll, only a third of Americans viewed Dr. King in a positive light. Sadly, there were many resisters to the change he was promoting.

When Dr. King was gunned down that fateful day of April 4, 1968, on the second-floor balcony of the Lorraine Motel in Memphis, Tennessee, by James Earl Ray, America reacted with “Glee, Satisfaction and Weeping,” according to a New York Times article on the 50th anniversary of his death. The Times asked readers who were alive at the time of King’s assignation to recall what they remember. The memories were mixed:

“As a young white woman living in the South when Dr. King was assassinated, I saw glee, satisfaction and weeping in equal parts. He caused my blind eyes to see.”— Ina McDonald, Houston

“I was a freshman and in the Phi Mu sorority suite at Memphis State when I heard it on the radio. Some girls walked into the room talking and laughing about it. I remember cars honking and a general feeling of celebration around me. I felt bad but was too stupid and gutless to speak up”. —Martha Asbury Wilson, Memphis

More than a half-century later, Dr. King, from Heaven, knows the impact of the work he sacrificed his life for. In Montgomery, where our firm’s home office is located, this man’s legacy feels very close. It was here that Dr. King preached at a church in shouting distance of the Alabama State Capitol, working in peaceful protest of Jim Crow laws and the inhumanity of segregation. We are reminded every day of the sacrifices made by Dr. King—and so many others who worked with him side-by-side—in a quest for equality. Today, we are badly divided in America. Racism has reared its ugly head again and that has become a serious problem in our country.

I pray that as Americans we will continue to push against “the current” and promote positive change for our fellow Americans regardless of their race, gender, religion, nationality, or sexuality. I fear our nation is at a turning point of division. In remembering Dr. King, we must also understand that we are together what makes this country great—free, diverse, one nation under God.

Source: New York Times

JereBeasleyReport.com

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No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.
On January 7, 1979, Jere L. Beasley established a one-lawyer firm in Montgomery, Alabama, which has grown into the firm now known as Beasley, Allen, Crow, Methvin, Portis & Miles, P.C.

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

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

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