The JERE BEASLEY REPORT

June 2023

beasley allen

LAW FIRM

I.
CAPITOL OBSERVATIONS

Loyalty Day In America

President Joe Biden designated May 1 as "Loyalty Day" in America. But this wasn't a new designation. President Dwight D. Eisenhower proclaimed that May 1, 1955, be observed as Loyalty Day. The U.S. Congress in 1958 made it an official recurring holiday. For 66 years, every President has proclaimed May 1 as Loyalty Day.

The goal of Loyalty Day was to shine a light on historic events that led to the forming of our great nation and to recognize the freedoms all Americans enjoy. The problem is that most people don't know about Loyalty Day, and few observe it. I don't know of a more critical time in history when Americans need to reflect on what it means to be an American and discuss and look for ways for people to express our loyalty to our country. Sadly, our nation is more divided today than ever, and that must change and soon.

A celebration of Loyalty Day took place at the Greater Peace Baptist Church in Opelika, Alabama, on May 1. The cities of Opelika and Auburn joined together to celebrate on that day. I believe this was the first time in history that two cities combined for such an observance! Both mayors issued proclamations.

My good friend Toby Warren set up the event. He invited eight Generals, the Chief Justice of the Alabama Supreme Court, the Lee County Sheriff, several key people in education and four pastors to speak for four minutes each on aspects of loyalty to America. For example, John Ed Mathison spoke on the importance of promoting the common good. General Ronald L. Burgess gave the opening challenge to start the meeting, and I gave the closing argument at the conclusion. As a follow-up to the event, John Ed wrote the following about Loyalty Day:

We need to spend more time studying how this nation came to be, what our forefathers had in mind when they developed our Constitution and set forth principles for leadership.

Recently, Pew Research reported that over two-thirds of Americans feel like you don't need religion in order to have morality. That's because so many people define morality as whatever they want it to be. That was not true with our forefathers. George Washington said on September 19, 1796, "It is impossible to govern the world without God and the Bible. Let us, with caution, indulge the supposition that morality can be maintained without religion. Reason and experience both forbid us to expect that our national morality can prevail in exclusion of religious principle."

John Quincy Adams, our sixth President, said on July 4, 1821, "The highest glory of the American Revolution was this: It connected in one indissoluble bond the principles of civil government and the principles of Christianity."

Our fourth President, James Madison, who was extremely influential in the forming of our Constitution, said, "We have staked the whole future of our new nation, not upon the power of government; far from it. We have staked the future of all our political constitutions upon the capacity of each of ourselves to govern ourselves according to the moral principles of the Ten Commandments."

The event in Opelika was inspirational and had a tremendous effect on me. The speakers – and there were 17 in total – made a strong case for the extreme importance of loyalty to America by its citizens. The future of America depends on our people honoring and obeying God and being loyal to a nation founded upon a belief in God and with a protection based upon a strong reliance on the protection of divine providence.

So how many of you knew May 1 was Loyalty Day? How many of you believe the future of our Republic depends upon its citizens being loyal to America?

We all have an obligation to help unify our country and to make the statement that America is the "land of the free and the home of the brave" a reality for all citizens. Make our loyalty to America a daily event. God bless America!

IN THIS ISSUE

II.
THE TALC LITIGATION

U.S. Trustee's Office Opposes J&J's Second Bankruptcy Attempt

Andrew R. Vara, the U.S. Trustee involved in Johnson & Johnson's (J&J's) bankruptcy scheme, has filed a motion to dismiss the fraudulent Chapter 11 reorganization case. The court appoints the bankruptcy trustee to oversee the debtor's estate in a bankruptcy proceeding. The trustee can evaluate and make recommendations about various debtor demands but cannot act without the court's approval. Vara's preliminary statement echoes arguments made by the Talc Claimant's Committee.

Vara notes, "LTL's bankruptcy petition appears to reflect a mistaken belief that the best cure for bad faith is more bad faith." The fact that LTL is acting in bad faith should come as a surprise to no one. This is not a new sentiment. While Judge Michael Kaplan ignored this argument at the initial bankruptcy dismissal hearing, he was quickly overruled by the Third Circuit, stating that LTL failed to meet an "ordinary requirement for bankruptcy – financial distress." Further, the court ruled that LTL's en banc rehearing petition misunderstands the bankruptcy code and congressional intent.

Despite a history of loss after loss, J&J continues in its shameful charade. The giant company has made no attempt to disagree with the bad faith argument because no other legitimate argument can be made. Vara points out that J&J "engaged in a series of transactions that LTL admits were designed for no purpose other than creating artificial "financial distress" to sidestep the Third Circuit's decision." It did not end there. "These transfers were either substantially or fully consummated when LTL was still a debtor in possession in its first case, subject to broad fiduciary duties to its creditors and the supervision of this court. But despite being under a statutory obligation to do so, LTL never disclosed these transactions to its creditors and never sought or obtained approval from this court for either its termination of the funding agreement or its decision to file a second bankruptcy petition."

Vara's motion points out the obvious, that "LTL is nothing more than J&J's captive and this case is but a part of J&J's scheme to discharge tort obligations at cents on the dollar – without itself filing for bankruptcy." He further notes that "[LTL] exists solely to get J&J out of a jam as cheaply as possible."

This has been pointed out by Linda J. Richenderfer, who represents the Office of the United States Trustee on more than one occasion. She stated, "the first case included more than $60 billion of support from J&J, but in the hours after the first case was ended and the second case began, a new funding agreement materialized with significantly less in financial commitments." She further noted LTL did so despite the Third Circuit's previous ruling and warning. In a filing supporting its motion to dismiss, the U.S. trustee said the second bankruptcy filing represents continued bad faith from LTL and that the company's defiance of the Third Circuit's previous ruling is enough to justify immediate dismissal of the Chapter 11. "LTL is nothing more than J&J's captive, and this case is but a part of J&J's scheme to discharge its tort obligations at cents on the dollar – without itself filing for bankruptcy," the trustee further argued in its motion to dismiss.

In allowing the case to continue, despite the many objections against it, Judge Kaplan has said, "the bankruptcy case would go forward, for now, to allow the parties to develop the record necessary for him to make a ruling on a potential dismissal."

Beasley Allen is in this battle to the end. The public would be shocked and outraged if folks knew how J&J was attempting to use the bankruptcy court to punish and cheat victims. But in the end, "right will prevail," and "wrong" will go down in flames.

The case is *In re: LTL Management LLC*, case number 3:23-bk-12825, in the U.S. Bankruptcy Court for the District of New Jersey.

Beasley Allen Talc Litigation Team

Beasley Allen lawyers Ted Meadows and Leigh O'Dell head the Beasley Allen Talc Ovarian Cancer Litigation Team. Andy Birchfield, who heads our Mass Torts Section, has been directly involved in all phases of the talc litigation. The team handles claims of ovarian cancer linked to talcum powder and mesothelioma cases. Several key team members are focused on J&J's abuse of the bankruptcy system. The following Beasley Allen lawyers are members of the Talc Litigation Team:

Leigh O'Dell (Leigh.ODell@BeasleyAllen.com), Ted Meadows (Ted.Meadows@BeasleyAllen.com), Kelli Alfreds (Kelli.Alfreds@BeasleyAllen.com), Ryan Beattie (Ryan.Beattie@BeasleyAllen.com), Beau Darley (Beau.Darley@BeasleyAllen.com), David Dearing (David.Dearing@BeasleyAllen.com), Liz Achtemeier (Liz.Achtemeier@BeasleyAllen.com), Jennifer Emmel (Jennifer.Emmel@BeasleyAllen.com), Lauren James (Lauren.James@BeasleyAllen.com), James Lampkin (James.Lampkin@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) and Matt Teague (Matt.Teague@BeasleyAllen.com).

While Charlie Stern and Will Sutton are on the team, they exclusively handle mesothelioma claims. Charlie and Will are looking at industrial, occupational, and secondary asbestos exposure resulting in lung cancer or mesothelioma and claims of asbestos-related talc products linked to mesothelioma.

III.
THE ASBESTOS LITIGATION

Adding New Defendants Based On New Evidence Of Exposures

Like with any lawsuit, in a mesothelioma case, Beasley Allen only files claims after they have a good understanding of the facts and legal arguments. This can take time and effort to conduct the necessary pre-filing investigation. Unlike most cases, though, mesothelioma cases

present unique challenges related to this. The most challenging and common is the balancing act between this pre-file investigation and moving with enough urgency and speed to get the case filed. Moving with urgency is crucial because our most vital source of evidence, the client with mesothelioma, often only has months to live. The goal is always to get that client deposed before they are unable to sit for a deposition.

So, what happens when we file our complaint and new evidence comes out at deposition or in the form of documents implicating an entirely new defendant? This is not an uncommon occurrence because mesothelioma cases can involve 20-30 defendants.

It is essential to weigh the pros and cons of adding the newly discovered defendant. Are the exposures substantial? Is there jurisdiction over the potential defendant? Can the client give another deposition to talk about this new exposure once the new defendant is added? Do you want to force your client to sit through another deposition? These are all things we must consider.

In a recent case, Beasley Allen lawyers faced this situation. Evidence of new defendants was discovered after a key witness' deposition. There were numerous potential new defendants, and the firm's lawyers carefully weighed the actual exposures related to these new possible defendants, along with applicable law, and made decisions on a defendant-by-defendant basis. With this knowledge, the strength of the client's claims was maximized while ensuring that all potential scenarios were evaluated before officially adding the new defendants. This thorough approach is crucial and utilized in all aspects of our mesothelioma litigation.

The Beasley Allen Asbestos Litigation Team

There has been no slowdown in the asbestos litigation. Case filings continue to increase nationwide. The Beasley Allen Asbestos Litigation Team is headed by Charlie Stern in our Dallas, Texas, office. Charlie has years of experience in asbestos litigation and was a perfect fit to lead the team. Other team members are Will Sutton and Cindy Lopez. Rhon Jones, who heads our Toxic Torts Section, works with the team. If you need assistance with cases involving asbestos products, contact one of the team members by phone at 800-898-2034 or email at Charlie.Stern@BeasleyAllen.com, William.Sutton@BeasleyAllen.com, or Cindy.Lopez@BeasleyAllen.com.

IV.
THE CAMP LEJEUNE LITIGATION

Camp Lejeune Litigation Update

Major advances are occurring in the very important Camp Lejeune litigation. As I predicted, the number of administrative claims filed with the Department of the Navy (Navy) continues to rise. It is estimated that more than 60,000 administrative claims have been filed with the Navy. However, the Navy is backlogged in processing the administrative claims and as such, many claims are being pushed into the court system. As far as we can tell, no settlement offers have been made in the administrative process. This means law firms nationwide are gearing up to file thousands of suits in the Eastern District of North Carolina. The lawsuit filing process is more complicated and expensive than simply filing an administrative claim.

We believe the Eastern District of North Carolina (EDNC) is preparing for this massive influx of cases and putting structures in place to deal with this unprecedented volume of cases. More than a thousand cases have already been filed at this point – with more being filed. We have confidence that the EDNC will require lawyers filing to work and present their cases efficiently and thoroughly.

Beasley Allen continues to work hard to properly represent the many veterans and their families that have been harmed by decades of exposure. We take this responsibility seriously and have, in fact, been endorsed by at least two service groups, the Veterans of Foreign Wars (VFW) of the U.S. and the Vietnam Veterans of America (VVA). The VFW is the nation's largest and oldest major war veterans' organization, comprised entirely of eligible veterans and military service members from the active, Guard and Reserve forces. It was founded in 1899 and has more than 1.5 million VFW and Auxiliary members. The VVA is dedicated to Vietnam-era veterans and their families and has more than 89,000 members. It is with great humility and pride that we represent our service men and women and receive endorsements from groups like VFW and VVA.

Beasley Allen Camp Lejeune Litigation Team

If you need help with a potential claim or more information on the Camp Lejeune litigation, contact one of the Camp Lejeune Litigation Team lawyers at 800-898-2034 or by email. The team is comprised of the following:

Julia Merritt (Julia.Merritt@BeasleyAllen.com) and Leslie LaMacchia (Leslie.LaMacchia@BeasleyAllen.com), who co-lead the team. Other members are Matt Pettit (Matt.Pettit@BeasleyAllen.com), Trisha Green (Trisha.Green@BeasleyAllen.com), Will Sutton (William.Sutton@BeasleyAllen.com), Gavin King (Gavin.King@BeasleyAllen.com), Elizabeth Weyerman (Elizabeth.Weyerman@BeasleyAllen.com). Ken Wilson (Ken.Wilson@BeasleyAllen.com), Ryan Kral (Ryan.Kral@BeasleyAllen.com), Tucker Osborne (Tucker.Osborne@BeasleyAllen.com), Maggie Arellano (Maggie.Arellano@BeasleyAllen.com) and Marion Brummal (Marion.Brummal@BeasleyAllen.com). Rhon Jones (Section Head) (Rhon.Jones@BeasleyAllen.com) works closely with the team. Additional lawyers will be added to the team as needed.

V.
THE JUUL LITIGATION

JUUL Trial Update: The Altria Settlement

Beasley Allen lawyers Joseph VanZandt, Soo Seok Yang, and Davis Vaughn were hard at work as part of the trial team representing the San Francisco Unified School District (SFUSD) in a federal multidistrict litigation (MDL) against Altria Group Inc. The trial began on April 24, and the plaintiff's case in chief ended on May 9 after crucial

evidence was presented to the jury for 11 court days. After the plaintiffs concluded their case, the parties reached a historic $235 million global settlement.

The Altria settlement is certainly a tremendous result for our deserving clients. It will provide extraordinary and meaningful relief for all those affected by JUUL. This comprehensive resolution will avoid the delay of further trial and possible appeals, bringing a close to litigation on behalf of children, teens, young adults, parents, schools, and health departments.

The settlement brings a final resolution to the personal injury, consumer class action, and government entity cases in the MDL and the JCCP, including over 8,500 personal injury cases, over 1,400 government entity cases, and a massive class of consumers.

The court will hold a hearing soon to review the proposed class settlement. If the settlement receives preliminary approval, the court will appoint a Class Settlement Administrator to structure and initiate a formal claims process. At that time, the Class Settlement Administrator will notify class members about their rights under the settlement. Concurrently, a claims process will begin for the personal injury and government entity settlements.

The cases are *In re: Juul Labs Inc., Marketing, Sales Practices and Products Liability Litigation*, case number 3:19-md-02913, and *San Francisco Unified School District. v. Juul Labs Inc. et al.*, case number 3:19-cv-08177, in the U.S. District Court for the Northern District of California.

If you need more information about the JUUL litigation, including the Altria settlement, contact any of the lawyers on the JUUL Litigation Team at 800-898-2034 or by email. The team is led by Joseph VanZandt (Joseph.VanZandt@BeasleyAllen.com), and it is comprised of Sydney Everett (Sydney.Everett@BeasleyAllen.com), Beau Darley (Beau.Darley@BeasleyAllen.com), Davis Vaughn (Davis.Vaughn@BeasleyAllen.com), Soo Seok Yang (SooSeok.Yang@BeasleyAllen.com) and Seth Harding (Seth.Harding@BeasleyAllen.com). Andy Birchfield (Andy.Birchfield@BeasleyAlllen.com) heads the firm's Mass Torts Section and has worked closely with the team on the JUUL litigation.

Source: *Law360*

VI.
SOCIAL MEDIA LITIGATION

The Surgeon General's Report On Social Media And Youth Mental Health Is A Wakeup Call For America

On May 23, 2023, U.S. Surgeon General Dr. Vivek H. Murthy issued a public advisory warning of the risks of social media use to young people. In a 19-page report, Dr. Murthy noted, "there are ample indicators that social media can ... have a profound risk of harm to the mental health and well-being of children and adolescents."

The advisory warned that social media platforms are often designed to maximize user engagement, encouraging "excessive use and behavioral dysregulation." As of 2021, eighth and 10th graders now spend an average of 3.5 hours per day on social media, with 1-in-4 spending five or more hours per day and 1-in-7 spending seven or more hours per day.

The advisory cited research that found adolescents who spent more than three hours per day on social media faced double the risk of experiencing poor mental health outcomes, including symptoms of depression and anxiety. This amount of social media exposure can "perpetuate body dissatisfaction, disordered eating behaviors, social comparison, and low self-esteem, especially amongst adolescent girls."

Excessive and problematic social media use, such as compulsive or uncontrollable use, has also been linked to sleep problems, attention problems, and feelings of exclusion among adolescents. On a typical weekday, nearly 1-in-3 adolescents report using screen media until midnight or later. And nearly 3-in-4 teenagers believe that technology companies manipulate users to spend more time on their devices. The advisory warned that this frequent and problematic social media use can result in changes to adolescents' brain structure, similar to changes seen in individuals with substance use or gambling addiction.

The surgeon general cautioned, "At a moment when we are experiencing a national youth mental health crisis, now is the time to act swiftly and decisively to protect children and adolescents from risk of harm." He called on policymakers, tech companies, researchers, and parents to "urgently take action" to protect youth against these potential risks.

The surgeon general's advisory marks an important step in raising awareness of the harms social media poses to youth and the urgency to seek solutions to the problem. It also tracks the legal theories Beasley Allen and other firms use to hold social media companies accountable. In the advisory, the surgeon general noted:

> *The Consumer Product Safety Commission requires toy manufacturers to undergo third-party testing and ... the National Highway Traffic Safety Administration requires manufacturers to fit new motor vehicles with standard airbags and seat belts ... Medications must demonstrate safety to the [U.S.] Food and Drug Administration ... Given the mounting evidence for the risk of harm to some children and adolescents from social media use, a safety-first approach should be applied in the context of social media products.*

Beasley Allen has been investigating social media companies since former Facebook product manager France Haugen first spotlighted the issue in 2021. Since then, our lawyers have initiated federal multidistrict litigation and California state court consolidated litigation against the market-leading social media companies: Meta (Facebook and Instagram), Google (YouTube), TikTok, and Snapchat. Beasley Allen and a national team of law firms seek to hold these companies accountable for the harm they have caused youth. The harm has unfortunately bled into school districts nationwide as they seek to combat the mental health problems of their young students.

We represent thousands of individuals harmed by social media, including adolescents suffering from addiction, anxiety, depression, body dysmorphia, eating dis-

orders, attention problems, self-harm, suicidal ideation, and suicide. Our firm also represents dozens of school districts that have suffered losses in time, resources, and damages to the learning environment because of social media companies' targeted actions against our youth.

If you have a potential claim or need more information on our social media litigation, contact one of the lawyers on the Social Media Litigation Team at 800-898-2034 or by email. Joseph VanZandt leads the team and is co-lead counsel for the Judicial Council Coordination Proceeding (JCCP) for the plaintiffs in California state court. He is also a member of the Plaintiffs' Steering Committee, helping lead the federal social media multidistrict litigation (MDL). Other team members include Jennifer Emmel (Jennifer.Emmel@BeasleyAllen.com), Suzanne Clark (Suzanne.Clark@BeasleyAllen.com), Clinton Richardson (Clinton.Richardson@BeasleyAllen.com), Sydney Everett (Sydney.Everett@BeasleyAllen.com), Davis Vaughn (Davis.Vaughn@BeasleyAllen.com) and Seth Harding (Seth.Harding@BeasleyAllen.com). Andy Birchfield (Andy.Birchfield@BeasleyAllen.com.

Source: U.S. Surgeon General

Social Media Litigation Update

Former Google CEO Eric Schmidt recently co-wrote an article in *The Atlantic* on May 5, 2023, regarding artificial intelligence (AI) and social media. Schmidt made this observation:

> *Recent research shows that the greatest damage from social media seems to occur during the rapid brain rewiring of early puberty, around ages 11 to 13 for girls and slightly later for boys.*

Schmidt cautioned that "[w]e must protect children from predation and addiction most vigorously during this time, and we must hold companies responsible for recruiting or even just admitting underage users, as we do for bars and casinos." Schmidt called for social media to "authenticate all users, including bots," and "clarify that platforms can sometimes be liable for the choices they make and the content they promote." He also suggested that social media companies "raise the age of 'internet adulthood' to 16 and enforce it."

We agree with the assessment by Schmidt, and our lawyers continue to work to hold social media companies accountable for the harm they have caused to our youth and communities. Currently, our firm represents hundreds of young people who have suffered devastating injuries related to social media usage, including eating disorders, body dysmorphia, suicidality, self-harm, and severe mental health issues.

Beasley Allen also represents school districts from around the country joining the fight to protect children, seeking to hold social media companies accountable for creating a youth mental health crisis and leaving schools to deal with the fallout. The ongoing youth mental health crisis places severe burdens on school administrators as they work to find ways to educate students on the dangers of social media addiction, mitigate disruptions in the learning environment, and provide counseling and resources to students dealing with mental health issues.

Beasley Allen lawyers hold key leadership positions in the Social Media Addiction/Personal Injury Product Liability multidistrict litigation (MDL) and California state court action (JCCP).

If you have a potential claim or need more information on our Meta litigation, contact one of the lawyers on the Meta Litigation Team at 800-898-2034 or by email. Members of the team are Joseph VanZandt (Joseph.VanZandt@BeasleyAllen.com), Jennifer Emmel (Jennifer.Emmel@BeasleyAllen.com), Suzanne Clark (Suzanne.Clark@BeasleyAllen.com), Clinton Richardson (Clinton.Richardson@BeasleyAllen.com), Sydney Everett (Sydney.Everett@BeasleyAllen.com), Davis Vaughn (Davis.Vaughn@BeasleyAllen.com), and Seth Harding (Seth.Harding@BeasleyAllen.com). Andy Birchfield, who heads our Mass Torts Section, also works with the team.

Source: *The Atlantic*

Facebook Nonusers Allege Damages From BIPA Violations

An Illinois man recently urged the Ninth Circuit Court of Appeals to revive his suit against Facebook for violating Illinois' biometric privacy law by scanning nonusers' faces, arguing the district court erred in dismissing the case.

Plaintiff Clayton Zellmer is seeking to bring a class action against Facebook, saying in a brief that U.S. District Judge James Donato erroneously interpreted the Biometric Information Privacy Act (BIPA) as requiring privity (i.e., a contractual relationship) in finding that Zellmer hadn't shown how Facebook Inc.'s conduct impacted him. The brief states, "[t]he district court inserted a judicially created privity requirement into BIPA, holding that BIPA only protects those who have a preexisting relationship with an offender and excluding all other persons from protection under the statute," arguing that requiring privity is contrary to BIPA's explicit language, which applies to a person's biometric data.

Zellmer alleges that from 2013 and 2016, Facebook users uploaded images with him in them to Facebook, and Facebook used facial scanning to analyze Zellmer's face to extract biometric data and create a digital template of his face. Zellmer also argued in his brief that the "Illinois BIPA doesn't have any requirement that he have a prior relationship with Facebook because the section of the law that Judge Donato cited in his ruling applies to people generally, not just customers."

Zellmer contends that "any person aggrieved" by a BIPA violation has a right of action. His brief also claims the Illinois Supreme Court would disagree with the trial court's findings in his case, pointing to the *Rosenbach v. Six Flags Entertainment Corp.* case, in which the court rejected the position that a party had to have an actual injury to be "aggrieved." The only privity requirement, according to Zellmer, is that the party collecting biometric information must inform users of the activity. The brief argues:

> *By imposing a privity requirement on the person whose biometric information is taken without authorization, the district court got it backwards.*

According to Zellmer, BIPA's legislative intent further supports reversal. The Illinois legislature aimed to promote the consensual use of biometric data when passing BIPA. In brief, Zellmer asserted that the district court

had misconstrued the legislative intent to say it was to promote the consensual use of biometric data only in existing relationships. It was argued further that the trial court erroneously found Zellmer lacked standing to sue for failing to identify a specific injury.

Beasley Allen lawyers in our Consumer Fraud & Commercial Litigation Section are ready to review potential BIPA violations. Contact Michelle Fulmer, Section Director, if you know your biometric information is collected or disclosed without your consent. Michelle will have one of the lawyers in the section contact you. She can be reached at 800-898-2034 or by email at Michelle.Fulmer@BeasleyAllen.com.

Source: *Law360*

EU Regulatory Group Orders Meta To Pay Record €1.2 Billion GDPR Fine, Stop Data Transfers From EU To U.S.

The Irish Data Protection Commission (DPC) issued a ruling against tech giant and parent company of Facebook, Meta, last month that included a €1.2 billion fine and ordered the company to stop transferring European Facebook users' information to the U.S. According to the *National Law Journal's* Law.com, this is the largest data privacy fine handed down in the European Union (EU) since the bloc enacted its General Data Protection Regulation (GDPR) 2018.

The DPC is the national independent authority responsible for upholding the fundamental right of individuals in the EU to have their personal data protected. The regulatory agency's order gives Meta Ireland, the defendant's EU entity, six months to implement the decision's data transfer requirement.

The regulatory agency reached the decision after deliberating with other data protection authorities. It found that Meta Ireland violated GDPR by continuing to transfer personal data from the EU to the U.S. after a 2020 judgment overturned the Privacy Shield or trans-Atlantic data transfer agreement. The DCP held that Meta «did not address the risks to the fundamental rights and freedoms of data subjects that were identified by the CJEU [(Court of Justice of the European Union)] in its judgment," according to the decision.

Observers say the decision was important because of the fine's amount and for imposing "both a suspension order and an order to bring Facebook's data processing into compliance." They say that these two orders have not been used so far in that context, and that is said to be highly significant.

Max Schrems, an activist from Austria, established a European privacy enforcement nonprofit, None of Your Business (NYOB) and began challenging Meta's business practices in court more than 10 years ago over data privacy concerns.

Facebook's use of standard contractual clauses was central to the proceedings that resulted in last month's order. The practice became increasingly prevalent after the CJEU overturned the Privacy Shield in 2020 due to concerns about U.S. surveillance practices. These pre-approved model clauses were included in contractual agreements by companies that send and receive data from European customers.

The practice was implemented to fulfill the GDPR's protection requirements. Simultaneously, companies were encouraged by a Luxembourg court to investigate, research and understand what is included in these standard contractual clauses in each instance before signing them. The court noted that it is the companies' responsibility to determine, before exporting users' personal data to a non-EU country, if the laws of that country provide enough protection under the EU law.

European Data Protection Board unites the EU's 27 national privacy oversight groups. Its chair, Andrea Jelinek, said Meta's infringement of the bloc's privacy rulebook is "very serious" because it concerned data transfers of a "systematic, repetitive and continuous" nature. Jelinek said in a press release:

> *Facebook has millions of users in Europe, so the volume of personal data transferred is massive. The unprecedented fine is a strong signal to organizations that serious infringements have far-reaching consequences.*

A new EU-U.S. data transfer agreement known as the Data Privacy Framework--the third one to be agreed upon by EU and U.S. authorities after the European court struck down the previous two-is expected to be finalized soon.

Source: Law.com

VII.
AN UPDATE ON MOTOR VEHICLE LITIGATION

NHTSA: Dangerous Airbags Put Millions Of Unwitting U.S. Drivers At Risk

The National Highway Traffic Safety Administration (NHTSA) has demanded the recall of 67 million ARC Automotive-made airbag inflators. ARC, a Knoxville, Tennessee-based company, refuses, potentially forcing the agency to take the battle to court. ARC refutes the allegations, saying there is no defect in its inflators. The Associated Press reports that more than 33 million U.S. drivers could unknowingly be at risk.

The ARC inflator is a pressurized metal canister that contains different components or pieces. Like other airbag inflators, ARC inflators use highly compressed gas and a secondary propellant, a fuel that undergoes a chemical reaction to create a forceful movement such as an explosion. NHTSA says that the explosive force of the ARC inflators could splinter the canister, shooting shrapnel and posing a significant and lethal risk to passengers of vehicles equipped with the defective inflators.

The agency launched an investigation into the defective inflators in 2015. It said the explosions began in 2009, and two deaths and seven injuries have been reported. The agency's documents show that the inflators date from 2002 to January 2018, "when ARC installed equipment on its manufacturing lines that could detect potential safety problems," the Associated Press reported.

Marlene Beaudoin from Michigan was killed in 2021 when her 2015 Chevrolet Traverse was involved in a mi-

nor crash. When the collision occurred, Ms. Beaudoin was driving with four of her 10 children, and flying shrapnel from the ARC airbag inflator killed her.

In resisting NHTSA's recall efforts, ARC told the agency in a letter that no root cause of the explosions has been determined, and no automaker has identified a common defect in the 67 million inflators NHTSA wants to recall. The company's letter said:

> *ARC believes they resulted from random 'one-off' manufacturing anomalies that were properly addressed by vehicle manufacturers through lot-specific recalls.*

NHTSA has noted that the automakers incorporating the defective inflators in their vehicles are also responsible for a recall. The ARC inflators have been included in Chevrolet, Buick, GMC, Ford, Toyota, Stellantis, Volkswagen, Audi, BMW, Porsche, Hyundai and Kia vehicles. Automakers are investigating to determine how many vehicles have an ARC airbag inflator. Automakers issued seven small recalls between 2017 and 2022 due to problems with ARC airbag inflators.

The latest automaker recall due to ARC inflators was announced last month when NHTSA said it would take action against ARC. General Motors issued a recall of certain 2014 through 2017 GMC Acadia, Chevy Traverse and Buick Enclave SUVs because the ARC inflators can explode. The company learned this year that an ARC airbag inflator ruptured in a 2017 GM Traverse and is investigating the cause. The GM recall issued last month involves 1 million vehicles.

The agency said it has the authority to demand a recall of a company supplying the parts. If NHTSA finds the inflators are defective, it can seek a court order requiring ARC to recall the faulty parts.

Michael Brooks, executive director of the nonprofit Center for Auto Safety, has asked the government and automakers to share a list of affected vehicles with the public. He encourages customers to continue filing complaints to increase pressure on ARC to recall defective inflators.

In response to the Associated Press' request for information, Ford and Kia's spokespeople said they are still investigating what vehicles may include an ARC inflator. Ford noted that it has not "had any ARC airbag inflators rupture in the field." Toyota confirmed some of its vehicles include ARC airbag inflators but did not provide further details.

When the ARC airbag inflator is activated, the cushion fills with air during a crash. ARC inflators suffer from a two-part problem – a manufacturing design defect and a volatile secondary fuel. The design process is flawed because it fails to join the airbag inflator parts and creates excess weld flash that may block the ventilation holes. Once the inflators explode, broken pieces of the inflator, or shrapnel, are thrust forcefully throughout the vehicle cabin, potentially injuring or killing those in the vehicle.

Further, the secondary fuel used in ARC inflators is ammonium nitrate, a volatile chemical compound that was also used in defective Takata airbags. It explodes violently when exposed to changing temperature phases and moisture. While the ARC inflators attempt to prevent exposure to moisture, experts question if the extreme pressure made worse by the excess weld flash could enhance the power of the explosion.

Source: Associated Press

Colorado Class Certified In GM Oil Consumption Lawsuit

A new class of General Motors (GM) customers was certified by U.S. District Judge Charlotte N. Sweeney in Colorado last month. Judge Sweeney approved the class after determining that the Colorado residents owning or leasing certain vehicles made by General Motors presented adequate evidence showing their vehicles share a common engine defect. The GM vehicles at issue feature a defective Generation IV 5.3 Liter V8 Vortec 5300 LC9 engine. It first incorporated the Generation IV engine in its 2007 vehicles, but the Colorado class action involves updated GM vehicles from 2011 to 2014.

The latest GM oil consumption class action comes after lawyers from Beasley Allen DiCello Levitt and local counsel Jennie Anderson of Andrus Anderson secured a $102.6 million verdict from a San Francisco, California, federal jury last fall for consumers pursuing compensation for the same defect in their GM vehicles. California class members included nearly 38,000 consumers from California, Idaho and North Carolina, each receiving $2,700 in compensation for the faulty engine.

In the Colorado class action, lead plaintiff Roy White filed a lawsuit in February 2021. He and other class members claim that GM concealed faulty piston rings in the engines, with the rings wearing prematurely and causing excessive oil consumption and serious internal engine wear. The plaintiffs say that GM continued to sell the defective vehicles for years after learning of the costly engine defect. The class includes consumers that bought or leased one of the estimated 10,100 vehicles in Colorado with faulty engines, including Chevrolet Avalanche, Silverado, Suburban or Tahoe, or GMC's Sierra, Yukon or Yukon XL for model years 2011 to 2014.

The defect forced Mr. White to replace the engine in his GMC Sierra. Beasley Allen lawyer Clay Barnett said:

> *While consumers have expected GM to roll out an extended warranty or recall, GM has not. So, we're compelled to step up on behalf of consumers. Colorado consumers should get the same $2,700 to cover the cost of replacing the pistons that cause the Generation IV engine to burn oil at an abnormally high rate.*

The automaker asked the court to dismiss the lawsuit arguing that it changed the design of the engines in varying ways that "effectively addressed the root cause of oil consumption" in vehicles made before 2011. It claimed that class members never experienced the defect or alleged injuries resulting from the defect. Judge Sweeney rejected GM's arguments and will allow the class action lawsuit to proceed.

Beasley Allen lawyers from the firm's Consumer Fraud & Commercial Litigation Section also represent the Colorado class members. They include Section Head Dee Miles, Clay Barnett, Rebecca Gilliland, Mitch Williams and Dylan Martin and co-counsel, including Adam Levitt, John Tangren, Daniel Ferri and Blake Stubbs of Dicello Levitt LLC and Jennie Anderson of Andrus Anderson.

The case is *Roy White v. General Motors LLC*, case

number 1:21-cv-00410, in the U.S. District Court for the District of Colorado.

Beasley Allen Seeks Justice For The Family Of Woman Killed In An Interstate Accident Caused By A Trailer's Faulty Tire

Beasley Allen lawyer Ben Locklar recently filed a lawsuit in the Circuit Court of Jefferson County, Alabama, on behalf of the son of a woman tragically killed when the wheel of a food service trailer fell off and struck her car on the interstate.

On Oct. 16, 2022, Margaret Greenwood drove her 2019 KIA Optima LX west on Interstate 20 in Jefferson County. At the same time, Hector Vidal Cosme was driving a 2005 Chevrolet Silverado 2500, towing a trailer east on I-20 in the general vicinity of the Greenwood vehicle. Cosme's employer, Eliel Jimenez Aviles, of Aviles Food Service, LLC, owned both the Silverado and the trailer. Suddenly and unexpectedly, the trailer's front driver-side tire and rim broke off the wheel hub.

The wheel and rim crossed over multiple lanes of I-20 Eastbound, over the concrete barrier, and into I-20 West. At least one witness swerved to miss the tire as it bounced into the roadway before colliding with the rooftop of the Greenwood vehicle. The car then left the interstate and collided with a metal light pole before coming to a stop. Ms. Greenwood suffered several broken bones in the crash, including a fatal head injury from the tire crashing onto the roof of her car.

Ms. Greenwood's son, Philip Michael Greenwood, a Calhoun County, Alabama resident, hired Ben to investigate the accident. Ben had this to say about his findings:

> *The wheel, hub, lugs, and assembly on the trailer failed and resulted in the wheel coming off of the trailer. While the investigation is ongoing, it is apparent that the owner of the trailer failed to properly inspect the wheel assembly. Had he done so, Margaret Greenwood would still be alive today.*

The lawsuit seeks compensatory and punitive damages from Cosme, Aviles, Aviles Food Service, and Ms. Greenwood's insurance provider, ALFA Mutual Insurance Company.

If you need more information, contact Ben Locklar at 800-898-2034 or by email at Ben.Locklar@BeasleyAllen.com.

The case is *Philip Michael Greenwood v. Hector Vidal Cosme, et. al.*, case number 01-CV-2023-900734.00.

Ruling In Mustang Seat Belt Case Appealed

Mark Henderson's son was killed in April 2016 when he lost control of the 2003 Ford Mustang he was driving, causing him to leave the roadway and resulting in the vehicle rolling onto its driver's side at 19 mph. During the rollover event, Mr. Henderson's son was partially ejected from the driver's side window and sustained fatal head injuries. Beasley Allen lawyers Tom Willingham, Mary Leah Miller and Ben Baker, members of the firm's Personal Injury & Products Liability Section, are appealing the case for Mr. Henderson after a federal jury ruled for Ford in August 2021.

Mary Leah argued before an Eleventh Circuit Court panel last month that the trial court "substantially prejudiced" our client by refusing to allow evidence of 28,000 warranty claims and customer complaints about seat belts in the Mustang for model years 2001 to 2004. The court also blocked Kathy Lawhon, the plaintiff's witness, from testifying about complaints she made to Ford about her Mustang's driver's seat belt not retracting when worn – the same defect exhibited in the driver's seat belt of the Henderson vehicle.

Our legal team also argued that the lower court rejected Mr. Henderson's request to allow an expert to explain the warranty claims to the jurors and did not allow Beasley Allen lawyers to cross-examine the defendant's design safety engineer on the warranty claims and its corporate representative.

Mary Leah had this to say about the basis for the appeal:

> *These warranty claims involve the exact vehicle at issue in this case. Our expert proved substantial similarity that these vehicles exhibited similar issues.*

At trial, our legal team argued that the seat belt system Ford designed for the vehicle at issue in the case "barely meet[s] its internal standard for stowage retractions." Although the system met the safety requirement when it was made, it would subsequently fail often within a year. The defective design allows excess webbing to remain in the seat belt and doesn't correctly retract and restrain occupants. This increases the likelihood of injuries like the fatal injuries Mr. Henderson's son suffered.

The case is *Henderson v. Ford Motor Co.*, case number 22-10348, filed in the U.S. Court of Appeals for the Eleventh Circuit. We will keep our readers updated about further developments in the case. If you have questions about this case, contact the lawyers on the case at 800-898-2034 or by email at Tom.Willingham@BeasleyAllen.com, MaryLeah.Miller@BeasleyAllen.com, or Ben.Baker@BeasleyAllen.com.

Judge Approves $326 Million Hyundai, Kia Deal

California federal judge Stanley Blumenfeld Jr. granted final approval to a $326 million deal, resolving three consolidated class action lawsuits accusing Hyundai and Kia of selling millions of vehicles with an anti-lock (ABS) brake system defect that can trigger fires.

Under the terms of the deal, Hyundai and Kia will reimburse class members for extended warranties covering all expenses class members incur related to the faulty ABS module, a free inspection of the ABS module in the affected vehicles, and reimbursement for out-of-pocket expenses, such as car rentals and towing. Class members whose vehicles were destroyed by a fire stemming from the defect will receive the full Black Book value for their vehicles plus $140 in goodwill payments.

More than a dozen Hyundai and Kia drivers filed class action lawsuits in 2020. The complaints alleged that about 3.1 million Hyundai and Kia vehicles have the faulty ABS modules, which can short circuit and ignite an engine fire. A communication from the automakers to owners of the affected vehicles underscored the severity of the problem. It advised them to park their vehicles outdoors and away from any structures until the proper repairs could be made.

While the deal comes with a minimum price tag of

$326 million, the automakers could potentially pay double that amount -- $652 million – depending on the number of class members who file claims for reimbursement and take their vehicles for the free inspection.

Law360 reports that the order approved incentive payment requests for the named plaintiffs totaling $67,500, with the judge agreeing to payment requests ranging from $2,500 to $5,000 for each of the 18 named plaintiffs.

The Hyundai class vehicles in the litigation include model years 2014-2021 Tucson; 2007 and 2017-2018 Santa Fe; 2013-2015 and 2017-2018 Santa Fe Sport; 2019 Santa Fe XL; 2006-2011 Azera; 2017-2020 Genesis G80 sedans; 2019-2021 Genesis G70 sedans; 2015-2016 Genesis; 2007-2010 Elantra; 2009-2011 Elantra Touring; 2006 Sonata; and 2007-2008 Entourage.

The Kia class vehicles include model years 2008-2009 and 2014-2021 Sportage; 2007-2009 and 2014-2015 Sorento; 2013-2015 Optima; 2018-2021 Stinger; 2006-2010 Sedona; 2017-2019 Cadenza; and 2016-2018 K900 vehicles – which were also the subject of recalls by the National Highway Traffic Safety Administration.

NHTSA's recall notices said Hyundai and Kia strongly urged the owners of affected vehicles to park their cars outside and away from homes and other structures until their vehicles could be repaired. NHTSA said the anti-lock brake system module could malfunction and cause an electrical short, leading to an engine compartment fire while parked or driving. The HECU, or hydraulic electronic control unit, is a component of the ABS module that was blamed for the fires.

The plaintiffs are represented by Elizabeth A. Fegan and Jonathan D. Lindenfeld of Fegan Scott LLC, Steve W. Berman, Thomas E. Loeser and Rachel E. Fitzpatrick of Hagens Berman Sobol Shapiro LLP, Jonathan M. Jagher of Freed Kanner London and Millen LLC, Katrina Carroll and Todd D. Carpenter of Lynch Carpenter LLC, Jennifer A. Lenze of Lenze Lawyers PLC, J. Barton Goplerud of Shindler Anderson Goplerud and Weese PC, and Rosemary M. Rivas, David Stein and Rosanne L. Mah of Gibbs Law Group LLP.

The case is *Ramtin Zakikhani et al. v. Hyundai Motor Co. et al.*, case number 8:20-cv-01584, in the U.S. District Court for the Central District of California.

Source: *Law360*

Hyundai, Kia Car Thefts Soar Despite Security Upgrade

Theft rates for Hyundai and Kia vehicles are soaring across the U.S. despite the automakers' recently released security fixes.

The problem stems from the automakers' refusal to implement industry-standard anti-theft technology in most of their vehicles. It is compounded by a proliferation of videos on Tik Tok and other social media demonstrating how simple it is to steal the vehicles using just a screwdriver and a USB cable.

Several major cities nationwide, including Atlanta, have seen alarming annual increases in Hyundai and Kia thefts, despite the companies' efforts to fix the problem. In Minneapolis, for example, police have received 1,899 Hyundai and Kia theft reports so far this year – almost 18 times the number of reported stolen in the same period last year.

The theft problem has been so bad that it's driving up the grand larceny auto rate (GLA) and overall crime rate in many cities, forcing several major cities to sue the automakers over the burden it has put on city services.

The predicament is equally dire or worse for Hyundai and Kia drivers throughout the U.S. Not only must they deal with their vehicles being sitting ducks for theft, but some insurance companies have started refusing coverage for the 8.3 million vehicles affected by the problem. That leaves many drivers vulnerable to theft and dire financial hardship.

The industry standard anti-theft device is a computer chip in the key that matches a chip in the steering column. These theft immobilizers were standard in 96% of vehicles made by other manufacturers in 2015 yet present in little over one-quarter of Hyundai and Kia models from 2011-2022.

The lack of a recall is another part of the problem. If NHTSA had compelled an official recall, drivers could have been alerted to the problem more effectively. As it is, most drivers of the affected vehicles aren't aware of the problem unless they saw something about it on the news or heard it from another second-hand source.

So far, just 210,000 of the 4.5 million affected Kia vehicles have been fixed with the new software upgrades – less than 5%. The rate of repair isn't much better for Hyundai. Only 225,000 of the 3.8 million Hyundai vehicles, about 6%, have been fixed.

Sources: Associated Press and National Public Radio

Ford Recalls 310,000 Trucks To Fix Problem With Driver's Front Airbag

Ford has recalled 310,000 trucks to fix drivers' front airbag problems. The recall covers certain F-250, F-350, F-450, and F-550 Super Duty trucks from the 2016 model year. The company says dust can accumulate in a cable inside the steering wheel, interrupting the electrical connection. Ford says it's unaware of any crashes or injuries caused by the problem. Dealers will replace the steering wheel wiring assembly at no cost to owners, who will be notified starting July 5. Owners may hear popping or clicking noises inside the steering wheel or steering wheel switches, and the horn might not work. They may also see an airbag warning light notifying them of the problem.

Stellantis Recalls 220,000 Jeep Cherokees Due To Fire Risk

Stellantis is recalling nearly 220,000 Jeep Cherokee SUVs worldwide due to an electrical defect that can spark a fire. As a precaution, the automotive manufacturer advised owners of affected models from 2014 to 2016 to park their SUVs outside and away from other vehicles.

Water can enter the liftgate control computer and cause an electrical short that can trigger a fire. These fires can occur even with the engine turned off. The company discovered the issue during a routine review of customer data. The U.S. National Highway Traffic Safety Administration (NHTSA) reports 50 customer assistance records, 23 warranty claims, and 21 field reports related to the issue. Stellantis says it is not aware of any injuries

related to the defect.

The company has not yet determined how to repair the problem. It will notify owners by letter beginning June 30.

In 2015 and 2017, Stellantis recalled many of the same vehicles to fix a similar problem. Vehicles affected by previous recalls will still need the latest repair.

Jeep Cherokee owners can check their vehicle identification number (VIN) to see if their vehicles are affected by visiting the NHTSA website at www.nhtsa.gov. Owners with questions can contact Stellantis at 800-853-1403 and reference recall number 49A.

Sources: Associated Press and Cars.com

Rear-View Camera Display Prompts Ford To Recall 422,000 SUVs

Ford Motor Co. has expanded a recall it issued in 2021 over a defect in several models' rear-view cameras. The latest recall includes 422,000 SUVs in addition to the 620,246 Ford recalled in 2020 over another problem with its vehicles' rear-view cameras.

The National Highway Traffic Safety Administration (NHTSA) launched an investigation in 2021 following the first recall. The ongoing investigation will determine if the vehicles were recalled promptly and if it included an adequate number of vehicles. The agency said the defect could increase the risk of an accident because a driver's rear visibility decreases without the image a rear-view camera provides.

While it is "working together with suppliers to identify root cause and provide the correct remedy as quickly as possible," Ford says the claims of vehicles experiencing loss of rear-view camera functionality are increasing. In 2022, the automaker had 17 reports of minor crashes due to the defect and over 2,100 warranty reports. According to Reuters, in April, Ford confirmed 29 claims of vehicles reporting malfunctioning screens after receiving the 2023 recall repair. The company said there were 250 warranty reports and a minor crash related to faulty rear-view camera images despite the vehicles involved in the reports having the 2023 recall repair.

Ford plans to mail notification letters on June 26.

Source: Reuters

VIII.
TRUCKING LITIGATION

Wrongful Death Lawsuit Against Tractor-Trailer Driver, Employer And Others

Mike Andrews, a lawyer in our Personal Injury & Products Liability Section, represents the widow, Gabrielle Celeste Reaves, whose husband was killed in a crash with a Conway Courier Service tractor-trailer truck driven by its employee Roy Earl Jackson. Mike is working with co-counsel Jeffrey L. Edwards, PA., in Oklahoma.

During the fatal crash, Steven Hunter Reaves was traveling northbound on Oklahoma State Highway 351 in Muskogee County on April 16, 2021, in a 2004 Dodge 1500 pickup truck. One of the defendants in the case, Mr. Jackson, was driving the Conway Courier Service tractor-trailer southbound on the highway. Mr. Jackson lost control of his vehicle as he approached the portion of the highway Mr. Reaves was traveling. Mr. Jackson's tractor departed from the roadway to the left, striking the cable barrier, crossing the center median and entering the highway's northbound lanes. His tractor-trailer crashed into Mr. Reaves' passenger vehicle with tremendous force, killing Mr. Reaves.

The lawsuit seeks to hold Mr. Jackson accountable for failing to operate his tractor-trailer safely and Conway Courier Services for hiring a negligent driver and failing to train Mr. Jackson to operate its commercial vehicle properly and safely. The plaintiffs are also seeking to hold PACCAR, the maker of the Peterbilt tractor-trailer involved and defendants Dana Incorporated and Nucor Incorporated, makers of the tractor-trailer's components, including the front axle assembly and bolts to the front axle assembly. The lawsuit claims the truck and its components were defective and/or unreasonably dangerous in their design, manufacture, warnings and/or marketing. They failed to protect those involved in the crash.

In fact, PACCAR recalled 18,000 Kenworth and Peterbilt trucks, including the one involved in this case, a year after Mr. Reaves' fatal crash due to a defect in the tractor-trailer and its components' design. The notice explains that "[t]he Dana D-Series axle steer arm fasteners that attach the steering arm to the steering knuckle may fail. Fastener failure can result in a loss of steering control, increasing the risk of a crash or injury." However, according to the recall notice, the defendant became aware of the defect as early as August 2020. The defendants failed to issue the recall in a timely manner before the defect contributed to Mr. Reaves' death.

The case is *Reaves v. Conway Courier Service, Inc., et al.*, filed in the Circuit Court of Faulkner County, Arkansas Civil Division, case number 23CV-21-775.

We will keep our readers updated on this case. If you have any questions about this or similar trucking cases, contact Mike Andrews at 800-898-2034 or by email at Mike.Andrews@BeasleyAllen.com.

IX.
AVIATION LITIGATION

Boeing Questions Victims' Pain, Suffering During 6 Minutes Of Terror

A trial gets underway this month in lawsuits brought by survivors of victims of Ethiopian Airlines Flight 302 who perished on Boeing's fatally flawed 737 MAX. The plaintiffs in the case say that their loved ones experienced pain and suffering in the last six minutes of their lives and deserve justice through compensation to their families.

Court documents filed by Boeing lawyers earlier this year, and obtained by media outlets, question whether the victims experienced "enough" pain and suffering to result in receiving compensation. Boeing argues that human nature to hold on to hope even in terrifying circumstances, combined with the aircraft's speed at impact, means those on board experienced a painless death.

Mike Andrews, a member of our Personal Injury & Products Liabilities Section who represents some relatives of family members killed in the crash, says:

Without question, the final moments of the lives on board Flight 302 were spent in sheer terror, all because of Boeing's horrendous behavior. The company negligently designed a faulty aircraft, lied to federal inspectors, and ruthlessly sentenced those on board to death. There is not enough compensation for this blatant disregard for human life.

Passengers of Flight 302 were on a four-month-old Boeing 737MAX when it crashed on March 10, 2019. The jet created a crater about 90 feet wide and 120 feet long, and the wreckage was driven up to 30 feet deep into the soil in Tulu Fara village near Bishoftu, Ethiopia.

Jonathan French, an expert testifying for Boeing, said:

While passengers undoubtedly perceived the flight as scary, humans have a tendency to hold on to hope and not expect the worst. Ultimately, it is impossible to know the subjective experience of each occupant.

The plaintiffs argue that pain and suffering damages are in order as their loved ones "undeniably suffered horrific emotional distress, pain and suffering, and physical impact/injury while they endured extreme G-forces, braced for impact, knew the airplane was malfunctioning, and ultimately plummeted nose-down to the ground at terrifying speed."

Under Illinois law, where the case is being tried, there is some legal precedent for Boeing's callous arguments. An American Airlines DC-10 passenger jet crashed outside Chicago in 1979. The court limited damages the plaintiffs, in that case, were seeking for mental distress due to the crash.

We will keep our readers updated on this ongoing Boeing litigation. Stay tuned!

Sources: *Wall Street Journal*, *Business Insider* and Huffington Post

X.
WORKPLACE LITIGATION

Client Injured By Defective Machine At Georgia Tuna Processing Plant

On-the-job injuries happen all too frequently, and when Beasley Allen lawyers investigate such injuries, there are many factors to consider. When industrial machinery is involved in the incident, a thorough investigation is necessary to determine if more than a worker's compensation claim is available and should be pursued. While pursuing a worker's compensation claim, our lawyers quite often will discover that faulty industrial machinery actually caused or contributed to the injury or death. A defective product claim should be considered when the injury is serious and disabling.

Another consideration involves the working conditions in which the client was injured. Many of these injuries take place in factories and plants, and it is essential to ascertain whether these facilities were compliant with OSHA regulations. Workplace safety regulations, though only applicable to employers, are relevant to product liability claims against machine manufacturers because the regulations require the proper guarding of recognized machine hazards.

Kendall Dunson and Ben Keen in our Atlanta office are currently handling a claim against the manufacturer and lessor of a machine used in tuna production. Our client worked for Chicken of the Sea in Chatham County, Georgia. She was performing a process known as recovery when she was injured. During recovery, the machine is shut off, and excess tuna is gathered from around and under parts of the equipment to be reused or discarded. While retrieving leftover tuna, the machine was activated, causing our client's dominant hand to become entrapped in the machine for more than thirty minutes. She sustained a catastrophic injury resulting in the amputation of several fingers and nerve damage that causes constant pain and restricts her ability to use her dominant hand.

Our client has been unable to obtain and maintain employment since her injury. She is essentially one-handed for the remainder of her life. In addition to preventing her from working, this injury prevents her from caring for her family as she did before her injury.

During discovery, our lawyers obtained engineering documents from the manufacturer/lessor of the machine, wherein the company safety engineer recommended placing guarding around the area where our client was injured. The lawyers also determined that while the area was guarded for machines sold or leased in Europe, but not for machines sold or leased in the U.S. Essentially, the defendant protected European workers but left American workers exposed to the risk of injury. The case is set for trial in August.

Unguarded industrial machines are always a possible factor in on-the-job injuries. In this field of law, it is recognized that effective guarding can eliminate a hazard to keep employees safe. Because this defendant recognized the hazard and proposed a solution that would have prevented our client's injury, we will ask a jury to levy a verdict including compensatory and punitive damages to our client. Compensatory damages will make her whole for her pain, suffering, lost access to income and lost enjoyment of life. Punitive damages punish the defendant for knowingly exposing our client to a hazard it knew how to eliminate. We will update you on this matter after the trial.

We have a number of lawyers in our Personal Injury & Products Liability Section who specialize in on-the-job injury litigation. If you or someone you know has suffered an injury at the workplace, you can contact Sloan Downes, Section Director, and she will have one of these lawyers contact you. Sloan can be reached at 800-898-2034 or by email at Sloan.Downes@BeasleyAllen.com.

Beasley Allen Lawyers In Our Mobile Office File Workplace Injury Lawsuit Implicating Third-Party & Co-Employee Liability

Wyatt Montgomery, a lawyer in our Personal Injury & Products Liability Section based in our Mobile office, represents a young woman who had several toes amputated in an on-the-job accident while employed at Fortune Gulf States, LLC in Mobile County, Alabama. The

young woman was searching for merchandise on the shelves of a warehouse when a co-worker backed over her foot with a forklift. Because the injury occurred while she was on the job, any legal action related to those injuries will be governed partly by Alabama's Workers' Compensation Act.

Alabama Workers' Compensation Act immunity laws prevent direct action against the employer and co-employees based on negligence. The law, however, does allow an injured employee to bring a claim against co-employees who removed safety devices from machinery. For this reason, when someone sustains a catastrophic injury or is killed while on the job, the facts surrounding the injury or death need to be thoroughly investigated to determine whether there is the potential for a third-party or co-employee case.

For instance, further investigation into the forklift incident revealed the backup alarm on the forklift had been disabled before the injury. Therefore, our lawyers filed suit against the co-employees who allegedly took part in removing that safety device. The lawsuit also alleges the forklift manufacturer remained responsible for its maintenance and upkeep and may also have played a role in removing the backup alarm from the forklift.

Workers' compensation laws provide for medical care, a percentage of the injured worker's weekly wage, and death benefits to a deceased worker's dependents in case of death; however, the compensation provided under Alabama's Workers' Compensation Act falls drastically short of the amount often needed to compensate the injured worker or their family fully. Workers' compensation laws typically do not account for damages such as mental anguish, pain and suffering, loss of consortium, loss of value of life, the full amount of lost wages, or punitive damages against those responsible for causing the injury. Fully investigating the facts surrounding an on-the-job injury for potential third-party or co-employee claims is essential to obtain full compensation for the client or their family.

Beasley Allen lawyers who handle workplace litigation have lots of experience in cases involving removing safety devices. Despite the difficulties of prosecuting these claims, they have obtained substantial recoveries for our clients. If you know of someone who has been catastrophically injured or killed while on the job, contact our Personal Injury & Products Liability Section Director Sloan Downes (Sloan.Downes@BeasleyAllen.com). She will have one of the lawyers in the section who handles workplace litigation get in touch with you. We would be honored to work with you.

If you have any questions about Wyatt's case, contact him at 800-898-2034 or by email at Wyatt.Montgomery@BeasleyAllen.com.

XI.
PREMISES LIABILITY LITIGATION

Shattered Hip While At The Atlanta Airport: Negligence In A Premises Case For The Direct Actions Of An Agent Or Employee

Beasley Allen lawyers have handled many premises liability cases over the years. They have included cases occurring on the premises of an owner/occupier where the direct actions of an agent or employee of the owner/occupier injured the victim.

In one such case Beasley Allen lawyer Houston Kessler is handling, a client shattered his hip due to the direct actions of a wheelchair service provider while the client was at the Atlanta airport with his spouse. The victim was walking through the concourse when the attendant carelessly pushed a wheelchair into the victim as he was passing by, knocking him to the ground and breaking his hip.

Cases such as these often involve multiple theories of liability. While traditional premises liability actions based on the physical conditions of the property are indeed still at issue, theories of traditional or ordinary negligence based on the employee's direct actions are also at play. Regardless of the theory of liability, however, the duty to act reasonably remains the same, and defendants are liable for any injuries sustained due to their failure to do so.

Parker Miller and Houston Kessler, lawyers in our Atlanta office, handle these types of cases, and numerous other premises liability and negligent security cases, across Georgia and in other states. If you have any questions about these cases, you can contact them at 800-898-2034 or by email at Parker.Miller@BeasleyAllen.com or Houston.Kessler@BeasleyAllen.com.

XII.
CLASS ACTION LITIGATION

New F150, Expedition And Navigator Brake Defect Class Action Lawsuit Filed

Beasley Allen lawyers in our Consumer Fraud & Commercial Litigation Section, have filed a new class action lawsuit that expands a very important existing class action lawsuit against Ford Motor Company (Ford) filed in the Eastern District of Michigan. This new class action follows Ford's March 21, 2022, 22V-150 Safety Recall of the brake system in 2016-2018 F-150s and 2016-2017 Ford Expeditions and Lincoln Navigators. Ford has now issued three sequential and incomplete recalls for a brake system that it installed in these trucks and SUVs since 2012.

Ford limited all three recalls to trucks and SUVs equipped with one specific engine, the 3.5L GTDI Ecoboost when it should have recalled all engine packages paired with the defective brake system. This is particularly troubling because roughly half of all 2013-2019 F-150s that Ford sold were equipped with the 5.0L V8 engine package. Yet, these 5.0L V8-powered trucks feature the same brake system that loses hydraulic pressure in the front brakes but are not recalled.

Another troubling aspect of Ford's deficient rolling recall scheme is that the company released the defective brake system in its Expeditions and Lincoln Navigators in calendar year 2015 but did not recall the SUVs until May 2022. These belatedly recalled SUVs contained the same brake system Ford recalled in May 2016 due to the system's high failure rates in the F-150 truck platform. Meaning Ford has known since well before 2016 that this

brake system was defective and dangerous. Yet, it waited seven years to warn purchasers of the oldest affected Ford and Lincoln SUVs. Ford's serious and calculated delay put peoples' safety at risk.

The new complaint details the Texas plaintiff's 2019 F150 master cylinder failure and the resulting harrowing crash in his non-recalled V8-equipped truck. These trucks and SUVs, no matter the engine package, are at risk for either external brake fluid escape or internal brake fluid bypass, both of which cause loss of the front brakes and shift the responsibility of braking to the rear brakes.

Both brake pressure failure modes create a sudden hazard for occupants in the disabled trucks and SUVs and other vehicles on the road around them. Ford contends these serious safety hazards should be handled with underinclusive and slow-rolling serial recall campaigns.

For those vehicles affected but not recalled, Ford apparently expects those customers to learn of the defect through personal experience or word of mouth. Likewise, the automaker expects them to seek dealership repair at their own expense. Ford is wrong and is putting people in danger.

On April 8, 2022, U.S. District Court Judge Gershwin A. Drain held that the plaintiffs' defect claims in *Weidman, et. al. v. Ford Motor Co.* were right for a consolidated jury trial by certifying a Rule 23(c)(4) issues class for all persons who purchased or leased in Alabama, California, Florida, Georgia, and Texas a 2013-2018 Ford F-150 equipped with a Hitachi made step-bore master cylinder not included in Ford 2020 safety recall. Judge Drain held that common questions of fact exist and warrant a jury's decision—namely, whether there is a brake system defect in the class vehicles, whether Ford had pre-sale knowledge of the brake system defect, and whether the brake system defect is material.

Beasley Allen lawyers and their co-counsel with Miller Law Firm PC, Dicello Levitt and Lieff Cabraser Heimann Bernstein, LLP, notified owners and lessees of all 2013-2018 F150 trucks in Alabama, California, Florida, Georgia and Texas of the pending class action trial.

Dee Miles, who heads our Consumer Fraud & Commercial Litigation Section, was appointed by the court as Co-Lead Class Counsel and class representative according to Federal Rule of Civil Procedure 23(g). Other Beasley Allen lawyers working on this case are Clay Barnett, who leads the trial team, and Mitch Williams, Dylan Martin, and Rebecca Gilliland.

Tesla Hit With Privacy Class Action

A proposed class action has been filed against Tesla, highlighting several vehicle privacy concerns. Specifically, the lawsuit alleges the cameras on Tesla vehicles, outfitted with advanced driver-assistance systems, captured "highly invasive" videos and images of vehicle owners, their homes, and their private activities.

The cameras are used for the vehicles' Autopilot systems, which rely on the cameras and other sensors to perform certain driving functions, such as steering, navigating, turning, changing lanes, accelerating, and braking. However, a human driver still has to be behind the wheel. Some recordings captured by the cameras appear to have been made when cars were parked and turned off.

It asserts in the complaint that Tesla has repeatedly assured its customers that their "privacy is and will always be enormously important to us," that the cameras in its vehicles are "designed from the ground up to protect your privacy," and that "camera recordings remain anonymous" and are not linked to a specific customer or vehicle. However, from 2019 to 2022, Tesla employees allegedly viewed and shared these sensitive videos and images collected from customers' cars for their own "tasteless and tortious entertainment" rather than for legitimate business purposes.

In particular, Tesla employees accessed and circulated recordings of Tesla customers in private and embarrassing situations without their consent. Employees also captured images of family pets, embellished them with captions or commentary, and posted them in group chats. While some private videos and images were only shared between a few employees, others were viewed by "scores" of Tesla employees. And, according to the complaint, many of these videos and images were very likely shared, "as is common with internet culture," with persons outside the company.

The complaint seeks a nationwide class and a California subclass and includes counts for intrusion upon seclusion; violations of California's Constitutional right to privacy; violation of the California Unfair Competition Law; violation of the California Consumer Legal Remedies Act; negligence; breach of contract; negligent misrepresentation; intentional misrepresentation; and unjust enrichment. We will keep our readers posted on any new developments in this case.

Source: Reuters and *The Guardian*

$20 Million Settlement For Robinhood's Data Breach Gets Final Approval

A $20 million settlement agreement between class plaintiffs and Robinhood Financial LLC, a stock-trading app platform, received final approval last month. The plaintiffs alleged that Robinhood failed to protect approximately 40,0000 customer accounts from a significant data breach.

U.S. District Judge Susan van Keulen gave final approval to the agreement saying the settlement "balances the strength of plaintiffs' claims against the risk, expense, complexity and likely duration of further litigation, including the possibility of protracted appeals." Judge van Keulen also had this to say:

> *Even after this court ruled on two motions to dismiss, there are still a wide range of issues left to be decided regarding liability. The parties have avoided the risk by agreeing to an aggregate claims amount of $500,000, which the court finds to be in the best interest of the settlement class.*

The settlement concludes two years of "vigorous" litigation that began when plaintiff Siddharth Mehta filed a lawsuit in January 2021. Mr. Mehta said the trading platform did not use industry-standard security measures to block third parties' improper access to the app's customers' accounts.

Judge van Keulen reduced the number of claims by half in the class action lawsuit in May 2021 for deficient claims for breach of contract and of the Customer Re-

cords Act, the Consumers Legal Remedies Act, the False Advertising Law and the fraud-related portion of the California Unfair Competition Law – findings by a magistrate judge. Those removed from the class action were allowed to replead with amended claims. The litigation began discovery, and the court rejected another motion to dismiss. The class members and defendant began mediation and reached a settlement agreement in May 2022, with Judge van Keulen giving preliminary approval to the deal in August 2022.

Class members include Robinhood users in the U.S. whose accounts unauthorized users were able to access between Jan.1, 2020, and April 27, 2022. The defendant agreed to pay class members certain out-of-pocket costs up to $260 each up to a $500,000 cap and provide two years of credit monitoring and identity theft protection services to class members, which could be worth approximately $19.5 million. The trading platform also agreed to several data security improvements. Court documents show 3,075 valid claims filed, and 400 class members opted for credit monitoring and identity theft protection services. No written objections to the settlement were entered. Judge van Keulen approved $5,000 service awards for class representatives Kevin Kian and Michael Furtado. Mr. Mehta opted for individual arbitration.

The case does not affect claims in separate ongoing litigation against Robinhood for a data security incident the company confirmed publicly on Nov. 8, 2021. The plaintiffs in that litigation claim that the incident exposed millions of customers' personal information.

The plaintiffs and settlement class are represented by Julie Erickson, Elizabeth Kramer and Kevin Osborne of Erickson Kramer Osborne LLP.

The case is *Siddharth Mehta et al. v. Robinhood Financial LLC et al.*, case number 5:21-cv-01013, in the U.S. District Court for the Northern District of California.

Source: *Law360*

Class Action Lawyers At Beasley Allen

Beasley Allen lawyers remain heavily involved in class action litigation around the country. Dee Miles, who heads the Consumer Fraud & Commercial Litigation Section, leads the effort. Other lawyers in the section who handle class action cases are:

Demet Basar, Lance Gould, Clay Barnett, James Eubank, Mitch Williams, Rebecca Gilliland, Rachel Minder, Paul Evans and Dylan Martin. They can be reached at 800-898-2034 or by email at: Demet.Basar@BeasleyAllen.com, Lance.Gould@BeasleyAllen.com, Clay.Barnett@BeasleyAllen.com, James.Eubank@BeasleyAllen.com, Mitch.Williams@BeasleyAllen.com, Rebecca.Gilliland@BeasleyAllen.com, Rachel.Minder@BeasleyAllen.com, Paul.Evans@BeasleyAllen.com and Dylan.Martin@BeasleyAllen.com.

If you need help on a case that would be a class action, you can contact one of these lawyers. You can also contact Michelle Fulmer, Section Director, and she will have one of the lawyers contact you. Michelle can be reached at 800-898-2034 or by email at Michelle.Fulmer@BeasleyAllen.com.

XIII.
THE WHISTLEBLOWER LITIGATION

Sixth Circuit Court Of Appeals Expands The FCA Split

In late March, the Sixth Circuit Court of Appeals issued an opinion that requires False Claims Act (Whistleblower) cases to connect directly to kickbacks with healthcare billing. This ruling goes as far as to refuse to view valuable actions not directly related to billing as possible kickbacks. There is currently a circuit split about what evidence is needed to prove that a kickback caused a false claim to be made. This ruling undercut the Anti-Kickback Statute's provision that discusses prohibited remuneration as "anything-of-value."

Other appellate court circuits, including the Third and Eighth Circuits, have weighed in on this issue. The Third Circuit requires a connection between the kickback and then the reimbursement claim. The Eighth Circuit took a different approach requiring plaintiffs to prove that the defendant would not have done the service without receiving the illegal kickbacks, which is most closely related to the Sixth Circuit's recent decision.

The increase in cases that widen this circuit split also enhances the likelihood that a petition will be filed with the U.S. Supreme Court to address the split. In this term, the Court is already reviewing the FCA's scienter standard, so it may address both issues at this time.

Beasley Allen's Qui Tam Team monitors issues related to this circuit split. For attorneys who may have a client alleging violations of the False Claims Act, our team is ready to review these claims. Feel free to contact Larry Golston or Lance Gould, the Qui Tam Team lead lawyers, at 800-898-2034 or by email at Larry.Golston@BeasleyAllen.com or Lance.Gould@BeasleyAllen.com.

Source: *Law360*

Eli Lilly To Pay Triple Damages In Whistleblower Case

In February 2022, an Illinois federal jury ordered drugmaker Eli Lilly to pay $61 million for shortchanging Medicaid on more than a decade of drug rebates. While Eli Lilly said then that it would fight the verdict, last month, U.S. District Judge Harry Leinenweber tripled the damages to nearly $187 million as required by the False Claims Act (FCA).

Whistleblower Ronald Streck filed the lawsuit against Eli Lilly in 2014, accusing the company of deliberately miscalculating drug rebates owed to the Medicaid program by omitting retroactive drug price increases from its rebate calculations.

Mr. Streck filed the FCA suit on behalf of the U.S. government in 2014. He and his lawyers chose to move forward with the case after the U.S. Department of Justice declined to intervene. The FCA requires that anyone who knowingly submits or causes to submit false claims to the government is liable for three times the damages.

In his 2014 lawsuit, Mr. Streck claimed the drugmaker failed to give the government its full cut of more than $500 million it received in clawbacks from pharma-

ceutical wholesalers. According to the suit, the alleged scheme violated the FCA and 26 states' laws.

Judge Leneinweber noted that Eli Lilly had stopped the practices at the center of the FCA lawsuit years before the trial. Ultimately, however, that did not factor in his decision to impose "minimal, if any, penalties," as Eli Lilly's lawyers had requested.

The jury found that Eli Lilly shorted the federal and state governments $61,229,217. That amount tripled comes to $183.687.651, Judge Leinenweber confirmed.

Eli Lily is represented by Daniel Miller, Derek Cohen and Jonathan DeSantis of Walden Macht & Haran LLP, Michael Behn of Behn & Wyetzner Chtd. and Robert Jackson Martin IV of Martin Law PC.

The case is *U.S. et al. v. Eli Lilly & Co.*, case number 1:14-cv-09412, in the U.S. District Court for the Northern District of Illinois.

Sources: Fierce Pharma, *Indianapolis Business Journal* and *Law360*

Medical Distributor's $490 Million FCA Verdict Affirmed By Federal Court

A Minnesota federal judge upheld a near-$490 million False Claims Act (FCA) verdict against Cameron-Ehlen Group Inc. over offering kickbacks to doctors. The ophthalmology distributor had argued that the verdict was unconstitutionally excessive. U.S. District Judge M. Wilhelmina Wright disagreed, finding the jury had correctly calculated liability and that the defendant was early in its argument that the verdict was unconstitutionally excessive.

The judge explained that other arguments the defendants made, including the judgment amount allegedly being unconstitutionally excessive, should have been filed after the judgment was entered in post-trial motions. Judge Wright cautioned that "the parties should be mindful that it is highly unlikely that the Court will revisit any of the legal conclusions made prior to or during trial." For the upcoming briefing, she advised the defendants to focus on issues the court hasn't resolved, such as the unconstitutionally excessive judgment or requesting a greater settlement offset.

The jury hit Cameron-Ehlen, dba Precision Lens, and its founder Paul Ehlen with just over $489.5 million in combined damages and penalties under the FCA ruling. "The [c]ourt concludes independently that this amount is an accurate calculation," Judge Wright said. However, she also slightly reduced the verdict to about $487.05 million to offset a previous settlement related to the case.

Former Precision Labs executive Kip Fesenmaier blew the whistle on his employer in 2013. He accused Precision Labs of paying kickbacks to doctors in the form of luxury travel and sports and theater tickets to entice them into buying medical supplies from the company. The government stepped into the suit in 2018.

The jury found that Precision Labs violated the FCA, resulting in just shy of $43.7 million in damages to Medicare. Under FCA's treble damages provision, this amount tripled to about $131.1 million. The jury also determined that the distributor made more than 64,575 false claims to Medicare as part of the kickback scheme, resulting in nearly $358.45 in penalties.

The government is represented by Ann M. Bildtsen, Chad A. Blumenfield, Bahram Samie and Andrew Tweeten of the U.S. Attorney's Office for the District of Minnesota.

Fesenmaier is represented by Jennifer Verkamp, Sonya A. Rao and Chandra Napora of Morgan Verkamp LLC.

The case is *U.S. ex rel. Fesenmaier v. The Cameron-Ehlen Group Inc. et al.*, case number 0:13-cv- 03003, in the U.S. District Court for the District of Minnesota.

Source: *Law360*

The Beasley Allen Whistleblower Litigation Team

Beasley Allen lawyers remain heavily involved in handling Whistleblower cases. Fraudulent conduct in corporate America continues to cause huge problems in many industries in this country. Due to the case volume, we significantly increased our firm's healthcare whistleblower practice months ago. Currently, our lawyers are handling cases throughout the country involving fraud against governments at both the federal and state levels.

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 questions about whether you qualify as a whistleblower, contact a lawyer on our Whistleblower Litigation Team for a free and confidential evaluation of your claim. There is a contact form on our website, or you may call or email one of the lawyers on our team who are listed below.

The experienced lawyers on the Whistleblower Litigation Team are dedicated to handling whistleblower cases. The Beasley Allen lawyers listed below are on the 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), Leon Hampton (Leon.Hampton@BeasleyAllen.com), Tyner Helms (Tyner.Helms@BeasleyAllen.com), Lauren Miles (Lauren.Miles@BeasleyAllen.com) and Jessi Haynes (Jessi.Haynes@BeasleyAllen.com). Dee Miles (Dee.Miles@BeasleyAllen.com) heads our Consumer Fraud & Commercial Litigation Section and works with the litigation group. The lawyers can be reached by phone at 800-898-2034 or by email.

XIV.
SECURITIES LITIGATION

Wells Fargo And Shareholders Reach $1 Billion Settlement Over Alleged False Statements

U.S. District Judge Gregory H. Woods of the Southern District of New York granted preliminary approval to a $1 billion settlement by Wells Fargo. The deal resolves securities fraud claims brought by shareholders. Named plaintiffs include the Swedish pension fund Handelsbanken Fonder AB, the Employees' Retirement System of Rhode Island, and the Public Employees' Retirement System of Mississippi.

The class action suit, filed in June 2020, accused former Wells Fargo executives and a director of making false and misleading statements about the bank's progress in consent orders imposed by regulators in 2018. The con-

sent orders resulted from the fallout of the bank's fake accounts scandal. It is believed that the securities class action settlement will be among the 20 largest of its kind if finalized.

The lawsuit stemmed from a significant price drop in Wells Fargo stock in March 2020, just as congressional hearings on Wells Fargo's consent order compliance were wrapping up. One issue with the lawsuit was the "disentangling" of the stock price drop from the overall market volatility that erupted just as COVID-19 lockdowns occurred.

A Wells Fargo representative said the bank disagrees with the accusations but is pleased to have the matter resolved. The case took less than three years to resolve the challenges of the COVID-19 pandemic.

The plaintiffs' lawyers said the settlement will help compensate hundreds of thousands of investors, such as state employees, nurses, teachers, police and firefighters. The bank's fraudulent business practices impacted these investors' retirement savings.

Wells Fargo continues operating under the asset cap by the Federal Reserve, which prohibits the bank from growing beyond $1.95 trillion. It continues facing other regulatory and litigation matters, including a shareholder derivative suit against the bank in California state court over the same compliance with consent order issues at the heart of the federal settlement.

The case is *Fulton County et al. v. Wells Fargo & Co. et al.*, case number 1:21-cv-01800, in the U.S. District Court for the Northern District of Georgia.

Source: *Law360*

Jury Awards Investors $95 Million Against Deutsche Bank For Fraud

A federal district court jury in Florida has returned a $95 million verdict against Deutsche Bank. The jury found the bank negligent for turning a blind eye to warning signs of fraud in accounts maintained at the bank by perpetrators of a Ponzi scheme who stole $155 million from unwary investors.

Six men operated the Ponzi scheme through an investment advisory firm, Biscayne Capital International LLC, and a supposed real estate development company, South Bay Holdings. The fraudsters raised money by convincing investors to buy securities backed by the assets of South Bay Holdings, which they falsely told investors were building real estate in South Florida. In reality, the men used the funds to pay other investors, cover their expenses and pay themselves millions of dollars until the Ponzi scheme went bust, as all Ponzi schemes do.

The fraudsters established a company called Madison Asset LLC and, operating under that name, set up four companies in the Cayman Islands which were used to issue the securities sold to investors. Madison Asset opened an account at Deutsche Bank and later opened sub-accounts at the bank in the name of the Cayman Island entities, which held the securities and investors' funds used to purchase the securities. Instead of using this money to develop real estate as promised, the fraudsters wired the money to hundreds of beneficiaries worldwide.

The Ponzi scheme was perpetrated by Frank Chatburn, Juan Carlos Cortes, Roberto Cortes, Ernesto Weisson, Fernando Haberer and Gustavo Trujillo—all men other than Juan Carlos Cortes were indicted. Chatburn, Weisson and Trujillo pled guilty, and Chatburn was sentenced to 42 months in prison in December 2019.

The plaintiffs are the liquidators of the four Cayman Island companies which went bankrupt when the Ponzi scheme collapsed. The plaintiffs sued Deutsche Bank in 2021, alleging that the bank ignored warning signs of fraud and asserted claims for negligence, breach of fiduciary duty, fraudulent trading and aiding and abetting the perpetrators of the Ponzi scheme. Among other wrongdoing, plaintiffs alleged the following in their complaint:

- that Deutsche Bank allowed Madison Asset to open accounts in the name of the Cayman Island companies without documentation of authority to act on the investors' behalf,
- that the bank knew the funds in the account were supposed to be used to develop real estate yet were constantly being wired out to hundreds of beneficiaries all over the world for over two years,
- that bank employees were expressing concern about the large number of wire transfers and beneficiaries, and
- that bank employees even went to Deutsche Bank's compliance department to inform the compliance group that the accounts may be being used to engage in money laundering.

The bank ultimately threatened to freeze assets of Madison Asset after a large number of multi-million dollar overdrafts but did not.

The case finally went to trial on April 10, 2023. After the plaintiffs rested their case, Deutsche Bank moved for judgment as a matter of law, arguing that it owed no fiduciary duties to the Cayman Island companies and that its customer agreements limited the bank's responsibility. The motion was denied.

After a three-week trial, the Florida jury returned a verdict for the plaintiffs on the negligence count and awarded damages of $95 million.

Beasley Allen lawyers are involved in prosecuting at least two Ponzi scheme class action cases, and there will be more. Financial scams are rising, and our law firm is committed to rectifying these wrongs.

Our Financial Fraud Litigation Team includes these lawyers: Dee Miles (Dee.Miles@BeasleyAllen.com), Demet Basar (Demet.Basar@BeasleyAllen.com) and James Eubank (James.Eubank@BeaseleyAllen.com). If you have been a victim of financial fraud, contact these lawyers by phone at 800-898-2034 or by email.

$450 Million Kraft Heinz Investor Lawsuit Nears Final Approval

A $450 million settlement between Kraft Heinz Co. and its investors got preliminary approval last month, moving closer to resolving class action claims that the industry giant concealed cost-cutting measures it took after its 2015 merger.

Illinois federal judge Jorge Alonso agreed with investors that the deal, one of the biggest settlements ever achieved in a securities class action, is an excellent re-

sult for class members. He said the parties satisfied each element required for approving class settlements he is likely to give it his final approval in September.

Lead plaintiff Union Asset Management Holding AG and other investors filed the lawsuit in 2019, days after Kraft Heinz disclosed that the SEC had subpoenaed it for its accounting records. The company also announced at the time that it had written down the value of its iconic Kraft and Oscar Meyer brands by $15.4 billion. The announcement led to a $12 billion drop in the company's stock market value.

The SEC charged Kraft and its executives with improperly managing expenses and engaging in deceptive accounting practices over several years. The practices included "misleading transactions, millions in bogus cost savings, and a pervasive breakdown in accounting controls," the agency reported, noting that the fraudulent activity harmed the company's stockholders.

After the 2015 merger of H.J. Heinz Co. and Kraft Foods Group Inc, company execs found far fewer cost-saving "synergies" between the companies than expected. Investors alleged that the company and 3G then implemented several cost-cutting measures that eroded its supply chain, alienated vendors, tarnished solid brand names, and drove off customers.

Investors accused Kraft-Heinz and Brazilian private equity firm 3G of implementing widespread and deceptive accounting practices to mask its substantial losses. The agreement provides pro rata shares of the settlement fund after deductions for attorney fees and other related costs, no matter how many claims are filed in the case. Many of the thousands of class members are large retail institutions. If any institutional investors disagree with the settlement, they will have time for Judge Alonso to hear and consider their objections.

The class is co-led by Kessler Topaz Meltzer & Check LLP and Bernstein Litowitz Berger & Grossmann LLP.

The case is *Hedick v. Kraft Heinz Co. et al.*, case number 1:19-cv-01339, in the U.S. District Court for the Northern District of Illinois.

Sources: *Law360* and Securities and Exchange Commission

Beasley Allen Securities Litigation Team

Lawyers in our firm remain very active in securities cases. This area of our practice continues to grow. We anticipate there will be a marked increase nationally in securities litigation. Lawyers in our Consumer Fraud & Commercial Litigation Section welcome any opportunity to investigate suspected practices and are blessed to be able to engage with both new and established colleagues in federal securities law and state securities litigation.

You can contact a member of our Securities Litigation Team concerning any securities issues. The team consists of the following lawyers: James Eubank, who heads the team, along with Demet Basar, Rebecca Gilliland and Paul Evans. Dee Miles, who heads the section, also works with the team. The team members can be reached at 800-898-2034 or by email at James.Eubank@BeasleyAllen.com, Demet.Basar@BeasleyAllen.com, Rebecca.Gilliland@BeasleyAllen.com and Paul.Evans@BeasleyAllen.com. Dee can be reached at Dee.Miles@BeasleyAllen.com.

XV.
MASS TORTS LITIGATION

CPAP Litigation Update

On June 14, 2021, Philips Respironics issued a voluntary recall of over 15 million CPAP, BiPAP, and ventilator devices, at least half of which are used daily in the U.S. The recall was issued because the PE-PUR foam, used to reduce noise and vibration of the machine, and its off-gasses have long been known to be toxic. These toxic particles and fumes can cause asthma, irritation to the respiratory tract, and cancer-causing effects on organs like the lungs and kidneys.

Since this voluntary recall, Philips asked users to register their devices on its website to facilitate device replacement. Philips reported on its website that 2,460,000 "new replacement devices and repair kits" have been shipped to the U.S. The FDA is now clarifying that this number is inaccurate. The actual number is considerably less since Philips included manufactured repair kits shipped internally to its facilities. The FDA further stated its concern that this inaccurate estimation will impact the wait time for users to receive new devices.

To further complicate Philips' remediation attempts, the FDA has issued a Class 1 recall, the most serious type of recall, for certain reworked DreamStation machines. This recall was issued because machines were assigned "inaccurate or duplicate serial numbers during initial programming." This error causes devices to deliver the wrong prescription or factory settings or to deliver therapy to the user at all. Errors of this kind can lead to respiratory failure, heart failure, serious injury, and even death.

Beasley Allen lawyers are investigating claims for the users of the recalled CPAP machines who have suffered from the adverse effects of the recalled Philips Respironics machines. For more information, contact Alexa Wallace (Alexa.Wallace@BeasleyAllen.com) or Melissa Prickett (Melissa.Prickett@BeasleyAllen.com).

Source: U.S. Food and Drug Administration

Infant Formula Litigation Update

Beasley Allen lawyers continue to investigate cases involving the development of Necrotizing Enterocolitis (NEC) in premature infants who were fed cow's milk-based infant formula products. A number of lawsuits against formula manufacturers are currently pending in federal court and have been centralized in a multidistrict litigation (MDL), pending before Judge Rebecca R. Pallmeyer.

Judge Pallmeyer recently entered a discovery protocol for potential bellwether and trial selection. The protocol limits the type and scope of discovery so that the parties can obtain adequate information to determine if a case should move forward to the bellwether trial without taking on the burden of full discovery. The order also allows for more in-depth discovery of the cases selected to proceed to trial. Judge Pallmeyer's ruling did not outline a protocol for expert discovery but promised to address

the topic in a future order. At this time, we anticipate trials for these cases will begin in Spring 2024.

Lawsuits filed against formula manufacturers in state courts, including many handled by Beasley Allen, also continue to move through the discovery process. In late March, Judge Dennis Ruth denied several of the defendant's motions to dismiss and transfer venue motions. We hope these orders will allow these pending cases to begin moving toward a trial date.

David Dearing and Brittany Scott, lawyers in our firm's Mass Torts Section, are aggressively investigating and filing these cases. For more information, contact them at 800-898-2034 or by email at David.Dearing@BeasleyAllen.com or Brittany.Scott@BeasleyAllen.com.

Acetaminophen MDL Judge Issues Invitation For Statement Of Interest From The FDA

Recently, U.S. District Judge Denise Cote in the Southern District of New York issued an Invitation for a Statement of Interest from the U.S. Food and Drug Administration (FDA) in the Acetaminophen multidistrict litigation (MDL).

This Statement of Interest invites the FDA to weigh in on pregnancy warnings that could have been added to the labels of acetaminophen-containing medications. The invitation asks the FDA, on behalf of the U.S., to submit its views on two questions.

1. Should the Plaintiff's Proposed Warning be added to the acetaminophen labels?
2. As of today, does science warrant the addition to acetaminophen labels of any warning or advice regarding in-utero exposure to acetaminophen and the risk of ASD or ADHD?

Acetaminophen has been touted as safe for use in pregnant women for years. Yet, acetaminophen manufacturers and retailers know the risk of prenatal exposure to acetaminophen causes autism spectrum disorder (ASD) and attention-deficit/hyperactivity disorder (ADHD). There are now over 100 lawsuits pending against the manufacturers and major retailers who sell generic versions of Tylenol.

Beasley Allen lawyers are investigating these claims. If you have any questions or need help on a case, contact Ryan Duplechin at 800-898-2034 or by email at Ryan.Duplechin@BeasleyAllen.com.

Hair Relaxers – A Litigation That Hits Close To Home

There are several unsafe products on the market that many people unknowingly use on a daily basis. As plaintiffs' lawyers, it hurts us to see our clients, or their loved ones suffer horrific injuries or worse from these unsafe products. But the truth is that no one is immune from the wrongful conduct of manufacturers or the negligent actions of their employees. Navan Ward, a lawyer in our Atlanta office, takes it personally. Navan says that even though he has represented many plaintiffs, he knows that his family members are just as susceptible to being victims as well. Navan has unfortunately already experienced that pain with an ongoing case that our firm is handling.

Navan says the hair relaxer litigation is just another reminder of how his family members could easily be victims of this defective product. Recent studies have shown how users of hair relaxer products are at a significantly higher risk of developing uterine cancer, endometrial uterine cancer, and ovarian cancer. Navan says he can truly identify with his clients who have suffered these injuries due to unknowingly using these unsafe products.

Navan Ward, who works in our Mass Torts Section, says his wife, mother, sister, aunts, cousins, and countless friends have used and relied on hair relaxers for years. Navan says:

> *As I inform my family and friends of the issues with these products, I hear firsthand accounts of how they felt pressure to straighten their hair to fit in or conform to the European standard of beauty that put them at risk of a deadly disease. The pressure that my family describes is similar to what many of the victims of these products describe.*
>
> *As a member of the Plaintiffs' Executive Committee of the Hair Relaxer consolidated federal court lawsuits, I'm proud to work with attorneys around the country to hold these manufacturers responsible for the injuries that they have caused. However, admittedly this litigation hits close to home, knowing that either now or in the near future, my loved ones could also be someone I represent. This is a sobering reality of how dangerous these products are and why Beasley Allen continues its fight to ensure that companies do the right thing because we never know when we will be the next victim.*

If you need more information or help with a case, contact Navan Ward at 800-898-2034 or by email at Navan.Ward@BeasleyAllen.com.

XVI.
TOXIC TORT LITIGATION

U.S. Supreme Court Case A Huge Blow To Oil Companies

State and local governments – such as coastal southern cities and counties - should note that the U.S. Supreme Court has turned down another forum challenge related to climate change lawsuits. This latest decision further supports the stance that the U.S. Supreme Court appears to have adopted this premise: state courts are the proper venue for various state authorities to hold energy powerhouses accountable for the climate crisis crippling many municipalities with higher-than-ever infrastructure costs.

The main issue in these cases is simple: where is the proper venue for these climate change cases to be heard? The defendants, some of the largest oil and energy companies in America, assert that these climate change lawsuits can only be heard in federal court because claims related to greenhouse gas emissions and climate change are matters of federal common law. However, state and local governments bringing these cases, and several U.S. District courts disagree.

The complaints filed strictly allege violations of state laws – such as nuisance, trespass, and consumer fraud. The state and local governments assert that their state-law claims do not raise any uniquely federal issue and that any attempt by the defendants to interject such a federal issue runs afoul of established procedural rules, including the well-pled complaint rule.

This is a developing area of law that can bring the needed relief to many state and local governments to combat the skyrocketing damages and costs that these energy powerhouses have contributed to. Beasley Allen is committed to monitoring this area of law as it develops. Stay tuned!

AFFF Firefighting Foam Multidistrict Litigation Update

The AFFF Firefighting Foam multidistrict litigation (MDL) involves various causes of action and claims relating to per- or polyfluoroalkyl substances (PFAS). Plaintiffs generally allege that aqueous film-forming foams (AFFFs) containing perfluorooctanoic acid (PFOA) and/or perfluorooctane sulfonate (PFOS), two types of PFAS, contaminated groundwater near various military bases, airports, and other industrial sites where AFFFs were used to extinguish liquid fuel fires. The plaintiffs allege that they were caused personal injury, a need for medical monitoring, property damage or other economic losses.

U.S. District Court Judge Richard Gergel for the District of South Carolina presides over this MDL, which has been split into two bellwether tracts. The first tract is for water utilities alleging generally that AFFF has contaminated their water sources and that defendants are responsible for the cost of filtering the harmful chemicals. The second tract will involve personal injury cases from individuals alleging their illnesses have been caused by exposure to the chemicals through drinking water or occupational exposure.

The first bellwether trial that was set for May 2023 is *The City of Stuart, Florida v. 3M et al.* On May 5, 2023, the court granted in part and denied in part the defendants' omnibus motion for summary judgment. The judge largely denied all the defendants' motions for summary judgment and motions to exclude the plaintiff's experts. The majority of the plaintiff's claims and experts will proceed to trial. The parties are currently conferring over exhibit lists and deposition designations to be read at trial.

Paraquat Litigation Update

The paraquat litigation is now advancing in two separate arenas. Currently, two venues are working concurrently to resolve this litigation. The multidistrict litigation (MDL) is centralized in the Southern District of Illinois, headed by Chief Judge Nancy Rosenstengel. In California, the JCCP formed in Contra Costa County, headed by Judge Charles S. Treat. Both courts adjusted trial dates, but now, dates have been set. An MDL trial is slated to begin on Oct. 16, 2023. Judge Treat recently set a JCCP trial for Oct. 9, 2023. These two trials will overlap. Key plaintiff lawyers are involved in both litigations. Judge Treat reasoned that there are enough lawyers to handle both litigations concurrently in the separate venues.

In the MDL, both parties are preparing for the next stage of litigation, the Daubert hearings. Daubert hearings to consider the admissibility of each party's expert witnesses are set for August 2023. The briefing schedule for the Daubert hearings has also been scheduled. Any Daubert challenges or summary judgment motions are due to the MDL court this month.

Beasley Allen lawyers Julia Merritt and Leslie LaMacchia are members of the Plaintiffs' Executive Committee on the paraquat MDL. Beasley Allen's Paraquat Litigation Team will be happy to answer any questions about the status of this litigation or the intricacies of the intake process, including the Plaintiff's Assessment Questionnaire. Beasley Allen continues to accept cases where clients applied paraquat and have Parkinson's Disease or Parkinson's-like symptoms.

XVII.
EMPLOYMENT AND FLSA LITIGATION

Franchisee Pays Nearly $2 Million To Resolve Sexual Harassment Suit

Recently, AMTCR, Inc., a McDonald's franchisee, paid $1,997,500 in regulatory fines to resolve allegations that it allowed widespread sexual harassment at its facilities. In a rare move, the U.S. Equal Employment Opportunity Commission (EEOC) filed a complaint against the franchisee. The agency's complaint alleged that AMTCR, Inc. knew about the harassment as early as 2017, allowing its supervisors to engage in unwanted and offensive touching, primarily with its teenage employees.

Overall, the EEOC alleged that 11 victims suffered at the hands of their supervisors and managers. One of the victims stated he was touched nearly daily at a McDonald's in Nevada from July 2016 until December 2017. Specifically, the 18-year-old worker stated that an older co-worker would rub his chest and crotch area during his shifts. He informed his manager of the unwanted touching, and his manager turned a blind eye. In another instance, a single mother employed by the entity alleged that her male manager cut her weekly hours from 40 to 5 after she declined a date. Eventually, many of the workers quit when the harassment created a hostile work environment.

In January 2023, U.S. District Judge Jennifer Dorsey granted a consent decree requiring that AMTCR hire a third party to review employee claims of sexual harassment and retaliation. The consent decree is set to last for three years. Although AMTCR denies any wrongdoing and liability, the entity agreed to enhance employee training and track all harassment and retaliation complaints. The funds paid by the franchisee will be distributed to approved claimants.

Beasley Allen lawyers see hostile workplace environments frequently in our employment law practice, and it remains a problem despite laws and lawsuits to prevent such violations. Our team of employment lawyers stands ready to fight for the victims of sexual harassment in the workplace. If you are a victim or witness of such con-

duct in the workplace, don't hesitate to contact Leon Hampton, Larry Golston or Lauren Miles, lawyers in our Consumer Fraud & Commercial Litigation Section. They can be reached at 800-898-2034 or by email at Leon.Hampton@BeasleyAllen.com, Larry.Golston@BeasleyAllen.com or Lauren.Miles@BeasleyAllen.com.

Source: U.S. Equal Employment Opportunity Commission

XVIII.
THE CONSUMER CORNER

Senate Panel Passes Bipartisan PBM Bill

The Senate Health, Education, Labor and Pensions Committee has now passed a bill directed at Pharmacy Benefit Managers (PBMs). The bill is called the Pharmacy Benefit Manager Reform Act, and it will require more transparency with drug pricing and limit what PBMs can charge for prescription drugs.

One significant change this bipartisan legislation will bring is the prohibition of spread pricing. Spread pricing occurs when the PBM charges a health plan more for the prescription drug than the PBM reimburses the pharmacy for the same drug, which in some cases is less than the cost the pharmacy incurred to purchase the drug. The difference between what the PBM charges the health plan and pays the pharmacy is called the spread, and the PBM pockets it as profit. Almost two months prior, bipartisan lawmakers introduced the Drug Price Transparency in Medicaid Act to end spread pricing in Medicaid programs. This causes artificially inflated drug costs to Medicaid and consumers but decreases prescription drug reimbursements to pharmacies.

In order to crack down on the lack of transparency with drug pricing, the bill also requires companies to provide reports to the U.S. Department of Health and Human Services at least 30 days before increasing the prices of certain drugs. The bill also prohibits gag clauses in PBM contracts that prevent pharmacists from discussing lower-cost options for prescription drugs with customers and voluntarily informing patients that their medication may be cheaper if paid for out-of-pocket instead of running the transaction through their insurance provider. By concealing a lesser expensive payment method, gag clauses limit the transparency and affordability of prescription drugs for patients.

The bill also focuses on access to care, including an exemption process for physicians and patients to avoid step therapy procedures that require patients to demonstrate they cannot tolerate lower-cost drugs before obtaining coverage for a higher-cost drug, which can create a delay in a patient's access to their physician's preferred drug option.

Other aspects of the Pharmacy Benefit Manager Reform Act include banning certain clawbacks by PBMs and requiring that rebates be passed through to plan sponsors. The legislation also requires that the U.S. Department of Labor Secretary study the impact of considering PBMs as fiduciaries under ERISA and that the U.S. Government Accountability Office perform a study on affordability and access pertaining to the addictive opiate drug Narcan.

The Pharmacy Benefit Manager Reform Act follows the passage of five bipartisan bills out of the Senate Judiciary Committee in February. The passage of the Pharmacy Benefit Manager Reform Act implies that the legislation will now go to the Senate for a vote. This bill and others that have moved to the Senate aim to increase transparency in drug pricing and the unfair and deceptive practices of PBMs.

Over the years, Beasley Allen has joined the fight to combat the unfair and deceptive acts concerning drug pricing through our representation of states and self-funded health plans against drug manufacturers and PBMs. Our firm welcomes the opportunity to investigate potential misconduct by drug manufacturers and PBMs. If you have any questions about PBMs and their unlawful practices, contact Dee Miles, Ali Hawthorne, James Eubank, or Rebecca Gilliland, lawyers in our Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at Dee.Miles@BeasleyAllen.com, Alison.Hawthorne@BeasleyAllen.com, James.Eubank@BeasleyAllen.com, or Rebecca.Gilliland@BeasleyAllen.com.

Source: *Law360*

XIX.
CURRENT CASE ACTIVITY AT BEASLEY ALLEN

The Latest Look At Case Activity At Beasley Allen

Our BeasleyAllen.com website provides the latest information on the current case activity at Beasley Allen. The list can be found on the navigation bar of our website (www.BeasleyAllen.com). The following are the current case activity listings for the Beasley Allen Sections.

Practices

- Business Litigation
- Class Actions
- Consumer Protection
- Employment Law
- Medical Devices
- Medication
- Personal Injury
- Product Liability
- Toxic Exposure
- Whistleblower Litigation

Cases

The cases in the categories listed below are handled by lawyers in the appropriate Litigation Section at Beasley Allen. The list can be found on our homepage, on the top navigation, or on the Cases page of our website (www.BeasleyAllen.com).

- Acetaminophen
- Auto Accidents

- Aviation Accidents
- Camp Lejeune
- CPAP Devices
- Defective Tires
- Hair Relaxers
- Heavy Metals in Baby Food
- Mesothelioma
- NEC Baby Formula
- Negligent Security
- On-the-Job-Injuries
- Paraquat
- Social Media
- Talcum Powder
- Truck Accidents

XX.
RESOURCES TO HELP YOUR LAW PRACTICE

This may sound like a "broken record," but Beasley Allen only handles litigation on behalf of individuals, companies and governmental entities that have been injured or damaged in some manner by a wrongdoer. Our lawyers do no defense work of any kind, and that includes working for companies in corporate America. I made that decision when our firm was founded in 1979, and that has been the firm's policy ever since.

All of us at the firm are pleased and humbled that our law firm has consistently been recognized as one of the country's leading law firms representing solely claimants involved in complex civil litigation. It is an honor and a privilege to be trial lawyers representing only victims of wrongdoing.

All of us at Beasley Allen have truly been blessed. We understand the importance of sharing resources and teaming up with peers in our profession. The firm is committed to investing in resources that will help our fellow trial lawyers in their work. For those looking to work with Beasley Allen lawyers or simply seek information that will help their law firm with a case, the following are among our most popular resources.

Co-Counsel E-Newsletter

Beasley Allen sends out a Co-Counsel E-Newsletter 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.

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 essential 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.

Webinars

Beasley Allen hosts a variety of webinars. These webinars feature lawyers in the firm and cover topics related to Beasley Allen cases. Continuing legal education (CLE) credits for Alabama or Georgia are often available for live presentations. To register for upcoming events or to access past webinars on-demand, you can visit the Events and Webinar page of the Beasley Allen website at https://www.beasleyallen.com/events/.

The Jere Beasley Report

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

You can reach Beasley Allen lawyers in the four litigation 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 our publications, visit our website at www.BeasleyAllen.com.

XXI.
PRACTICAL TIPS FOR TRIAL

E-Discovery Platforms Are Not "One Size Fits All"

Suzanne Clark, a lawyer in our Mass Torts Section, has some helpful recommendations for lawyers relating to e-discovery in litigation, especially relating to the technology tools, platforms, and services available to litigators as they navigate the management of large volumes of electronically stored information produced in their cases. Suzanne has had extensive experience handling e-discovery issues. She helps other lawyers in our firm in this area as part of her role in the firm.

Often attorneys and paralegals get comfortable with an eDiscovery platform that they have been trained on and are accustomed to and will select that same platform for all of their matters without considering if it is the best tool for the particular litigation. There is something to be said for familiarity because it can build efficiency. However, litigation comes in all shapes and sizes, and different eDiscovery platforms, tools, and services can benefit litigations in different ways.

When selecting which eDiscovery platform is appropriate for the litigation I am approaching, I do a cost-benefit analysis to help determine the best platform for the job. The first step is to determine what we are up against by asking these questions:

How big is the litigation? Is this a single event matter or a mass tort? If a mass tort, how big do we anticipate it becoming? How many plaintiffs? Will there be multiple defendants? How many? Can we estimate the volume of ESI we expect to receive or produce? Do we know the type of ESI we will be reviewing?

The next step is to perform a cost-benefit analysis, which begins with identifying the platforms we are interested in and assessing the costs/pricing associated with those platforms. I have conversations with service providers and vendors over time, building relationships, attending demonstrations of their tools, and obtaining pricing so that when I am up against a new litigation or a project within a litigation, I already have much of the information I need to make decisions.

To make a complex topic simple, basically, there is a range of eDiscovery platforms. Some are inexpensive but do not have many bells and whistles. They can do the job of organizing your ESI and allow for limited search capabilities, which meet basic needs and are an improvement from trying to house data on your firm's own server or reviewing in Adobe, but they are limited in providing efficiency boosts that other platforms offer. The costs may be simply monthly user fees and a one-time ingestion charge. You may also be able to "do it yourself" in these platforms to save ingestion charges and technical / project manager billable time.

Next, you have the more robust platforms that will increase your fees with monthly per gigabyte hosting charges based on the volume of ESI you ingest, processing fees for your client's data, and they may or may not have user licenses. (Many platforms that charge per gig are eliminating user license fees.) These platforms do have additional tools like structural and conceptual analytics that can give you a better understanding of the ESI you are reviewing. You will likely need support and incur project management costs.

On top of that, there are tools that offer Artificial Intelligence (AI) capabilities. Sometimes these are included, and other times you can add this on for a subset of your universe of ESI. For example, you may wish to just put emails in the Artificial Intelligence (AI) engine to reduce costs associated with volume and get the most bang for your buck. Often these tools are very user-friendly, which can save costs of services.

Once you have educated yourself on the different platform offerings in the eDiscovery space, you can move on to the next step and ask yourself: What do we need for this particular litigation, and what is a reasonable budget?

Again, this can be addressed in somewhat of a continuum. On one end, you may have a circumstance where you just need a good filing system and a place for various attorneys to log in, pull documents by bates and folders and thoughtfully organize things, and do some simple search and review of documents.

On the other extreme, you might have a large volume of documents, a tight deadline, not many people available to review, but a good amount of funding. In this case, you could hire eDiscovery and AI consultants to work with a couple of attorneys, use the most robust AI engine you can find, and dig in with the best tools and services using only a couple of attorneys to assist the eDiscovery and AI specialists to defensibly and efficiently find what you need with a short turnaround time.

Another example would be having multitudes of attorneys available to review, not much funding, and no imminent deadline. For this, conducting attorney review with review protocols and review batches might be the way to go.

Finally, the type of ESI matters. Are you reviewing mainly emails and corporate documents or social media and consumer documents? Different platforms can be more effective for reviewing certain types of ESI.

All things considered, my advice is not to get married to an eDiscovery platform but to educate yourself in the resources available through vendor demos and CLEs so that when a new project arrives, you are ready to tackle it in the most thoughtful, timely, and cost-effective way possible.

I believe Suzanne's words of wisdom will benefit those of you who handle civil litigation. E-discovery can be difficult, and all lawyers need to be current on the resources available to them. If you have any questions, contact Suzanne at 800-898-2034 or by email at Suzanne.Clark@BeasleyAllen.com.

XXII.
RECALLS UPDATE

A large number of safety-related recalls were issued during May. We mentioned several in the Motor Vehicle Litigation Section in this issue. There are other significant recalls available on our website, BeasleyAllen.com/Recalls/. We attempt to put the latest and most important product recalls on our site throughout the month. You are encouraged to contact Shanna Malone, the Executive Editor of the *Jere Beasley Report*, at Shanna.Malone@BeasleyAllen.com if you have any questions or to let her know your thoughts on recalls. We would also like to know if we have missed any significant recalls over the past several weeks.

XXIII.
FIRM ACTIVITIES

Lawyer And Employee Spotlights

Anna Adams

Anna Adams works in the firm's Personal Injury & Products Liability Section in the Mobile office as a Paralegal. She works with Beasley Allen lawyer Wyatt Montgomery. In her position, Anna works with clients to answer discovery, draft pleadings, obtain medical records and various documents, and research. Anna joined the firm in 2021 and has been an asset to the team! We are thankful to have Anna, a hard-working and dedicated employee, helping our clients.

Anna is a native of Gadsden, Alabama, and for the past 11 years, she and her dog, Nolan, have lived in Mobile. Anna shares that she loves living on the coast and enjoys almost anything outdoors. Whether traveling or experiencing different cultures, her friends say you will find Anna having a great time and making wonderful memories wherever she is! She says she loves traveling so much that she is always planning her next destination!

When asked what her favorite thing about working at Beasley Allen has been, she said it is working closely with clients. She added, "I love helping people, and the feeling of appreciation that clients show makes the work very rewarding."

Margarita "Maggie" Arellano

Margarita "Maggie" Arellano has joined the firm and is a lawyer in our Toxic Torts Section. She assists in handling Camp Lejeune claims. Maggie brings experience she obtained while serving as an Alabama Court of Civil Appeals Staff Attorney and Elmore County, Alabama, Assistant District Attorney.

A California native, Maggie left her home state at 14 to attend Phillips Academy in Andover, Massachusetts. While at Phillips, she visited every state on the East Coast and completed a study abroad program in Paris, France. She then attended Smith College in Northampton, Massachusetts, graduating with a B.S. in neuroscience and biology in June 2016. In December 2020, she earned her Juris Doctor from Mississippi College School of Law, graduating *magna cum laude*. She made the Dean's List and served on the Mississippi College Law Review.

During law school, Maggie was the Moot Court Board Vice Chair and was selected to compete in trial, appellate, and arbitration competitions. As a Moot Court Board member, she participated in pretrial and trial seminars focused on litigation and trial strategies. In her second year of law school, Maggie received her limited-practice card. She worked as a summer associate for a private law firm in Jackson, Mississippi, helping prepare for trials, oral arguments and mediations.

Maggie says she became a lawyer to impact others and solve problems. She explains:

As an attorney, I can make a difference because I am constantly presented with opportunities to shape the law. Facing conflicts allows me to use my creativity and skills to come up with resolutions.

Maggie believes Beasley Allen's creed aligns with her professional goals and sets the firm above the rest. She says:

'Helping those who need it most' demonstrates that clients are the heart of the firm, which makes Beasley Allen stand out from other law firms.

Maggie is an active member of the Alabama State Bar, the D.C. Bar, and the National Institute for Trial Advocacy (NITA). She also mentors law students and judges student trial competitions. We welcome Maggie to the firm!

Lauren Miles

Lauren Miles joined Beasley Allen's Consumer Fraud & Commercial Litigation Section as a law clerk in 2014. She rejoined the same section in 2018 and handles consumer fraud class action litigation in the healthcare industry. Lauren also works on *qui tam* cases under the False Claims Act.

Lauren decided to practice law after seeing how she could change people's lives. She explains:

I became an attorney because of Mr. Beasley and my dad. Growing up, I was able to see first-hand how fulfilling and impactful 'helping those who need it most' was, and I'm so grateful for the opportunity to walk in their shadows and make a difference in my community by taking a stand against bad actors.

In 2012, Lauren graduated from Birmingham-Southern College with a B.A. in political science. While at Birmingham-Southern, she was selected to several national academic honor organizations and was on the Dean's List. Lauren was also active in the Greek communities, EnACT Club, and student art league. Further, she interned for Senators Lindsey Graham and Richard Shelby in the U.S. Senate.

Lauren graduated from Samford University's Cumberland School of Law in 2015. She was a member of the Cumberland Women in Law organization and Cumberland Environmental Law Society during law school. She also participated in Cumberland's community outreach programs while repeatedly receiving Dean's List recognition.

Lauren says she appreciates how the law impacts her clients and others. She adds:

My favorite part of practicing law is how gratifying it can be, especially seeing how hard work and our firm's commitment to seeking justice results in both righting a wrong done to our clients and making a change for the better that benefits our whole community.

According to Lauren, Beasley Allen's enthusiastic and supportive lawyers make it a unique firm. She explains:

The wisdom and confidence our older lawyers make a priority to instill in the younger generation and their example in keeping our small-town values, putting faith and family as a priority, is invaluable.

An Alabama State Bar member, Lauren is active in the Young Lawyers and Women's Sections. She is also a member of the National Trial Lawyers Association, Young Lawyers Section of the Birmingham Bar Associa-

tion, American Bar Association, Federal Bar Association, Phi Alpha Delta Legal Society and Pi Sigma Alpha Political Science Honor Society.

Lauren supports King's Home and the WellHouse Birmingham. She is also a Catholic Social Services Board of Directors member, Birmingham Southern Young Alumni Committee Board member, and advisor to her sorority chapter.

Lauren is a talented lawyer who works very hard and is dedicated to helping her clients receive justice. We are blessed to have Lauren with us.

Renea Shirley

Renea Shirley is a Paralegal in our Toxic Torts Section, where she assists Beasley Allen lawyers with various tasks and projects, ranging from client intake to making follow-up phone calls to clients and running due diligence on open projects. Renea joined the firm two years ago and has been an asset to the lawyers in the section! We are thankful to have Renea with us!

Renea shares that she raised two wonderful children and helped raise a precious adopted grandchild, niece, and nephew. She is also grandmother to eight grandchildren, all of whom she adores! And whenever possible, Renea enjoys spending time with all of her family, making what she describes as "precious memories." She also enjoys beach trips, even just for lunch, undertaking home remodel projects, and spending time with her sister and friends relaxing and enjoying each other's company.

Renea says her favorite thing about working at Beasley Allen is the team of lawyers and her Director, Tracie Harrison. She says, "Beasley Allen is the best place I have ever worked, and we have the best team in the business!"

Renea is a hard worker and is dedicated to helping clients receive justice. She is an asset to the firm.

Latoria Thomas

Latoria Thomas is a Staff Assistant in the firm's Mass Torts Section in the Montgomery office, where she assists with managing filed client cases related to the Johnson & Johnson talcum powder litigation. Latoria initially launched her career with Beasley Allen in 2018 and, after a short time away, returned to us in 2021. We are thankful to have Latoria with us, and we appreciate all her hard work!

Latoria shares that she is a single mom of two children, daughter Parys (13) and son Jarys (5). She and her two children recently moved into their new home, which Latoria says they "absolutely love." After settling in, they have enjoyed DIY projects and making the house their home. They also enjoy family game nights, dining out, and going to waterparks. In her free time, Latoria loves to read fiction novels and play pool.

Latoria says her co-workers are her favorite thing about working at Beasley Allen. She added, "We aren't just co-workers; we are family. We all pull together to provide the best service to our clients that we possibly can."

Ken Wilson

Ken Wilson joined Beasley Allen's Toxic Torts Section in 2020. He is located in our Atlanta office. Ken has been working with Georgia Attorney General Christopher Carr in the state's opioid litigation.

Ken has experience handling various legal matters, including automobile, premises liability, trucking, environmental, and products liability litigation. He has worked at one of Atlanta's top insurance defense firms and served as in-house counsel for a Fortune 500 insurance company.

From a young age, Ken says he knew he wanted to become a lawyer. He says:

> *My desire to become an attorney started in my adolescent years when I developed a deep interest in those that stood for justice, such as Charles Hamilton Houston, Thurgood Marshall, and Martin Luther King. The more I learned about those that fought against injustice, the stronger my desire grew to become an attorney to help those in need seek justice.*

Ken graduated with honors from Morehouse College in 2010, earning his B.A. in English and literature with a minor in philosophy. He then attended Mercer University's Walter F. George School of Law, graduating in 2014 with his Juris Doctor degree. During law school, Ken served as treasurer of the Black Law Students Association. He was also a member of the Public Interest Committee.

Ken says he enjoys practicing law because of the unique opportunity to help others and make a difference in their lives. He explains:

> *My favorite part of practicing law is seeing the gratitude on our clients' faces due to a result in their case or just simply the fact that they were able to be heard in court.*

Ken has been selected to the 2023 Georgia Super Lawyers and Rising Stars list and the National Black Lawyers Top 40 Under 40 list. He is a member of the Georgia State Bar, Dekalb County Bar Association and Georgia Trial Lawyers Association. He is also a Kappa Alpha Psi Fraternity, Inc., and Phi Alpha Delta Law Fraternity, International member. From 2017 to 2019, Ken served as a Clayton County Community Service Board member.

Ken says he is grateful to have the opportunity to practice law at Beasley Allen. He says that the firm's motto, "helping those who need it most," is put into action daily by our firm's lawyers. Ken is a definite asset to the firm. Ken is a hard-working, dedicated trial lawyer who seeks justice for his clients. We are blessed to have him with us.

XXIV.
SPECIAL RECOGNITIONS

Beasley Allen Verdict Among California's Top Ten In 2022

Last year, lawyers in Beasley Allen's Consumer Fraud and Commercial Litigation section achieved one of the top ten verdicts in California. The class action, Siqueiros et al. v. General Motors LLC, resulted in a $102.6 million verdict after several years of litigation. Our lawyers Clay Barnett, Mitch Williams, Rebecca Gilliland, and Dylan Martin, along with members of the DiCello Levitt firm, tried this case before a San Francisco jury.

TopVerdict.com's top ten list includes various types of cases, including civil rights, personal injury, wrongful death, economic loss, and environmental cases, which were tried in California's state and federal courts.

The plaintiffs our lawyers represented in the case against GM alleged that the automaker knew its Generation IV Vortec 5300 LC9 engines had defective piston rings but continued to sell vehicles with the faulty engines anyway. The defect pulled oil into the combustion chambers leak, where it burned away, causing oil starvation and aggressive internal component wear condition. The affected vehicles were at risk of stalling and breakdowns, putting drivers, passengers, and other motorists at risk of injury and death.

GM installed the faulty engines in tens of thousands of GM SUVs and trucks sold between 2010 and 2014. Affected models included the Chevrolet Avalanche, Silverado, Suburban, and Tahoe, and the GMC Sierra, Yukon, and Yukon XL.

The lawsuit was tried in the U.S. District Court for the Northern District of California. The jury found that the automaker violated the breach of implied warranty of merchantability in California and North Carolina and violated the provisions of the Idaho Consumer Protection Act.

Source: Topverdict.com

Two Beasley Allen Lawyers Recognized In CaseMetrix's "Top 10 In 2022" Motor Vehicle / Trucking Settlements List

Beasley Allen Personal Injury & Products Liability Section lawyers handled 20 percent of the cases recognized by CaseMetrix in its "Top 10 Motor Vehicle/Trucking Settlements in 2022" listing. The personal injury settlement and verdict data provider reviewed all the case settlements it received throughout the year to develop the top 10 list. CaseMetrix is said to be the leading provider of personal injury settlement and verdict data in the Southeastern United States.

CaseMetrix recognized a case handled by Chris Glover, Managing Attorney in our Atlanta office, which resulted in a $45 million settlement, and a case handled by Parker Miller, who also is in our Atlanta office, which resulted in a $17.25 million settlement.

Chris and Darren Penn with Penn Law represented the family of a 9-year-old boy paralyzed in an automobile accident. The lawyers uncovered evidence that the Jeep Wrangler Unlimited that collided with the plaintiff's Honda Civic had an illegal lift kit installed. The illegal component, made by Pro Comp, contributed to the child's injuries.

Pro Comp denied making the part. Through substantial discovery and hours underneath the Jeep, Chris found a vehicle part with Pro Comp's serial number, connecting the illegal lift kit to Pro Comp. The legal team reached a $36 million settlement with Pro Comp and prior settlements totaling $9 million with other defendants, resulting in a $45 million settlement for the family.

In Parker Miller's case, he and Jonathan Hayes of Hayes & Lina represented the four adult children of a 54-year-old woman killed when a commercial truck struck her vehicle along a rural Alabama highway. The defendants vehemently contested and disputed liability. In the end, justice prevailed, and the lawyers secured a $17.25 million settlement for the victim's family.

CaseMetrix also recognized Chris in its Top 10 Motor Vehicle/Trucking Settlements for the 2021 list. As reported last month, Chris' $45 million settlement was included in CaseMetrix's "Top 10 Premises Liability, Products Liability & Medical Malpractice Settlements in 2022."

Source: CaseMetrix

GTLA Appoints Beasley Allen Lawyers To Executive Board

Beasley Allen is delighted to announce that two of our Atlanta lawyers, Chris Glover and Alyssa Baskam, were recently reappointed to the Georgia Trial Lawyers Association (GTLA) Executive Board. This organization has been instrumental in protecting Georgia's civil justice system and the rights of all Georgians to seek justice. Chris and Alyssa have served the GTLA in various positions for several years.

Chris, our Atlanta office Managing Attorney, is now the GTLA's Grassroots Committee Co-Chair for the 2023-2024 term. He will travel around the state to meet with members and provide updates on what is happening within the GTLA. He will also work to build camaraderie among the association's members. Chris has dedicated his practice to defending the rights of those whose lives have been impacted by catastrophic personal injury and wrongful death. His experience as a trial lawyer allows him to see the importance of GTLA's mission every day. Chris said:

> *GTLA is the most important organization to assure that our clients' access to justice is never compromised, that we are well-educated as lawyers, and have fellowship amongst our members.*

Alyssa is a lawyer in the firm's Personal Injury & Product Liability Section in the Atlanta office and was appointed as the GTLA Membership Committee Co-Chair. In this new role, she will act as a bridge between GTLA's executive committee and its members and between the GTLA and trial lawyers who are not members to increase membership. Alyssa said:

> *Ultimately, GTLA's mission is always to protect the constitutional promise of justice for all by guaranteeing the right to trial by jury, preserving an independent judiciary, and providing access to the courts for all Georgians. Serving on the GTLA leadership committee is important to me because of my respect for GTLA's mission and my desire to participate in supporting that mission. GTLA protects all of our clients through its work, and I am honored to help in any way I can.*

Gavin King Coordinates Annual Montgomery Minority Pre-law Conference

The Alabama State Bar Young Lawyers Section hosted its annual Montgomery Minority Pre-Law Conference recently. Beasley Allen lawyer Gavin King, a lawyer in our Toxic Torts Section, helped coordinate the event for the second consecutive year. The conference allows minority students to hear about practicing law, earning a law degree, and careers available to those holding law degrees.

Gavin spoke to Montgomery Public School students about becoming a lawyer. Additional conference speakers included Chief District Judge Emily C. Marks and Senior District Judge Myron H. Thompson of the U.S. District Court for the Middle District of Alabama, and Montgomery County Probate Judge J.C. Love.

Students attending the conference received information about law school admission requirements, heard panel discussions on careers available to those with Juris Doctor degrees, participated in small group sessions with local lawyers, networked with other students seeking a legal career and viewed portions of a mock trial competition. Gavin and fellow Young Lawyers Section Executive Committee members Miland Simpler and Chenelle Smith explained aspects of the mock trial to students as they watched the video.

This year's conference occurred in the historic Frank M. Johnson Jr. Federal Courthouse, the perfect setting for the event. Judge Frank M. Johnson made a large number of critical rulings in this courthouse during the Civil Rights Era, including bus desegregation in 1956 and allowing the Selma to Montgomery march to proceed in 1965. His record on litigation relating to civil rights is unmatched, and Judge Johnson left a tremendous legacy.

Gavin was proud to be part of the minority pre-law conference. He says:

It feels great to inspire the next generation of minority lawyers to persevere, no matter what obstacles they face. Hosting this year's conference in the historic Frank M. Johnson Federal Courthouse helped show students that even when the odds are stacked against them, they can still succeed. I hope they gained insight into not only the practice of law but also into overcoming trials and tribulations.

If you have questions, contact Gavin King at 800-898-2034 or by email at Gavin.King@BeasleyAllen.com.

Kendall Dunson And The University Of Alabama Honor First Black Law Grads

Beasley Allen lawyer Kendall Dunson, a member of the firm's Personal Injury & Products Liability Section, recently co-hosted a 50th Anniversary Gala commemorating the first African American graduates of the University of Alabama School of Law.

The occasion was a century in the making. It wasn't until 1972 –100 years after the Alabama School of Law was founded – that Michael Anthony Figures, Booker T. Forte, Jr., and Ronald E. Jackson became the first Black students to graduate from Alabama Law. A fourth student, John H. England, was drafted into the U.S. Army while in law school but returned to graduate in 1974 upon completing his military service. Kendall, a 1996 Alabama Law graduate, had this to say about those honored:

I am truly grateful for the courage and tenacity of the trailblazers who made it possible for me and other people of color to matriculate through the University of Alabama School of Law. Their sacrifices, along with the sacrifices of countless others, should never be forgotten.

The April 21 Anniversary Gala included stories, presentations, and performances by Alabama alums and current students, many of which illustrated the ostracization, exclusion, and other obstacles driven by racism that Black students at Alabama Law endured. The Gala concluded with the announcement of the planned building of the Path Makers Legacy Plaza, a $1.5 million outdoor space honoring the first three African American Law school graduates. The semi-circular plaza will be built outside the Bounds Law Library and include three prominent arches representing the original graduates.

Kendall said:

I'm also proud of the University of Alabama. While Governor Wallace's attempt to perpetuate segregation at the school will never be forgotten, The Path Makers Legacy Plaza will be a visual reminder of the school's past and future commitment to integration, diversity and opportunity for all, regardless of skin color.

Beasley Allen Lawyers Judge Jones School Of Law Moot Court Competition

Elizabeth Weyerman and Marion Brummal, lawyers in our firm's Toxic Torts Section, had the distinct pleasure of judging the 2023 John Garman 1L Moot Court Competition at the Thomas Goode Jones School of Law on April 22. Legal Research and Writing professors nominated 12 first-year students based on their oral arguments supporting their recently submitted appellate briefs.

Each student competed in two 45-minute rounds. In the first, each student represented the viewpoint supported in the briefs they had spent months researching, writing, and arguing. For the second round, each had to represent the opposing client. Elizabeth said:

I feel fortunate to have had the opportunity to score two sets of students embarking on what will surely be promising legal careers. Each student displayed an excellent grasp of the legal issues and exuded an air of professionalism.

Both Elizabeth and Marion had similar moot court experiences as students at Samford University's Cumberland School of Law and Louisiana State University Paul M. Herbert Law Center, respectively. Marion said:

As a moot court participant, I was very appreciative of the feedback I received from practicing attorneys and was honored to give back and offer critiques and advice to these first-year students by serving as a judge in the competition. Our hope is that our words will encourage their natural talent going forward in summer clerkships, schooling, bar prep, and legal practice.

Beasley Allen instills in its lawyers the value of giving back and volunteering their valuable time to promote quality advocacy in the next generation of lawyers. Elizabeth said: "It is always fulfilling to represent Beasley Allen and give back to our community."

AAJ CEO Linda Lipsen Accepts The Esther Peterson Consumer Service Award From The Consumer Federation Of America

My longtime friend Linda Lipsen received the 2023 Esther Peterson Consumer Service Award from the Con-

sumer Federation of America (CFA). Linda is the Chief Executive Officer of the American Association for Justice (AAJ). She began working for the organization in 1993 when it was the Association of Trial Lawyers of America. This distinguished award honors consumer advocates who walk in the footsteps of consumer advocate pioneer Esther Peterson.

Esther Peterson helped spur the creation of CFA, asking consumer advocacy, cooperative, and labor organizations to form a coalition. To that end, she was known for bringing people together and getting politicians to champion consumer causes. She worked as the first female lobbyist for the AFL-CIO and went on to become the highest-ranking woman in the Kennedy Administration. Ms. Peterson served Presidents Johnson and Carter and created a space in the White House for consumer affairs. Esther Peterson's achievements continue to impact consumers, from establishing grocery unit pricing and "open by" dating to truth in labeling and occupational safety for workers.

Linda's public policy accomplishments include leading the trial lawyers' highly regarded Washington lobby team and successfully fighting back efforts limiting access to America's courts and making it impossible for the victims of wrongdoing to be fairly compensated. She has directed countless legislative campaigns on behalf of various issues, including patient, worker, and investor protections.

Upon receiving the award, Linda said:

> *Esther Peterson is my advocacy idol. It's truly humbling to be mentioned in the same sentence as her. She was incredibly optimistic and effective in her decades of service on behalf of consumers trying to get a fair shake when they are hurt by negligent companies. Her impact is still felt today.*

Previously, Linda has received other prominent recognition and numerous awards for her advocacy on behalf of injured Americans, including, among others, the "Senator Paul Wellstone Award" from U.S. Action, the "Esther S. Weissman Eternal Optimism Award" from Workers' Injury Law & Advocacy Group (WILG), and the Marie Lambert Award.

Linda is regularly recognized in leading Capitol Hill and legal publications such as *The National Law Journal* as one of Washington's most influential women lawyers, T*he Hill* as a top lobbyist in recognition of her outstanding professional achievement and *Roll Call* as one of Washington's most effective lobbyists.

Before joining AAJ, Linda directed the legislative advocacy program for Consumers Union, the publisher of *Consumer Reports*. In that capacity, she represented consumers on Capitol Hill on various issues, including antitrust, insurance reform and health care. Linda earned her B.A. from the University of Wisconsin and her J.D. from the Antioch School of Law.

Chuck Bell, Programs Director at *Consumer Reports*, congratulated Linda for receiving the award based on her "long-haul leadership in advocacy for [c]onsumer rights and economic justice." He thanked her for "all the hard work and victories that point the way toward a fairer and more just society."

The CFA is an association of more than 250 nonprofit consumer organizations established to advance the consumer's interest. The organization presented Linda with the award during its 51st Annual Awards Celebration held last month. The celebration was held at the close of the organization's annual Consumer Assembly, where panelists explored consumer issues like navigating the court system, climate risks and their connection to the growing insurance gap, and the continuing medical debt epidemic, among other consumer interest topics.

As I said at the beginning, Linda is a very good friend, and I can attest to her dedication and hard work on behalf of consumers and victims of corporate wrongdoing. She has been a true defender of the rights of consumers and a champion in the ongoing battle to preserve the civil justice system and uphold the right to trial by jury. Truly, Linda Lipsen is a great American!

Sources: Consumer Federation of America and American Association for Justice

XXV.
FAVORITE BIBLE VERSES

Several lawyers and staff employees who are being featured this month share their favorite Bible verses in this issue.

Anna Adams

Anna says her favorite Bible verse reminds her to stay strong and face life's challenges with faith and confidence.

> *For God so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life. Be strong and courageous. Do not be afraid; do not be discouraged, for the Lord your God will be with you wherever you go.* Joshua 1:9

Lauren Miles

Lauren says that her favorite Bible verse provides her with daily encouragement. She said, "It's so easy to be discouraged hearing how at odds our community seems to be, but the verse reminds me that a rising tide lifts all boats and God's example to be better than my baser instincts is rewarding to heart and soul."

> *And let us consider how to stir up one another to love and good works, not neglecting to meet together, as is the habit of some, but encouraging one another and all the more as you see the Day drawing near.* Hebrews 10:24-25

Renea Shirley

Renae says John 3:16 is her favorite Bible verse because it tells you all you need to know about how much God loves you.

> *For God so loved the world that he gave his one and only Son, that whoever believes in him shall not perish but have eternal life.* John 3:16

Ken Wilson

Ken provided three of his favorite Bible verses this month.

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

I can do all things through Christ who strengthens me. Philippians 4:13

Trust in the Lord with all your heart, And lean not on your own understanding; In all your ways acknowledge Him, And He shall direct your paths. Proverbs 3:5-6

XXVI.
CLOSING OBSERVATIONS

Hopefully, The Crisis In America Was Avoided

In January, the U.S. government hit its debt ceiling or ran out of money to pay its bills. However, as Treasury Secretary Janet Yellen explains, her department has been able to buy some additional time through "extraordinary measures" or "accounting gymnastics," as *Vox* described. But those accounting tactics are dwindling. The date when all options are exhausted is known as "X – Date." As of this writing, Sec. Yellen predicts that date could be as early as June 1. Other economists believe it could be within the first two weeks of this month. Regardless, if such an unprecedented intentional event occurs, it would have severe and lasting detrimental effects on the U.S. and a far-reaching global impact. To put it mildly, failure to act would be catastrophic and devastating.

This part of the *Report* was written prior to June 1. Hoping and praying that our leaders in Washington will have put the welfare of our nation and its people above "politics" and "egos," I have to believe the crisis was dealt with. At least, I am assuming the debt ceiling issue has been resolved. Therefore, the assessment in the writing below comes believing this critically important crisis was resolved. In any event, a historical rendition of the issue and the consequences of inaction follows.

The Debt Ceiling, Budget and Deficits

The debt ceiling sets the maximum amount of debt the U.S. government can acquire. Each year, the federal government passes a budget detailing how much it will spend on programs that keep the country running. It brings in revenue to pay for the programs. A deficit occurs when there isn't enough money from revenue to fund the programs. The government will issue debt through Treasury bills, notes and bonds to help cover the deficit.

Congress created the "debt ceiling" through the Second Liberty Bond Act of 1917 to provide flexibility in funding World War I. In 1939, Congress adjusted its approach to the debt ceiling – setting the total combined limit for the national debt, *The Washington Post* reported. Since then, Congress has regularly voted to approve an increase in or suspend the self-imposed limit 102 times.

Weaponizing the Debt Ceiling

In 1953, during the Eisenhower administration, the debt ceiling was first used as a political bargaining tool, a maneuver at the center of the crisis we are witnessing today. The process is driven by the desire to control the debt, thereby, the budget and, as a result, have a more substantial influence over policymaking. The minority party, with limited political power and control, uses the debt ceiling negotiations as leverage to force as many concessions as possible for its own political agenda. Such brinksmanship could have detrimental outcomes if those involved misjudge the circumstances and stakes, which appear may happen this month.

The current battle comes down to the Republicans refusing to raise the debt ceiling without significant spending cuts on programs the Biden administration and Democrats value for the American people. The president remains committed to raising the debt ceiling and addressing spending cuts negotiations independently. If neither party yields, the U.S. government will default on its debt. It won't be able to pay for things like the military or Social Security and Medicare.

Sounding the Alarm

The U.S. government has never intentionally defaulted, though a few events came too close for comfort. For instance, the Treasury Department reported that a similar debt ceiling debate in 2011 "harmed job growth, roiled financial markets and lowered consumer and business confidence," NBC News said. The 2011 debate also resulted in the S&P Global Ratings agency downgrading the soundness of the U.S.'s credit for the first and only time ever, driving up the interest on existing debt.

Although this is uncharted territory, economists, Sec. Yellen, Defense Secretary Lloyd Austin, Joint Chiefs of Staff Chair Gen. Mark Milley and even Corporate America are sounding the alarm. They warn that families, small to mid-size businesses, the military and the families represented in the military and national security hang in the balance of this political chess game. The following are among the results they predict.

- The U.S. creditworthiness could be downgraded once again by the credit rating agencies.
- It would cost consumers, businesses and homeowners more to borrow money by driving up the interest rates on credit cards, loans and mortgages.
- Consumer and business confidence would decline, sending the U.S. economy into recession – likely worse than the "Great Recession" in 2008 after the Lehman Brothers collapse.
- Moody's Analytics forecasts that a prolonged debate could drive stock prices down by almost a fifth, reducing the economy by 4%, translating to more than seven million lost jobs – increasing the unemployment rate by as much as five percentage points.

- Sec. Austin told lawmakers that the Defense Department "won't in some cases be able to pay our troops with any degree of predictability," *The Hill* reported. Military families we ask to sacrifice so much could face even more financial strain.
- Gen. Milley told lawmakers that a default by the U.S. government could "embolden China and increase risk to the United States."

The Council on Foreign Relations explains how the default could also have a global impact. It said:

Over half of the world's foreign currency reserves are held in U.S. dollars, so a sudden decrease in the currency's value could ripple through the market for treasuries as the value of these reserves drops. As heavily indebted low-income countries struggle to make interest payments on their sovereign debts, a weaker dollar could make debts denominated in other currencies relatively more expensive and threaten to tip some emerging economies into debt crises.

It further noted that a U.S. default could "also benefit aspiring great-power rivals such as China."

Economists and others suggest alternatives to prevent default, yet the most direct approach is for politicians to put aside their rhetoric and personal agendas and genuinely lead the country. Recognize what is needed for the good of the country and the global markets and commit to forging a path that leads to unity and success.

Hopefully, the leaders in our nation's capital came to their senses and resolved the crisis. If that didn't happen, we are all in for some very hard times in America. Also, the adverse effects would be felt abroad. My prayer was for all concerned to put politics aside and to do the right thing.

Sources: *Vox*, Council on Foreign Relations, Congressional Research Service, *The Washington Post*, NBC News, and *The Hill*

XXVII.
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

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.

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.

Rep. John Lewis on movement building in *Across That Bridge: A Vision for Change and the Future of America*

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

Bryan Stevenson, 2019

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

XXVIII.
PARTING WORDS

I have learned over the years that a lawyer needs to set priorities that apply in their work life but also in their personal life. Setting priorities and then keeping them daily is critically important. This applies to all lawyers at Beasley Allen. These are the priorities for all of us in the firm: put God first, family second, and with Beasley Allen third, in that order. While these priorities are to be followed at the firm on a voluntary basis, I believe they are firmly in place and followed.

I learned for certain about 40 years ago that when God is in control and firmly first, numbers two and three on the priority list will be taken care of and will be in good order. It took my time in politics and a devastating defeat in my attempt to become Governor of Alabama to make me finally realize I had my priorities all mixed up. Sara and I prayed for direction in our life, and God made sure I got the message. I found myself a defeated politician with no job and in debt from the campaign. At that time – with a strong word of "encouragement" from Judge Frank Ms. Johnson in early January of 1979 – I opened my law office as a sole practitioner in Montgomery. I made my priorities in life those I now recommend to all at Beasley Allen.

My prayer is that others will see the need to put God at

the top of their list of priorities. Regardless of who they are, what they may do, or what political party they are associated with, that priority list is needed, and it will work in their lives.

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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. His short-lived political career ended in 1978 when he ran, unsuccessfully, for Governor.

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 of products liability, insurance fraud, business litigation 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's primary offices are based in Atlanta, Georgia, Dallas, Texas, Mobile, Alabama, and Montgomery, Alabama. Beasley Allen is one of the country's leading firms involved in civil litigation on behalf of claimants. The firm has been privileged to represent businesses and hundreds of thousands of individuals who have been wronged by no act of their own.

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LAW FIRM

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.