The Jere Beasley Report

January 2021

ALABAMA | GEORGIA
LaBarron Boone Selected As 2020 ‘Chad Stewart Award’ Recipient

LaBarron Boone was awarded the 2020 “Chad Stewart Award,” by Beasley Allen. This honor was created in memory of Beasley Allen lawyer Chad Stewart, who passed away unexpectedly in 2014 at the very young age of 41. The firm established the award to honor Chad’s spirit of service to God, his family and the practice of law in the task of “helping those who need it most.” Each year, the firm recognizes one of its lawyers who best exemplifies those qualities Chad demonstrated in his life and his law practice.

“I’m very glad to present this award to LaBarron and I can think of no one more deserving in the firm to receive this award,” said Tom Methvin, Beasley Allen’s Managing Attorney, while presenting the award to LaBarron. Tom reflected on Chad’s life, saying:

“This award is about how Chad prioritized his life, which was faith, family and firm, in that order. LaBarron lives his life in the same way. It is a pattern demonstrated from the top leadership and encouraged across the firm. We appreciate LaBarron keeping Chad’s spirit alive in his life and in his own law practice.

LaBarron Boone joined the firm more than 25 years ago and since then he has been instrumental in presenting product liability, consumer fraud and personal injury cases. He is a member of the firm’s five-person Executive Board and, as a Beasley Allen lawyer for more than 20 years, he has successfully handled an array of important cases. Many brought about, in addition to obtaining justice for his clients, needed safety changes in Corporate America.

LaBarron said, “From day one in my time with the firm, the leadership has stressed the importance of keeping our priorities in the right order. Keeping God first, family second and the firm third demonstrates that you are approaching your calling—in my case the practice of law—with God’s will in mind and a heart for serving him.”

Now, LaBarron’s background and experience as an industrial engineer as well as his mother’s urging him to “make this world a better place” help guide his advocacy for his clients. He strives to be a gatekeeper for fairness, justice and equality when it comes to consumer safety.

In addition to LaBarron’s casework, he currently serves on the executive committee for The National Trial Lawyers-Top 100 Civil Plaintiff, the executive committee for the National Black Lawyers Top 100, and the Attorneys Information Exchange Group (AIEG) Board of Directors. Previously, LaBarron served on the Alabama State Bar President’s Executive Council from 2013 to 2014 and served as the liaison for its Access to Justice initiative. LaBarron was the first Beasley Allen attorney to serve as President of the Alabama Lawyers Association and the Capital City Bar Association.

LaBarron holds a Martindale Hubbell AV Preeminent Rating. He is an award-winning attorney who has been regularly selected by his peers for inclusion in The Best Lawyers in America. He was named Marquis Who’s Who in America 2020 Entrepreneurs and Business Owners from the State of Alabama. In Spring 2019, LaBarron was selected to The National Trial Lawyers Top 100, an invitation-only organization composed of the premier trial lawyers from each state or region who meet stringent qualifications as civil Plaintiff and/or criminal Defense trial lawyers. He has also been named to the LawDragon 500 Leading Plaintiff Consumer Lawyers, which is the 500 best attorneys across the nation in this category.

LaBarron was recognized as Beasley Allen Litigator of the Year in 2007 and is especially proud to have been selected as Beasley Allen’s 2016 & 2017 Product Liability Lawyer of the Year. In 2009, he was given the Resurrection Catholic Mission’s Truth & Charity Award for his exemplary and extraordinary support of the Mission Center. On Sept. 22, 2005, LaBarron was the first recipient of the Hands for Children Award, presented to him at the Children’s Advocacy Center in Montgomery, Alabama.

LaBarron is also actively involved in many community and social activities, such as serving on the Cleveland Avenue YMCA Board of Management, Resurrection Catholic Church Board of Trustees, Child Protect Board of Trustees, the Dexter Avenue King Memorial Foundation, and serving on the board of Medical Outreach Ministries (MOM). He also served on the Central Alabama Community Foundation Board of Trustees (CACF), one of the largest charitable foundations in the state of Alabama with assets exceeding $27 million.

Last year, LaBarron co-chaired the Montgomery Area Chamber of Commerce Ad Valorem Initiative Committee to improve funding for the Montgomery County (Alabama) Public Schools System. The committee encouraged voters to support an increase in the local property tax, which was successfully approved by Montgomery voters in the November 2020 general election. In December, he joined...
the Chamber's Board of Directors. Previously, he was also selected to serve on the Alabama State University 2011 and 2013 Presidential Search Committees. He is married to Lori David Boone and they have two children, Micah and Logan.

More information about LaBarron’s casework and tremendous legal career is available on our website at beasleyallen.com/attorneys/. You can reach LaBarron at the firm by calling toll-free 800-898-2034 or email him at LaBarron.Boone@beasleyallen.com.

II. THE BEASLEY ALLEN OFFICES

Beasley Allen Mobile Office Open For Business

In the last issue of this Report, we let you know that Beasley Allen is opening an office in Mobile, Alabama. The office will be headed up by experienced lawyer Frank Woodson as Managing Attorney-Mobile. Frank has been with the firm since 2001. Before coming to Montgomery, Frank practiced in Mobile for 17 years, and he is looking forward to “returning home” to lead the Mobile office.

Frank practiced in Mobile from 1984-2001 and now that he and his wife are empty-nesters he looks forward to returning. Frank was President of the Mobile County Young Lawyers Section and served on the County Bar Association Executive Committee. Frank, concerning his return to Mobile, observed:

I am originally from Jackson, Alabama, just up the road from Mobile. My family had a place in Gulf Shores, and I had relatives in Bay Minette and Fairhope. So, the area is home to me. Since I practiced in many areas, I got to know many of the fine local lawyers and have always enjoyed going back to the Mobile/Baldwin Bench and Bar and visiting friends.

Frank will be joined in the Mobile office by Evan Allen who already had several cases pending in Mobile County before the decision was made to open an office. Evan currently serves as President of the Young Lawyers section of the Alabama State Bar. Evan had this to say about the new venture:

I am excited and optimistic about the future of the Mobile office and the overall future of the firm. Beasley Allen has continued to evolve and grow throughout the firm’s history. I think that willingness to accept change sets Beasley Allen apart and has been integral to the firm’s success. I look forward to continuing that legacy with the new Mobile office.

Frank and Evan will welcome to our Mobile office a new Beasley Allen lawyer, Matt Griffith, who will join the firm this month. Matt has been involved in high-stakes commercial litigation, representing both Plaintiffs and Defendants, across the Gulf Coast and eastern seaboard. He also has handled numerous lawsuits involving environmental and toxic exposure issues ranging from solid waste landfills to reclaimed dump pits, and cases involving the Clean Water Act and RCRA. Matt will be continuing his practice in the area of Toxic Torts at Beasley Allen, with a focus on water contamination cases and the opioid litigation on behalf of cities, states and municipalities nationwide. Matt has this to say about his new venture at our firm:

Hanging made Mobile my home for the past seven years, I don’t think there is a better place to raise my family or to go to work every day. Mobile is a vibrant and diverse city steeped in history, including having the oldest bar association in our state. I am excited to join Beasley Allen and help grow the firm in Mobile and along the Gulf Coast.

Although the physical location is new, that does not mean our firm is new to the Mobile or Baldwin County courts. Lawyers in our Personal Injury & Products Liability Section tried the first civil case after a COVID pause last year and obtained a $12.4 million verdict in a dram shop case. The firm has had several other verdicts in Mobile, including an $18 million verdict two years ago.

The new office is located at 301 St Louis Street. You can reach our Mobile lawyers toll free at 800-898-2034 or dial the Mobile office directly at 334-801-1555, or email Frank.Woodson@beasleyallen.com, Evan.Allen@beasleyallen.com or Matt.Griffith@beasleyallen.com. More information about Beasley Allen Mobile is available on our website at beasleyallen.com/mobile.

An Update On Beasley Allen’s Atlanta Office

Lawyers in our Atlanta office were hopeful they would be able to resume jury trials at the end of 2020, but a spike in COVID-19 cases dashed their hopes. As cases in Georgia—particularly in the Metro Atlanta area—remained high, courts are mostly staying closed for trials. Chris Glover, Managing Attorney-Atlanta says:

Technically, you can have a trial, but they’re not really setting the vast majority of civil cases on the calendar because of the pandemic spike. It’s unsure when that will change, so we are carrying on as best we can to be ready. We’re hopeful with the vaccine that soon we can get back into the courtroom. Our clients need justice. The best thing right now is that we have more cases ready to go for trial than we ever have. It’s going to be exciting when things return to normal.

Meanwhile, the office continues to grow. Two new staff members joined the team. Samantha Fitzpatrick and Heather Gamba are working to assist lawyers Alyssa Baskam, Ben Keen and Rob Register. Alyssa moved from representing nursing home patients and their families to handling personal injury & products liability cases. We are also excited to announce that Alyssa also recently made “Principal” in the firm. This month, Tom Willingham joins the office as Of Counsel, and he also will be working on personal injury & products liability cases. Tom’s talent and experience are a tremendous addition to the Atlanta office. We are certainly excited to have him on board.

Kendall Dunson, who specializes in personal injury and products liability litigation, was a featured speaker at the Georgia Trial Lawyers Association (GTLA) convention, held at the St. Regis in Atlanta at the beginning of December. He shared his experiences with the firm’s recent trial in Mobile, Alabama, one of the first in-person trials in the state to proceed after the COVID restrictions were lifted. The case, Wiggins v. Mobile Greyhound racing, sought to hold the racetrack and casino liable for allowing their employee to drive while intoxicated under the state’s Dram Shop Law. The case ended in a $12.4 million verdict for the Plaintiff, whose fiancée was killed in a crash with the intoxicated employee.
Kendall shared how the process was different given COVID restrictions, and how they might proceed in Georgia. He shared photographs of the Courtroom setup and described the COVID restrictions put in place by the Court—like placing the judge and witnesses behind plexiglass shields and requiring face masks and social distancing—to protect the parties, the Court staff, and, most importantly, the jury.

Kendall, who is in the firm’s Personal Injury & Products Liability Section, made this observation relating to trials during the pandemic:

As Plaintiff attorneys, we have to decide if it is best for our client to proceed with trial during this pandemic or wait until circumstances improve. We were successful because we had a unique opportunity, a Judge who wanted to proceed, great technology staff and a case suitable to try despite the issues created by a Pandemic.

Atlanta lawyers also participated in Clark’s Christmas Kids with the GTLA, spearheaded by the New Lawyers’ Division. As co-chair of the division, Alyssa Baskam helped organize the firm’s efforts in support of the annual holiday giving project. It was the third year GTLA participated. Clark’s Christmas Kids partners with the Division of Family and Child Services (DFCS) to provide Christmas presents to all foster children in the state of Georgia. Alyssa said: “Every year that is their goal, and miraculously by the last day they always make it.”

This year was no exception. GTLA was able to sponsor 332 foster children through the help of its generous members (an increase of more than 100 from the previous year). Beasley Allen sponsored 11 children as a firm and also had almost 100% lawyer participation from the Beasley Allen Atlanta office. In addition to firm sponsorships, individual lawyers sponsored an additional 17 children. That means in total Beasley Allen Atlanta sponsored 28 children!

Chris Glover had this to say about Atlanta and the holiday season:

It was a strange holiday season in Atlanta this year. Usually Atlanta is really hectic through the holidays, with activities back to back every night. This year was more quiet, but I’m happy that we were still able to help bring holiday cheer to those who needed it.

We are hoping that as 2021 gets underway, courthouses will be able to cautiously reopen, allowing our Atlanta lawyers to help the folks we represent get their cases heard. The pandemic certainly has presented unusual challenges for everyone throughout 2020. I would say we aren’t sorry to see 2020 come to an end and we are staying optimistic for a very good 2021.

III. THE TALC LITIGATION

January Talc Litigation Update

Beasley Allen’s Talc Litigation Team has continued its efforts in the multidistrict litigation (MDL) and state courts leading up to the holiday season and our lawyers and staff are looking forward to advancing the litigation throughout 2021. The MDL team has continued work setting depositions for Plaintiffs, fact witnesses, and experts for those cases selected as potential bellwether picks. The potential bellwether picks are a mix of Plaintiff picks, Defense picks, and random selections from the court. The goal remains for the case-specific depositions to be completed by the end of this month.

Meanwhile the MDL team continues working out some discovery issues with the Defense lawyers and will be conducting additional corporate liability discovery depositions over the next several months. Numerous Johnson & Johnson witnesses have been identified and researched, with these depositions slated to be taken in the first half of 2021.

On the state court front, the coronavirus pandemic continued to affect 2020 trials through the end of 2020. As a result, Beasley Allen currently has numerous cases set for trial in 2021. The first trial the team had scheduled for Jan. 4 in St. Clair County, Illinois, has been rescheduled to April after the recent surge in new cases throughout the area. While this setting has been pushed back, the multi-Plaintiff trial in St. Louis, Missouri, involving three Plaintiffs remains set to begin in mid-February. There has been an additional case set for trial in St. Louis in May with additional potential trial dates throughout the second half of 2021.

In Philadelphia, coronavirus continues to affect trial settings and the Kleiner trial has been pushed to 2021. The Beasley Allen team has several trial ready dates in Philadelphia and will be trying the Kleiner case as soon as possible. In addition to Kleiner, the Wilson case is set for trial in Philadelphia for May 5 and remains on schedule. In Georgia, the Brower retrial is still being reset with plans to retry this case as soon as it can be scheduled in 2021.

While working on getting the Brower retrial set, additional discovery efforts have continued against Johnson & Johnson’s longtime talc packager/manufacturer PTI, which has a large presence in Georgia.

Along with multiple trials already set in Missouri, Illinois and Pennsylvania for 2021, the team is continuing to look at Atlantic City and South Florida as potential venues for additional trials in 2021. For additional information on these cases, contact Ted Meadows, Leigh O’Dell or Brittany Scott at 800-898-2034 or by email at Ted.Meadows@beasleyallen.com, Leigh.Odell@beasleyallen.com or Brittany. Scott@beasleyallen.com.

New Studies Find More Asbestos In Cosmetics Containing Talc

The Environmental Working Group (EWG) estimates that 15,000 Americans die each year from diseases that have been triggered by asbestos exposure.

The advocacy nonprofit has recently released results from asbestos testing the group commissioned through the Scientific Analytical Institute. The results have been published in the peer-reviewed journal, Environmental Health Insights.

According to the journal, the Scientific Analytical Institute found that three of the 21 products (almost 15%) tested contained asbestos, including eye shadow palettes and a children’s toy make up kit. All three products were purchased from a large-scale online retailer. Asbestos exposure is linked to numerous diseases including asbestosis, lung and ovarian cancer, and mesothelioma. (Environmental Health Insights. 2019:18:71). Studies have shown that more than 60% or greater of mesothelioma cases in women are likely attributable to non-occupational asbestos exposures. (Br J Cancer. 2009;100:1175–1183). Tasha Stoiber, Ph.D., a senior scientist at EWG, said:

Inhaling even the tiniest amount of asbestos in talc can cause mesothelioma and other deadly diseases, many years after exposure. How much talc is inhaled—and how much
is contaminated with asbestos—is hard to know, but it only takes one asbestos fiber, lodged in the lungs, to cause mesothelioma decades later.

The study also highlights the need for more adequate testing. Testing used by many in the cosmetic industry is not sensitive enough to detect asbestos in products, and there is no level of exposure that is considered to be safe. The FDA does not require a specific method of testing. The FDA is currently working toward a standardized testing recommendation, but testing will remain voluntary. Sean Fitzgerald, the head of Scientific Analytical Institute, observed:

It is critical that the FDA develop a rigorous screening method for talc used in personal care products. The lab repeatedly finds asbestos in products made with talc, including cosmetics marketed to children. It's outrageous that a precise method for testing personal care products for the presence of asbestos exists, but the cosmetics industry isn't required to use it.

The EWG provides the Skin Deep database (www.ewg.org/skindeep) where on staff scientists compare the safety profiles of consumer products. EWG recommends:

Avoiding products, particularly powders that contain talc, especially for children. Makeup in powder form can be easily inhaled into little lungs. Instead, look for cream-based blushers and eye shadow. Being wary of “toy” makeup kits. They are often made with cheap and potentially hazardous ingredients, like asbestos-contaminated talc, lead and chemicals linked to serious health hazards. Use Skin Deep to help you choose makeup and other personal care products with the fewest hazardous ingredients.

It is not too much to ask that companies be held to an acceptable standard when it comes to the safety of the consumers that trust in their products.

Source: EWG Release

Beasley Allen Talc Litigation Team

Beasley Allen lawyers Ted Meadows and Leigh O’Dell head up the Beasley Allen Talc Litigation Team. The team handles claims of ovarian cancer linked to talcum powder use for feminine hygiene. Lawyers Will Sutton and Charlie Stern also are on the team and they are exclusively handling mesothelioma claims. Will and Charlie are looking at cases of industrial, occupational and secondary asbestos exposure resulting in lung cancer or mesothelioma as well as claims of asbestos-related talc products linked to mesothelioma.

Members of the Talc Litigation Team, in alphabetical order, include: Kelli Alfreds (Kelli.Alfreds@beasleyallen.com), Ryan Beattie (Ryan.Beattie@beasleyallen.com), Beau Darley (Beau.Darley@beasleyallen.com), David Dearing (David.Dearing@beasleyallen.com), Jennifer Emmel (Jennifer.Emmel@beasleyallen.com), Jenna Fulk (Jenna.Fulk@beasleyallen.com), Lauren James (Lauren.James@beasleyallen.com), James Lamkin (James.Lamkin@beasleyallen.com), Caty O’Quinn (Caty.OQuinn@beasleyallen.com), Cristina Rodriguez (Cristina.Rodriguez@beasleyallen.com), Brittany Scott (Brittany.Scott@beasleyallen.com), Charlie Stern (Charlie.Stern@beasleyallen.com), Will Sutton (William.Sutton@beasleyallen.com), Matt Teague (Matt.Teague@beasleyallen.com), and Margaret Thompson (Margaret.Thompson@beasleyallen.com).

IV. OPIOID LITIGATION

30 Attorneys General Back J&J Opioid Verdict In Oklahoma

The $465 million judgment resulting from the Oklahoma opioid trial has been under attack after Johnson & Johnson appealed the verdict to the Oklahoma Supreme Court. The opening brief, filed by J&J in October, challenges the notion that public nuisance law, the basis for the $465 million verdict, can apply to claims unconnected to real property connected hazards and certain other circumstantial harms.

J&J contends that the Oklahoma Supreme Court “always has limited public nuisance liability to property disputes and a limited class of recognized nuisances. They say expanding the scope risks turning Oklahoma into a haven for Plaintiff suits that in theory could target Coca-Cola for obesity and General Motors for lung damage caused by tailpipe emissions. This is typical of J&J’s absurd arguments in the talc litigation.

However, Oklahoma law, like many other states, supports the view that the reckless spread of infectious disease can be the basis of a claim for public nuisance. A bipartisan group of 30 attorneys general filed an amicus brief on Nov. 25 urging the court to accept this view. The brief focused mainly on an Oklahoma district judge’s finding that J&J created a “public nuisance” in the form of the opioid crisis.

The attorneys general say in their brief supporting the verdict that Oklahoma’s public nuisance law arguably prohibits any unlawful act that “annoys, injures or endangers the comfort, repose, health or safety of others,” and that J&J is mistakenly reading a property requirement into the text.

Significantly, the attorneys general have also observed that even if a property requirement existed, the requirement would be satisfied because J&J bankrolled misleading marketing at doctors’ offices.

While Oklahoma’s litigation against J&J is the only opioid case that has gone to trial so far, there are roughly 3,000 pending lawsuits blaming various drug companies for fueling the opioid crisis, which has killed an estimated 450,000 people since 1999.

Source: Law360.com

Another Opioid Bellwether Delayed For COVID-18

U.S. District Judge Dan A. Polster has moved the May 2021 trial date for the bellwether case brought by two Ohio counties against pharmacies in the Opioid multidistrict litigation (MDL) to October 2021. This was due to concerns over the coronavirus pandemic.

Judge Polster has made it clear that he wants the trial to be over by Thanksgiving 2021. The bellwether case focuses on Trumbull County and Lake County’s claims that pharmacy chains like CVS and Rite Aid created a public nuisance by failing to monitor suspicious orders of opioids.

The cases are County of Lake, Ohio v. Purdue Pharma LP et al. (case number 1:18-op-45032) and County of Trumbull, Ohio v. Purdue Pharma LP et al. (case number 1:18-op-45079) in the U.S. District Court for the Northern District of Ohio. 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
DOJ Sues Walmart Over Opioid Crisis

The U.S. Department of Justice (DOJ) has filed a lawsuit against Walmart in Delaware federal court. The DOJ alleges the retail chain helped spur the nationwide opioid epidemic by failing to scrutinize suspicious prescriptions and making it hard for its pharmacists to comply with rules for controlled substances.

In the complaint, the DOJ said the retail giant, which operates more than 5,000 pharmacies across the country, was in a unique position to prevent the illegal diversion of opioids. But Walmart violated its gatekeeping duties under the Controlled Substances Act and knowingly filled thousands of prescriptions for controlled substances that were not written for legitimate medical needs, according to the DOJ.

Additionally, Walmart was a wholesale distributor of controlled substances for its pharmacies until 2018 and the DOJ says the company did not report hundreds of thousands of suspicious orders to the U.S. Drug Enforcement Administration. The DOJ accuses Walmart of making little effort to follow the rules for controlled substances. The DOJ said in the suit:

Walmart managers put enormous pressure on pharmacists to fill prescriptions — requiring pharmacists to process a high volume of prescriptions as fast as possible, while at the same time denying them the authority to categorically refuse to fill prescriptions issued by prescribers the pharmacists knew were continually issuing invalid prescriptions.

The DOJ's suit against Walmart follows a recent signal by one of its top opioid lawyers that the federal government will continue to broaden its opioid enforcement beyond drug manufacturers and distributors.

According to the suit, Walmart filled prescriptions with “glaringly obvious” red flags, such as for drug cocktails its pharmacists allegedly knew that people abused. And if one Walmart pharmacist saw that a customer’s prescription was invalid, that customer could just shop around for another Walmart pharmacy to fill it, the DOJ said in its complaint. Jeffrey Bossert Clark, acting assistant attorney general of the DOJ's Civil Division, said in a statement:

As one of the largest pharmacy chains and wholesale drug distributors in the country, Walmart had the responsibility and the means to help prevent the diversion of prescription opioids. Instead, for years, it did the opposite — filling thousands of invalid prescriptions at its pharmacies and failing to report suspicious orders of opioids and other drugs placed by those pharmacies.

The case is U.S. v. Walmart Inc. et al. (case number 1:20-cv-01744) in the U.S. District Court for the District of Delaware. We will monitor this case and see where it goes.

Source: Law360.com

The Beasley Allen Opioid Litigation Team

Beasley Allen's Opioid Litigation Team has been hard at work. The team includes Rhon Jones, Parker Miller, Ken Wilson, David Diab, Rick Stratton, Will Sutton, Jeff Price, Gavin King and Tucker Osborne. This team of lawyers represents the State of Alabama, the State of Georgia, and numerous local governments and other entities, as well as 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, Ken.Wilson@beasleyallen.com, David.Diab@beasleyallen.com, Rick.Stratton@beasleyallen.com, William.Sutton@beasleyallen.com, Jeff.Price@beasleyallen.com, Gavin.King@beasleyallen.com or Tucker.Osborne@beasleyallen.com.

V. CONGRESSIONAL UPDATE

The $900 Billion COVID ‘Relief’ Bill Is Now Law

Calling it “another major rescue package for the American people,” Senate Majority Leader Mitch McConnell announced preliminary approval for a $900 billion economic relief package late Sunday afternoon, Dec. 20. The full text of the bill was released Dec. 21. After playing a bizarre political game, President Trump, after some weird behavior, finally signed the bill late in the day on Sunday, Dec. 27.

It’s rather ironic that McConnell delayed passage of the bill for months and then tried to take credit for the measure. President Trump didn’t lift a finger on the bill before the bill had already passed and then he tried to find a way to kill it. McConnell’s delay hurt millions of people who badly needed help from the government. The president’s antics made it even worse. Key components of the bill include:

• A $600 direct stimulus payment of up to $600 per adult and child;
• $300 per week enhanced unemployment insurance benefits through March 14;
• More than $284 billion for forgivable Paycheck Protection Program (PPP) loans;
• $25 billion for rental assistance and an extension of the eviction moratorium;
• A deadline extension for states and cities to use CARES Act funds, which were set to expire by the end of the year. They will now have an additional year to allocate these funds.

The relief bill is tied to a $1.4 trillion bill to fund the government through September. Its passage avoided a looming government shutdown that was feared as a result of the deadlock over the terms of the stimulus package.

There was bipartisan support for increasing the amount of these payments from $600 to $1,200—the amount issued in the first stimulus package in March. A smaller stimulus payment is likely part of the compromise to keep the bill below $1 trillion, which is reportedly what Republican legislators set as their cap. If that’s the case, some critics are asking why the package includes expenditures like $1.4 billion in new funding for Trump’s pet project border wall.

When there was real fear the bill would die, Congress began deliberation on a measure to provide $2,000 stimulus checks to the American people. One of President Trump’s complaints about the original stimulus package was that the stimulus payment of $600 was too low, so legislators hoped he might quickly agree to the new single-focus bill. That deliberation is still underway, and would now amend the bill now approved by the president to raise the amount of the second stimulus check from $600 to $2,000.

President-elect Joe Biden has called this package a “down payment” that will help
avoid short-term economic hurt, but one that should be only a first step to continued financial aid to assist in both individual and national economic recovery. As with the first stimulus checks, the second round will likely be distributed in waves. He bizarre delay in signing the bill will cause a problem.


VI.
THE NATIONAL SCENE

Excellent Choices For Time Person Of The Year

Time magazine kept with tradition, naming President-elect Joe Biden its Person of the Year. But it also broke with tradition and for the first time also named the Vice President-elect, Kamala Harris, as Person of the Year and featured both the President- and Vice President-elect on the cover together. This is the first time any Vice President-elect has been named Person of the Year. The cover reads “Joe Biden and Kamala Harris—Changing America’s Story.”

Since 1932, with the election of Franklin Delano Roosevelt, the President or President-elect has been named Person of the Year (or, Man of the Year, as it was called until 1999). The magazine doesn’t always name the President as Person of the Year upon their election. Sometimes the designation is given later in the leader’s term to recognize exemplary leadership or a groundbreaking policy decision. Sometimes a President is named more than once. President Roosevelt was named Person of the Year more often than any other president—three times.

President-elect Biden and Vice President-elect Harris have already been at work bringing into truth the promises of the campaign—to provide an America that is fertile ground for healing—both the physical wounds of the pandemic and the social and emotional divides of race and poverty. Their plan for tackling this gargantuan task is through teamwork, and “walking the walk.”

Biden and Harris couldn’t be more different on the surface—he, a 78-year-old white man, she, the first woman, the first Black, the first Asian American Vice President more than two decades younger. Biden is very familiar with the people’s house, having served as Vice President during the Obama administration. However, the early stages of the transition—hampered by Trump’s refusal to concede and continued lack of cooperation by some government officials—has demonstrated this administration will not be “business as usual,” or business as it used to be. The pair have by all accounts been working in tandem on cabinet picks and other decisions for setting up their White House—drawing on both his generational experience and administrative knowledge, and her fresh perspective, lived diversity experience, charisma and toughness.

The Biden–Harris administration hopes it can reconcile the evidence of the divisiveness in America—not caused by Trump, but as evidenced by his election and support. For the sake of our democracy and every citizen in this great nation, I believe they will succeed—that is my prayer!

Source: Time Magazine

VII.
CORPORATE AMERICA

SEC Fines GE $200 Million In Accounting Investigation

The U.S. Securities and Exchange Commission (SEC) has reached a $200 million settlement with General Electric Co. (GE) as a result of disclosure failures within GE’s power and insurance businesses.

GE failed to disclose material information about its profit calculations and insurance costs to investors between 2015 through 2017. These were factors causing the company’s stock to dip by almost 75% in 2017 and 2018, according to the settlement order.

The company failed to disclose to investors information about its reported profit growth in its power business and “worsening trends in its insurance business” and the potential for substantial losses, according to the SEC. Stephanie Avakian, the SEC’s Enforcement Director, in prepared remarks during a press conference call, said:

“These disclosure failures painted a deceptively positive picture of the state of GE’s overall business at the time. Investors are entitled to an accurate picture of a company’s material operating results. GE’s repeated disclosure failures across multiple businesses materially misled investors about how it was generating reported earnings and cash growth as well as latent risks in its insurance business.

GE misled investors by failing to explain that more than $2.5 billion in profits in 2016 and 2017 actually resulted from reductions in cost estimates for repairs and service for customers’ power turbines. The settlement order states:

Under GE’s accounting method, these reductions in cost estimates resulted in large revenue and earnings increases in the period in which the estimates were changed.

Also within the power business, GE failed to tell investors it had begun using “deferred monetization,” which allowed the company to report an additional $1.9 billion in increased industrial cash flow without disclosing it was “depleting future cash flows by moving them into the present.”

In addition, in 2015 and 2016, GE’s insurance business lowered projected claims costs for the “distant future and simultaneously concluded that it did not have insurance losses” despite knowing about trends of increasing costs tied to its long-term care policies. By the time the practices discontinued in 2017, Ms. Avakian said GE’s power division had “pulled forward” more than $2 billion in cash from future years, including nearly $900 million from 2018 alone. She added: “Put a little more simply, they took from the future to benefit the present.”

The $200 million will be returned to harmed investors, Ms. Avakian said. The company will also be required to report for a one-year period to the SEC regarding “certain accounting and disclosure controls” in the insurance and power businesses.

The SEC is represented by Michael Vito, Michael Franck, Patrick Noone, Mark Albers, Celia Moore, Rua Kelly, Colin Forbes, Kerry Vasta, Ryan Murphy, David D’Addio and John Dugan of its Boston regional office. The case is In the Matter of General Electric Company (case number 3-20165) before the Securities and Exchange Commission.

Source: Law360.com
In $30 Million Scam New York Pharmacy Owners Exploited Virus

Two New York-area pharmacy owners have been charged in a federal indictment that was unsealed on Dec. 21 with exploiting emergency codes implemented due to COVID-19 while engaging in a $30 million fraud scheme involving fake claims for an expensive cancer drug. Peter Khaim, 40, and Arkadiy Khaimov, 37, both of Forest Hills, New York, each were charged with one count of conspiracy to commit health care fraud and wire fraud, and one count of conspiracy to commit money laundering.

Khaim is also charged with two counts of concealment money laundering and one count of aggravated identity theft, while Khaimov is also charged with two counts of concealment money laundering. In a statement, Acting Assistant Attorney General Brian C. Rabbitt of the U.S. Department of Justice’s (DOJ) Criminal Division, said:

“An investigation by our law enforcement partners, the Criminal Division is working to aggressively identify, investigate, and prosecute scammers who seek to take advantage of the COVID-19 crisis to defraud our public health care programs.

According to the indictment, Khaim and Khaimov own more than a dozen pharmacies and used COVID-19 emergency override billing codes to submit fraudulent claims for the cancer medication Targretin Gel 1%, which sells for more than $34,000 per tube. The drugs were never prescribed by physicians or ordered by the pharmacies, prosecutors allege. The Defendants are also accused of buying their pharmacies by paying others to pose as the owners and hiring pharmacists to pretend to be supervising pharmacists in order to obtain pharmacy licenses and insurance plan credentialing.

The Defendants also created sham pharmacy wholesale companies and engaged in various money laundering schemes, according to the indictment. Acting U.S. Attorney Set D. DuCharme of the Eastern District of New York, in a statement, said:

As alleged in the indictment, the defendants manipulated information in over a dozen pharmacies to defraud the Medicare program, including by taking advantage of systems that were intended to assist patients during the COVID-19 pandemic, and then went to great lengths to hide their ill-gotten gains through a network of sham companies. This office and our law enforcement partners are committed to holding accountable those who seek to enrich themselves at the expense of vital taxpayer-funded health care programs upon which so many rely.

I am concerned that others, many in Corporate America, took advantage of the pandemic and cheated the government. This may especially be true in the drug industry. The government is represented by Andrew Estes of the U.S. Attorney’s Office for the Eastern District of New York. Counsel for the Defendants was not immediately available. The case is USA v. Peter Khaim et al. (case number 1:20-cr-00580) in the U.S. District Court for the Eastern District of New York.

Source: Law360.com

VIII. THE WHISTLEBLOWER LITIGATION

A Study Looks At Pharma Payments To Physicians

A recent study showed drug companies are paying doctors in order to get their products prescribed. An article written by Sharon Klahr Coley, appearing in Fierce Pharma on Dec. 3, is set out below. It appears drug companies are getting a good return on their “investment.”

Drug companies are still getting a return on their investments with physicians. More than $2 billion a year was paid by pharma companies to doctors, fueling an increase in prescriptions, according to a new report published in the Annals of Internal Medicine.

Sixty-seven percent of doctors received some kind of payment from 2015 to 2017. And in specialized areas—including oncology, urology and orthopedic surgery—that percentage jumped to more than 80%, according to researchers at Memorial Sloan Kettering Cancer Center in work funded by the National Cancer Institute.

“Physicians who receive money from a given company are more likely to prescribe that company’s drug instead of other treatment options,” oncologist Aaron Mitchell, M.D., who led the research team, said in an email interview. Doctors are more inclined to prescribe expensive brand-name drugs rather than the cheaper generic, with the results being a big “return on investment” for the drug companies, he said.

While smaller incentives were included in the totals, the study found the main forms of payment were consulting and speaker fees, travel and hotel expenses, and dining out. In some cases, the incentives were actually enough to be the main source of a physician’s income, according to the report, which reviewed results from 36 studies.

This practice of boosting scripts with doctor payments has been going on for years, and, while attention has been brought to it, including the 2013 Physician Payments Sunshine Act, not much has changed. Mitchell and his team had previously concluded that money from pharma actually affected which cancer drugs oncologists chose to use for their patients, even if the drugs are more costly and toxic. Mitchell continues to be dismayed by the seeming quid pro quo of money for scripts. “Out of duty to our patients and our professional standards, it is time that we end our support of industry gifts and bring about the end of this practice,” he said.

Source: Fierce Pharma

2nd Circuit Revives False Claims Suit Over Veteran Status

The U.S. Court of Appeals for the Second Circuit has revived a government False Claims Act case accusing the owner of Strock Contracting, Inc., a construction company, of using “a front company” to fraudulently win contracts set aside for veteran-owned businesses, saying that ownership misrepresentation was material to payment.
The three-judge panel found that a federal district court had taken too narrow a view of materiality when it found that the government had failed to show Lee Strock’s alleged misrepresentations allowing him to win service-disabled veteran-owned small business (SDVOSB) contracts that his company wasn’t legally eligible for were material to actual payments made under those contracts.

Under the U.S. Supreme Court’s landmark 2016 Escobar decision, the government or False Claims Act (FCA) whistleblower must show an alleged falsity is “material to the government’s payment decision.” U.S. Circuit Judge Robert Katzmann wrote for the panel:

*We find that, at least in fraudulent inducement cases, the government’s ‘payment decision’ under Escobar encompasses both its decision to award a contract and its ultimate decision to pay under that contract.*

The government accused Strock of setting up Veteran Enterprises Co. Inc. as a front to funnel business to Strock’s construction firm, installing a figurehead service-disabled veteran as president. Veteran Enterprises won more than $21 million in SDVOSB set-aside contracts from the U.S. Department of Veterans Affairs, the U.S. Army and the U.S. Air Force between 2008 and 2013, according to the opinion.

A district court dismissed the government’s suit in September 2019, saying the government had failed to show that the alleged misrepresentations were necessarily material to an actual “payment decision,” even if it would not have awarded the underlying contracts if aware of those falsehoods.

Judge Katzmann said that the scope of the term “payment decision” is broader than the district court had found or either party in the case had argued. The government had argued that under the fraudulent inducement standard of FCA liability, every claim for payment is tainted by an underlying fraud even if the payment claims themselves aren’t false, making the contract awards to Veteran Enterprises the key factor for determining materiality. Strock alternatively argued that “payment decision” excludes the initial contract award.

According to Judge Katzmann, under Escobar’s materiality standard, both the government’s initial decision to enter into a contract and its later conduct when payment claims arise are relevant, and the government had adequately pled Strock’s alleged misrepresentations about SDVOSB status were material.

The judge said the government’s allegations related to post-contract actions gave only “weak support” for materiality, hinging on what it would have done if aware of the alleged misrepresentations, rather than concrete actions such as debarment or refusal to pay.

But Judge Katzmann said that the government’s other arguments regarding factors like having expressly designated SDVOSB compliance as a condition of contract eligibility and the pre-award steps it takes to try to verify that status show that the alleged misrepresentations about compliance with SDVOSB requirements were material.

The alleged noncompliance was also substantial, another required factor under Escobar, cutting against the main intent for the SDVOSB program of increasing federal contracting opportunities for those veterans, according to Judge Katzmann. The judge said the government had adequately alleged Strock knew SDVOSB status was important to the government, for example taking “elaborate steps” to make it look like Veteran Enterprises complied with requirements for the program.

The government is represented by Charles W. Scarborough of the U.S. Department of Justice’s Civil Division and James P. Kennedy of the U.S. Attorney’s Office for the Western District of New York.

The case is U.S. v. Strock et al. (case number 19-4331) in the U.S. Court of Appeals for the Second Circuit.

Source: Law360.com

**Texas Hospital To Pay $48 Million To Settle False Claims Suit**

A Baylor Scott & White Health system hospital has agreed to pay $48 million to settle False Claims Act (FCA) violation allegations lodged by two whistleblower doctors who say the hospital placed extremely high patient quotas on its physician owners to drive business for the hospital.

Texas Heart Hospital of the Southwest LLP, doing business as Heart Hospital Baylor Plano, has agreed to settle the kickback claims filed by former doctors Mitchell Magee and Todd Dewey. The U.S. Department of Justice (DOJ) announced the settlement on Dec. 18. The doctors accused the hospital of submitting fraudulent Medicare claims based on patient referrals that violated the Physician Self-Referral Law and the Anti-Kickback Statute.

The Physician Self-Referral Law, also known as the Stark Law, prohibits hospitals from billing Medicare for services referred by physicians who have a financial relationship with the hospital, except under certain exceptions. And under the Anti-Kickback Statute, hospitals can’t offer to pay physicians for any referrals to the hospital for items or services covered by federally funded programs.

In their lawsuit, Magee and Dewey said Heart Hospital’s actions “epitomize” concerns the law and statute attempt to address, according to court documents. In a statement sent to Law360, Magee and Dewey said they hope this settlement sends a warning message to hospitals throughout the country. They said:

*Doctors should recommend facilities to their patients without the financial pressure of contacts requirements effectively treated as case quotas, such as those instituted by multiple physician-owned hospitals within the Baylor Scott & White system.*

The government declined to intervene in Magee and Dewey’s case, but it helped negotiate the settlement. Stephen J. Cox, U.S. Attorney for the Eastern District of Texas, in a DOJ statement, said:

*Although the business of health care continues to evolve, our mission remains the same—to ensure that medical decision making is based on patient care and free of influence by financial consideration.*

Magee and Dewey first sued Heart Hospital, its partial owner Baylor Regional Medical Center at Plano, Texas, and other related entities in September 2016 after their ownership interests were involuntarily taken in September 2013 and 2014, respectively, according to their complaint. The doctors both claim their interests were taken after they failed to meet the hospital’s patient referral quota.

According to the complaint, since at least 2010, Heart Hospital has required its physician owners to refer at least 48 patients per year to treatment at the hospital, a requirement four to eight times higher than the industry standard. The hospital also allegedly partakes in anti-
A medical equipment provider has agreed to pay $40.5 million to settle government claims that it charged federal health programs for costly, non-invasive ventilators. The agreement includes Apria Healthcare Group Inc. and its affiliate Apria Healthcare LLCs. The companies accepted responsibility for misconduct enabling them to overcharge Medicare, Medicaid and other government health programs for costly, non-invasive ventilators.

Audrey Strauss, the acting U.S. Attorney for the Southern District of New York, in a statement, said:

"Durable medical equipment providers like Apria have an obligation to ensure that the equipment and devices they rent to patients are medically necessary. When companies knowingly disregard that obligation to maximize their profits, this office will hold them accountable for their fraudulent conduct."

Apria further agreed to an independent claims review process and to enact certain board oversight procedures. Of the $40.5 million payout, $37.6 million will go to the federal government, with half of the cash representing restitution, and $2.3 million will be divided between the states that reimbursed ventilator claims and the three former Apria employees who filed the whistleblower suit in February 2017. The U.S. Department of Justice said that Apria's non-invasive ventilator rentals are complex devices that require frequent at-home visits by respiratory therapists to confirm that the equipment is in use and that the patient still needs the machine. Apria's therapists frequently missed the visits, with an internal review showing that its workers failed to complete more than half of required check-ins throughout December 2016. Despite this, Apria admitted that the company continued to seek the up-to $1,400 reimbursements for the rentals, and even collected the repayments for the rentals Apria knew were no longer in use.

The company also acknowledged it pressed doctors to order its ventilators in PAC mode, an operational setting that's available on devices that qualify for $100 and $300 reimbursement options. Lastly, Apria offered to fully waive co-pays for certain Medicare beneficiaries, without first reviewing their financial need, in an effort to lure patients away from rival ventilator suppliers.

The settlement covers the misconduct that occurred from Jan. 1, 2014, to Dec. 31, 2019. However, the settlement permits the federal government to discharge Apria from Medicare, Medicaid and other federal programs because of its misconduct. A New York federal judge approved the settlement on Dec. 18.

The government is represented by Li Yu and Steven Kochevar of the U.S. Attorney's Office for the Southern District of New York. The whistleblowers are represented by Arun Subramanian and Steven Shepard of Susman Godfrey LLP.

Source: Law360.com
Whistleblowers are the key to exposing corporate wrongdoing and government fraud and their role has intensified greatly. 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. The experienced group of lawyers on our team are 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, you can contact one of the lawyers on Beasley Allen’s Whistleblower Litigation Team for a free and confidential evaluation of your claim.

The following Beasley Allen lawyers are on the Whistleblower Litigation Team: Larry Golston (Larry.Golston@beasleyallen.com), Lance Gould (Lance.Gould@beasleyallen.com), James Eubank (James.Eubank@beasleyallen.com), Paul Evans (Paul.Evans@beasleyallen.com), Leslie Pescia (Leslie.Pescia@beasleyallen.com), Leon Hampton (Leon.Hampton@beasleyallen.com), Tyner Helms (Tyner.Helms@beasleyallen.com) and Lauren Miles (Lauren.Miles@beasleyallen.com). Dee Miles, who heads up our Consumer Fraud & Commercial Litigation Section, also participates in the whistleblower litigation and works with the Litigation Team. The lawyers can be reached by phone at 800-898-2034.

IX. PRODUCT LIABILITY UPDATE

Still No Word From The U.S. Supreme Court On Ford’s Personal Jurisdiction Challenges

We previously reported that the U.S. Supreme Court heard oral arguments on two cases involving jurisdiction over Ford in early October 2020. In both of these cases, the Plaintiffs were injured by defects in Ford’s cars and filed their suits in the state where the accidents occurred. The cars at issue were manufactured, designed, and originally sold outside the forum state. Ford did not dispute the quality and quantity of its contacts with those states. Instead, Ford argued that since the Plaintiffs’ cars were not purchased brand new in those states, then Ford's in-state contacts did not “cause” Plaintiffs' claims. In both cases, the state supreme courts rejected Ford’s “causation” argument.

Not happy with these rulings, Ford asked the U.S. Supreme Court to rule that lawsuits may only be brought in the state where Ford is either headquartered (i.e. Michigan) or where a Plaintiff can prove that a specific in-state contact caused the Plaintiff’s claim. We were very encouraged by the questions and observations we heard from the U.S. Supreme Court during oral argument:

• Chief Justice Roberts noted that Ford was making the ultimate issue of causation for liability a jurisdictional question. He questioned why there is no causation when the defect in the car causes the accident.

• Justice Thomas questioned how Ford derived a proximate cause standard for jurisdiction from the Due Process Clause. He considered the leap from one to the other to be a “long journey.”

• Justice Breyer questioned why it would be unfair for Ford to defend against product liability suits in either State since it does a lot of business with the same kinds of cars there. He noted that “the whole point of this whole doctrine... is not to put a defendant to the trouble of going to a different state, where it's really unfair.”

• Justice Sotomayor noted that, in essence, Ford is arguing that it can only be liable in its home state.

• Justice Kagan pointed out that Ford’s argument for a proximate cause standard relied on caselaw where there was no connection with the forum. Unlike in those cases, Ford serves, resells, and advertises cars in these states.

• Justice Gorsuch observed that this case highlights the difficulties the Court’s doctrinal tests have created.

• Most pointedly, Justice Kavanaugh read the following from the Court’s well-recognized opinion in World-Wide Volkswagen and asked “if we just follow that sentence, you lose, correct?”

[If] the sale of a product of a manufacturer/distributor arises from the efforts of the manufacturer/distributor to serve directly or indirectly the market for its products in other states, it’s not unreasonable to subject it to suit in one of those states if its allegedly defective merchandise has been the source of injury to its own or to others

• Justice Kavanaugh also questioned why Ford doesn’t “want to litigate these cases in Minnesota and Montana” when it already litigates lots of cases there.

We agree with Plaintiffs’ closing argument that “any sensible resolution of these cases is going to have to be grounded in some combination of interstate federalism, fairness to the Defendant, predictability, and common sense... Ford’s approach flunks all three tests.” The U.S. Supreme Court should agree and put an end to the senseless arguments manufacturers have been using to keep citizens out of court.

We have not yet received an opinion from the U.S. Supreme Court, but we expect one very soon. Many of our cases will be affected by this ruling, and we will keep our readers updated on any rulings on this issue. If you have any further questions involving personal jurisdiction, contact Stephanie Monplaisir, a lawyer and Principal in our Personal Injury and Products Liability Section, at 800-898-2034 or by email at Stephanie.Monplaisir@beasleyallen.com.

Firm Reaches Settlement In Aerial Scissor Lift Case

The law firms of Beasley Allen and Penn Law were able to successfully settle a workplace fatality lawsuit that was filed in Gwinnett County State Court. The deceased employee, (hereinafter referred to as “Employee”), was working in 2013 as a plumber on a jobsite in DeKalb County, Georgia. He was using an aerial lift to aid him in brazing and inspecting recently installed copper pipes, and was working at a height of approximately 12 feet. Brazing is a method of joining two metal pipes together, very similar to welding. During the brazing process, copper pipes can reach temperatures up to 1,000 degrees Fahrenheit.

While the Employee was brazing pipes, he became pinned between the aerial lift and the copper pipe, and became trapped between the platform's guardrail pressing against his chest and the hot copper pipe pressing against the back of his neck. It is believed that he leaned forward to reach a section of pipe overhead, and while
doing so, he pushed the joystick on the control box forward causing the lift to move, even though the trigger on the joystick was not activated. The aerial lift should never have lifted without the joystick trigger having been activated.

Several co-workers frantically tried to lower the lift, but the Emergency Lowering Procedure did not work. Neither did lowering the lift from the control box. The only way co-workers were able to free the Employee was to cut the pipe with a band saw. The employee was diagnosed with posttraumatic cardiac arrest with second- and third-degree burns. Unfortunately, he died from the accident.

Through inspections and discovery by our firm, it was learned that defects existed in the control box and joystick assembly of the aerial lift. The trigger on the control box of the lift did not work, and the lift had not been inspected by the owner in two years. In the lawsuit strict liability, failure to warn, and negligence claims were brought against the manufacturer of the control box as well as against the manufacturers of the control box and joystick assembly. Additionally, the complaint also included failure to warn and negligence claims against the owner/lessor of the machine for failure to properly maintain and inspect it.

The Employee’s estate was represented by Chris Glover from our Atlanta office and Darren Penn and Alexandra “Sachi” Cole of Penn Law, LLC, also located in Atlanta. It was an honor for our firms to represent the Employee’s family and to obtain justice for them. The lawyers involved did a tremendous job for this family.

**Juries Return Major Verdicts In Metal On Metal Hip Cases**

Despite the delays many courts are experiencing due to the Covid-19 pandemic, metal on metal hip implant cases are going to trial and juries are awarding major verdicts in favor of Plaintiffs. In two recent Biomet M2a Magnum metal on metal hip implant cases, juries returned significant verdicts in favor of Plaintiffs.

Juries in Missouri found the Biomet metal on metal hip implants were defective and caused injuries to Plaintiff Mary Bayes, awarding her $20 million. Jurors also awarded $1 million to her husband, Phillip Bayes, plus post-judgment interest and costs of the action. Jurors found in favor of the Defense on the strict liability and the punitive damages claim. The punitive damages portion of the trial did not begin until two weeks after the compensatory damages verdict due to a juror testing positive for COVID-19.

Mary Bayes had both her hips replaced in early 2008 with the Biomet M2a Magnum metal on metal implant. During the trial, Bayes noted that Biomet should have known the M2A Magnum had defects because it was based on an earlier problematic design, called the M2a Taper. Bayes began experiencing pain in 2010 due to her metal on metal implants and had her first revision surgery in March 2011. Problems with the Biomet M2a Magnum system led Bayes to have 11 dislocations and seven revision surgeries.

Jurors in Iowa awarded $3.5 million to Lori Nicholson and her husband due to her Biomet M2a Magnum’s metal on metal implant shedding microscopic particles that caused Lori to need a revision surgery. These metal particles caused pain and dramatically increased levels of chromium in Nicholson’s body. Nicholson had a revision surgery in June 2012. Jurors awarded $1.05 million in compensatory damages and $2.5 million in punitive damages. Although the trial did have some difficulties due to two jurors being dismissed for COVID-19 related reasons, six jurors were left and decided the verdict.

Beasley Allen lawyers continue to investigate metal on metal hip implant cases. We are currently looking at metal on metal hip cases where the hip has been revised or a revision is already scheduled. The metal on metal hip implant brands we are currently looking at are the DePuy Orthopaedics “ASR XL Acetabular System” and the DePuy “ASR Hip Resurfacing System,” recalled in August 2010; Stryker “Rejuvenate” and “ABG II” modular-neck stems, recalled in July 2012; Stryker LFIT; and the Biomet “M2A 38 mm” and “M2A-Magnum” hip replacement system.

If you would like to send a case to Beasley Allen or have questions concerning metal on metal hips please contact Navan Ward, Tiffany Birley or Aigner Kolom at 800-898-2034, or by email at Navan.Ward@beasleyallen.com, Tiffany. Birley@beasleyallen.com, or Aigner. Kolom@beasleyallen.com.

Source: Law360.com

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**X. UPDATE ON THE BOEING LITIGATION**

**Boeing Will Have Difficulty Overcoming Consumers’ Fear Of The 737 MAX**

The Federal Aviation Administration (FAA) lifted its ban on Boeing’s 737 MAX in November. Since then the plane maker has ramped up its marketing efforts, attempting to assuage consumers’ worries over the aircraft’s safety. A questionnaire distributed by NPR in June and described by the Detroit Free Press revealed that Boeing’s efforts are warranted because winning back consumer trust will likely be an uphill battle for the company. The questionnaire polled 1,600 potential passengers and more than 1,000 said that even if the FAA approved the aircraft they would not fly on a MAX. Boeing’s public relations efforts began over the summer with the announcement that it had obtained blessings from the FAA regarding improvements to the MAX aircraft and continue to build as airlines plan to return the planes to commercial service.

Boeing, with approval from the FAA, will install new flight control computer software to update the Maneuvering Characteristics Augmentation System (MCAS), revise the existing Airplane Flight Manual to incorporate new and revised flight crew procedures, install new MAX display system software, change the horizontal stabilizer trim wire routing installations, and complete an angle of attack (AOA) sensor system test. The flight control software will now require inputs from both AOA sensors in order to activate MCAS—a shift from only one AOA sensor input in the original MAX software, which created a single point of failure. These requirements along with additional pilot training allegedly will make the aircraft safer. Other global regulators have discussed clearing the MAX for commercial flight in their respective countries but only with additional requirements included in Boeing’s update of the plane.

Following the crashes of two MAX aircraft, Lion Air flight 610 in October 2018 and Ethiopian Airlines flight 302 in March 2019, the plane was grounded worldwide in March for 20 months. Those tragedies claimed 346 lives and while Boeing attempted to place complete blame on the pilots, numerous investigations revealed...
that the new flight control system, the MCAS, malfunctioned, sparking similar chains of events in both flights that resulted in the tragedies.

The public relations efforts were heightened even more when Boeing and American Airlines conducted a photo op demonstration flight for media representatives last month, Reuters reported. The flight from Dallas, Texas, to Tulsa, Oklahoma, was brief (45 minutes) and followed a strategically choreographed flight path. At the writing of this Report, American Airlines was also planning to conduct the first commercial flight for the MAX since the FAA lifted the ban. The flight was scheduled for Dec. 29, over the New Year’s holiday weekend, from Miami to New York. Boeing and the FAA have said that all of the aircraft won’t immediately return to service. The phased-in approach will allow Boeing to ensure all planes meet the requirements for returning to service and for all pilots to obtain the additional training.

Other airlines also have announced plans to reintroduce the MAX into their schedules, too. United Airlines plans to return the MAX to service in the first quarter of the year, U.S. News reported. Southwest Airlines, the largest MAX customer in the world, plans to have MAX aircraft operational later this year, according to the Dallas Business Journal.

Meanwhile, grieving families who lost loved ones in the two tragic MAX flights are continuing their own campaign to keep the MAX out of the skies with hopes of keeping others from suffering the same fate. In an interview with CBS News, Michael Stumo, whose daughter Samya was killed on flight 302, warned potential customers not to fly on the plane. He issued this warning: “The flying public should avoid the MAX. Change your flight. This is still a more dangerous aircraft than other modern planes.”

Airlines are not required to allow customers to request changes if they end up with a flight on a MAX; however, larger airlines have developed a process for requesting a change. Consumers should contact the airlines directly for more information. The flying public should be aware that in addition to the other public relations efforts to manage the impact as a result of the MAX tragedies, airlines may identify the aircraft by using the formal variant names such as 737-8 and use the MAX title less frequently, NPR reported. For consumers who don’t want to take the risk of flying on the MAX, it will be important to carefully identify the type of aircraft or contact the airline to confirm.

Mike Andrews, a lawyer in our Personal Injury & Products Liability Section, focuses much of his practice on aviation litigation. Currently, he is representing a number of families in the Boeing litigation. Mike, who is also currently investigating other potential cases, visited the Ethiopian Airlines flight 302 crash site and surrounding areas several times last year and was overwhelmed at the carnage left behind after the flight lurled itself and passengers 30 feet into the earth.


Mike Andrews Handles Aviation Litigation For Beasley Allen

If you would like to have more information on the Boeing litigation, or on any other aspect of aviation litigation, contact Mike Andrews at 800-898-2034 or by email at Mike.Andrews@beasleyallen.com. Mike, who is in our Personal Injury & Products Liability Section, is the lead lawyer handling aviation litigation for the firm. 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.

XI.
THE JUUL LITIGATION

Update On The JUUL Litigation

The JUUL Litigation continues to move at a fast pace, despite the challenges associated with the COVID pandemic. Discovery is well underway in the various JUUL litigations, and bellwether trials are scheduled to begin in early 2022. The national litigation consists of personal injury cases, class actions, school district cases, government entity cases, state attorney general cases, and tribal cases brought against JUUL Labs, Inc., Altria, and dozens of other companies who distributed, sold, or manufactured components of JUUL vape devices.

Beasley Allen lawyers have teamed up with dozens of Plaintiff law firms around the country to seek justice on behalf of those impacted by JUUL. Beasley Allen’s Joseph VanZandt serves on the Plaintiff Steering Committee (PSC) in the JUUL federal multidistrict litigation (MDL), and Beasley Allen lawyer Beau Darley serves on the PSC in the California state court consolidated litigation against JUUL.

Beasley Allen has devoted a team of talented lawyers to work on this critically important litigation. The firm represents hundreds of youths who became severely addicted to nicotine because of JUUL and suffered other serious physical injuries. The firm also represents hundreds of school districts who have sued JUUL for the public nuisance they allege its products have caused in schools around the country.

The JUUL Litigation Team

Beasley Allen lawyers Joseph VanZandt, Sydney Everett, James Lampkin, Beau Darley, Soo Seok Yang, and Mass Torts Section Head Andy Birchfield are currently representing a number of individuals who are suing the top U.S. vape maker JUUL for the negative impact its products have had on their lives. These lawyers currently make up our firm’s JUUL Litigation Team. Lawsuits have also been filed on behalf of school districts nationwide, which seek to protect students and recover resources spent fighting the vaping epidemic. If you have a potential claim or need more information on JUUL, contact any of the lawyers on the team at 800-898-2034 or by email at Joseph.VanZandt@beasleyallen.com, Sydney.Everett@beasleyallen.com, James.Lampkin@beasleyallen.com, Beau.Darley@beasleyallen.com, SooSeok.Yang@beasleyallen.com or Andy.Birchfield@beasleyallen.com.

XII. MASS TORTS LITIGATION

Counsel Financial Names Top Five Mass Torts Of 2020

Counsel Financial has named its Top Five Mass Torts of 2020, and Beasley Allen lawyers are actively involved in four of them. As previously reported, our firm has been actively involved in Mass Torts Litigation for a very long time. The first major case involving mass torts handled by Beasley Allen involved the pain killer Vioxx. The litigations, listed by Counsel Financial, in no particular order, are:
PFAS WATER CONTAMINATION

Our Toxic Torts Section is handling cases on behalf of state and municipal governments affected by PFAS. The most commonly found PFAS are perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). PFAS are commonly called “forever chemicals” because they are extremely stable and do not break down once released into the environment. PFAS also tend to remain in human tissue permanently.

Exposure to the chemicals over time, even in trace amounts, can lead to serious health problems. These may include developmental effects to fetuses during pregnancy or to breastfed infants, including low birth weight, accelerated puberty, and skeletal variations; cancer, including testicular, kidney, and pancreatic cancer; liver damage; adverse immune effects, such as antibody production and weakened immunity; and thyroid problems, to name a few.

PFAS water contamination is likely the most widespread form of exposure. People can also be exposed to PFAS in other ways, such as inhaling dust in spaces with carpets, textiles, and other consumer products treated with PFAS to resist stains; surface water in lakes and ponds; consuming fish from contaminated bodies of water; and various contaminated foods and food packaging.

Rhon Jones, who heads up the Toxic Torts Section, along with Rick Stratton and Ryan Kral, and other lawyers in the Section, are handling these claims.

JUUL VAPING DEVICES

Beasley Allen has been a leader in the JUUL vaping litigation from the onset. Our firm was among the first to file claims for injuries and addiction related to the vaping devices, and we joined a coalition of six firms nationwide representing school districts negatively affected by JUUL addiction among students.

JUUL created a new generation of nicotine addicts through shrewd and aggressive social media campaigns, a clever and easily disguisable product design, and other business strategies that targeted U.S. teens and children.

The impact JUUL has had on U.S. public health is staggering. Recent studies have found that vaping among high school students doubled between 2017 and 2018—the highest increase in smoking, drinking, and drug use ever recorded in the U.S.

The surge in vaping among U.S. middle and high school students correlates directly with JUUL’s appearance on the market and its savvy youth-oriented marketing campaigns.

Joseph VanZandt, a lawyer in our Mass Torts Section, serves on the Plaintiff Steering Committee (PSC) in the federal JUUL multidistrict litigation (MDL), where more than 1,200 cases are pending against 83 Defendants. Beasley Allen lawyer Beau Darley serves on the PSC in the California state court consolidated litigation, where there are 66 government entity cases (including 64 school districts) and 204 personal injury cases brought on behalf of more than 2,400 individual personal injury Plaintiffs.

Other Beasley Allen lawyers handling these claims are Sydney Everett, Soo Seok Yang, and Section Director Melissa Prickett.

ZANTAC CANCER

Beasley Allen lawyers are currently investigating claims of Zantac users. Zantac was voluntarily recalled from the market on Sept. 13, 2019, and withdrawn in April. The popular over-the-counter antacid and heartburn relief medicine has been linked to certain types of cancer, including liver, bladder, stomach, colon, kidney and pancreatic cancer.

On April 2, 2020, all prescription and over-the-counter versions of ranitidine, the active ingredient in the heartburn and acid reflux medicine Zantac, as well as generics, were withdrawn from the market because they were contaminated with a probable human carcinogen called N-Nitrosodimethylamine (NDMA).

FDA testing, confirmed by third-party laboratories, confirmed NDMA was present in ranitidine, and that the levels of NDMA increase even under normal storage conditions, and could increase significantly when stored at higher temperatures. Furthermore, the older a ranitidine product is, or the longer it sat in store shelves or a consumer’s medicine cabinet, the greater the level of NDMA. These conditions could cause the levels of NDMA in ranitidine to rise above the acceptable daily intake limit.

Frank Woodson, who is heading up our firm’s new Mobile office, is leading the Zantac cancer litigation and has been appointed to serve on the Plaintiffs’ Steering Committee (PSC) for the national multidistrict litigation regarding Zantac.

ROUNDUP

Lawyers in our Toxic Torts section also are handling cases involving Roundup, the most widely used herbicide in the world and the second-most used weed killer for home and garden, government and industry, and commerce. It was introduced commercially by Monsanto Company in 1974 and is used by landscapers, farmers, groundskeepers, commercial gardeners and even home gardeners.

Roundup has been linked to a type of cancer called non-Hodgkin lymphoma, connected to the chemical glyphosate in the weed killer. Litigation continues against Monsanto and Bayer, which acquired Monsanto in 2016.

Bayer said it would settle lawsuits in the Roundup litigation in June but was accused in August by Plaintiffs attorneys of reneging on its agreement. In September, Bayer said it had settled another 15,000 lawsuits, adding to 32,000 it previously disclosed it had settled. The company faces an estimated 125,000 Roundup cases.

Rhon Jones and John Tomlinson are leading this litigation for our firm. They were skeptical of the settlement referred to above from the start and continue to fight to fairly resolve cases for Beasley Allen clients.

TikTok

There is one Mass Tort on the list that Beasley Allen is not currently involved in, related to the social media app TikTok. It is estimated that 1.3 billion people worldwide have downloaded the app, with 120 million users in the
United States. TikTok is facing lawsuits related to privacy issues. Litigation accuses the app's operators, including its China-based parent company, ByteDance Inc., of gathering and storing users' private data. It will be most interesting to see how this litigation proceeds.

To contact the Beasley Allen lawyers working on PFAS Water Contaminations, JUUL Vaping Devices, Zantac Cancer or Roundup litigation, call the firm at 800-898-2034 or you can email the lawyers, whose contact information is set out below.

For PFAS contact Rhon.Jones@beasleyallen.com, Rick.Stratton@beasleyallen.com or Ryan.Kral@beasleyallen.com; for JUUL Vaping litigation, contact Joseph.VanZant@beasleyallen.com, Sydney.Everett@beasleyallen.com or Melissa.Prickett@beasleyallen.com; for Zantac cancer claims, contact Frank.Woodson@beasleyallen.com; and for Roundup cancer claims, contact Rhon Jones or John.Tomlinson@beasleyallen.com.

You can also reach out to the Directors for each of the Beasley Allen sections: Melissa Prickett, Melissa. Prickett@beasleyallen.com, for Mass Torts and Tracie Harrison, Tracie.Harrison@beasleyallen.com, for Toxic Torts. They will be able to put you in touch with a lawyer, who will be glad to talk to you about your claim.

Source: Counsel Financial; Top 5 Mass Torts of 2020 (counselfinancial.com)

XIII. INSURANCE INDUSTRY LITIGATION

Northern District Of Georgia Consolidates COVID-19 Business Interruption Classes Against Westchester And Appoints Beasley Allen Co-Lead Counsel

In August of this year, Beasley Allen lawyers Dee Miles, Gibson Vance, Chris Glover, Paul Evans and Rachel Boyd filed a class action complaint against Defendant Westchester Surplus Lines Insurance Company in United States District Court for the Northern District of Georgia. Like other cases filed by Beasley Allen related to COVID-19 business interruption coverage, this case, The Last Resort-Mobile LLC v. Westchester Surplus Lines Ins. Co., arises from a denial by Westchester of its policyholders' business interruption coverage claims after they were required to close or reduce business after government authorities issued closure orders in an attempt to address the COVID-19 pandemic.

In September, lawyers for The Last Resort-Mobile LLC filed a motion to consolidate this case with a previously filed action against Westchester in the same court, The K's Inc. v. Westchester Surplus Lines Ins. Co. Counsel for both cases also filed a motion to appoint Dee Miles of Beasley Allen and Adam Levitt of DiCello Levitt Gutzler LLC as interim co-lead class counsel, and to appoint Beasley Allen lawyer Gibson Vance as liaison counsel. Both motions were opposed by counsel for Westchester.

The court held a hearing on Oct. 5, 2020 and heard arguments from both sides regarding the consolidation and leadership motions. Despite the arguments from Westchester's counsel, the court indicated it was inclined to consolidate the proceedings and appoint Dee Miles and Adam Levitt as interim class counsel. The parties then submitted competing proposed orders to the court to clarify the scope of consolidation.

Ultimately, on Nov. 6, 2020, District Judge William M. Ray of the Northern District of Georgia issued orders consolidating The Lasts Resort and The K's for all purposes and appointed Dee Miles and Adam Levitt as Interim Class Counsel and Gibson Vance as Liaison Counsel. The court also indicated it would reserve the determination of whether to consolidate other later-filed actions or actions transferred or removed to the United States District Court for the Northern District of Georgia. The court also instructed that it will decide dispositive motions before addressing any motion for class certification. Since the issuance of the court's order, the parties have begun discovery to prove their respective claims and defenses.

In addition to this action, Beasley Allen lawyers continue to monitor the development of other COVID-19-related business interruption cases and proposed legislation. Dee Miles, head of our Consumer Fraud Section, Rachel Boyd and Paul Evans are spearheading the litigation of business interruption litigation for our firm and monitoring any multidistrict litigation (MDL) developments that arise. Contact these lawyers at Dee.Miles@beasleyallen.com, Rachel.Boyd@beasleyallen.com or Paul.Evans@beasleyallen.com if you have any questions or would like to discuss potential claims.


JPML Consolidates COVID-19 Business Interruption Insurance Litigation Against Erie Insurance Group

The Judicial Panel on Multidistrict Litigation (JPML or Panel) issued a transfer order on Dec. 15, 2020, to centralize more than a dozen business interruption cases against Erie Insurance Group. These cases, like several other cases filed against insurers nationwide, allege Erie has wrongfully refused to cover businesses' lost income due to COVID-19 stay-at-home orders.

Erie is only the second insurer to face multidistrict litigation (MDL) over its rejection of policyholders' claims for pandemic-related losses. On Oct. 2, 2020, the Panel centralized more than 30 cases against Society Insurance Company in the Northern District of Illinois, but ultimately denied consolidation of cases against The Hartford, Cincinnati Insurance Co., Certain Underwriters at Lloyd's of London, and Travelers.

The Erie MDL will centralize 25 COVID-19 coverage actions pending against the insurer across four separate states. These actions will be transferred to Chief U.S. District Judge Mark R. Hornak in Pittsburgh, Pennsylvania, where Erie is headquartered. Prior to the Panel's Order, Plaintiffs in six actions and potential tag-along actions supported centralization in Pennsylvania.

The JPML followed largely the same rationale it applied to the Society matter in deciding to centralize business interruption cases against Erie. Like Milwaukee, Wisconsin–based Society, Erie is a smaller regional insurer. Although Erie does more business in more jurisdictions—12 states and the District of Columbia, versus six states for Society—the JPML found that centralization will promote efficiency because the Erie policyholders' cases—which include both individual suits and putative class action complaints—raise common factual allegations that the insurer wrongfully denied their claims for losses due to government orders that required them to close or reduce operations. Due to Erie's size as a regional

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The settlement terms take this into account by offering forward-thinking, pro-competitive reforms that will change the nature of defendants’ business moving forward.

The litigation began in 2012, and numerous cases filed nationwide were consolidated in a multidistrict litigation (MDL) proceeding in the Northern District of Alabama. Plaintiffs accused the BCBS entities of conspiring to split up geographic regions to avoid competing against one another directly. The litigation centered on the contention that several of the Blue Cross Blue Shield Association (BCBSA) rules concerning the use of trademarks unlawfully impeded competition among its BCBS members, causing consumers to pay higher rates for health insurance.

Plaintiffs alleged that this conduct violated Sections 1, 2 and 3 of the Sherman Antitrust Act because it decreased competition between and among the Plaintiffs and the Defendants in health insurance markets by:

• allocating geographic territories;
• limiting the Member Plans from competing against each other, even when they are not using a Blue name, by mandating a minimum percentage of business that each Member Plan must do under that name, both inside and outside each Member Plan’s territory;
• restricting the right of any Member Plan to be sold to a company that is not a member of BCBSA; and
• agreeing to other ancillary restraints on competition.

Prior to the motion for preliminary approval of the settlement, Defendants attempted to dismiss the litigation multiple times. On summary judgment, Judge Proctor ruled that the BCBS system would be examined under the rules for per se illegality and not the rule of reason. Included in the settlement is a May 31, 2021 deadline for notice to class members and a July 28, 2021 objection deadline. A final approval hearing is tentatively set for Oct. 20 and 21.

The MDL also concerns a separate track for health care providers (including hospitals and doctors) which is still ongoing. The provider litigation is centered on similar conduct by BCBS, but while subscribers allege that conduct drove up insurance premiums, providers allege that BCBS’s conduct kept doctor and other medical organization reimbursements low. Beasley Allen lawyers Dee Miles and Leslie Pescia are currently working on the provider track of this litigation. We will keep you up to date on that part of the litigation.

**XIV. EMPLOYMENT AND FLSA LITIGATION**

**C.R. England Agrees To $18.6 Million Settlement In Wage Dispute**

C.R. England (CRE), the nation’s largest refrigerated truck company, has agreed to an $18.6 million settlement of a class action lawsuit alleging it made false representations to truck drivers and violated California labor and wage laws. A Utah federal judge granted final approval of the class action settlement, which includes $3.6 million in cash plus an additional $15 million in debt forgiveness for 12,802 class members.

The lawsuit alleged that when drivers participated in CRE’s truck-driving school and took out loans from the company to pay for their studies, the company withdrew loan payments from their paychecks at an extremely high interest rate. Many drivers attended the truck-driving school because the company promised employment, but they did not expect to be taken advantage of with hidden high interest rates.

Additionally, the drivers alleged CRE violated California labor and wage laws by failing to pay them for meal and rest breaks, failing to reimburse for required business expenses, taking unlawful deductions and failing to timely pay all wages owed to class members upon termination of their employment.

Unfortunately, labor abuses occur every day in our country. The law provides protections for these types of wage and hour violations, but it requires courageous employees to come forward and challenge their employers who are violating the labor laws. Our firm has dedicated a portion of our law practice to helping victims of labor law abuse. For more information contact our lead labor lawyers Lance Gould or Larry Golston at Lance.Gould@beasleyallen.com or Larry.Golston@beasleyallen.com or at our office, 800-898-2034.
The virtual scrapbook company Pinterest will pay out a record $20 million (£15m) to settle a gender discrimination lawsuit brought by a female executive who had alleged she was fired after “speaking out about the rampant discrimination, hostile work environment, and misogyny” at the San Francisco firm.

Françoise Brougher, the company’s former chief operating officer, had accused Pinterest of marginalising and silencing women and excluding them from decision-making. She accepted the payout after Pinterest—a website mostly used by women where users share recipes, home decoration and gardening ideas—conceded that it must do more to “improve its culture.”

As part of the settlement with Brougher, the company is also investing $2.5 million in “advancing women and underrepresented communities in the technology industry.” The tech sector in the U.S. is frequently portrayed as having a “tech bro” culture that encourages men and blocks women from top decision-making roles. Ms. Brougher, who was fired in April on a video call with Pinterest’s 38-year-old billionaire chief executive, Ben Silbermann, said she agreed to the settlement only on the condition that it was made public, to help other women in the male-dominated tech industry. She said: “My goal was about accountability and driving change.”

The $20 million settlement is thought to be the largest publicly announced settlement for gender discrimination. If there is a larger one, please let Shanna Malone know. She can be reached at Shanna.Malone@beasleyallen.com.

Source: The Guardian

XV.
PREMISES LIABILITY LITIGATION

Gun Violence On The Rise Across The Nation, Adding Emphasis To Needed Security Measures

Although 2020 may long be remembered for its historical pandemic, social unrest, and the unprecedented election, the nation is quietly enduring an increase in neighborhood gun violence. For example, in just one weekend in August, 30 people were shot and three people were killed in Chicago. In a 48-hour time period in that same month, more than 40 people were shot. In early August, New York reported 70 people injured and 55 shooting victims, 14 of which were homicides. In the same week in 2019, 26 people were injured in New York shooting incidents.

New York and Chicago are not alone. From May to June 2020, homicides in 20 major U.S. cities increased by 37%, led by Chicago, Philadelphia and Milwaukee. As this article was going to print, Georgia was also dealing with major gun violence issues. Atlanta has seen numerous shooting events at night clubs in October and November, and what seems to be nightly shootouts in different areas of the city, including at multiple apartment complexes. Buckhead is not immune, as the famous Lenox Shopping Mall has had multiple shootings in its parking lots and multiple shooting events inside the mall. In Savannah, gunshots rang out for three nights in a row. Between Jan. 1 and Oct. 31, there had been a total of 109 shooting incidents, although 27 of them were accidental. Special investigations units in Savannah have made 350 felony arrests and confiscated nearly 200 guns this year.

Certainly, law enforcement plays a major role in apprehending offenders and removing guns from the streets. Consistently, however, we see many of the same properties in the news with more of the same shooting events. With just basic security measures in place on these properties, studies prove that gun violence and gang activity would decrease substantially. When property owners fail to take reasonable measures to secure their premises, such as in apartment complexes and shopping centers, the local economy, our citizens, communities, and law enforcement are put in harm’s way. Most of the time, the troubled properties are not owned by individuals, but large corporations that are based out of state and have no real connection to the community. Their existence is based on owning as many properties as possible, and treating them as income streams instead of communities that serve families and other local businesses.

Beasley Allen is committed to restoring this critical balance of responsibility to our neighborhoods so citizens and law enforcement can work and live in a safer place. Parker Miller and Donovan Potter of our Atlanta Office are the lead Beasley Allen lawyers handling these cases. If you or a loved one was seriously injured as a result of a criminal act, or if you have any questions about these cases, contact Parker or Donovan at 800-898-2034 or by email at Parker.Miller@beasleyallen.com or Donovan.Potter@beasleyallen.com.

Sources: WTDC, CNN and AJC

XVI.
WORKPLACE HAZARDS

Beasley Allen Stands By Client Attempting To Change Alabama Workers Compensation Laws

On Sept. 3, 2019, Mason Spurlin was employed with J&M Tank Lines in Sylacauga, Alabama. He had been employed there for a few months when he was tasked with cleaning the inside of a tanker fresh off a delivery. Within an hour of starting that task, Mason was pronounced dead after inhaling toxic fumes inside of the tanker that scorched his lungs. The official autopsy report determined Mason died from “environmental asphyxia.” Mason’s mother and our client, Connie Hay, contacted our law firm to determine what happened to her son and who could be held responsible for his death.

Any on the job death in Alabama must be reported to the Occupational Safety and Health Administration (OSHA). OSHA is tasked with enforcing federal safety regulations in the employment arena and is also tasked with investigating any death in an employment setting. While OSHA’s investigation was pending, Beasley Allen lawyer Kendall Dunson and our firm’s investigators commenced our own independent investigation on behalf of the family. We were able to gain access to the subject tanker, medical records and information about the task Mason was performing.

Long before the OSHA report was released, Kendall warned Ms. Hay that the evidence indicated that the employer was responsible for her son’s death. When she asked when Beasley Allen would file suit, Kendall had to explain to her that the Alabama Workers Compensation Statute governs her son’s death; thus, the family would only be entitled to $7,500 since her son died unmarried and with no dependents. Ms. Hay, like most other families who have lost a loved one on the job, was surprised to hear Kendall’s explanation.

JereBeasleyReport.com
The release of the OSHA report was devastating for Ms. Hay as she learned her son's death could have and should have been prevented. The employer was cited for failing to have and implement a confined space program. A confined space program is required for all employers where employees are required to enter a confined space. A tanker is a confined space. A confined space program and training include atmosphere detection devices, breathing devices, special safety training, and protocols to follow before entering a confined space. If confined space protocols had been followed, Mason Spurlin would not have suffocated alone in that tanker.

After the OSHA findings were explained to Ms. Hay, she was certain the penalties imposed on the employer also justified a lawsuit. Kendall had to explain that we would be glad to file a lawsuit against the employer, but that Alabama law does not allow a lawsuit against an employer under those circumstances. The employer/insurance carrier would gladly pay $7,500 and that is all the family can recover regardless of the employer's conduct.

After recovering from the legal explanation, Ms. Hay decided to act. With our support she started calling her state legislator, her state senator and even the governor's office seeking to change the law.

Ms. Hay is seeking to increase the benefits available to injured workers and/or the families of loved ones killed on the job. Alternatively, she is seeking an exception to the absolute immunity granted to employers, especially when the employer violates federal safety regulations. Ms. Hay is not alone in her assessment of the need to change Alabama's Worker Compensation laws. In May of 2017, Judge Pat Ballard, a Circuit Court Judge in Jefferson County Alabama, declared the Alabama Workers Compensation Act unconstitutional. Judge Ballard's ruling focused in the inadequacy of the benefits available under the statute from the weekly benefits to the predetermined payments set by the Alabama Legislature for losing body parts. The Alabama Legislature has determined an Alabama employee should receive the following benefits if injured or killed on the job:

<table>
<thead>
<tr>
<th>Injury</th>
<th>Benefit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amputated hand</td>
<td>$37,400</td>
</tr>
<tr>
<td>Amputated arm</td>
<td>$48,840</td>
</tr>
<tr>
<td>Amputated thumb</td>
<td>$13,640</td>
</tr>
<tr>
<td>Amputation of any other finger</td>
<td>Less than $10,000</td>
</tr>
<tr>
<td>Death with no dependents</td>
<td>$7,500</td>
</tr>
</tbody>
</table>

These “benefits” are too low to adequately compensate someone forced to live the remainder of their life without an appendage and wholly inadequate to compensate the survivors of a loved one killed on the job. Ms. Hay understands she has an uphill battle because the business community holds heavy influence on Alabama's decision makers. However, she is up for the challenge and we at Beasley Allen support her efforts 100%.

Although Judge Ballard's decision did not address the immunity granted to employers, the state legislature should explore and consider granting an exception to absolute immunity when the employer violates OSHA safety regulations. The threat of litigation serves as motivation for employers to comply with safety laws just like the threat of incarceration motivates regular citizens to follow the law.

The caps imposed by the Alabama Workers Compensation statute do not promote compliance and safety. One could argue that the statute promotes ignoring the safety of employees. That's because employers know they face little to no repercussions in the event of an injury or death.

Unfortunately, Alabama employees and their families are forced to suffer under this scheme that is supposed to benefit employees. The statute is entitled “Workers Compensation" though the compensation afforded is grossly inadequate. Perhaps it should be entitled “Employers' Protection Statute” since the benefits to employers far outweigh the benefits to employees.

We encourage Alabama Gov. Kay Ivey and the leadership in both the House of Representatives and the Senate to support the needed changes in Alabama's workers compensation laws. Workers in Alabama deserve to be treated fairly and the current laws are patently unfair. If you agree that substantial changes are needed, contact these leaders and let them know how you feel.

If you need more information on Alabama's workers compensation laws, contact Kendall Dunson at 800-898-2034 or by email at Kendall.Dunson@beasleyallen.com.

**Acrobats Injured In Circus Accident Reach $52.5 Million Settlement**

Eight females acrobats, badly injured in a horrific 2014 incident during a circus performance, have settled with the owners and management of the performance arena for $52.5 million. They were involved in a fall that sent 11 people to the hospital, some in critical condition. All of the women survived, but some are still unable to work.

The acrobats landed on a dancer, who was also injured. The incident occurred during a Ringling Bros. and Barnum & Bailey Circus performance before thousands of spectators at the Dunkin' Donuts Center in Providence, Rhode Island.

The settlement, reached during mediation, came about after 20 experts were deposed. The acrobats had sued Rhode Island Convention Center Authority, which owns the arena, and SMG, which manages it, in 2016 for safety lapses leading to the fall. SMG was charged with maintaining safety.

Investigators determined that a metal loop or clip holding the acrobats by their ponytails as they were forming a “human lotus blossom,” had snapped while they were suspended 20 feet in the air. The U.S. Department of Labor’s Occupational Safety and Health Administration concluded that circus staff had overloaded a carabiner clip, which in turn held up a chandelier-like apparatus that the women were suspended from by their hair. The Plaintiffs suffered serious injuries in the fall.

Zachary Mandell, a lawyer with Mandell, Boisclair & Mandell, Ltd., in Rhode Island, represented the eight Plaintiffs who settled their claims. He did an outstanding job.

Source: The New York Daily News

**XVII. AN UPDATE ON MOTOR VEHICLE LITIGATION**

**Beasley Allen Sues On Behalf Of UPS Driver’s Family**

Ben Baker, a lawyer in our Personal Injury & Products Liability Section, has filed a lawsuit on behalf of a veteran UPS driver who was killed while he was delivering packages during the pandemic. The driver, Gary Kukelhan, known as “Kuke,” died after a rear wheel and tire assembly broke free from a truck owned by defendant Kona Ice Company and crashed into Kukelhan’s front, driver’s-side windshield. The incident occurred on June 10, 2020, in Shelby County, Alabama.
Defendant Melton Automotive, Inc. performed maintenance on the Kona vehicle shortly before the incident, including installing new tires on the Kona truck. When filing the suit in Shelby County, Ben had this to say:

This terrible, needless incident claimed the life of a father, brother and son who was also an essential worker, vital to our economy during this year’s pandemic. The wheel and tire assembly at the center of this tragedy should never have come loose from its truck. The defendants must be held accountable for their failure to properly install the tire and their disregard for the traveling public’s safety.

Mr. Kukelhan, who was 61 years old, and about three months from retiring, had been honored by UPS in 2019 for his safe driving. In February 2019, he was inducted into the UPS Circle of Honor, an honorary organization for UPS drivers who achieved 25 or more years of accident-free driving. He had worked for UPS for 30 years.

The lawsuit states that Melton Automotive failed to properly torque lug nuts on the rear wheel assembly and otherwise failed to provide appropriate maintenance and repairs to the Kona Ice truck involved in the incident. The complaint further states that, despite knowing that the vehicle was unsafe for operation and needed repairs, Kona Ice sent the vehicle onto the public roads, placing the traveling public at risk of such an incident that resulted in Mr. Kukelhan’s fatal injuries.

The lawsuit states that Melton Automotive failed to properly torque lug nuts on the rear wheel assembly and otherwise failed to provide appropriate maintenance and repairs to the Kona Ice truck involved in the incident. The complaint further states that, despite knowing that the vehicle was unsafe for operation and needed repairs, Kona Ice sent the vehicle onto the public roads, placing the traveling public at risk of such an incident that took Mr. Kukelhan’s life. The Defendants’ negligent and reckless actions, combined and concurred to cause the incident that resulted in Mr. Kukelhan’s fatal injuries.

The lawsuit is filed in the Circuit Court of Shelby County, Alabama (case number 58-CV-2020-900594.00). Pretrial discovery and other trial preparation has started and Ben’s goal is to obtain justice in the case.

**Family Of Student Killed In 2019 Crash Settles Wrongful Death Lawsuit**

The parents of a high school student will receive $3.1 million in settlement of their lawsuit, which arose from a post-prom car crash in April 2019. The suit was filed by the parents of Elizabeth Daniel against the estate of the driver of the vehicle, Citadel cadet Keith Schemm, who was also killed in the crash and several other Defendants, including the boy’s mother, and three other adults who had a role in the post-prom party. The lawsuit alleges the following:

- Daniel and Shemm drank alcohol before the deadly crash, which occurred shortly before 2:30 a.m. on April 7, 2019.
- Both Schemm, 19, and Daniel, 18, were pronounced dead at the scene.
- Schemm’s mother, Martha Jones, had driven her son to Daniel’s house for prom pictures on the Saturday night because he had already been drinking that afternoon.
- After the prom, Schemm and Daniel went to the house of Paula Lewis. Lewis’ son was dating the daughter of Raymond and Nandy Short. Mr. and Mrs. Short provided alcohol for the party which Ms. Lewis consented to. Both Schemm and Daniel consumed alcoholic drinks at the party. Others in attendance noticed both of them appeared drunk before leaving the party around 1 a.m. on April 7.
- According to the crash accident report, Schemm was driving 70 mph in a 40 mph zone when he hit a right curb, then a sidewalk and swerved left before crossing the center line and over-correcting.
- Ms. Lewis failed to prevent Daniel and Schemm from leaving her house in a drunken condition.
- Schemm’s mother knew her son had past history and a tendency to drink and drive.
- An autopsy report showed that Schemm’s blood alcohol content was .235%, almost three times the legal limit.

This case reveals the dangers of drinking and driving and also how irresponsible adults in their role as parents actually caused two deaths. The lesson taken from this case is especially needed during the holidays and beyond.

Source: Live5news.com

**General Motors Engines Were Engineered To Fail**

On Nov. 23, 2020 our firm filed another proposed class action against General Motors LLC alleging that it knowingly sold vehicles in Ohio with engines "engineered to fail" through a defective combustion and oil containment system.

Plaintiffs Airko Inc. and Lisa Mae Jennings bought 2013 Chevrolet Silverados, powered by the Generation IV Vortec 5300 Engine, whose flawed combustion system components cause it to consume excessive oil, and suffer aggressive premature wear of numerous internal rotating engine components.

The defect in the Airko and Jennings vehicle are the piston rings, which fail to keep oil in the crank case and combustion gases in the combustion chamber. Additionally, GM’s “Active Fuel Management” system aggravate the defect by overpowering the piston rings with oil spray, pushing excess oil into the combustion chamber.

There, the oil either burns or accumulates as carbon buildup, which in turn can cause it to coat the spark plugs, impeding their ability to robustly ignite the gasoline in the combustion chamber. This results in poor ignition, misfire, power loss and eventual engine stall.

In addition, the vehicles’ oil monitoring systems are deficient and fail to warn drivers that there is a problem with the oil levels in the engine. The oil life monitoring system does not monitor the actual oil level, according to the suit, but instead monitors engine conditions such as temperature to calculate expected deterioration in oil quality.

As a result, the system allows vehicle owners to drive thousands of miles without warning them that the engine lacks proper lubricant, which causes engine components to wear out. Neither does the oil pressure gauge properly warn drivers, the proposed class said, as it does not light up until the engines are well past the point of being “critically oil starved.”

Plaintiffs know from evidence Beasley Allen developed in the lead cases proceeding in the Northern District of California that GM quickly learned of the defect through an “extraordinary” number of consumer complaints and warranty claims. In response, GM instructed its dealers to use stop-gap fixes to address the excessive oil loss, but failed to provide a complete remedy. And, while GM rolled out a new (Generation V) engine in 2014, aiming to engineer around the defect, GM abandoned owners of the Generation IV vehicles, offering them no relief after warranty expiration.

Airko and Jennings seek to represent a class of all Ohio buyers of Chevrolet Avalanche, Silverado, Suburban and Tahoe and GMC Sierra, Yukon and Yukon XL vehicles from model years 2010 to 2014 and seek damages from GM for violations of the state’s Consumer Sales Practices.
Act and for breach of express and implied warranty, fraudulent omission and unjust enrichment. Our co-counsel Adam J. Levitt of DiCello Levitt Gutzler LLC, stated:

While the strength of our complaint’s allegations speak for themselves, the fact is that materially identical claims have already been roundly sustained in the United States District Court for the Northern District of California, where classes have already been certified. We see no reason why the same outcome shouldn’t happen here.

Clay Barnett, a lawyer in our firm’s Consumer Fraud & Commercial Litigation Section, who specializes in automobile-related class action litigation, stated:

Airko and Jennings purchased Silverados built on the same assembly line as the trucks that are the subject of the lead class in the Northern District of California. At the heart of assembly line production is uniformity, meaning these Plaintiffs’ trucks contain the same defective components and fail in the same manner as those trucks already certified for trial in California.

The case is Airko Inc. et al. v. General Motors LLC (case number 1:20-cv-02638) in the U.S. District Court for the Northern District of Ohio. Airko is represented by Dee Miles, Clay Barnett and Mitch Williams of Beasley Allen Crow Methvin Portis & Miles PC and Adam J. Levitt, John E. Tangren and Daniel R. Ferri of DiCello Levitt Gutzler LLC.

Source: Law360.com

Beasley Allen Settles Case Against Two Trucking Companies

Beasley Allen has settled another case in Georgia involving a motor vehicle crash involving big trucks. On Aug. 29, 2017, our client Lynn Curry was driving a 2012 Jeep Compass vehicle northbound on Interstate 285 in Cobb County, Georgia. Her vehicle was in the third lane from the left shoulder. An 18-wheeler owned by CT Transportation, LLC out of Port Wentworth, Georgia, and driven by Ernest Elmore, Jr., was traveling northbound in the lane behind our client’s vehicle. Elmore was an employee of Defendant CT Transportation.

John Thomas Haugen was operating another big truck owned by Florilli Transportation LLC, located in West Liberty, Iowa, and was also traveling northbound. Haugen was an employee of Florilli Transportation.

In an attempt to change lanes, Elmore drove his truck into Haugen’s truck two lanes over, resulting in a collision. Haugen was driving over the speed limit and too fast for conditions, rendering him unable to avoid a collision with Elmore’s vehicle. As the Elmore and Haugen trucks collided, the Haugen truck then entered our client’s lane, and collided with her vehicle.

This incident occurred during early morning rush hour traffic. Drivers must be extra careful in such conditions. This road condition created a potential hazard, well known to all commercial truck drivers. There was also active construction in the area, which created an additional hazard.

Both Elmore and Haugen ignored the dangers created by the two hazardous road conditions. Our client, properly belted, was on her way to work at the time of the accident and her vehicle was not moving at the time of it was struck.

The speed limit in the area where the accident occurred was 40 mph, without factoring in rush-hour traffic and construction. According to John Haugen’s blackbox download on his vehicle, he was traveling at speeds that reached up to 53 mph right before the accident happened. Haugen maintained that he did nothing to cause or contribute to this accident. He stated that Elmore pulled into his lane of travel abruptly, causing the collision. Having maintained that the speed limit in the area was 55 mph and that it was only 40 mph in the approaching curve. Although Haugen disputed the speed limit in the area, he admitted in deposition that he would have been able to avoid hitting our client had he been travelling at 40 mph.

Our client suffered serious injuries, including a traumatic brain injury; a C4-5 disc herniation causing ventral cord compression, and lumbar facet capsular injury. She filed claims of negligence and wantonness in her complaint against CT Transportation, LLC; Florilli Transportation LLC; Ernest Elmore, Jr.; and John Thomas Haugen. Plaintiff also alleged negligent hiring, training and supervision against Defendants CT and Florilli.

The Plaintiff was represented by Beasley Allen lawyers Chris Glover and Ben Keen from our Atlanta office, along with Gibson Vance, who is based in Montgomery. The case was successfully settled for the client. The lawyers and staff did a tremendous job in investigation and presentation in this case.

NHTSA Fines Hyundai And Kia $210 Million Over Recall Reporting

The National Highway Traffic Safety Administration (NHTSA) has announced consent orders with Hyundai Motor America, Inc. and Kia Motors America, Inc. related to recalls of their vehicles equipped with Theta II engines. The consent orders reflect NHTSA’s determination that both Hyundai and Kia conducted untimely recalls of more than 1.6 million vehicles equipped with Theta II engines, and inaccurately reported information to NHTSA regarding the same.

Hyundai is subject to a total civil penalty of $140 million. This includes an immediate payment of $54 million, an obligation to direct an additional $40 million toward specified safety performance measures, and an additional $46 million deferred penalty triggered by non-satisfaction of specified conditions. The Hyundai consent order operates for three years, with an option for NHTSA to extend the order for an additional year if warranted.

Kia is subject to a total civil penalty of $70 million. This includes an immediate payment of $27 million, an obligation to expend an additional $16 million on specified safety performance measures, and an additional $27 million deferred penalty that may become payable triggered by non-satisfaction of specified conditions. The Kia consent order operates for two years, with an option for NHTSA to extend the order for an additional year if warranted.

In addition to the monetary penalties, Kia will be creating a new U.S. safety office headed by a Chief Safety Officer, and Hyundai will be building a U.S. test facility for safety investigations. Both companies will develop and implement sophisticated data analytics programs to better detect safety-related concerns, and each company will retain an independent, Third-Party Auditor, who will directly report to NHTSA. NHTSA Deputy Administrator James Owens stated:

Safety is NHTSA’s top priority. It’s critical that manufacturers appropriately recognize the urgency of their safety recall responsibilities and provide timely and candid information.
Drivers Claim Ford Sold Faulty 'Ecoboost' Engines

A group of Ford owners has filed a proposed class action in a Delaware federal court accusing Ford Motor Company of knowingly selling faulty autos with "eco-boost" engines containing a defect that causes coolant to leak into the engines’ cylinders.


It's alleged by the owners that the defect causes coolant to leak into the engine's cylinders causing significant damage and, in some cases, complete engine failure. The owners also allege Ford has known about the problem since at least 2010 but did not order a recall. The complaint says:

Even with extensive knowledge of the engine defect, Ford has nevertheless failed to provide any final solution to consumers who purchased or leased class vehicles. Further, Ford has not addressed the source of the defect for those consumers, including for those whose vehicles are still under warranty. In fact, Ford merely performs temporary stop-gap remedies such as installing coolant level sensors.

The owners added that “the sensor does nothing to prevent the coolant from leaking into the engine cylinders. Ford may otherwise simply perform ineffective replacement of certain parts, thereby never actually addressing the cause of the engine defect.” The lawsuit includes causes of action for breach of express warranty, breach of written warranty, fraudulent concealment and unjust enrichment, as well as violations of state laws pertaining to the subclasses.

Plaintiff Robert Reed of Colorado, one of the five Plaintiffs, says he purchased a used 2016 Ford Edge in March 2018 with approximately 36,376 miles on the odometer from McCloskey Motors in Colorado Springs, Colorado. And that in November, with approximately 65,000 miles on the odometer, Plaintiff Reed's Edge began to experience engine trouble, and he took it to a repair shop before arriving at Longmont Ford, an authorized Ford service dealer.

Plaintiff Reed says the defect was so significant he was told by the dealer that his entire engine needed to be replaced for $10,000 before the cost was lowered to $7,178.62. It's alleged:

Plaintiff Reed contacted Ford's corporate customer service department, requesting reimbursement or a discount for the replacement of his vehicle's engine, but Ford refused to cover any of the cost.

The Ford owners also claim there is documented proof that Ford has known about the defect since 2010 through “pre-production testing, including design failure mode analysis, early warranty claims, replacement part orders, and consumer complaints to Ford's authorized network of dealers, as well complaints to [the National Highway Traffic Safety Administration].”

Despite knowledge of the defect, it's alleged that Ford "knowingly, actively and affirmatively omitted and concealed the existence of the engine defect" in its advertising and manuals.

The lawsuit seeks a court order directing Ford to issue a recall on the defective engines as well as unspecified damages and other remedies. Russell D. Paul of Berger Montague PC, who represents the Plaintiffs, in an email to Law360:

This is a serious safety defect that affects over 4.4 million Ford vehicles whereby engine coolant leaks into the engine’s cylinders. The result can be overheating, oil dilution and contamination, the cylinder head cracking, engine corrosion, total engine failure and engine fires. We look forward to diligently prosecuting this action on behalf of all class members across the country.


Source: Law360.com

New Hours Of Service Rules For Commercial Drivers

On Sept. 29, 2020, new Hours of Service (HOS) rules for commercial vehicle drivers will take effect. HOS rules have been alternately contested and revised since they were first implemented in 1937 as a way to reduce commercial driver fatigue and improve overall highway safety.

Safety advocates have voiced concerns that the new rules could have an adverse effect on safety, not just for motorists sharing the road with tractor-trailers but for commercial truck drivers as well due to the potential for greater fatigue.

Only time will whether the new HOS rules will affect highway safety for better or worse... or at all. According to the Federal Motor Carrier Safety Administration (FMCSA), the new rules will "provide greater flexibility for drivers... without adversely affecting safety." This, the agency says, is achieved by giving drivers some options to slightly alter their on-duty time under the current rules. The current rules require drivers to be off-duty and/or in a sleeper berth during their breaks. But under the new rules, drivers can choose to remain on duty but not driving on their breaks.

The following is a breakdown of the key changes in the new, final rule.

• 30-Minute Break Requirement: The revised HOS rules require a break of at least 30 consecutive minutes after eight cumulative hours of driving time, instead of on-duty time under the current rules. The current rules require that drivers must be off-duty and/or in a sleeper berth during their breaks. But under the new rules, drivers can choose to remain on duty but not driving on their breaks.

• Sleeper Berth Provision: The new rules allow drivers to meet the 10-hour minimum off-duty requirement by spending at least seven of the 10 hours
We are especially concerned about severe lung injury or lung disease resulting from chemical or other toxic exposure, or a cancer diagnosis related to toxic exposure. This may occur in the workplace or as a result of environmental exposure from hazardous chemicals. The section is headed up by Rhon Jones.

The following is an update on three areas of ongoing litigation being handled in this section.

**Roundup**

In 2016, dozens of Roundup lawsuits filed against Monsanto were consolidated into multidistrict litigation (MDL) in the United States District Court for the Northern District of California. The cases were filed by farmers and landcapers (and their families) against Monsanto claim that their glyphosate exposure contributed to the development of non-Hodgkins lymphoma. The first three cases to go to trial resulted in Plaintiff verdicts of $289 million, $80 million and $2.055 billion.

On June 24, 2020, Bayer announced that it would pay up to $10.9 billion to settle about three-quarters of the 125,000 Roundup cancer claims the company faced. U.S. District Judge Vince Chhabria of the Northern District of California who is overseeing the Roundup MDL, imposed a 90-day break counts against the 14-hour limit. On June 24, 2020, Bayer announced that it would pay up to $10.9 billion to settle about three-quarters of the 125,000 Roundup cancer claims the company faced. U.S. District Judge Vince Chhabria of the Northern District of California who is overseeing the Roundup MDL, imposed a 90-day break counts against the 14-hour limit.

Rhon Jones, who is leading the Roundup litigation along with John Tomlinson, had been skeptical about the deal from the start. Rhon says:

> We did not resolve cases for our clients at the time Bayer announced this settlement back in June because it lacked transparency and we felt Bayer was not serious about resolving cases for our clients.

For more information about the Roundup litigation you can email Rhon.Jones@beasleyallen.com, John.Tomlinson@beasleyallen.com or this writer at Jere.Beasley@beasleyallen.com.

**Water Contaminations**

Beasley Allen is currently working with cities, towns, municipalities and water boards in Alabama that have been affected by perfluorinated compounds (PFC) contamination. We have filed lawsuits on behalf of the Water Works and Sewer Board of the Town of Centre, Alabama, and the Water Works and Sewer Board of Gasden, Alabama, against carpet and textile companies and their chemical suppliers to hold them responsible for polluting these communities’ water supply.

The U.S. Environmental Protection Agency (EPA) issued new lifetime health exposure guidelines in May 2016 for perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA) in the water supply. After the EPA issued the new exposure limits, an advisory warning was provided to
eight water systems in Alabama and more than 50 nationwide.

The EPA advisory focused on PFOA and PFOS, man-made chemical compounds that are used in the manufacture of non-stick, stain-resistant and water-proofing coatings on fabric, cookware, firefighting foam and a variety of other consumer products. Exposure to the chemicals over time, even in trace amounts, could promote serious health problems, the EPA warns.

For more information about Water Contamination cases, contact Rhon Jones@beasleyallen.com, Ryan.Kral@beasleyallen.com or David.Diab@beasleyallen.com.

In addition to these cases, the Toxic Torts Section is handling a number of other cases involving toxic exposure, including benzene exposure resulting in Acute Myeloid Leukemia (AML), Myelodysplastic Syndrome (MDS), lymphomas and aplastic Anemia; and representing clients with mesothelioma, a rare and deadly form of cancer caused by asbestos exposure.

Rhon Jones heads the Section. The following lawyers are in the Section and they have been very busy the past several years:

- Rhon Jones (Rhon.Jones@beasleyallen.com)
- David Diab (David.Diab@beasleyallen.com)
- Michael Dunphy (Michael.Dunphy@beasleyallen.com)
- Danielle Ingram (Danielle.Ingram@beasleyallen.com)
- Gavin King (Gavin.King@beasleyallen.com)
- Ryan Kral (Ryan.Kral@beasleyallen.com)
- Tucker Osborne (Tucker.Osborne@beasleyallen.com)
- Jeff Price (Jeff.Price@beasleyallen.com)
- Charlie Stern (Charlie.Stern@beasleyallen.com)
- Rick Stratton (Rick.Stratton@beasleyallen.com)
- Will Sutton (William.Sutton@beasleyallen.com)
- John Tomlinson (John.Tomlinson@beasleyallen.com)

For more information about any of the cases being handled by the Toxic Torts Section, you can also contact Tracie Harrison, who does a tremendous job as the Section Director. She can be reached at Tracie.Harrison@beasleyallen.com and she will be happy to put you in touch with the appropriate lawyer in the Section who can help you.

XIX.
MORE ON TOXIC TORT LITIGATION

3M And Dupont Sued Over Contaminated Water In Orange County

Last month, Dupont, 3M, Chemours, and Corteva were hit with another lawsuit alleging forever chemicals in groundwater. The suit was filed by the Orange County, California, Water District and 10 other water districts in the same county. The lawsuit claims that the manufacturer should cover the Districts’ decontamination costs.

For decades, the chemical companies manufactured products containing perfluorooctanoic acid, or PFOA, and perfluorooctanesulfonic acid, or PFOS, both of which are known as “forever chemicals” because they don’t break down in the environment, according to the water districts. The man-made substances are part of a group of more than 5,000 per- and polyfluoroalkyl substances, known as PFAS, and have been shown to lead to reproductive and developmental, liver and kidney, and immunological problems, and certain cancers.

The Districts assert that the Defendants knew that the harmful compounds they manufactured would reach groundwater, pollute drinking water supplies and threaten public health and welfare. The Plaintiffs further claim that they have incurred extensive expenses, and expect to incur even more, as they grapple with the contamination. It’s alleged in the complaint:

OCWD also seeks to safeguard the quality of the public water resources in the basin; to prevent pollution or contamination of water supplies; and to assure that the responsible parties—rather than the OCWD, producers or taxpayers—bear the cost of responding to and remediating contamination.

Early litigation involving forever chemicals has yielded multiple nine-figure settlements which have drawn more attention to the danger of the chemicals. If you need more information on this litigation, contact Ryan Kral, a lawyer in our Toxic Torts Section, at 800-898-2034 or by email at Ryan.Kral@beasleyallen.com.

Source: Law360.com

EPA Says ‘Forever Chemicals’ Can Be Considered In Permits

Last month, the U.S. Environmental Protection Agency (EPA) said that regulators issuing Clean Water Act permits for wastewater should consider requiring certain measures, such as monitoring, for per- and polyfluoroalkyl substances (PFAS) while the agency continues to weigh possible regulation of the chemicals.

Along with monitoring, permit holders should consider requiring best management practices and pollution control measures when issuing National Pollutant Discharge Elimination System (NPDES) permits for sources that may discharge PFAS, EPA Assistant Administrator for the Office of Water David Ross said in a memo to regional leaders.

Separately, the EPA highlighted progress on new methods to test for PFAS compounds in wastewater and elsewhere. The EPA had said that managing and mitigating PFAS in water is a priority for the agency and that the two actions are steps on the way to federally enforceable wastewater monitoring for PFAS.

The NPDES permit recommendations came from a group made up of EPA employees from both headquarters in Washington, D.C., and regional offices, and are intended to serve as interim measures while the Office of Water continues to work on implementing the agency’s 2019 PFAS Action Plan.

The agency’s action met with criticism from the Environmental Working Group. Scott Faber, the EWG’s senior vice president for government affairs, called the EPA’s proposal “an insult” to people who are drinking water contaminated with PFAS. He said in a statement:

The EPA should be issuing tough, mandatory standards to regulate PFAS discharges from thousands of industry facilities, not ‘encouraging’ industry facilities and regulators to ‘consider’ whether to limit releases of toxic chemicals building up in the blood of every American. The PFAS pollution crisis is a big problem that we should not be making bigger through unlimited pollution.

While the EPA’s action to combat PFAS contamination has been incremental, President-Elect Biden’s environmental platform during the campaign indicated that it would focus on PFAS. Those measures include setting enforceable limits for PFAS chemicals in the Safe Drinking
**LG Chem Recalls Certain Home Batteries Over Fire Concerns**

In November, battery manufacturer LG Chem launched a recall of some of its Resu 10H residential battery products in the interest of fire safety. The recall affects certain battery systems containing cells from specific groups of batteries produced in 2017 and 2018 according to the company. The company explained in a letter that those cells are at risk of overheating, which could lead to fires and dangerous smoke. The letter notes:

“LG Chem has received five reports of thermal events in the United States causing limited property damage. There have been no reported injuries. LG Chem is undertaking this voluntary action as part of its continued commitment to product safety and to providing the highest quality and service to its customers.”

The Resu has been increasing in popularity among the growing residential energy storage market. It has been a critical piece of solar installer Sunrun’s build-out of solar-plus-storage, which reached 13,000 homes this past November. This recall affects about 5% of Sunrun’s battery installations.

This is not the first time LG Chem has been cited for recalls involving its batteries. The recall of the Resu 10H comes on the heels of a recall of approximately 70,000 electric vehicles because several of those cars caught fire. Those vehicles contained LG Chem batteries as well. While investigations are still underway, the fires are believed to be related to LG Chem’s batteries.

**$265 Million Dicamba Verdict Reduced By Court To $75 Million**

U.S. District Judge Stephen N. Limbaugh Jr., the Missouri federal judge who presided over the Bader Farms trial, has reduced the punitive damages award that the Missouri-based farm won against Defendants Monsanto and BASF. This verdict was in a bellwether trial over claims the weedkiller dicamba ruined the farm’s peach trees. The verdict was cut from $250 million to $60 million. Judge Limbaugh ruled that the case involved only economic damages as opposed to physical harm.

Judge Limbaugh also upheld Plaintiff Bader Farms Inc.’s $15 million compensatory damages award, finding that the correct standard under Missouri law was applied to the farm’s damage.

A federal court jury had returned the verdict for Plaintiff Bader Farms in February, finding that the farm was entitled to $265 million in total damages. This was in the first trial in multidistrict litigation (MDL) over claims by Plaintiffs that dicamba, which each company manufactured, drifted from neighboring farms that planted dicamba-resistant crops and hurt their own nonresistant crops.

Since the verdict, the parties in this case have been fighting over punitive damages, with BASF Corp. arguing that Bayer AG-owned Monsanto Co. should have to pay the full amount. BASF contends that neither it nor Monsanto intended for a joint venture to exist. The companies also argued that the damages award was unconstitutionally large.

Judge Limbaugh ruled that the jury “reasonably found that the defendants had intended what is in law a joint venture.” The judge stated:

“The evidence in this case is that Monsanto and nonparty BASF SE entered into the 2010 umbrella agreement, which formed an alliance management team. The AMT itself has no apparent corporate form, but ... its purpose was effectively to carry out a joint venture between BASF SE’s affiliate (defendant BASF Corporation) and Monsanto.”

Judge Limbaugh also rejected the companies’ objections to the $15 million compensatory damages award, finding that the jury had awarded less than the farm sought and “presumably took into account that evidence that some damages were caused by sources other than dicamba.”

The damages expert had testified at the trial that the information supplied by Plaintiff Barber Farm was credible and trustworthy.

Judge Limbaugh said the jury’s punitive damages award should be reduced from $250 million to $60 million, stating:

“Because of the lack of actual malice, the presence of economic damages only, and the excessive ratio of punitive to compensatory damage, precedent requires this court to reduce the punitive damages award to $60 million, a 4:1 ratio.”

Bader Farms, located in southwest Missouri’s “boothel,” was the first to go to trial in multidistrict litigation over the pesticide. At trial Bader Farms claimed that thousands of peach trees were hurt by dicamba. The nearby fields were planted with Roundup Ready Xtend cotton seeds, genetically modified to withstand dicamba and glyphosate, Bader Farms said.

Bader Farms and other Plaintiffs say Monsanto rushed these new, genetically modified seeds to market, introducing the cotton seed in early 2015 and soybeans in 2016. But because the seeds came out before a regulator could approve a new dicamba version to go with them, farmers had to spray older, more volatile dicamba on them, the peach farm said.

The U.S. Environmental Protection Agency finally approved the companies’ versions of Dicamba—BASF’s Engenia and Monsanto’s XtendiMax with VaporGrip and Roundup Xtend with VaporGrip—in late 2016, nearly two years after the seeds hit the market in Missouri, Arkansas and Tennessee.

The farmers also said BASF and Monsanto misled the EPA in getting the approvals. In April, BASF said the $250 million in punitive damages should be the sole responsibility of Monsanto, telling the court that the jury didn’t find BASF responsible for those damages. BASF said in its filing:

“The court instructed the jury to determine whether Monsanto was liable for punitive damages, and the jury found that it was. The court did not instruct the jury to determine whether BASF was liable for punitive damages, and the jury made no such finding.”

Meanwhile, Bader Farms argued that BASF can’t shunt its responsibility onto Monsanto, telling the court that BASF can’t now claim that it wasn’t engaged in a joint venture with Monsanto in order to avoid sharing liability for the punitive damages.

BASF’s own internal documents said the two companies were forming a joint venture, and it is “wholly irrelevant” that BASF and Monsanto put language in some
of their agreements denying that those agreements created a partnership, Bader Farm contended.

The companies have also argued that it would be unfair to allow punitive damages at such a high multiple of compensatory damages. U.S. federal courts often cite a 10-to-1 ratio as a tacit or explicit maximum.

In May, Bader Farms pointed to a recent Eighth Circuit ruling in a case about a used Ferrari as supporting the $250 million punitive damages award. That decision supports a much higher multiple, Bader Farms said. The appeals court upheld a $500,000 punitive damages award in a fraud case by a car buyer who was awarded only $7,000 in compensatory damages and $13,500 in incidental damages against a dealership the buyer said deceived him about damage to the used car.

Billy Randles, a lawyer with Randles & Splittegerber, a Kansas City, Missouri, firm, represented Bader Farms in this litigation. He has done an outstanding job for his client.

Monsanto and BASF say they will appeal the decision, even with the reduction in the amount of the verdict.

The case is Bader Farms Inc. et al. v. Monsanto Co. et al. (case number 1:16-cv-00299) and the MDL is In re: Dicamba Herbicides Litigation (case number 1:18-md-02899) both in the U.S. District Court for the Eastern District of Missouri.

Source: Law360.com

XXI.
NURSING HOME LITIGATION

Vulnerable Nursing Home Residents Among The First To Be Offered COVID Vaccine

The much-anticipated COVID-19 vaccines rolled out mid-December after securing approval from the Food and Drug Administration (FDA). The Centers for Disease Control and Prevention (CDC) is recommending that the first vaccines be offered to health care personnel and residents of long-term care facilities—health care personnel because they are exposed to patients or infectious materials, and nursing home residents because they are among the most vulnerable. But there are some obstacles to getting elderly and frail residents of long-term care facilities vaccinated in a timely manner.

Health care workers received their first shots beginning the week of Dec. 14, and about 6,200 nursing home residents and an estimated 9,200 workers who care for them were expected to be offered vaccines the following week. The vaccine was much anticipated to help spur an end to the global coronavirus pandemic. But many people in these priority groups are concerned about the safety of the fast-tracked vaccine.

According to an informal poll by the Maine Health Care Association, only 60% of nursing home staff members and 60–70% of residents or their family members said they were willing to be vaccinated. Nursing home administrators are working to put workers’, residents’, and their family members’ minds at ease. “I will be getting the vaccine,” Jeff Ketchum, longtime administrator at Maine Veterans’ Homes, told the Press Herald. “I want to be able to protect the people in my care, and I don’t think [pharmaceutical companies and federal authorities] would put out something that’s unsafe.”

But the momentum seems to have hit another snag, at least when it comes to vaccinating nursing home residents. According to two Operation Warp Speed documents obtained by CBS News, the Department of Health and Human Services (HHS) explicitly instructs CVS and Walgreens—the program’s pharmacy partners assigned to administer vaccines to residents at long-term care facilities—
that the “earliest the program can turn on is Dec. 21.”

HHS Secretary Alex Azar denied delaying the start date for nursing homes on “Face the Nation,” on Dec. 13. But former FDA commissioner Dr. Scott Gottlieb confirmed the delay, saying it is because nursing home residents or their families needed to provide consent for the vaccine.

Regardless the cause, “it’s a very costly delay,” he said on Face the Nation. “There [are] 50,000 new infections in nursing homes every week right now, probably more than that. And we know 20% of people in the nursing homes who are infected will succumb to the infection. So, there’s a lot of death happening in these nursing homes.”

Sources: CBS News, Portland Press Herald and USA Today

The Beasley Allen Nursing Home Litigation Team

Beasley Allen lawyers continue to be involved in the Nursing Home litigation and with the pandemic playing a significant role we expect things to intensify. We reported in the December issue that Alyssa Baskam, the Beasley Allen lawyer who previously headed the Nursing Home Litigation Team, had moved to our Personal Injury & Products Liability Section. Rhon Jones is temporarily heading up the Nursing Home Litigation Team. A permanent head will be named later. We do not expect there to be any significant changes in how the firm handles nursing home cases.

David Diab, Ryan Kral and Gavin King also serve on the Nursing Home Litigation Team. In order to properly handle nursing home litigation, lawyers and support staff must have experience and expertise in this type case.

Beasley Allen lawyers are 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, our lawyers would like to talk with you about working together on the case. You can contact Rhon Jones, David Diab, Ryan Kral and Gavin King at 800-898-2034 or by email at Rhon.Jones@beasleyallen.com, David.Diab@beasleyallen.com Ryan.Kral@beasleyallen.com or Gavin.King@beasleyallen.com.

XXII.
CLASS ACTION LITIGATION

UK’s Top Court Paves Way For £14 Billion Mastercard Class Action

Britain’s highest court cleared the way on Dec. 11 for a £14 billion (§18.5 billion) proposed consumer lawsuit against Mastercard over its merchant swipe fees to proceed as a class action. The court approved a more lenient test for deciding whether an antitrust suit merits collective status.

The U.K. Supreme Court upheld a Court of Appeal decision reviving the case after a specialist antitrust tribunal refused to grant class status based on concerns that the claimants had failed to show how to assess the loss suffered by consumers. The majority of the justices on the high court ruled that the fact the process would be difficult was not a good enough reason to block a class action based on a proven competition violation. Justice Michael Briggs said in a ruling co-signed by Justice John Thomas:

“The incompleteness of data and the difficulties of interpreting what survives are frequent problems with which the civil courts and tribunals wrestle on a daily basis. The likely cost and burden of disclosure may well require skilled case management. But neither justifies the denial of practicable access to justice to a litigant or class of litigants who have a triable cause of action, merely because it will make quantification of their loss very difficult and expensive.

The decision increases the likelihood that Walter Merricks, the former head of the Financial Ombudsman Service, can sue Mastercard Inc. on behalf of 46 million consumers over claims they paid higher prices in shops for 16 years because of excessive fees charged to retailers by the credit card company. Merricks’ application for certification has now been sent back to the Competition Appeal Tribunal, which will need to review the case again while applying the approach set out by the Supreme Court in the ruling.

The case is Mastercard Inc. and others v. Walter Hugh Merricks (case number UKSC 2019/0118) in the U.K. Supreme Court. Because of its importance, we will continue to monitor the case and will report on it in future issues.

Source: Law360.com

Recent Class Action Settlement Activity

There has been a great deal of activity in class action litigation over the past several weeks, including a number of settlements. We will mention several significant settlements below.

HSBC Bank Settles Gold Price-Fixing Class Action For $42 Million

HSBC Bank investors and traders have asked a New York federal judge to preliminarily approve a $42 million agreement to settle class action claims that the bank was one of several to engage in illegal price-fixing of the gold market.

HSBC would also provide transaction data and discovery to help the Plaintiffs continue to go after the banks remaining in the suit—The Bank of Nova Scotia, Barclays Bank PLC, Société Générale SA and The London Gold Market Fixing Ltd.—pursuant to the agreement. The March 2014 putative antitrust class action represents 18 consolidated suits that allege several banks were involved in a wide-ranging alleged conspiracy to price-fix the gold market.

London Gold Market Fixing Ltd. members held secret meetings to share information on the real-time price of gold to set a rate beneficial to the members, including Barclays, HSBC and Deutsche Bank, according to the suit. The HSBC settlement is the second such settlement in the class action following a 2016 settlement with Deutsche Bank AG for $60 million. UBS AG was dismissed from the suit in 2018.

The settlement class would be anyone who from Jan. 1, 2004, through June 30, 2013, bought or sold any physical gold or financial or derivative instrument, including futures contracts. The motion for preliminary approval of the settlement agreement with HSBC asks U.S. District Judge Valerie E. Caproni to combine notice of the HSBC and Deutsche Bank settlements and distribute the money from both settlements to the identical settlement class.
Options Trading Litigation

Exchange Inc., Gold Futures and a company pledge to provide "mate-

The settlement also comes with preliminary approval of a $24.5 million settlement with JBS USA Food Co. Direct buyers have moved for pre-

$24.5 M/settlement

P/o.sc/r.sc/k.sc B/u.sc/y.sc/e.sc/r.sc/s.sc S/e.sc/e.sc/k.sc I/n.sc/i.sc/t.sc/i.sc/a.sc/l.sc A/p.sc/p.sc/r.sc/o.sc/v.sc/a.sc/l.sc O/f.sc

Source: Law360.com

number 1:14-md-02548) in the U.S. The case is

Emanuel Urquhart & Sullivan LLP.

Christopher M. Seck of Quinn Emanuel Urquhart & Sullivan LLP, counsel for the Plaintiffs, said in a statement:

We are pleased with the HSBC settlement. Together with the earlier $60 million settlement with Deutsche Bank, we have now recovered over $10 million for the gold investors who are part of the class action. We look forward to continuing to prosecute the case against the remaining defendants.

Plaintiffs are represented by Merrill G. Davidoff, Martin I. Twersky, Michael C. Dell'Angelo and Zachary D. Caplan of Berger & Montague PC and Daniel L. Brockett, Sami H. Rashid, Alexee Deep Conroy and Christopher M. Seck of Quinn Emanuel Urquhart & Sullivan LLP.

The case is In Re: Commodity Exchange Inc., Gold Futures and Options Trading Litigation (case number 1:14-md-02548) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

PORK BUYERS SEEK INITIAL APPROVAL OF $24.5 MILLION SETTLEMENT

Direct buyers have moved for preliminary approval of a $24.5 million settlement with JBS USA Food Co. (JBS). The settlement also comes with a company pledge to provide "mate-

rial cooperation" to the Plaintiffs. This is the first settlement in the massive Minnesota federal court case accusing pork producers of conspiring to raise prices.

The proposed class action settlement is the "first 'ice-breaker' settlement in this litigation." It offers "significant and substantial relief" because of the financial payout along with cooperation against JBS's fellow pork producers, which include Tyson and Hormel, according to a statement. The direct buyers said:

"[T]he settlement agreement is the product of protracted arm's-length settlement negotiations with the assistance of an experienced and nationally-renowned mediator, provides substantial monetary and nonmonetary relief to the DPP settlement class, and should be granted preliminary approval because it falls well within the range of possible approval.

The filing represents the first disclosure of the settlement terms after the buyers and JBS first said they had reached a settlement in early November.

Thirteen putative classes filed complaints in 2018 against JBS and others—claiming they manipulated the price of pork by restricting supply as early as 2009. The lawsuits claimed that the producers were able to do this through coordinating public statements and sharing price information.

The lawsuits were later consolidated in August 2018. Buyers were put into classes of direct purchasers, indirect buyers that resold the pork and indirect purchasers like consumers. With their first settlement in hand, the direct buyers said that their settlement had all the hallmarks required for approval, including "extensive good faith negotiations."

The settlement would cover anyone who bought pork "for use or delivery in the United States" directly from JBS "or any co-conspirator" from 2009 until the date of preliminary approval. Thousands of such buyers are estimated to comprise the class.

Certification is also sought for that class.

The settlement does, however, give JBS the power to terminate the agreement if would-be class members "representing more than a specified [and sealed] portion of relevant transactions" decide to opt out.

Claims against the other producers are also moving forward under U.S. District Judge John R. Tunheim largely refused in October to dismiss the claims.

The direct purchasers are represented by W. Joseph Bruckner, Brian D. Clark, Simeon A. Morbey and Arielle S. Wagner of Lockridge Grindal Nauen PLLP and Clifford H. Pearson, Daniel L. Warshaw, Bobby Pouya, Michael H. Pearson, Bruce L. Simon, Melissa S. Weiner and Joseph C. Bourne of Pearson Simon & Warshaw LLP.

The case is In re: Pork Antitrust Litigation (case number 0:18-cv-01776) in the U.S. District Court for the District of Minnesota.

Source: Law360.com

ALLSTATE AND DRIVERS REACH SETTLEMENT IN $10 MILLION 'DIMINISHED VALUE' SUIT

A Washington federal judge has preliminarily approved a $10 million class action settlement in a lawsuit filed by drivers accusing Allstate Fire & Casualty Insurance Co. of not covering all of the losses they incurred under the company’s uninsured motorist (UIM) policy.

According to the suit, the company and its various entities in the state did not cover “diminished value” losses when a car was repaired after an accident with an uninsured motorist. The proposed settlement would cover an estimated 14,418 claims filed in Washington and pay an average estimate of $500 per vehicle, according to the unopposed settlement filed by Plaintiff drivers Daniel Kogan and Christopher Hewitt. The drivers said in the proposed settlement:

"The proposed settlement here provides an excellent resolution to this now over five-year-old litigation, warranting preliminary approval and submission to the class for its consideration. It would resolve this matter, providing an end to hard-fought litigation that has consumed con-
The lawsuit was first filed in Washington Superior Court in 2015 and Allstate removed it to federal court. The drivers said in the complaint:

Plaintiffs allege that when certain automobiles, those within the proposed class, sustain damage to their structural systems and bodies, they cannot be repaired to their pre-accident condition, and are as a result tangibly different than they were pre-accident. This causes the vehicles to suffer a loss in value called diminished value at the time of the accident.

The complaint added that the uninsured motorist portion of Allstate’s policies in Washington did not include a diminished value exclusion, but the company excluded it anyway and “continued with its practice of failing to disclose the loss or coverage, and failing to adjust losses to consider and include payment for diminished value in settling first-party UIM claims.”

The proposed settlement would certify a conditional class of drivers who submitted UIM claims from July 6, 2009, through the approval of the proposed settlement with specific requirements including that repair estimates on the vehicle totaled at least $1,000, the vehicle was no more than six years old, and that it had less than 90,000 miles on it at the time of the accident.

The proposed settlement of $10,092,600 also includes 21.5% of the fund for attorney fees and $28,000 for costs. The Plaintiffs are represented by Scott P. Nealey and Stephen M. Hansen, who were named by the court as class counsel.

The case is Daniel Kogan et al. v. Allstate Fire and Casualty Insurance Co. (case number 3:15-cv-05559) in the U.S. District Court for the Western District of Washington.

Source: Law360.com

**Massachusetts Truckers Getting $12.5 Million Settlement To End Training Fee Case**

CRST International Inc. has agreed to pay $12.5 million to settle a certified class and collective action from thousands of drivers who said the commercial trucking company illegally deducted money from their paychecks for a training program.

A motion for preliminary settlement approval was filed by the drivers. The defendants are CRST and its long-haul trucking division CRST Expedited Inc.

Truck driver Juan Carlos Montoya filed the lawsuit in January 2016. He claimed that Iowa-based CRST violated the Fair Labor Standards Act (FLSA) and Iowa wage laws by failing to pay all wages it owed drivers and making improper deductions from their paychecks to cover the supposed costs of a training program it had advertised as “free.”

In court in April 2018, U.S. District Chief Judge Patti B. Saris called the matter “a really important case” that “could govern standards in the trucking industry.” Judge Saris certified the collective action the following month, and in September 2019 said most of the certified class and collective action could move forward after cross-motions for summary judgment by both parties. The drivers and CRST had announced in November 2020 that they had reached a settlement.

Besides the monetary payout, CRST also agreed to release class and collective members from its further efforts to collect on training school costs beyond what the company paid the school for tuition. And beginning in January, the company would treat drivers in the training program as employees and pay them minimum wage, among other promises set out in the agreement.

Montoya is represented by Hillary A. Schwab and Rachel J. Smit of Fair Work PC and by Andrew Schmidt and Peter G. Mancuso of Andrew Schmidt Law PLLC. The case is Montoya v. CRST Expedited Inc. (case number 1:16-cv-10095) in U.S. District Court for the District of Massachusetts.

Source: Law360.com

**$19.5 Million Settlement in TechnipFMC Investor Suit Gets Initial Approval**

A Texas federal judge has granted preliminary approval to a $19.5 million settlement in a securities class action against TechnipFMC, which accused the French oil and gas company of misleading investors by misstating its financial data. Lead Plaintiff Joseph Prause first filed suit in August 2017, accusing TechnipFMC of violating the Securities Exchange Act when it miscalculated its net income by converting foreign currencies using incorrect exchange rates. The suit claims the company overstated its net income by roughly $209.5 million in its 2017 first-quarter financial report. Once investors learned of the erroneous financial reporting, TechnipFMC’s share price fell by 1.71% in July 2017.

On Dec. 16, U.S. District Judge Alfred H. Bennett approved the multimillion-dollar settlement, preliminarily certified the class for settlement purposes and set a March 19 date for a final approval hearing.

At the approval hearing next year, Judge Bennett will issue a final determination to approve the attorney fees, the settlement fund and the proposed allocation plan. The securities class action isn’t the only litigation TechnipFMC has faced in recent years. The company was fined $296 million in June 2019 to resolve charges that the company engaged in a pair of schemes to bribe officials in Iraq and Brazil. And in September 2019, the oil company doled out $5 million to settle U.S. Securities and Exchange Commission bribery claims.

The investors are represented by Jeremy A. Lieberman of Pomerantz LLP. The suit is Joseph Prause v. TechnipFMC PLC et al. (case number 4:17-02368) in the U.S. District Court of the Southern District of Texas.

Source: Law360.com

**XXIII. PHARMACY BENEFITS MANAGER (PBM) LITIGATION**

**SCOTUS Decision Allows States To Regulate PBMs**

In a much-anticipated decision, the United States Supreme Court ruled that states can regulate Pharmacy Benefit Managers (PBMs), finally clearing the way for state legislation that bans unfair and deceptive business practices that are
harming consumers and putting independent pharmacies out of business.

The high court’s 8-0 ruling upheld an Arkansas law, passed in 2015, that prohibits PBMs from reimbursing pharmacies for drugs at rates below the drugs’ acquisition costs. Small pharmacies in Arkansas, and throughout the country, have been harmed by PBMs who are reimbursing them less than their cost to purchase the drugs, while the PBM reimburses its own affiliated pharmacies at significantly higher rates. This historical decision marks a turning point in a broader legal fight against PBMs, allowing all states throughout the country to pursue their own PBM legislation in an effort to protect the rights of patients and pharmacies who have been abused by PBMs for years.

The ruling rejects the PBMs’ arguments that only the federal Employee Retirement Income Security Act (ERISA) can regulate their business dealings, claiming that Arkansas’ law would unravel their federal protections under ERISA. The high court’s ruling overturns the Eighth Circuit, which held that Arkansas’ Act 900 was preempted by ERISA. In rejecting the PBMs’ arguments, the Supreme Court Justices explained that ERISA only preempts states’ ability to regulate employee benefit plans, leaving states free to oversee PBMs and other members of the health care supply chain.

The opinion was authored by Justice Sonia Sotomayor and joined by all the justices except Justice Amy Coney Barrett, who sat out from considering the case. Justice Sotomayor wrote:

“ERISA does not preempt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage.”

This is a long-awaited victory for states. Forty-seven attorneys general joined together to support Arkansas’s position in this Supreme Court case in an effort to preserve the states’ ability to fight against PBMs who are causing significant economic harm to consumers and community pharmacies. The CEO of the National Community Pharmacists Association, Douglas Hoey, commented in response to the decision:

“This is a historic victory for independent pharmacies and their patients. And it confirms the rights of states to enact reasonable regula-

tions in the name of fair competition and public health.”

The case is Rutledge v. Pharmaceutical Care Management Association (case number 18-540) in the Supreme Court of the United States.

Over the years, Beasley Allen lawyers have joined the fight to lower prescription drug costs through our representation of states and municipalities against drug manufacturers and PBMs. We welcome the opportunity to investigate potential drug manufacturer and PBM misconduct.

If you have any questions about our firm’s health care fraud practice, contact Dee Miles, Ali Hawthorne, or James Eubank, lawyers in our Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Dee.Miles@beasleyallen.com, Alison.Hawthorne@beasleyallen.com or James.Eubank@beasleyallen.com.

Source: Law360.com

Pharmacy Benefit Manager Reform: What Are The States Doing?

American consumers pay more for prescription drugs than any country in the world, causing the issue of drug pricing to come to the forefront of U.S. health policy. As a result, states have become active in seeking to control drug prices and pharmacy reimbursement. One major way states have been trying to reduce the costs of prescription drugs is through regulating Pharmacy Benefit Managers (PBMs). At least 43 states have enacted legislation regulating the activity of PBMs.

The laws that these state legislators are passing are quite varied. However, many states have passed statutes that prohibit the PBM practice of “clawbacks.” Clawbacks are where PBMs intentionally over charge patients by setting a patient copay amount for a drug that exceeds the pharmacy’s acquisition cost. The PBM then “claw back” the extra money from the pharmacy, allowing the PBM to profit from the amount of the copay in excess of the pharmacy’s cost. Laws that ban clawbacks are intended to, among other issues, prevent patients from paying more for drugs than they would if they just paid out-of-pocket.

At least 30 states have enacted laws banning “gag clauses” in contracts entered into with pharmacies. These unlawful clauses prevent pharmacists from telling their patients about more affordable options for prescription drugs, such as paying out-of-pocket for a drug on a discounted drug list. States are passing these laws that make gag clauses unlawful because they want to send the message that consumers deserve to know the lowest price for a prescription drug. In fact, these statutes have gained a lot of national attention and have stirred up federal legislators to pass similar federal law prohibiting gag clauses in connection with drugs reimbursed under Medicare.

Also, states such as Arkansas, Idaho, Montana, and Texas have passed laws that require PBMs to frequently update their pricing lists and to provide for an appeal process in which pharmacies can challenge unfair PBM reimbursement rates. All four state laws require that drugs may be put on Maximum Allowable Cost (MAC) lists only if they are not obsolete, generally available for purchase by pharmacists and pharmacies from national or regional wholesalers, and if they have certain ratings. PBMs have to update MAC pricing every seven days to reflect market changes, sources of pricing data have to be disclosed, and the PBM has to establish an appeals process.

PBMs have come under attack for capitalizing on the lack of transparency with drug pricing, rebates, recoupments, drug formularies, and other issues in order to pocket hidden profits. Such deceptive practices can cost consumers and the government millions of dollars in prescription drug costs. Therefore, many states like Kentucky have passed laws that subject PBMs to transparency laws, requiring them to disclose prices and drug formularies.

Since at least 2018 and continuing today, hundreds of bills each year related to PBM regulation have been introduced in state legislatures across the country attempting to protect patients against some of the worst practices by PBMs.

Over the years, Beasley Allen has joined the fight to lower prescription drug costs through our representation of states and municipalities against drug manufacturers and PBMs. Our firm welcomes the opportunity to investigate potential drug manufacturer and PBM misconduct. If you have any questions about our firm’s health care fraud practice, contact Dee Miles, Ali Hawthorne or James Eubank, lawyers in our Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Dee.Miles@beasleyallen.com, Alison.
Dangerous Toys Watch List

World Against Toys Causing Harm, Inc. (WATCH) annually puts forth its “10 Worst Toys” list. WATCH describes itself as “a non-profit organization dedicated to educating the public about dangerous children’s products and protecting children from harm.” The 10 Worst Toys list has been published by WATCH since 1973. According to WATCH, a child is treated in a United States emergency room every three minutes for a toy-related injury.

WATCH estimates that as many as 240,000 children are injured each year by toys. With regard to the latest numbers, WATCH has reported: “According to the latest statistics from the Consumer Product Safety Commission (CPSC), there were an estimated 226,100 toy-related injuries in the U.S. in 2018, and a reported 43 children died from toy-related incidents from 2016 to 2018.”

WATCH notes that toy safety begins with safe design and manufacture of items that will be placed in the hands of the some of our most defenseless citizens, our children. WATCH firmly believes that the primary burden to purge the market of hazardous toys falls on the manufacturers and the retailers, who have greater knowledge of toy safety than do consumers. WATCH also calls for greater government oversight to ensure that the $28 billion a year U.S. toy industry ($90 billion globally) is regulated to provide safer toys and to ensure that the products are properly tested before being released on the market. This responsibility falls primarily on the CPSC. WATCH also encourages media outlets to help spread the word of dangerous toys.

The number one item on WATCH’s 2020 10 Worst Toys list is Calico Critter’s Nursery Friends. Marketed for children 3 and older, the small flocked animal toy comes with small component parts, which creates a choking hazard. Sadly, a child from New Mexico who was almost 3 years old choked on a small pacifier that came with one of the toys, resulting in the child’s death. A lawsuit has been filed in the U.S. District Court of Albuquerque seeking to hold those responsible for the death of the child accountable. The full 2020 10 Worst Toys list includes:

- Calico Critters Nursery Friends, manufactured/distributed by Epoch Co., Ltd and sold by Walmart, Amazon, Kohls and other retail outlets.
- Missile Launcher, manufactured/distributed by Toysmith and Redballoon-toystore.com and sold by Home Goods.
- Marvel Avengers Vibranium Power FX Claw, manufactured/distributed by Hasbro and sold by Kmart, Amazon and Walmart.
- Gloria Owl, manufactured/distributed by Jellycat, Ltd and sold by Home Goods, Amazon, the Paper Source and Saks Fifth Avenue.
- WWE Jumbo Superstar Fists, manufactured/distributed by Jakks Pacific, Inc. and sold by Kmart and Amazon.
- Scientific Explorer Sci-Fi Slime, manufactured/distributed by Alex Brands-Scientific Explorer and sold by Amazon, Kohls, Toyexpresskids.com, and Magic Beans.
- The Original Boomerang Interactive Stunt UFO, manufactured/distributed by Amazx Group and sold by Target and Walmart.
- Boom City Racers Starter Pack, manufactured/distributed by Moose Toys, LLC and sold by Target, Amazon and Walmart.
- My Sweet Love Lots to Love Babies Minis, manufactured/distributed by JC Toys Group, Inc and Walmart, and sold by Walmart.
- Star Wars Mandalorian Darksaber, manufactured/distributed by Hasbro and Disney and sold by Target, Amazon, Walmart and Best Buy.

Parents who purchase these products or whose children receive these toys as gifts are encouraged to do further research on the safety risks associated with these toys.


Sunbeam Products Recalls Nearly One Million Crock-Pot Multi-Cookers

Sunbeam Products, Inc. has issued a recall for Crock-Pot® 6-Quart Express Crock Multi-Cookers. The recalled Crock-Pot multi-cooker can pressurize when the lid is not fully locked. This can cause the lid to suddenly detach while the product is in use, posing burn risks to consumers from hot food and liquids ejected from the product.

This recall involves Crock-Pot 6-Quart Express Crock Multi-Cookers, Model Number SCCPPC600-V1. The multi-cookers were manufactured between July 1,
immediately stop using the recalled Crock-Pot in pressure cooker mode, but may continue to use it for slow cooking and sautéing. Consumers should contact Crock-Pot immediately to obtain a free replacement lid. The CPSC says consumers who continue using the multi-cooker in pressure cooker mode while waiting for the replacement lid should be certain the lid is securely turned to the fully locked position by aligning the arrow on the lid with the lock symbol on the base.

Source: Consumer Product Safety Commission

The following are some of the current case activity listing:

**Business Litigation**
- Antitrust
- Business Interruption Insurance
- Commercial Disputes
- Intellectual Property
- Pharmaceutical Pricing
- States & Municipalities

**Consumer Protection**
- Class Actions
- Insurance Disputes
- Pension Plans

**Defective Products**
- Defective Airbags
- Defective Tires
- E-Cigarette Explosions
- Heavy Truck Defects
- JUUL Vaping Devices
- On-the-Job Injuries
- Talcum Powder

**Employment Law**
- Fair Labor Standards Act
- Sexual Harassment
- Whistleblower
- Workplace Discrimination
- Workplace Retaliation

**Medical Devices**
- Hip Replacements
- Knee Replacements
- Physiomesh

**Medication**
- Belviq Cancer
- Proton Pump Inhibitors
- Zantac Cancer

**Serious Injuries**
- Truck Accidents
- Auto Crashworthiness
- Aviation Accidents
- Heavy Equipment Injuries
- Premises Liability
- Sexual Abuse
- Single Vehicle Accidents

**Toxic Exposure**
- Benzene
- Environmental Exposures
- Roundup
- Mesothelioma
- Water Contaminations

The cases in the categories listed above are handled by lawyers in the four sections at Beasley Allen, which are Personal Injury & Products Liability, Mass Torts, Toxic Torts and Consumer Fraud & Commercial Litigation. The subject matter of a claim will determine which section would get the case.

**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 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 and alarmingly high rates of underreporting. To assist families and lawyers pursuing justice for victims, Beasley Allen has prepared a brochure with information to help identify the signs of abuse and neglect, and advice about how to file a claim.
**Co-Counsel E-Newsletter**

Beasley Allen also sends out a Co-Counsel E-Newsletter, which is specifically tailored with lawyers in mind. It is emailed 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/.

**XXVII. PRACTICE TIPS OF THE MONTH FOR TRIAL LAWYERS**

**Trial Tips From Beasley Allen Lawyers**

James Eubank, a lawyer in our firm’s Consumer Fraud Section, will give our readers some tips in relating to the art of cross examination. As all trial lawyers know, cross-examination of any witness is difficult and presents a real challenge. Let’s see what James has for us.

**The Art (Not Science) of Cross Examination**

Cross-examination is lauded by many litigators, and rightfully so, as one of the crucial times an attorney can make or break a case. This is absolutely true. Opening and closing statements can have a great effect on jurors, but a well-executed cross examination is often what either lays the foundation for the arguments made in closing statements, or supports or destroys claims made in opening statements that have been promised to the jury. A myriad of books, treatises, and articles have been written on proper cross-examination, including Francis L. Wellman’s *The Art of Cross-Examination*, originally published in 1904, which inspired the title of this piece. A copy of the Fourth Edition that once belonged to my father, a fine litigator, sits on my bookshelf within easy reach for frequent reference.

The notion Wellman saw fit to convey in his title, and what all others have rightly concluded, is that there is no formulaic method to effective cross-examination. Litigators must use their judgement and instinct in cross-examining witnesses, because no two examinations are alike. The strategy for every occasion is governed by the different witnesses, facts, laws, judges, jurors, and counsel that we see in each case. For this reason, cross-examination is an art, rather than a science, during which each brush stroke must be adjusted, as circumstances dictate, to paint the picture you want jurors to see. Use your judgement wisely, and it could make the case. Err in any direction, and it could cost your client dearly. This practice tip will discuss the importance of evaluating your surroundings to plan your cross-examination strategy, and also explore how this may change on the fly during testimony.

**Know Your Battleground**

“The general who wins the battle makes many calculations in his temple before the battle is fought.”—Sun Tzu.

In preparing for cross-examination, whether you are deposing an adverse witness or performing a true cross-examination at trial, it is vital to prepare not only the questions to bring out the facts you want exposed, but also to have as much situational awareness as possible regarding other factors that could affect how you conduct your examination.

In a trial, you have more information available to make these judgments. Typically, even if you are calling an adverse witness in your case-in-chief, you will have had hearings before the judge, extensive interaction with opposing counsel, depositions with some key witnesses, and enough time through voir dire, opening statements, and prior witnesses that you can begin to evaluate the jury to know what they want.

Jurors are people, and the people have tells in their body language and facial expressions. It’s a good idea to make eye contact with the jurors throughout the trial, but especially important during witness examination. While the other side conducts their direct examination, pay attention to what peaks the jurors’ interest.

If a section of testimony is important enough to alter their demeanor when they hear it, it is important enough to sway their judgment and should be addressed. If jurors are permitted to take notes, pay attention to when they write. This can indicate key parts of the testimony they think are important, but it also could mean their attention is divided during the next question. If a juror is already writing when the fact you want them to hear comes up, there’s a chance they missed it, and you may need to bring it up again on cross.

Also note their overall perception of the witness. If you have strong impeachment evidence to alter this, certainly use it, but if you know you cannot break the jurors’ empathy with the witness, it is best to cast whatever impeachment evidence to alter this, certainly use it, but if you know you cannot break the jurors’ empathy with the witness, it is best to cast whatever doubt you can on the testimony and the witness in a manner that doesn’t put you and the jurors on opposite sides.

When you depose an adverse witness, you have two disadvantages that do not exist at trial. First, in addition to questioning a deponent for testimonial purposes, you are also often trying to locate further discovery. This nearly takes deposition testimony out of being considered a true cross-examination, but you should always be mindful that even a deposition primarily sought for purposes of discovery could later go before a jury.

Second, you cannot read the judge or jury as you go to gauge how they receive the testimony or your questioning, but this should still be con-
considered. Your experience should guide you to some common, universal truths. If the testimony will be presented to a jury: jurors do not want to hear “lawyer speak” and they do not like it when attorneys are crass, combative, or talk down to sympathetic witnesses. Neither jurors nor judges (especially judges) want questioning dragged out longer than it takes to establish the facts you need, nor do they appreciate disingenuous attempts to spin bad facts. Knowing your facts and the witness beforehand will tell you how far you should go, and how hard you can push the witness while retaining credibility. Keep in mind, this may change as the questioning progresses, and you should be prepared to alter your strategy accordingly. If you’ve prepared a scathing dress-down of a 30(b)(6) designee that you anticipate will be a faceless businessman, your demeanor should change when the witness produced turns out to be a wounded veteran and widowed mother of three young children. You still must elicit the facts you need, and if they are well-prepared you will still need to push for those admissions, but your tactic should be such that it will not cost you credibility with a jury down the road.

**Know How Much to Say**

“I try to leave out the parts that people skip.”—Elmore Leonard

The most effective cross-examination for a particular witness may take the better part of a day or it may take no time at all, or it may fall anywhere in between. Once you have decided you will conduct cross-examination, in addition to your preparation and evaluation of the jurors, to know what strategy is best suited for your situation you must pay particularly close attention to the facts elicited on direct examination.

The abilities of all attorneys vary, and some may not be able to adequately divide attention between the witness and the jurors. If you have the resources, do not be hesitant to seek help and to delegate responsibility to co-counsel and staff at trial. We never try cases without at least two attorneys in the courtroom, at all times. If you are alone, you will often miss something. It could be something small or it could be the difference in the case, and you may not know the impact until it’s too late. With two or more attorneys and/or staff in the courtroom, persons can be assigned to track the answers, track the questions, and track the jurors’ reactions.

To tailor your questioning to get directly to the facts you want, you should combine your pre-trial preparation with what just occurred during direct. Ensuring that your questioning is succinct and extracts only that information which you want the jury to consider will have two effects: keeping the jury from disliking you, and keeping them focused on the facts on which you want them to focus. As previously noted, most jurors do not want to hear “lawyer speak” or listen to attorneys talk for hours unless forced to—and they remember that they are being forced to, some unwillingly. The more concise you can be, the more they will appreciate you, the more they will be willing to agree with you. Additionally, if you only have a few key facts to get out, but go through hours of questioning on smaller issues unlikely to persuade them to your side, jurors could very well miss your key information in the morass. A daydream, scribbling notes, or some other distraction could sink a cross-examination. If you hit those facts quickly, you lessen the chances they will miss or forget your points.

**Know Whether to Say Anything**

“Wise men speak because they have something to say; fools because they have to say something.”—Unknown

Sometimes, and more often than many attorneys think, the most effective way to make sure the jury perceives the witness and their testimony in the way you want them to, is to say nothing at all. If direct examination is not particularly damaging to your case, and the witness already brought out the facts you want without adequately explaining them away, then your goal is already accomplished. Also, sometimes witnesses testify on direct and, for one reason or another, just look bad to the jury.

Asking any questions in these instances may give the witness the opportunity to explain away bad facts for their side, and will give opposing counsel the opportunity to re-direct and cure defects that they could not fix on direct. Reading the jurors and recalling testimony is critical to this analysis. If your planned cross-examination is geared towards impeaching the witness’ credibility, and the jury is already rolling their eyes and casting ice-cold stares at the witness, your job has probably been done for you. If there is some key point in the case that was not covered, you may want to briefly hit that point. However, with an in-depth knowledge of your case you will know that it can just as easily be presented through a later witness. If another witness can establish the same fact with the same impact on the jury, waiting to address it then can allow you move on, ensuring the favorable testimony cannot be altered.

If items you needed to get out were already addressed on direct, you will have a decision to make—bring them up again to reinforce the point or let them be. Reading the jurors is key here. Repeating that important fact will help reinforce it for some jurors and may bring it to light for those who missed it, but be wary when there is potential for the witness to explain away discrepancies. If you know the jury caught it, then you can safely move on and hammer the point in closing, when the witness will not have the ability to alter the testimony. Even asking yes or no questions cannot protect you from this. Asking the judge to strike a narrative answer as “non-responsive” is usually an ineffective tool. As is often said, you cannot unring the bell, and having to object to testimony that you elicited spotlights the point to jurors.

In a nutshell, an effective cross-examination requires a careful and thorough preparation, a keen awareness of the jurors’ reception of the evidence and a nimble approach in presenting the evidence.
**Employee Spotlights**

**JULIE GAY**

Julie Gay, a Legal Assistant in the Mass Torts Section, has worked with Beasley Allen for nine years. She assists with the Talcum Powder litigation. Julie works on drafting and filing complaints, drafting and filing motions for death cases and contacting clients for missing information.

Julie and her husband Billy have been married for five years. They have two dogs, a Siberian Husky and a Pit Bull Mix.

Julie is originally from Dothan and she graduated from UAB in 2000 with a Bachelor of Science degree in Criminal Justice and a minor in Sociology. After graduation, Julie attended Samford University and received her Paralegal certification.

Julie enjoys working out, listening to true crime podcasts, watching Investigative Discovery, spending time with family and friends, playing with her dogs and going to the beach.

When asked what her favorite thing is about working at Beasley Allen, Julie says:

> Everyone is extremely nice and helpful. I truly enjoy my job and helping clients as much as I can. Beasley Allen is more than just a job, it is a family. I am thankful to have the opportunity to be a part of this wonderful firm that helps those who need it most.

Julie is a hard-working paralegal who is totally dedicated to the clients she works for. We are fortunate to have Julie at Beasley Allen.

**SHANON HODUM**

Shannon Hodus has been with the Firm for 15 years. She is a Legal Assistant in our Personal Injury & Products Liability Section, where she has worked on some important litigation.

Shannon was born in Grand Forks, North Dakota. She lived in California and Michigan before moving to Alabama in 1996.

Shannon has an 18-year-old son in the Air Force ROTC at Auburn University who is majoring in Computer Science. Her 16-year-old participates in the high school track/cross country teams and does welding at the Elmore County tech center. Her 10-year-old son participates in the Montgomery Barracudas swim team.

In her spare time, Shannon enjoys playing with their family dog, Magnus Bane SirWoofsalot or their cat Skippy. She also enjoys painting, reading and going on road trips with her boys.

When asked what her favorite thing is about working at Beasley Allen, Shannon says:

> It is the clients and the relationships we build with them throughout their case. Most of our cases deal with significant injuries or death. It’s very rewarding to be able to help them get answers to why and how this incident happened and closure. I like it when clients come back years after their case is done, just to say hi and let us know how they are doing.

Shannon is a hard-working paralegal who is totally dedicated to the clients she works for. We are fortunate to have Shannon with us at Beasley Allen.

**WHITNEY OAKLEY**

Whitney Oakley, who has been with the Firm for six years, works in the Consumer Fraud & Commercial Litigation Section as a Paralegal for Demet Basar, James Eubank and Tyner Helms, all lawyers in the Section. Whitney provides assistance at every level of the litigation from keeping calendars and scheduling meetings, investigating claims, preparing Motions and assisting in numerous multidistrict litigation (MDLs), class actions and whistle-blower suits.

Whitney and her husband Jordan were married in September and they have three dogs. In her spare time, Whitney enjoys gardening and creating new varieties of food. She says she enjoys sharing food from her garden with friends and family and finding healthy recipes to keep dinner at her house interesting.

When asked what her favorite thing is about working at Beasley Allen, Whitney says:

> My coworkers have always been the best part about this job, but this is especially true during 2020. Beasley Allen has gone above & beyond to not only keep their staff safe but comfortable as well. This firm is truly an extension of my family, so they’ve made a tough year a little easier.

Whitney is a hard-working paralegal who is totally dedicated to the clients she works for. We are fortunate to have Whitney with the firm.

**RICK STRATTON**

Rick Stratton, already a highly successful lawyer, joined Beasley Allen in May 2010 as a member of our Toxic Torts Section. Rick has more than 30 years of legal experience devoted entirely to civil litigation practice in state and federal courts in Alabama and other states in the South. He has experience in a broad range of litigation, including products liability, medical negligence, bad-faith insurance, workplace safety, environmental, toxic torts, civil rights, commercial and vaccine claims.

Before becoming a lawyer, Rick worked in business after graduating from college. He says that he wanted to learn more about the law since it affects all aspects of our working and personal lives. Rick said that “clerking for a Plaintiffs’ litigation firm during law school got me interested in litigation. Having long been a fan of the underdog, representing regular folks in litigation was appealing to me and that is the road I have been on now for over 30 years.”

Shortly after joining the firm, Rick focused his practice on the BP Oil Spill litigation. He was one of our lawyers who represented the State of Alabama in its Natural Resource Damage Claims arising from the BP Oil Spill, which were resolved as part of the $18.5 billion agreement to settle federal, state and local government claims in 2015. Rick also was appointed as Alabama Deputy Attorney General and represented the Governor of Alabama in litigation to recover economic damages, which contributed to the State of Ala-
bama’s recovery of more than a billion dollars. Currently, Rick represents the State of Alabama and the State of Georgia in opioid litigation.

Rick’s appellate experience includes appeals before numerous state and federal appellate courts as well as the United States Supreme Court. His legal work has earned him an AV Preeminent Rating from his peers. In 2017, he was named Beasley Allen’s Toxic Torts Section Lawyer of the Year.

Rick says his favorite part of practicing law is “working up cases well and obtaining good results for my clients.” He says: “Working up a case provides personal satisfaction in studying areas that are new to me as does obtaining tangible and meaningful results for a client. I think of it as somewhat akin to the paraphrased quote attributable to Henry Ford that ‘chopping your own wood will warm you twice.’ To me, both the journey of working up a case and the result of that case are rewarding.”

Rick earned his J.D. from Samford University’s Cumberland School of Law, where he was a member of the Cumberland Law Review and the National Mock Trial Team. Following law school graduation, he clerked for the Honorable Oscar W. Adams, associate justice of the Alabama Supreme Court.

Rick says he is pleased with the firm’s size. In that regard, he said:

The large size of the firm is unusual for a Plaintiffs law firm. To me, the size of the firm significantly enhances our lawyers’ ability to represent the firm’s clients when compared to other firms by providing specialized practice sections and the substantial human and economic resources to quickly and efficiently prepare cases for settlement or trial resolution. This allows our lawyers to achieve the maximum recovery for our clients in the shortest amount of time.

Away from the office, Rick is active with Habitat for Humanity of Greater Birmingham and is a frequent Continuing Legal Education lecturer. He is married to Sharon Wall Stratton and they have two grown children and three grandchildren. Rick is a definite asset to Beasley Allen and we are fortunate to have him with the firm.

XXX.  SPECIAL RECOGNITIONS

Beasley Allen Welcomes Charlie Stern To The Firm

We announced last month that Charlie Stern has joined our firm. He will be the lead attorney in the Toxic Torts Section working on mesothelioma and asbestos exposure claims. Charlie is an experienced mesothelioma lawyer, and he is well prepared to handle asbestos cases. Those cases are highly complicated and require someone with a true understanding of the facts, medical issues, science and law related to asbestos litigation.

For Charlie, representing people who suffer from mesothelioma and other debilitating diseases after being exposed to asbestos is an opportunity to fight for the very people who “worked in critical manufacturing facilities, helped build America’s great buildings and cities, served in the U.S. military, or were the mechanics who kept people in their cars and on the road.” These are people who were never told that the jobs they were doing to support their families were exposing them to life-ending dangers.

Charlie grew up in Dallas, Texas, received his bachelor’s degree from the University of Georgia and earned his Juris Doctorate in 2012 from the University of Texas School of Law. He gained immediate trial experience as an Assistant District Attorney for the Griffin Judicial Circuit in Spaulding County, Georgia, and represented his first Plaintiffs harmed by asbestos with another law firm, before joining Beasley Allen in September. Charlie now lives in his hometown of Dallas, where he focuses his practice on representing Plaintiffs who have been exposed to asbestos and asbestos-contaminated talc.

Charlie says it was the plight of a 59-year-old client that solidified his devotion to representing clients harmed by asbestos exposure. The client was diagnosed with mesothelioma in late 2016. Charlie recalls:

You could tell that he was going to approach his mesothelioma diagnosis the same way he had lived his entire life—full of optimism, energy, and hope. The client was a husband of 30 years and a father of five grown women, all of whom had children of their own. He never stopped fighting his disease nor for the opportunity to hold accountable the company that exposed him to cancer-causing asbestos.

Through treatments and bad days, the man and his wife arrived at the courthouse every day of his six-week trial. Charlie recalls further:

On the final day of our case—in-chief, he slowly limped to the witness stand and poignantly told his story. The trial was a success by the standards we judge trials. But the client died just a few weeks after the trial ended. It was clear to me at the time and then confirmed when he died that the only reason he was even capable of continuing was to one last time help, protect, and provide for his family. In the end, that is what most of our clients care most about.

Charlie says he knew then that he wanted to help others fight back against the asbestos industry’s failure to protect workers from asbestos exposure. He says:

To me, I look at the asbestos industry’s cover-up of the fact that asbestos could kill workers and people who came into contact with asbestos products as one of the first great ‘conspiracies of silence’ by massive corporations in modern history. Starting as early as the 1920s, these companies knew that their products could kill people.

There were easy measures readily available that these companies could have taken to protect workers. Charlie says:

But instead of informing people of the threat that asbestos posed and how to protect themselves, corporate actors deliberately withheld this information knowing that people would die. This is the standard blueprint that we have seen with corporate bad actors over the past century whether with asbestos, tobacco, opioids, or a host of other products.

Charlie, reflecting on his life and career, says:

I am fortunate, I received a good education, have had great opportunities in my law career, and have a supportive wife and family. Not everyone has those advantages. If we don’t have our clients’ backs
and make sure their rights are protected, who will?

Charlie is a tremendous addition to Beasley Allen. We are fortunate that he chose to join the Firm. He also gives us a significant presence in Texas, which is very important.

**Del Marsh Changes His Role In The Senate**

Sen. Del Marsh, R-Anniston, has stepped down from his decade-old leadership role in the state Senate. Del, who has served as Senate President Pro Tempore since 2011, turned the reins of the upper chamber over to Sen. Greg Reed last month. Greg previously served as Senate Majority leader.

A leadership change in the Senate has been in the works for about two years, but Del somewhat surprised “the politicos” by his early departure and an announcement that he will not run for re-election in 2022. Del will officially turn the reins over to Greg when the Legislature convenes in February 2021.

Del says he plans to devote his final two years in the Senate to improving Alabama’s education system and expanding broadband in rural areas. He told the Associated Press:

“This is my last quadrennium. I want to focus this session specifically on that. I can do it better as a senator than as pro temp.

Things have changed since Del was elected to the Senate in 1998. At that time the body was controlled by a Democratic supermajority. That is definitely no longer the case.

Leading the Senate is no “easy” task. It requires a special talent. Del has led the Senate with a steady hand, quickly learning the importance of “keeping peace” in the 35-member body by balancing the diverse priorities of his Republican supermajority and Democratic senators.

Del has practiced an open-door policy that allowed him to govern with the knowledge of all sides of an issue. His management style has been particularly helpful with the complicated issues that face trial lawyers every legislative session. Although he is not a lawyer, Del was always willing to listen to representatives of the Alabama Association for Justice and to weigh the needs of consumers with corporate goals. As pro temp, Del mastered “legislative mediation,” and will be remembered for trying to work things out before a floor fight. Del told the Anniston Star:

**Even though the Republicans have a supermajority and we can pass anything we want to pass, I’ve had a saying for a long time that I go by: True strength is the ability to be fair when you have total control, and we’ve done that as long as I’ve been pro temp. I pride myself in making the chamber run as efficiently as possible for whoever is there.**

Sen. Greg Reed, R-Jasper, was elected in 2010, and quickly rose in the leadership ranks. He was elected majority leader in 2014. I am confident that Greg will do an outstanding job in his new role in the Senate.

Sen. Clay Scofield, R-Guntersville, who was also elected in 2010, will replace Greg as the Senate Majority Leader. Sen. Scofield previously served as Chairman of the Senate Confirmations Committee.

Political insiders do not expect a major change in direction in the Senate. Greg has worked hand-in-hand with Del the last six years and a smooth, stable transition is expected. Currently, Republicans hold 26 Senate seats, Democrats hold seven seats, and there are special elections pending to fill two vacant Senate seats.

As members of the Alabama Association for Justice, the lawyers at Beasley Allen welcome the opportunity to continue our work with Del Marsh and with the new leadership team of Sens. Reed and Scofield.

I will say in closing that Del Marsh has been a true statesman in his leadership role in the Senate. He has been fair, reasonable and extremely effective in that role. I am confident the Senate is much better today because of Del’s commitment and leadership. We wish him the very best in the future in whatever he elects to do.

**XXXI. FAVORITE BIBLE VERSES**

Chad Cook, a lawyer in our firm’s Mass Torts Section, furnished two verses this month. He says:

I recently read that online Bible apps have tracked Isaiah 41:10 as one of the most searched for and shared bible verses of the year. This has been a particularly difficult year for many people who are searching for hope and answers. This scripture provides us with hope, comfort, strength and confidence in the Lord!

“So do not fear, for I am with you; do not be dismayed, for I am your God; I will strengthen you and help you; I will uphold you with my righteous right hand.” Isaiah 41:10

Chad says another verse from Isaiah echoes that HOPE:

“but those who hope in the Lord will renew their strength. They will soar on wings like eagles; they will run and not grow weary, they will walk and not be faint.” Isaiah 40:31

Darneshia Whitfield, a legal secretary in our Mass Torts Section, also says “Isaiah 41:10 is a scripture that is helpful for me these days as we are adjusting to these different times.”

So do not fear, for I am with you; do not be dismayed, for I am your God.

I will strengthen you and help you;
I will uphold you with my righteous right hand. Isaiah 41:10 NIV

She says Romans 8:28 is another one of her favorites. Darneshia says “this verse reignited in my heart from a Devotion that Rev. Carmen Falconie led at the firm years ago. This scripture helps me to put my Faith over fear.”

And we know that in all things God works for the good of those who love him, who have been called according to his purpose. Romans 8:28 NIV

Larry Golson, a lawyer in our firm’s Consumer Fraud and Commercial Litigation Section, sent in several Bible verses for this issue.

“For unto us a child is born, unto us a Son is given: and the government shall be upon his shoulder: and his name shall be called Wonderful, Counselor, The mighty God, The Everlasting Father, The Prince of Peace.” Isaiah 9:6 KJV

“I have come that they may have life, and have it more abundantly.” John 10:10 NKJV

“If you confess with your mouth, ‘Jesus is Lord,’ and believe in your heart that God raised him from the
dead, you will be saved. For it is with your heart that you believe and are justified, and it is with your mouth that you profess your faith and are saved.” Romans 10:9–10 NIV

“Jesus replied: ‘Love the Lord your God with all your heart and with all your soul and with all your mind.’ This is the first and greatest commandment. And the second is like it: ‘Love your neighbor as yourself.”’ Matthew 22:37–39 NIV

XXXII.
AMERICA AT A CROSS ROADS

The Election Is Over. Can America Heal Its Divisions?

As this issue of the Report is being prepared for the printer, Joe Biden has been officially declared the winner of the U.S. presidential election. Again. He had already won the popular vote by evidence of the ballots cast, the election was called, and he delivered his victory speech on the evening of Nov. 7. More than a month later, on Dec. 14, the Electoral College made it official, affirming President-Elect Biden by an expected 306 votes to 232 for outgoing President Trump.

Along the way, President Trump refused to concede, alleging rampant voter fraud, alternately calling to “stop the count” and “count every vote,” depending on how he was faring in the state in question, and, as of press time, refuses to budge, despite every filed challenge being overturned and tossed out as worthless.

According to the United States Election Project, the 2020 U.S. presidential election had the highest voter turnout since 1900, with 160 million people voting for a 66.9% turnout rate. The Associated Press certified the victory, pleaded for peace, but he warned folks there will have to be a painful continuation of the division in order to get to the healing—one that looks frankly at the issues that divide us and meets them head-on.

In an interview with The Atlantic writer Adam Harris, Rev. Barber cautioned people to forget about “returning to normal,” and not just in the sense of pandemic. He reminded the reporter that “everyone remembers Dr. Martin Luther King, Jr.’s ‘I Have a Dream’ speech, but many forget its actual title: ‘Normalcy—Never Again.’”

For too long, he said, the idea has been allowed to simmer, until boiling over, that “the others”—whatever that might mean—are a threat to our individual success and happiness. Brother pitted against brother. As a result, people became greedy and divisive. Rev. Barber says:

The body is sick. It’s sick with poverty. It’s sick with the denial of health care, where you have politicians who have the very health care they don’t want their constituents to have. It’s sick with cutting money for public education, which is key to our economic future—an educated society. It’s sick with all forms of racism and disparate treatment. And it’s a sickness that we have to keep working on, keep addressing—which is why I think one of the great geniuses of the Constitution is that the establishment of justice precedes ensuring domestic tranquility. It says: Establish justice, then ensure domestic tranquility. And then in order to keep the tranquility, you must provide for the common defense and promote the general welfare, in that order. You cannot have some kind of false peace.

It’s quite appropriate that Rev. Barber recognizes Justice as a key to our survival as a nation. Every month in this Report, I include a quote by Bryan Stevenson, founder of the Equal Justice Initiative, who notes, “My work with the poor and incarcerated has persuaded me that the opposite of poverty is not wealth; the opposite of poverty is justice.”

Jesus taught that nations would be judged by how they treat “the least of these”—among them—the poor, the sick, the stranger—immigrants—and prisoners.

That they will be judged based on the mercy they showed.

I pray that our nation can come together, show mercy on each other, listen to one another, be slower to judge and faster to forgive. The divide is deep. America was founded on the fundamental principles of freedom. Our strength has always been our diversity. It’s what keeps our country vibrant, inventing, breaking new ground, making new strides. I pray that we have not become so mired in fear that we have lost our capacity for vision.


2020 Alabama Legislative Session

Impacted By COVID-19

The coronavirus pandemic was beginning to threaten the United States when Alabama convened its regular legislative session on Feb. 4, 2020. While the session adjourned as planned on May 18, nothing about the session was “regular.”

By the end of March, cases of COVID-19 were rising and the state recorded its first virus-related deaths. On March 16, the Alabama House of Representatives announced it was suspending its legislative activity and canceled all committee meetings scheduled for March 25 to prevent the spread of the virus.

Instead of reconvening on March 31 as planned, both the House and the Alabama State Senate opted to suspend all legislative activity through April 28, which was later extended to May 4. When session did resume on that date, the public was barred from the State house and all the Legislature dealt with were the budgets and local bills.

One of the major discussions when the legislature reconvened was how to spend the $1.8 billion in federal coronavirus relief money, which came with stipulations that it must be spent on expenses incurred due to the pandemic and it must be spent by Dec. 30, 2020. The legislature also passed scaled back versions of the General Fund budget and the Education Trust Fund budget, and authorized a bond program for capital improvements at public K-12 schools, two-year colleges, and four-year universities. The legislature adjourned, as planned, on May 18.
Several current and former Alabama lawmakers have been personally affected by the virus, including former State Sen. Larry Dixon, R-Montgomery, who died in December from virus complications. According to Alabama Political Reporter, before being placed on a ventilator, Dixon said, “We messed up. We just let our guard down. Please tell everybody to take this thing seriously and get help as soon as you get the virus.” Alabama Republican Party chief of staff Harold Sachs died from COVID in November.

State Sen. Randy Price, R-Opelika, had a long struggle with COVID, during which he was admitted to the ICU twice and spent time on a ventilator. State Sen. Jim McClendon, R-Springville, who chairs the Senate Health Committee, also dealt with a serious case of COVID. As of Dec. 15, 80-year-old State Rep. Joe Faust, R-Fairhope, was being treated for COVID at the ICU at Thomas Hospital.

In December, Speaker of the House Mac McCutcheon, R-Monrovia, demonstrated a remote voting system that House members will use if social distancing is required during the 2021 Regular Session, scheduled to begin Feb. 2, 2021. We will have a report on the session in the February issue.

Sources: BCA and Alabama Political Reporter

XXXIV. CLOSING OBSERVATIONS

A New Administration Brings New Hope For Real Climate-Change Policies

The 2020 Atlantic hurricane season ended on Nov. 30, but only after 30 named storms left widespread destruction across North America, the Caribbean, Mexico, and Central America. The record-shattering storm season came as yet another wake-up call. Yet predictably, lawmakers beholden to the oil and gas industry and other giant industrial polluters hit the snooze button again. Will we ever wake up and heed the warnings of climate scientists or will we continue to let corporate interests and their political allies pull us toward an ever-nearing cliff?

President-elect Biden has vowed to make climate change a national priority. His promises to do so likely helped him win the White House, according to some political analyses, reflecting Americans' strengthening resolve to save the planet. More and more conservatives are ready to act on climate change as well, signaling an opportunity for lawmakers to work on solid, effective bipartisan legislation that will not be dismantled by future administrations or by anti-regulation Supreme Court justices. Hopefully, the time for using climate change as a political hockey puck is over.

Scientists agree that we are past the eleventh hour in acting meaningfully to slash emissions enough to give us a fighting chance. Climate change and all its ugly effects are not a looming threat. They are already upon us.

The incredibly destructive storm season of 2020 was but one sign of these here-and-now perils. Wildfires and floods are destroying communities in the U.S. and countries around the globe. Rising sea levels are creeping away at our coastlines. A great migration of animals to colder latitudes and elevations is already underway. The habitat for mosquitoes carrying Zika, yellow fever, dengue fever and other deadly viruses has expanded to include parts of the U.S. Pandemics keep trying to happen: Ebola, SARS, MERS-COV, and several other infectious diseases are being contained by the herculean efforts of doctors and field experts throughout the world. Even COVID-19 may be connected to the warming climate and migrating animal populations in ways we don’t yet understand.

Denial and ignorance of these everyday realities are receding as more and more people wake up to them. If there is any reason to be grateful for 2020, it could be that. But will it translate to political action? As daunting as the odds may seem, there is now hope.

Joe Biden has spent his entire career forging strong alliances with lawmakers and officials of every political stripe. We will need those strong alliances going forward. Laws that incentivize clean, renewable energy and absorb jobs from the fossil fuel industry will be more durable as long as they are bipartisan and benefit everyday Americans, not just corporate CEOs and board members.

A plan to abolish climate regulations and replace them with a carbon tax could also cut greenhouse gas emissions far more than all of the green policies put in place under President Obama. That plan, endorsed by Janet Yellen, former chair of the U.S. Federal Reserve and Biden’s nominee to U.S. Secretary of Treasury, is within our grasp.

A border-adjustable American carbon tax on imports would make our international trade partners follow our lead in neutralizing carbon emissions, and such taxes could also replace federal income tax on low- and middle-income families, substantially raising take-home pay for most Americans.

These are just a couple examples of the innovative solutions on the horizon. Creating policies that benefit all Americans and not just the wealthy few will be key, as will be the need for unified support for the policies across the political spectrum. Joe Biden is in a unique position to advance these ideas and “build back better” in ways that can restore confidence in our nation and our future.

Sources: GAVI.org, NBC News, USA Today, EcoWatch and Rolling Stone

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
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 he 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 hear and the blind can see.

Mark Twain (1835-1910)

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

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

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

Get in good trouble, necessary trouble, and help redeem the soul of America.

Rep. John Lewis speaking on the Edmund Pettus Bridge in Selma, Alabama, on March 1, 2020

Ours is not the struggle of one day, one week, or one year. Ours is not the struggle of one judicial appointment or presidential term. Ours is the struggle of a lifetime, or maybe even many lifetimes, and each one of us in every generation must do our part.


XXXV.
PARTING WORDS

I am greatly concerned over the direction our country is taking after the presidential election. The cult-like following of Donald Trump, who most all knowledgeable observers believe was the worst president in recent history, and perhaps ever, has bought into the bogus conspiracy claim that the election was stolen from their leader. As a result, we appear to be on the verge of civil war in our country and that could involve violence and even deaths. That is something I never thought in my entire time I would see in America.

There are many good people who supported Trump, and while those people didn’t like the outcome of the election, they recognize that their candidate lost. However, there are others, like the white supremacists, the Neo-Nazi groups, the militia groups and the KKK, who appear ready to take to the streets and appear eager to engage in some sort of armed rebellion. Sadly, we live in dangerous times in a country that has experienced one civil war, and we must avoid a second.

America is at a crossroads and the overwhelming majority of the American people want a change. They want a unified country where the Rule of Law is honored and obeyed. They also want hate to be replaced with love and decency and for racism to have no place in America. In our history as a Republic, it has been said on more than one occasion that a country divided against itself cannot stand. As he attempted to end slavery in America, perhaps President Abraham Lincoln found the inspiration for his statement on the subject of unity in the Holy Bible. You will find Matthew 12:25 to be one such place. It reads:

Jesus knew their thoughts and said to them, “Every kingdom divided against itself will be ruined, and every city or household divided against itself will not stand.

Hopefully, reasonable people will recognize the danger to our Republic that comes from the type of division that we have seen develop over the past several years. This division reached an extreme over the last four years. Now as we enter 2021, that division has intensified even more, to an extremely dangerous level. The time has come for all people, Democrats, Republicans and Independents, to join together, put politics aside, and work for unity.

If the American people would do as required in 2 Chron. 7:14, I sincerely believe all of our problems would be solved and our nation healed for good.

If my people, which are called by my name, shall 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

My prayer is that God will bless America and that we will have a perfect union, one that will truly make America great again, but in the right way, and for all of our people.

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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, Montgomery and Mobile, and employs more than 275 people, including more than 80 personal injury lawyers. Beasley Allen is one of the country’s leading law firms involved in civil litigation on behalf of claimants, having represented hundreds of thousands of people.

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