The JERE BEASLEY REPORT

January 2022

beasley allen
LAW FIRM

I.
CAPITOL OBSERVATIONS

The 2010 BP Oil Spill

Our firm represented the State of Alabama in the Gulf Oil Spill litigation, and our lawsuit, which was filed in August 2010, was the first state government lawsuit to be filed against BP in the litigation. Rhon Jones and Parker Miller led the team from our firm that handled the state's case. Aside from litigating the case in Louisiana federal court before U.S. District Judge Carl J. Barbier, marshaling the state's experts and prosecuting the State's case in discovery, Beasley Allen lawyers were actively involved in the intense settlement negotiations that resulted in a historic $2.8 Billion settlement for Alabama.

One of the most significant settlements in Alabama's history, this settlement took place in 2015 and was announced publicly on July 2 that year. We wrote about the settlement in some detail in the September 2015 issue of the Report. We were honored to represent the state and get the ball rolling in this most important litigation.

Alabama has received funds from the settlement over the past several years. In December, it was announced that Alabama, Florida and Mississippi will receive more than $103 million in BP oil spill settlement money for new and continued coastal projects.

The 11 new projects and two extensions from the foundation's Gulf Environmental Benefit Fund bring its total allocations across the five Gulf states to $1.6 billion. The fund was established to address damage and limit the future risk of harm to natural resources affected by the 2010 BP oil spill. It received $2.5 billion in settlement money that resulted from criminal charges against BP and other defendants involved in the BP oil spill.

Alabama and Florida are getting more than $43 million and nearly $33 million, respectively. The money will support four new projects in Alabama and one new project in Mississippi. The rest of the funds, $27 million, will support six new projects and two existing Mississippi projects.

The new Alabama projects will help slow beach erosion and restore natural habitats. One project will fund the engineering and design of Dauphin Island's west end beach and restore the beach's dunes. The other three projects are intended to slow eroding shorelines and repair Mobile County's coastal marsh.

Florida plans to use its award to acquire and manage about 32,000 acres (13,000 hectares) of wetland and floodplain habitat in the Apalachicola watershed. That's aimed at ensuring sufficient freshwater and nutrient flow to Apalachicola Bay and the Gulf of Mexico to support oysters and marine fishes.

Mississippi's new projects will expand and enhance artificial reefs across the Mississippi Sound and restore and protect vulnerable coastal habitats along the Mississippi Gulf Coast.

Our investigation led to Alabama filing the first lawsuit against BP started the litigation, which resulted in other states filing suit and the Department of Justice getting involved. This is a classic example of what we do at Beasley Allen and that our work is so important.

Source: Associated Press

Activity In Our Mobile Office – General Maritime and Jones Act Negligence Case

Wyatt Montgomery and Evan Allen, lawyers in our firm's Mobile office, have filed a case under General Maritime Law and The Jones Act. The lawsuit was filed against a ship owner on behalf of the ship's captain, severely injured while performing his duties aboard the vessel. The lawsuit alleges that the ship's owner negligently failed to provide its crew with a seaworthy vessel, violating General Maritime Law and The Jones Act.

Under General Maritime Law, a vessel is unseaworthy if it is not reasonably fit for its intended purpose. It can result from either a temporary or permanent defect in the vessel, her equipment, or the procedures crew members are instructed to use for their assigned tasks. In this particular instance, the owner of the vessel failed to provide a non-skid coating on staircases, resulting in the captain's fall and permanent injury.

Unlike the remedies provided by the Alabama Workers' Compensation Act, when an employee, or "seaman" as defined by The Jones Act, is injured aboard a vessel while performing his duties, there are several causes of action available to the injured seaman: unseaworthiness under General Maritime Law, negligence under General Maritime Law, negligence under The Jones Act, and a claim for maintenance and cure.

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Additionally, a Jones Act plaintiff has damages available to him that the Alabama Workers' Compensation Act does not provide. For instance, not only is an injured seaman entitled to compensation for maintenance and cure, but they are also entitled to reasonable compensation based on the number of medical expenses, lost wages, earning capacity, and damages for mental anguish and pain and suffering.

If you would like to know more about this case, or if you have a client who has been severely injured on a navigable waterway, contact Wyatt Montgomery or Evan Allen in the Beasley Allen Mobile office. Wyatt and Evan can be reached at 800-898-2034 or by e-mail at Wyatt.Montgomery@BeasleyAllen.com and Evan.Allen@BeasleyAllen.com.

II.
BIG TRUCK ACCIDENT LITIGATION

Litigating Left-Hand Turn Trucking Cases

When a lawyer investigates a potential tractor-trailer case, breaking down the driver's actions is important. In left-hand turn cases, consider the legality of the turn. Was it a forbidden U-turn? Did the driver pull out in front of your plaintiff? Then assert that the plaintiff was at fault for speeding.

After determining whether the left-hand turn in itself was legal, consider the mechanism of left-hand turns in a tractor-trailer. Of course, the trailer "off tracks" or "cheats," meaning that the wheels of the trailer and the trailer follow a path narrower than the tractor.

If your client was struck by the driver's side of the trailer, then be prepared to ask the defendant driver of the tractor-trailer a series of questions about the "off-tracking" of his trailer. What is his understanding of "off-tracking? Why does he want to account for the tracking of his trailer? Why is executing button hook turns important to account for the tracking of the trailer?

If, in the alternative, an impact occurs on the right side of the tractor or trailer, be prepared to analyze this event differently. The driver has a duty to scan for hazards such as incoming traffic. When they begin a left-hand turn, the driver knows or should know that there are approximately three to six seconds when they are completely blind to the right and all incoming traffic.

If a driver perceived a hazard such as your client's oncoming vehicle and chose to execute this left-hand turn, they consciously decided to turn a blind eye to the incoming hazard for three to six seconds. The drivers of these tractor-trailers know the weight of their vehicles and are certainly aware that they cannot get up to the speed of traffic quickly.

You can expose the fault of these drivers of big trucks and eliminate the fault that the driver attempted to place on your clients.

In situations where your client was speeding, consider evaluating the quality of the tractor-trailer's conspicuity tape (reflective tape). This is placed on trailers to make them more visible and will be discussed in-depth in a later issue of this Report.

If you have tractor-trailer left-hand turn cases you would like to discuss or have questions, contact Ben Keen, a lawyer in our Atlanta office, at 800-898-2034 or by email at Ben.Keen@BeasleyAllen.com

The Beasley Allen Truck Accident Litigation Team

Beasley Allen has been successfully handling major big truck litigation for years. The cases are handled by lawyers in the firm's Personal Injury & Products Liability Section, headed by Cole Portis. Many truck cases involve complicated products liability issues that are quite often overlooked and missed by lawyers who don't regularly handle product liability cases. Most cases involve speed, inattention, fatigue, and other driver issues. But there will be accidents where a products liability issue will also be involved in causing the accident.

Greg Allen, the Lead Products Liability Lawyer for the firm, has handled a number of the major truck cases involving a defective product issue. We have a team of experienced lawyers making up the Trucking Litigation Team. In addition to Cole and Greg, lawyers on the team are Chris Glover, Evan Allen, Mike Crow, Parker Miller, LaBarron Boone, Ben Baker, Warner Hornsby and Wyatt Montgomery.

If you have any questions or want to discuss a case, contact Sloan Downes, Section Director, at 800-898-2034 or by email at Sloan.Downes@BeasleyAllen.com. She will have the appropriate lawyer contact you.

III.
THE TALC LITIGATION

Johnson & Johnson Appeal Denied Again By The U.S. Supreme Court

The U.S. Supreme Court has refused to hear another appeal by Johnson & Johnson (J&J) related to talc litigation. J&J appealed a Mississippi Supreme Court decision holding that Mississippi law requires an ovarian cancer warning even though the FDA does not. The State of Mississippi sued for an injunction requiring a warning label and a retroactive penalty of up to $10,000 per bottle sold in Mississippi in the past 50 years. J&J argued that the court erred in rejecting its federal preemption defense.

Mississippi, in the lawsuit, alleged the company failed to warn consumers of the link between its talcum powder and ovarian cancer. In its order, the high court denied a petition for a writ of certiorari filed in August by J&J.

Two Supreme Court justices recused themselves from the decision: Justice Samuel Alito, who has reported that he owns the company's stock; and Justice Brett Kavanaugh, whose father previously headed the Personal Care Products Council, a cosmetics trade association that submitted an amicus brief on J&J's behalf.

The Mississippi Supreme Court found that the 7-year-old false advertising suit filed by Attorney General Lynn Fitch is not preempted by the U.S. Food and Drug Ad-

ministration's 2014 decision not to issue a warning label flagging reported cancer risks associated with the perineal use of talc.

This order is the second recent U.S. Supreme Court cert denial for J&J in its nationwide battle against many talc liability claims. The justices declined in June to review a $2.1 billion verdict won by nearly two dozen ovarian cancer patients in Missouri, despite the company›s arguments that too many claims were combined in a single trial.

The State of Mississippi is represented by Scott Grant Stewart of the Mississippi Attorney General's Office. Allen Smith and Patrick Malouf served as co-counsel for the state in the case. The case is *Johnson & Johnson et al. v. Mississippi ex rel. Lynn Fitch* (case number 21-348) in the United States Supreme Court.

Sources: Law.com and Law360.com

J&J Bankruptcy Update

As has been widely reported, Johnson & Johnson's (J&J's) newly-created subsidiary, LTL Management LLC (LTL), filed for bankruptcy in the Western District of North Carolina on Oct. 14, 2021. As we previously reported, Bankruptcy Judge Craig Whitley removed J&J's bankruptcy case from North Carolina (4th Circuit) in November. Judge Whitley also extended a stay for all actions another 60 days to give the court in New Jersey (3rd Circuit) time to become more acquainted with the case. Since those orders, the Judicial Panel on Multidistrict Litigation ruled on Dec. 3 that this stay did not apply to the transfer of actions to the MDL.

On Dec. 1, the TCC (the official committee of talc claimants, which represents people who have sued J&J alleging that its talc products cause mesothelioma and ovarian cancer) filed its first formal motion in the case. It asked the court to dismiss LTL's bankruptcy for "cause" under section 1112(b) of the Bankruptcy Code. The 3rd Circuit (and most other courts) hold that cause exists if a case is not filed in good faith.

The TCC argues that the creation of LTL was created in bad faith and its sole purpose was to allow J&J to "hinder and delay talc claimants." The burden to prove good faith in the 3rd Circuit rests on LTL, whereas in the 4th Circuit, the burden to prove bad faith would have rested with TCC. Judge Kaplan has set hearings for Feb. 16 to hear arguments regarding dismissal of the bankruptcy. https://www.realbankruptcyintel.com/. There will be lots of activity up to that date.

Beasley Allen Talc Litigation Team

Beasley Allen lawyers Ted Meadows and Leigh O'Dell head up the Beasley Allen Talc Litigation Team. Andy Birchfield, who heads up 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 use for feminine hygiene. Currently, several team members are focused on the bankruptcy move by J&J.

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

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 Eiland (Liz.Eiland@BeasleyAllen.com), Jennifer Emmel (Jennifer.Emmel@BeasleyAllen.com), Jenna Fulk (Jenna.Fulk@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), Matt Teague (Matt.Teague@BeasleyAllen.com) and Margaret Thompson (Margaret.Thompson@BeasleyAllen.com).

IV.
OPIOID LITIGATION

Opioid Litigation Update

CVS, Walgreens and Walmart were found liable last month in the first trial to reach a jury verdict in the widespread opioid litigation. The litigation over manufacturers, distributors, and pharmacies' role in causing the opioid crisis has been ongoing for nearly half a decade, led by state attorneys general and plaintiffs' lawyers in a multidistrict (MDL) in the Northern District of Ohio.

The Ohio lawsuit turned on the allegation that CVS, Walgreens and Walmart filled opioid prescriptions with insufficient oversight for many years. The jury found that the pharmacies contributed to a public nuisance in the form of the opioid crisis, lending credence to a nuisance-based theory of liability, undergirding thousands of lawsuits across the country.

The landmark verdict in Cleveland federal court came after a week of deliberations following a six-week trial. The lawsuit was bifurcated, with the jury only determining liability. A remedy trial will proceed in May 2022, with Judge Polster determining the remedy. Each plaintiff county is seeking more than $1billion in damages to pay for services to abate the crisis.

Several other cases have gone to verdict, but they have consistently been bench trials. A jury trial has also been proceeding in New York state court for several months, but it has yet to conclude. Pharmaceutical Distributors McKesson, Cardinal Health, and AmerisourceBergen are also awaiting a ruling in a bench trial in West Virginia. Likewise, those distributors face allegations of delivering opioids to pharmacies in massive quantities while performing very little oversight over the quantity of opioids delivered.

The role of pharmacists in opioid litigation has now taken a more prominent position. The recent jury verdict in Ohio federal court that found pharmacies liable

for contributing to the opioid epidemic is being seen as having far-reaching consequences.

Source: Law360.com

Purdue Pharma's Opioid Settlement Sidetracked

A federal judge has derailed the settlement between Purdue Pharma and thousands of state, local and tribal governments. As a result, the settlement won't go forward. As previously reported, Purdue, the maker of the prescription painkiller OxyContin, has been sued extensively around the country for its role in the opioid epidemic.

Judge Colleen McMahon of the U.S. District Court for the Southern District of New York said that the settlement, part of a restructuring plan for Purdue approved in September by a bankruptcy judge, should not go forward because it releases the company's owners, members of the billionaire Sackler family, from liability in civil opioid-related cases.

Although they did not file for personal bankruptcy protection, the Sacklers' nonnegotiable prerequisite was no liability on their parts for opioid claims. In exchange, they paid $4.5 billion to the agreement. Judge McMahon said that judges are not permitted by the bankruptcy code to grant such releases, calling this "the great unsettled question."

The issue, the basis of the court order, will likely be before the U.S. Court of Appeals for the Second Circuit. I agree with Judge McMahon that lower courts need a clear answer on this issue. Purdue will appeal the ruling.

We will provide a summary below of what has transpired in the bankruptcy proceedings prior to the ruling by Judge McMahon.

Purdue filed for bankruptcy restructuring in September 2019, which automatically put a hold on all the claims against it. Nearly two years later, Judge Robert Drain, the bankruptcy court judge in White Plains, N.Y., confirmed a plan that had been approved by a majority of creditors who voted. Purdue would be formally dissolved and would re-emerge as a new company called Knoa Pharma that would still produce OxyContin but also other drugs. The new company's profits would go to states and communities to fund opioid treatment and prevention efforts. The Sacklers would renounce their ownership, eventually, sell their foreign pharmaceutical companies as well, and contribute $4.5 billion of their fortune to the state and local opioid abatement funds.

In exchange, all lawsuits against Purdue would be extinguished, a benefit typical of bankruptcy. What made the settlement so contentious was the Sacklers' insistence on being released from all Purdue-related opioid claims, although they had not personally filed for bankruptcy. There are more than 800 lawsuits that name the Sacklers. After Judge Drain approved the plan, it was immediately appealed by the United States Trustee, a branch of the Justice Department that monitors bankruptcy cases; eight states, including Maryland, Washington and Connecticut; the District of Columbia; and about 2,000 individuals. The appeal was filed in federal district court.

Lawyers challenging the plan argued that the Sacklers had essentially gamed the bankruptcy system. Moreover, they argued, Judge Drain lacked the authority to shut off a state's power to pursue the Sacklers under its civil consumer protection laws.

During oral arguments, Judge McMahon said she was troubled by what she saw as a red flag: the more than $10 billion that the Sacklers withdrew from Purdue between 2008 and 2018, as the opioid epidemic was cresting. The Sackler dividends were largely deposited in offshore accounts and trusts inaccessible to American authorities.

And notably, she said, the withdrawals escalated after Purdue and three top executives pleaded guilty in 2007 to federal criminal and civil charges related to aggressive marketing of opioids, paying more than $600 million.

The Purdue Pharma bankruptcy plan, including its disbursements, is now on indefinite pause. But the opioid epidemic persists. It should be noted that federal data shows that deaths from opioids – fentanyl, heroin and illegally diverted prescription painkillers – continue to trend upward.

Source: Reuters, New York Times

Allergan Reaches $200 Million Settlement In New York Opioid Trial

Allergan has reached a settlement valued up to $200 million to end its participation in the closely watched New York opioid trial brought by the state and county governments. The company was one of three remaining defendants in the trial that has been going for six months. The case involves claims by the state and two counties that drugmakers helped fuel a crisis of addiction and death. Allergen's settlement agreement will require "formal approval" by county legislatures. But Allergan, being dismissed by the trial judge, will no longer be involved in the trial.

New York Attorney General Letitia James said in a statement on Dec. 8 that Allergan will pay $200 million, and the settlement also "makes enforceable" Allergan's exit from opioid sales in the state. Allergan, which had a minimal market share of less than 1% of nationwide prescriptions, had previously decided to discontinue its branded prescription opioid business voluntarily. This settlement also resolves claims related to generic opioid medications Allergan divested to Teva in 2016, according to an Allergan spokesperson. The jury trial continues against the remaining defendants, Teva and Anda Inc. At press time, the case was in the hands of the jury. There will be a verdict before this issue is received.

The cases are *In re: Opioid Litigation*, case number 400000/2017; *County of Suffolk v. Purdue Pharma LP et al.*, case number 400001/2017; *County of Nassau v. Purdue Pharma LP et al.*, case number 400008/2017; and *State of New York v. Purdue Pharma LP et al.*, case number 400016/2018, all in the Supreme Court of the State of New York, County of Suffolk; and *In re: National Prescription Opiate Litigation*, case number 1:17-md-02804, in the U.S. District Court for the Northern District of Ohio.

Source: Law360.com

Opioid Jury Sees Teva's Movie-Parody Sales Videos

The jury in the New York case was permitted to watch internal Teva videos showing opioid sales staff imitating villains in "Austin Powers" and "A Few Good Men." The viewing came after the company unsuccessfully fought hard to exclude what Teva lawyers called the "incredibly damaging" clips from the trial.

The jury saw two videos made internally by Teva for the consumption of company employees. It should be noted that the videos were done around the time of the launch of the opioid drug Fentora in 2006.

The Austin Power Clips

In one, a takeoff of "Austin Powers," various sales executives overdub the voices of villain Dr. Evil and his advisers in a conference scene in his lair, discussing the just-completed Fentora launch and their plan to move more customers to Fentora by convincing doctors to prescribe it over a Cephalon drug being phased out, Actiq. Teva bought cephalon in 2011.

Making liberal use of air quotes, the overdubbed Dr. Evil says, "We will do studies in low-back breakthrough pain, neuropathic breakthrough pain and for all non-cancer breakthrough pain – a new 'pivotal study.' Using these 'studies,' we will ... show doctors around the world that Fentora 'works for all breakthrough pain.'"

The "Few Good Men" Video

In the other video, a spoof of the famous courtroom scene at the end of "A Few Good Men," Sales Vice President Roy Craig is edited into a back-and-forth as Jack Nicholson's character, explaining the mindset of the sales team. Craig is seen onscreen in military costume, declaring in response to footage of Tom Cruise, "You can't handle the truth. Son, we live in a world that has quotas, and those quotas have to be exceeded by reps with skills." "My existence, while grotesque and incomprehensible to you, makes bonuses ... you need us to sell," Craig continues. "I have neither the time nor the inclination to explain ourselves to people who rise and sleep under the very blanket of revenue we provide and then question the manner in which we provide it."

Teva had previously told the court that a handful of its parody videos – including a spoof of the sales drama "Glengarry Glen Ross" that was not played – were so provocative they could single-handedly destroy the drugmaker's defense.

Teva has taken the position that the videos "were made in jest." But the New York Attorney General's Office said the videos show how Cephalon actually approached its legal duty to conscientiously market-controlled substances that fueled the deadly epidemic of opioid abuse. Throughout the opioid litigation, Teva has emphatically defended its marketing practices and depicted Fentora as a profoundly important drug for cancer patients during brief flares of agonizing "breakthrough" pain.

The cases are *In re: Opioid Litigation* (case number 400000/2017*); County of Suffolk v. Purdue Pharma LP et al.* (case number 400001/2017); *County of Nassau v. Purdue Pharma LP et al.* (case number 400008/2017); and *State of New York v. Purdue Pharma LP et al.* (case number 400016/2018) all in the Supreme Court of the State of New York, County of Suffolk; and *In re: National Prescription Opiate Litigation* (case number 1:17-md-02804) in the U.S. District Court for the Northern District of Ohio.

Source: Law360.com

The Beasley Allen Opioid Litigation Team

Beasley Allen's Opioid Litigation Team continues to work on existing cases. There is a tremendous amount of activity in this litigation. There have been a number of significant developments in this litigation on several fronts.

As previously stated, Beasley Allen lawyers, in addition to the State of Alabama, also represent the State of Georgia, numerous local governments and other entities. Our lawyers also handle individual claims on behalf of victims in this litigation.

Our Opioid Litigation Team includes Rhon Jones (Rhon.Jones@BeasleyAllen.com), Parker Miller (Parker.Miller@BeasleyAllen.com), Ken Wilson (Ken.Wilson@BeasleyAllen.com), David Diab (David.Diab@BeasleyAllen.com), Rick Stratton (Rick.Stratton@BeasleyAllen.com), Will Sutton (William.Sutton@BeasleyAllen.com), Jeff Price (Jeff.Price@BeasleyAllen.com), Gavin King (Gavin.King@BeasleyAllen.com), Tucker Osborne (Tucker.Osborne@BeasleyAllen.com), Elliott Bienenfeld (Elliot.Bienenfeld@BeasleyAllen.com) and Matt Griffith (Matt.Griffith@BeasleyAllen.com).

If you need more information on any phase of the opioid litigation, contact one of the lawyers on the team listed above at 800-898-2034 or by email.

V.
THE WHISTLEBLOWER LITIGATION

Flower Mound Hospital To Pay $18.2 Million To End Whistleblower Case

Flower Mound Hospital Partners LLC (Flower Mound Hospital), a partially physician-owned hospital in Flower Mound, Texas, has agreed to pay $18.2 million to resolve allegations that it violated the False Claims Act (FCA) by knowingly submitting claims to the Medicare, Medicaid and TRICARE programs that resulted from violations of the Physician Self-Referral Law and the AntiKickback Statute.

Commonly known as the Stark Law, the Physician SelfReferral Law prohibits a hospital "from billing for certain services referred by physicians with whom the hospital has a financial relationship unless that relationship satisfies one of the law's statutory or regulatory exceptions." Similarly, the AntiKickback Statute "prohibits offering or paying remuneration to induce the referral of items or services" covered by federally funded programs. The Stark Law and the Anti-Kickback Statute are intended to ensure that improper financial inducements do not compromise medical judgments.

The Department of Justice alleged that Flower Mound Hospital violated the Stark Law and the Anti-Kickback Statute when it repurchased shares from physician-owners aged 63 or older and then resold those

shares to younger physicians. Allegedly, Flower Mound Hospital impermissibly took into account the volume or value of certain physicians' referrals when it selected the physicians to whom the shares would be resold and determined the number of shares each physician would receive.

"The Stark Law and the Anti-Kickback Statute are designed to ensure that physician financial considerations can never influence patient care," said U.S. Attorney Chad E. Meacham. "The system relies in part on whistleblowers who come forward to report financial improprieties at their workplaces."

The settlement resolves claims brought under the *qui tam* or whistleblower provision of the FCA by Leslie Jennings, M.D., a physician-owner at Flower Mound Hospital. It's important to remember that the FCA allows private individuals with knowledge of fraud against the Government to bring a lawsuit on behalf of the Government and share in the recovery. Jennings will receive approximately $3 million as his share of the recovery in this case.

Source: Department of Justice

The Beasley Allen Whistleblower Litigation Team

Lawyers on Beasley Allen's Whistleblower Litigation Team are still very busy handling cases around the country under the False Claims Act (FCA). Whistleblower litigation has continued to be very active. Fraud against the federal government is being committed by all too many industries in this country, especially in the healthcare field. This continues to be a huge problem.

We continue to stress that whistleblowers are essential and key to exposing corporate wrongdoing and fraud against the government. Their essential role has intensified dramatically and will continue in that direction in the immediate future and beyond.

A person who has first-hand knowledge of fraud or other wrongdoing may have a whistleblower case. Before you report suspected fraud or other misconduct – before you "blow the whistle" – it is essential to make sure you have a valid claim and that you prepare for what lies ahead. The experienced group of lawyers on our team is dedicated to handling whistleblower cases.

It's important to know that if you are aware of any fraudulent activity in corporate America against the federal or state governments, you could be rewarded for reporting the fraud. If you have any questions about whether you qualify as a whistleblower, you can contact one of the lawyers on Beasley Allen's Whistleblower Litigation Team for a free and confidential evaluation of your claim. There is also a contact form on the Beasley Allen website that you can use.

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

VI.
PRODUCT LIABILITY UPDATE

Defective Tires Create A Severe Safety Hazard

Tires are among the most important vehicle safety components as they are the only points of contact between vehicle occupants and the ground. We have previously written on tire defects, but perhaps, the most dangerous tire defect is one that cannot be seen---tire aging. A tire might look brand new and might not have ever been used, but research and testing show that when tires reach a certain age, those tires can break down from the inside, de-treading upon use and causing fatal accidents.

Lawyers in our firm's Personal Injury & Products Liability Section have handled many tire aging cases. For instance, one of our clients took her car in to a tire and lube franchise to have one of her tires repaired for being low. When the tire technician informed her that her tire could not be repaired, he recommended using her full-size spare. Our client expressed concerns about her spare tire's age and condition to the technician. She relied on the technician to tell her if the tire was unsafe or needed to purchase a new tire. Without verifying the tire's age, the technician repeatedly assured her that her tire was safe.

The tire was over ten years old. On her way back home, the tire failed on the interstate, causing our client's vehicle to leave the road and roll over. This crash resulted in severe injuries to our client and her passengers.

LaBarron Boone, a lawyer in the Personal Injury & Products Liability Section, previously handled a case involving the failure of a sixteen-year-old tire. The tire was the original spare tire on a 1995 Ford Explorer. The tire looked brand new. However, while driving down I-85, just two days after a mechanic shop put the spare tire on the 1995 Ford Explorer, the tire de-treaded, causing the Explorer to roll over. This resulted in the deaths of our clients' sister and son.

Greg Allen, Chris Glover, Stephanie Monplaisir, and Alyssa Baskam will try a case in Georgia very soon involving a defective Goodyear tire that had a partial thread separation which caused the rollover of a 2001 Ford Explorer Sport Trac. The 19-year-old driver was killed in the rollover. His girlfriend, who was sleeping in the passenger seat, was injured.

Despite the dangers of tire aging, NHTSA has still refused to establish a tire aging standard. A tire aging standard would make it easier for consumers to determine the age of a tire. Right now, the only way to determine the age of a tire is to decipher the cryptic code on the tire's sidewall. Also, a tire aging standard would make it mandatory for tire centers to take tires out of service at a specified date, regardless of the tire's appearance on the outside.

Beasley Allen lawyers will continue to aggressively

pursue actions for tire aging until such standards are put in place. If you have any questions, contact Stephanie Monplaisir at 800-898-2034 or by email at Stephanie.Monplaisir@BeasleyAllen.com.

DeVilbiss Healthcare Recalls Adult Portable Bed Rails After Two Deaths

The U.S. Consumer Product Safety Commission (CPSC) and Drive DeVilbiss Healthcare of Port Washington, New York, have announced the voluntary recall of four different Bed Assist Handle and Bed Assist Rail adult portable bed rails. Drive has received two reports of entrapment deaths associated with two Bed Assist Handle bed rails (models 15064 and RTL15073).

The deaths occurred in February 2011 and February 2015 and involved a 93-year-old woman at her home in California and a 92-year-old man at an assisted living facility in Canada. In both incidents, the bed rails were not securely attached to the bed, and the users became entrapped between the product and their mattress.

This recall involves four models of Drive DeVilbiss Healthcare's adult portable bed rails:

- Model

15064

15062

RLT15073

RTL15063-ADJ

- Product

Bed Assist Handle

Bed Assist Rail with Folding Board

Home Bed Assist Handle

Home Bed Assist Handle

- Product as Sold on Amazon

Home Bed Assist Handle

Home Bed Assist Grab Rail with Bed Board

Home Bed Assist Handle

Adjustable Height Home Bed Assist Handle

- Dimensions

About 21 inches high and 12 inches wide

About 23 inches high and 12 inches wide

About 13-17 inches high (adjustable)and 19 inches wide

About 15-20 inches high (adjustable)and 20 inches wide

The name "Drive" and the model number are printed on a label located on the product's metal tubing. The rails are made of steel tubing, either in white or chrome. Models RTL15063-ADJ and RTL15073 include black non-slip padding on the grip handle and under-bed frame. Model 15062 features a wooden under-bed board attached to the grip handle.

Drive DeVilbiss Healthcare sold about 496,100 bed rails at medical supply stores nationwide and online at www.amazon.com and www.walmart.com. The bed rails were sold from October 2007 through December 2021 for between $30 and $80. Drive Medical also sold about 68,000 units in Canada. Drive DeVilbiss Healthcare sold about 119 units in Mexico.

CPSC urges consumers to report any related incidents to the agency at www.SaferProducts.gov.

Source: CPSC

GE Appliances Recalls Free-Standing And Slide-In Ranges

GE Appliances, a Haier Company, has recalled about 132,000 free-standing and slide-in electric and gas ranges due to a tip-over hazard. According to the Consumer Product Safety Commission (CPSC), the ranges can tip over when a heavy object is placed on an open oven door, and the anti-tip-over bracket is not secured to the wall or floor, posing a tip-over hazard and risk of burn injuries from hot food or liquids in cookware.

This recall involves 30-inch, 24-inch, and 20-inch free-standing and slide-in electric and gas ranges, with seven brand names: GE, GE Profile, Café, Haier, Hotpoint, Crosley and Conservator. The brand name, model number and serial number are printed on a label visible on each unit. Ranges with a serial number that starts with either "HS" or "LS" and ends with "P" and have a model number prefix listed in the chart below are included in this recall.

Consumers should contact GE Appliances to determine if their unit is part of the recall and schedule a free in-home service call to inspect the recalled range's anti-tip bracket and ensure it is securely installed on the floor or wall. Consumers can continue to use the recalled ranges but are cautioned not to place any objects on the open oven door until the range's anti-tip bracket has been inspected and repaired, if necessary. Consumers should not return the recalled ranges to the place of purchase, as retailers are not prepared to take the units back.

GE Appliances is contacting all known purchasers directly. Thus far, no incidents or injuries have been reported. The ranges were sold at Lowe's, Home Depot, Best Buy and other home improvement and home appliance stores nationwide and online from May 2021 through July 2021 for between $580 and $4,600, depending on the model.

Consumers can contact GE Appliances toll-free at 877-247-9770 from 8:00 a.m. to 5:00 p.m. ET Monday through Friday. You can also go online at www.geappliances.com and click on "Appliance Recalls" at the bottom of the page or https://www.geappliances.com/ge/recall/ for more information.

Source: CPSC

VII.
AN UPDATE ON MOTOR VEHICLE LITIGATION

A $700,000 Jury Verdict For Victim In Case Involving Distracted Driving

Mike Crow, a lawyer in the firm's Personal Injury & Product Liability Section, helped secure a $700,000 jury verdict last month for a mother of five who had been involved in a serious traffic accident that happened on I-65 in Autauga County, Alabama.

In October 2018, Marijo Stallings, an Indianapolis, Indiana resident, was driving along I-65 North with her two children, Anthony and Alexandra Stallings, and her mother, Elizabeth Nemecek. As Mrs. Stallings approached mile marker 194 in Autauga County, she pressed on the brake to slow down due to an unknown backup in traffic.

Meanwhile, Dillon Melvin was traveling behind Mrs. Stallings' vehicle when he became distracted, taking his eyes off the road for 3-5 seconds to change the music on his iPhone. While he was distracted, his vehicle struck the back of the Stallings car, causing it to flip over three times across the median before coming to a stop in the southbound lane.

Mrs. Stallings and her mother were taken to Baptist Medical Center South in Montgomery. The two children were life-flighted to UAB Hospital in Birmingham. Anthony suffered a fractured ankle in the crash. Mrs. Nemecek and Alexander sustained minor spinal injuries. Mrs. Stallings was diagnosed with what was thought to be a minor injury. All were treated by medical staff and released later that day.

However, Mrs. Stallings' neck pain worsened when she returned to Indianapolis. Mike explained to the jurors that Mrs. Stallings doesn't like to complain and waited two weeks before seeing a chiropractor. The doctor ordered an MRI, which revealed acute trauma to the spinal cord at the C3-4 vertebra. Mrs. Stallings had a cervical fusion two weeks later with good results and returned to her activities, mainly as a high school and college volleyball official. But she continues to experience numbness and tingling.

Mrs. Stallings hired Mike Crow, an experienced auto accident lawyer, seeking compensation for the lingering discomfort and mental anguish she continued to suffer after the accident. Mike filed a lawsuit in the U.S. District Court for the Middle District of Alabama against Dillon Melvin, contending that his reckless and distracted driving caused the collision, leading to injuries suffered by Mrs. Stallings and her family members.

During pretrial mediation, the family members settled their claims for a total of $200,000. The case proceeded to trial with Mrs. Stallings as the only plaintiff. The jury deliberated four hours before returning with a $700,000 verdict.

Mrs. Stallings had difficulty expressing how much her injury had affected her life. But even seemingly minor injuries can cause lingering symptoms that add physical, emotional, and financial stress to victims of traffic accidents. Drivers are responsible for ensuring those they injure while recklessly driving are compensated. Distracted driving is a most serious safety hazard on our highways.

Kent Winingham and Bill Winingham of Wilson, Kehoe and Winingham, lawyers in Indianapolis, worked with Mike to represent Mrs. Stallings and the other family members. They did a very good job in the case. The case was *Marijo Stallings, et al. v. Dillon Melvin, et al.*

Georgia's Dram Shop Law And The Duty To Not Overserve Alcohol

The Center for Disease Control and Prevention (CDC) reports that every 50 minutes, someone in the U.S. dies from a vehicle crash involving an alcohol-impaired driver. These accidents amount to an astounding $44 billion in related costs. In Georgia, between 2009-2018, 3,241 people were killed in these crashes. In 2018 alone, National Highway Transportation Safety Administration (NHTSA) data shows that 30% of all motor vehicle crash deaths in Georgia involved alcohol. Not only is the individual held responsible for a crash caused by alcohol impairment, an establishment that overserved that individual can also be held accountable by way of the Dram Shop Law.

Almost every state has a Dram Shop Law. Such laws hold sellers of alcohol responsible if they overserve a person whose intoxication results in injury or death. Georgia's Dram Shop Law regulates the liability of those who sell, furnish, or serve alcoholic beverages to others. These laws allow for civil negligence claims, personal injury claims, and even criminal negligence charges against the business or individuals who knowingly served alcohol to someone they should not have, including a person who is not of lawful drinking age or someone they know will soon be operating a motor vehicle.

Last November, the nation saw firsthand the devastating impact alcohol can have when a talented and widely acclaimed NFL player, driving drunk and at a high rate of speed, struck another vehicle. The vehicle's driver was killed. The high-profile event, as detailed by NBC News, reminded the country of tragedies resulting from such senseless circumstances with devastating consequences.

Lawyers in our firm recently handled a lawsuit that bore a strong resemblance to the crash referred to above that occurred in November. The defendant, in our case, consumed alcohol for hours at an entertainment establishment. Within minutes after leaving the establishment, the defendant crashed his car into the back of our client's car. The defendant, traveling 97 mph when he struck our client's vehicle, had a blood alcohol content of more than .240, or more than three times the legal limit. The establishment, also a defendant, had a duty not to continue to serve an individual who was already intoxicated, especially when it was reasonably foreseeable that the person could get behind the wheel of a vehicle and, as with our clients, injure and kill others. As the jury returned to give its verdict and hold the establishment accountable for our clients' tragedy, the defendant establishment agreed to settle the case.

Like most states, Georgia requires property owners to provide reasonable safety measures that adequately

protect invitees and their guests from foreseeable harm while on the property. In the special circumstances for bar owners and others supplying alcohol, state law also requires them to take additional measures to identify and stop serving intoxicated individuals who could drive while in an impaired condition, putting their lives and the lives of others at risk.

Parker Miller, a lawyer in our Atlanta Office, leads Beasley Allen lawyers handling premises liability cases. If you or a loved one was seriously injured on a premises due to a criminal action arising from that premises, or if you have any questions about premises liability law, please contact Parker at 800-898-2034 or by email at Parker.Miller@BeasleyAllen.com.

Sources: CDC, NHTSA, NBC News

Ford SUV Defective Brake Class Action Lawsuit

Beasley Allen lawyers Dee Miles, Clay Barnett, Mitch Williams, and Dylan Martin are investigating a class action lawsuit against Ford Motor Co. for defective brake systems in its 2013-2019 expedition and navigator vehicles, hereafter referred to as "the SUVs."

The SUVs are allegedly equipped with a defective Hitachi-made brake master cylinder that puts them at risk of suddenly and unexpectedly losing all front brake circuit functions. Specifically, the master cylinders' internal seals could fail, resulting in a loss of brake pressure in the front brake circuit and extending stopping distances.

From many consumer reports and other internal data, Ford has been aware of the brake system defect since before these SUVs were first sold in 2013, but Ford concealed it from the public for corporate gain. Ford has also previously recalled 2013-2017 Ford F-150 trucks equipped with 3.5L GTDI engines for defective Hitachi-made master cylinders.

Ford's failure to recall and remedy all vehicles known to be at risk for brake failure is unconscionable and an egregious disregard of consumer safety. If you or a family member, or someone you know owns a 2013-2019 Ford Expedition or Lincoln Navigator and are interested in joining this class action lawsuit, contact Dee Miles, Clay Barnett, Mitch Williams, or Dylan Martin at 800-898-2034 or by email at Dee.Miles@BeasleyAllen.com, Clay.Barnett@BeasleyAllen.com, Mitch.Williams@BeasleyAllen.com, or Dylan.Martin@BeasleyAllen.com.

Mazda Defective Fuel Pump Class Action Lawsuit

Beasley Allen lawyers Dee Miles, Demet Basar, Clay Barnett, Mitch Williams and Dylan Martin, have filed a class action lawsuit against Mazda Motor of America, Mazda Motor Corporation, Denso Corporation, and Denso International America, Inc. for defective fuel pumps installed in 2013-2020 Mazda vehicles. The lawsuit, filed in the Central District of California, specifically includes 2013-2020 CX-3. CX-5, CX-9, Mazda2, Mazda3, MX-5 Mazda vehicles.

The vehicles are equipped with a defective Denso-made low-pressure fuel pump that places them at a risk of failure resulting in engine no start and / or vehicle stall and engine shutdown while driving, increasing the risk of a crash. Specifically, the impeller in the fuel pumps was made using a lower density material which causes the impeller to swell and deform, rendering the vehicles inoperable.

From numerous consumer reports from Mazda owners, internal data, Mazda's foreign recall, and Denso's recalls, Mazda had been made aware of the fuel pump defect well before many of these class vehicles were first sold. But Mazda concealed the defect from the public for corporate gain. The lawsuit specifically alleges that Mazda knew about the defect as early as March of 2019. However, the automaker failed to issue a U.S. vehicle recall until Nov. 12, 2021. Moreover, plaintiffs allege Mazda's 2021 recall is woefully inadequate because it failed to include other Mazda vehicles equipped with the very same defective impeller.

These defective impellers in the fuel pumps manufactured by Denso have been the subject of other class action lawsuits that firm lawyers had filed against Toyota, Honda and Subaru. Denso is a defendant in each of those class actions. We have reported on each of these class cases recently. These class actions are pending in the Federal courts and are in the discovery phase of trial preparation. We will keep our readers apprised of any new developments regarding these important class actions.

The Mazda case is *Townsend Vance, et al.* v. *Mazda Motor of America, et al.* In addition to the Beasley Allen lawyers mentioned above, our co-counsel are Tim Blood, Paula Brown, Jennifer MacPherson, and Craig Straub from Blood, Hurst & O'Reardon, LLP.

Acceleration Defect Suit Filed Against Tesla Over Fatal New Jersey Crash

The family of a man who died after what is described as a "catastrophic collision" with a Tesla vehicle on the New Jersey Turnpike has filed a wrongful death lawsuit against the automaker. It's alleged that the car had a defect that caused it to suddenly accelerate without the driver pressing on the pedal.

In the complaint filed in state court asking for compensatory and punitive damages, the widow and children of Vladimir Chen contend Tesla showed a "reckless indifference" to Chen's safety by building and selling the Tesla Model X in "such a defective and unreasonably dangerous condition."

The allegedly defective and unsafe condition of the vehicle involved in the Jan. 26, 2020 crash was said to have caused the death of the 50-year-old Chen. In addition to Tesla, the owner and driver of the 2019 Model X at the time – Mike P. Gao and Kim Lam, respectively – also are named as defendants.

The accident occurred around 3:30 p.m. while Chen was stopped in his vehicle in a cash lane at a southbound toll plaza on the Turnpike. Lam told police at the scene that she was slowly approaching the toll plaza when the Model X "accelerated suddenly and unexpectedly" without her causing the acceleration. The complaint says:

- The Model X "took a sharp bank to its left passing multiple open lanes" at the toll plaza and struck the back of Chen's vehicle at about 80 miles per hour.
- Tesla knew about the purported acceleration defect for years before the crash. During that time, Tesla driv-

ers "have reported a phenomenon known as sudden uncommanded acceleration ('SUA),'" in which the vehicles "accelerate at full power" even though the drivers said they did not direct the cars to do so.

- A year after the Model X was launched in the U.S., Tesla in 2016 "was put on notice of the nature and extent of the SUA defect in its Model X vehicle, when a lawsuit was filed alleging that [the National Highway Traffic Safety Administration] had received 13 SUA complaints in its Model X in its first year on the road."
- Chen ultimately died as a result of the "catastrophic spinal cord injuries" he sustained in the crash.

In addition to the purported acceleration defect, Chen's family asserts that Tesla was aware of a "phenomenon known as 'driver disengagement'" for years before the crash. Under that scenario, the complaint says:

- Tesla drivers stop operating the vehicle due to "their misplaced reliance on the vehicle's various control systems, which may or may not be engaged."
- "Defendant Tesla has known for several years that driver disengagement is a hazardous condition particularly in light of the fact that it advertises its technology as 'full self-driving.'"
- Certain features of the Model X involved in the crash were defective, such as its "automatic emergency braking," "forward collision warning," or "electronic stability control" systems.
- The ESC system in the vehicle "automatically engaged the subject Tesla vehicle contributing to the sharp turning movement that resulted in the fatal collision with plaintiffs' decedent's vehicle."

The family is represented by Francis J. Leddy III of Cipriani & Werner PC. The case is *The Estate of Vladimir Chen et al. v. Tesla Inc. et al.* (case number L-3885-21) in the Superior Court of New Jersey, County of Camden.

Source: Law360.com

Court Approves $50 Million Nissan Headlight Litigation Settlement

U.S. District Judge William L. Campbell Jr. has granted final approval to a $50 million settlement in a suit by a class of Nissan drivers who accused the company of equipping their cars with allegedly defective headlights.

Under the settlement, Nissan North America Inc. will replace headlamps on 1.43 million Altimas manufactured between 2013 and 2018. Alternatively, the automaker will reimburse class members – current and former owners and car lessees – who have already paid the $600 to $800 to replace the allegedly defective lights.

The lawsuit, filed in the Middle District of Tennessee on May 14, claimed that the automaker's headlights had a defect that allowed heat and humidity to "delaminate" the reflective surfaces inside the lamps' casing and caused them to become less bright.

Nissan agreed to change the parts on all the class members' vehicles, no matter how many miles are on the Altimas. It will also provide an extended warranty on the lamps, equaling six years. Class members seeking a reimbursement need not prove they suffered from this issue specifically, only that they "more likely than not" replaced their headlamps "due to dimming." The total value of these promises from Nissan equals more than $50 million. Attorney fees of $2.5 million will be paid by Nissan directly. Each of the three lead plaintiffs will receive $5,000.

The drivers are represented by Timothy N. Mathews, Samantha E. Holbrook, Alex M. Kashurba, and Zachary P. Beatty of Chimicles Schwartz Kriner & Donaldson-Smith LLP and John Tate Spragens of Spragens Law PLC. The case is *Suarez et al. v. Nissan North America Inc.* (case number 3:21-cv-00393) in the U.S. District Court for the Middle District of Tennessee.

Source: Law360.com

Toyota Reaches $20 Million Settlement To End Prius Stalling Defect Suit

A group of Toyota Motor Corp. car buyers asked a California federal judge last month to approve their $20 million class settlement resolving claims that its hybrid Prius cars were prone to stalling. Following five years of litigation, Toyota and the consumers reached a settlement that will provide at least $20 million to pay for all valid claims for reimbursement for the repair or replacement of the defective parts, as well as the cost of towing and rental cars associated with those repairs. A motion requesting approval was filed with the court.

Toyota also agreed to provide all current owners and subsequent buyers of the Priuses with extended warranty coverage for 20 years from when the vehicles were first used, the motion states. In addition, the company will provide complimentary towing and rental cars for class members whose cars require repairs or replacement parts. The motion states:

> *The proposed settlement provides real, substantial benefits to class members in an easy-to-understand, straightforward manner, without subjecting class members to any undue burden with respect to claiming or receiving those benefits.*

In their 2018 suit, the consumers – led by Kathleen Ryan-Blaufuss, Cathleen Mills, Khek Kuan, Steven Kosareff and Laura Nawaya – alleged.

- Toyota hid the stalling problems in its 2010-2014 Priuses despite a history of safety problems in hybrid cars, including in earlier models of Highlander SUV hybrids.
- The Priuses have defective inverter components, which led the cars, when driving at high speeds, to suddenly stall.
- The defect also affected the fuel efficiency of the vehicles, which is the reason many consumers purchased hybrids, to begin with.
- Toyota knew about and should have disclosed the defects before the Priuses were bought, or it should have implemented a proper recall of the vehicles.

Toyota's request for the claims to go to arbitration was denied by the court. Settlement talks began in June 2020, following extensive discovery, and went on a parallel track with the briefing of motions to compel arbitration for class certification and summary judgment.

The parties finalized a formal settlement agreement on Nov. 15, over a year later. The consumers said:

The parties came to the bargaining table with vastly different views of the merits and value of the claims and defenses, which is only part of the reason settlement negotiations took 17 months to complete. Consequently, every material issue underwent intensive scrutiny and discussion before it became part of the settlement agreement, and the time, effort and resources expended on those efforts paid off.

The settlement agreement provides the class members with substantial monetary and other benefits. Under the agreement, Toyota will also separately pay for class counsel's attorney fees, which are estimated to be $19.6 million, as well as $5,000 service awards for each of the class representatives. If the judge awards a lower amount of fees, the difference will be put in the settlement fund and distributed to class members, the consumers said. Any money left in the settlement fund will be given to the Texas A&M Transportation Institute.

The consumers are represented by Jeffrey L. Fazio and Dina E. Micheletti of Fazio Micheletti LLP, Amnon Z. Siegel and Casey B. Sypek of Miller Barondess LLP, Paul R. Kiesel, Jeffrey A. Koncius and Nicole Ramirez of Kiesel Law LLP, Charles J. LaDuca of Cuneo Gilbert & LaDuca LLP, Donald R. Pepperman and Emily R. Stierwalt of Waymaker LLP and William M. Audet, Clint Woods and David Kuang of Audet & Partners LLP.

The case is *Kathleen Ryan-Blaufuss et al. v. Toyota Motor Corp. et al.* (case number 8:18-cv-00201) in the U.S. District Court for the Central District of California.

Source: Law360.com

Drivers Seek Final Approval Of $33 Million Honda Infotainment Settlement

A class of drivers has asked a California federal judge to grant final approval to a $33 million settlement resolving claims that American Honda Motor Co. Inc. sold vehicles with defective infotainment systems. The class is led by named plaintiffs Lesley Conti and Tom Conti.

The agreement also includes additional measures such as an independent review of Honda's remedies by an engineering expert, an extension of the warranty from three years and 36,000 miles to five years and 60,000 miles, and ongoing software updates to resolve issues with the system.

The class said its experts have estimated that the total benefit to the class is valued at more than $33 million and that Honda has agreed to pay incentive awards and attorney fees separately to avoid reducing that benefit.

The Contis filed the class action in March 2019, alleging that infotainment systems in the model year 2018-2019 Honda Odysseys and 2019 Honda Pilots malfunctioned. For example, they sometimes had loud and startling "cracking" or "knocking" noises, dysfunctional vehicle backup cameras or disabled GPS and radio systems – all of which could distract drivers and lead to safety hazards.

Judge Carney dismissed the claims filed on behalf of a nationwide class of buyers. He found the suit didn't meet the threshold for asserting a federal Magnuson-Moss Warranty Act claim because it had fewer than 100 named plaintiffs. Judge Carney also found that the lawsuit failed to sufficiently allege that Honda fraudulently misrepresented the infotainment systems to customers. Therefore, several of the state-based consumer protection law claims didn't survive.

Honda announced the settlement in May, and Judge Carney granted preliminary approval in June. According to the motion seeking final approval, the settlement also includes:

- Additional training for Honda's authorized dealerships and technicians. (The class noted that the suit's allegations included that dealerships could not replicate the problems and thus could not fix them.)
- Honda will create an online resource for the infotainment system to keep drivers up to date on potential issues and recalls and provide a means to report problems.
- There will be some reimbursement to class members who brought their vehicles in for infotainment issues that were not resolved.

According to the motion, only 153 class members out of about 450,000 have opted out of the deal, and only four have objected, which the class said shows the response to the deal has been positive. U.S. District Judge Cormac J. Carney set a final approval hearing for Jan. 4.

The drivers are represented by Steve W. Berman, Sean R. Matt and Christopher R. Pitoun of Hagens Berman Sobol Shapiro LLP and Jeffrey S. Goldenberg and Todd Naylor of Goldenberg Schneider LPA.

The case is *Conti et al. v. American Honda Motor Co. Inc.* (case number 2:19-cv-02160) in the U.S. District Court for the Central District of California.

Source: Law360.com

VIII. AVIATION LITIGATION

Beasley Allen Lawyers File Wrongful Death Lawsuit For Family Of Woman Killed In Georgia Plane Crash

Two lawyers in our firm's Personal Injury & Product Liability Section, Mike Andrews and Rob Register, have filed a lawsuit on behalf of the family of Lauren Harrington. As previously reported, Lauren was killed when the plane piloted by Jonathan Rosen crashed in October at the Dekalb-Peachtree Airport outside of Atlanta. The lawsuit names the Estate of Jonathan Rosen and two companies, Algab Holdings, LLC and JDR Capital Holdings, LLC, as defendants. Mike, Beasley Allen's lead lawyer in aviation litigation, has this to say about the case:

Mr. Rosen failed to recognize the grave danger of operating an airplane negligently and without proper training, and as a result, our client's family member was killed.

As discussed in a prior issue of this *Report*, federal investigators explained that Rosen's plane, a Cessna P210N, had been fully fueled and was bound for Houston, Texas. An airport security surveillance video showed that the

aircraft lifted off about 1,000 feet down the runway in a nose-high attitude before rolling to the left and reached an inverted attitude before crashing to the ground nose first beside the runway. After impacting the ground, the aircraft was engulfed in flames and incinerated within minutes because of the large amount of jet fuel.

The aircraft's engine had been recently upgraded from a Continental engine to a Rolls Royce turbine engine, which consumes more fuel because it can carry more weight. The plane was also outfitted with an additional fuel tank to meet the new engine's need.

The lawsuit alleges that Jonathan Rosen lacked sufficient training, experience and skill and had less than two total flight hours' experience with the aircraft in its modified configuration and that he had participated in only one day of a five-day course training on the plane. The plaintiffs also allege that Rosen failed to maintain control of the airplane and properly inspect the aircraft before the flight. Further, the lawsuit asserts that he negligently and improperly calculated the aircraft's center of gravity, resulting in an aft center of gravity beyond the proper operating limits, causing instability that led or contributed to the crash. Rob, who is in our Atlanta office, explains:

> *As the pilot of the airplane in question, Mr. Rosen was responsible for ensuring the aircraft is in safe working condition and keeping passengers safe throughout the entire flight, from takeoff to landing. Quite simply – he failed Lauren Harrington and the others who tragically died in the crash.*

The case, *Harrington, et al. v. The Estate of Jonathan Rosen, et al.*, was filed in the State Court of Dekalb County, Georgia.

Aircraft Litigation At Beasley Allen

If you would like to have more information on any aspect of aviation litigation, including the Boeing litigation, or you need help on an aviation case, contact Mike Andrews at 800-898-2034 or by email Mike.Andrews@BeasleyAllen.com. Mike is the lead lawyer in our firm on all aircraft-related litigation.

IX.
THE JUUL LITIGATION

Update On The JUUL Litigation

The national litigation against JUUL Labs, Inc. enters 2022 poised for an eventual year. Four bellwether trials are set for this year. The first two bellwether trials are personal injury cases and will commence in April and June. Discussions about a second group of personal injury bellwether cases are ongoing.

These two trials are nearing the end of the discovery phase, as the remaining depositions are scheduled for completion. Many fact witnesses on both sides have been deposed. Many expert witnesses submitted reports in 2021 and have also been deposed.

Beasley Allen lawyers, led by Joseph VanZandt, are heavily involved in the JUUL litigation. They represent plaintiffs against JUUL Labs, Inc. across the litigation, including individual personal injury cases, class action claims, claims by school districts, and other claims brought by government entities for the negative impact JUUL products have had on their lives and organizations. Both of the first two bellwether trial cases involve Beasley Allen clients.

If you have a potential claim or need more information about JUUL, contact any of the lawyers on the firm's JUUL Litigation Team, all of whom are listed below.

Judge Gives Initial Approval For $90 Million Settlement To End Suit Against JUUL And Altria

A Virginia federal judge has given initial approval of a $90 million settlement between a class of investors and tobacco company Altria Group Inc. and JUUL Labs Inc. The order, filed on Dec. 16, would end claims the defendants' companies knowingly marketed to underage consumers.

U.S. District Judge David J. Novak certified a settlement class of all who purchased or acquired Altria securities between Oct. 25, 2018, and April 1, 2020. He found that the class met all the elements required to certify the settlement class under Rule 23 of the Federal Rules of Civil Procedure.

The approval is subject to further consideration at a settlement fairness hearing scheduled for March 31.

The lead plaintiffs in the case claimed they and other class members were harmed by false and misleading statements by Altria and JUUL regarding the companies' marketing to underage consumers, their commitment to preventing youth usage of their products, and the health and safety of JUUL's products.

Altria invested $12.8 billion in JUUL in 2018 and received a 35% stake. The investors claimed that Altria knew JUUL would continue marketing to underage consumers before investing. But the companies continued to assure investors they were only interested in adult smokers. Investors were also told that JUUL did not intend to have youth users and that the companies were committed to solving youth vaping.

In reality, Juul executives were studying and employing marketing techniques to target underage consumers "in the hopes they would create lifelong customers for Juul's products," that memorandum states. The companies' misrepresentations allegedly caused a series of Altria stock drops after investigations were launched by federal government agencies into the effects of vaping and the marketing tactics of Juul, according to the investors.

The proposed investor class is represented by Steven J. Toll, Daniel S. Sommers and S. Douglas Bunch of Cohen Milstein Sellers & Toll PLLC, Jeremy A. Lieberman and Michael J. Wernke of Pomerantz LLP, Samuel H. Rudman, David A. Rosenfeld, Erin W. Boardman, Douglas R. Britton, Ellen Gusikoff Stewart, Kevin A. Lavelle, Matthew J. Balotta and Philip T. Merenda of Robbins Geller Rudman & Dowd LLP, and Brian Schall of The Schall Law Firm.

The case is *Klein v. Altria Group Inc. et al.* (case number 3:20-cv-00075) in the U.S. District Court for the Eastern District of Virginia.

Source: Law360.com

Vape Company To Pay $51 Million Over Youth Ad Blitz

Eonsmoke LLC, a shuttered e-cigarette seller, will pay nearly $51 million to settle civil claims brought by Massachusetts Attorney General Maura Healey alleging that the vape company illegally marketed its sweetened nicotine pods to minors. The company, which dissolved in 2020, will pay $50 million to the state. Its co-owners, Gregory Grishayev and Michael Tolmach will pay $750,000 for violating the state's strong consumer laws by targeting underaged consumers with social media ads for their vaping products.

Despite repeated warnings, the founders and the company failed to show up in state court in January. A default judgment was entered against the defendants. A hearing on damages in the case had been scheduled, but the settlement was reached. Attorney General Healey said in a statement:

> *Eonsmoke coordinated a campaign that intentionally targeted young people and sold dangerous and addictive vaping products directly to minors through their website. We were the first to take action against this company and its owners, and today we are holding them accountable and permanently stopping them from conducting these illegal practices in our state.*

Eonsmoke, a New Jersey company that designed flavored nicotine pods to be compatible with the popular-JUULvaping pens, made their products appeal to youth and designed vaping products that appear to be fitness bands or easily concealable USB drives, according to the attorney general›s office. TheU.S. Food and Drug Administrationforced Eonsmoketo pull nearly 100 of its products from sale due to a lack of necessary authorization to market them. The company had beenengaged in litigationwith JUUL over trademark claims.

Eonsmoke pushed the products to kids through social media channels, including Instagram, YouTube and Snapchat. The company also failed to verify the ages of online buyers and ensure that shipments were received by a person older than 21, the state's minimum age for smoking products, according to the complaint.

The ads by Eonsmoke targeting young consumers included popular culture references and featured social media influencers, celebrity endorsers, cartoons, and internet memes that intentionally minimized or omitted the fact that the vaping products contained nicotine.

In addition to the monetary payments, Eonsmoke and its founders are barred from selling, distributing, offering, marketing or advertising tobacco products to Massachusetts consumers.

The state is represented by Samantha Shusterman and Max Weinstein of the Massachusetts Office of the Attorney General. The case is *Commonwealth of Massachusetts v. Eonsmoke LLC* (case number 1984CV01728) in Suffolk County Superior Court.

Source: Law360.com

The Beasley Allen JUUL Litigation Team

Beasley Allen lawyers, led by Joseph VanZandt, have been heavily involved in the JUUL litigation for several years. Our lawyers represent individuals suing JUUL, the top U.S. vape maker, for the negative impact its products have had on their lives. Beasley Allen also represents a number of school systems in the JUUL litigation. The firm's JUUL Litigation Team lawyers have filed JUUL lawsuits on behalf of school districts nationwide. This litigation seeks to protect students and recover resources spent fighting the vaping epidemic.

If you have a potential claim or need more information on JUUL, contact any of the lawyers on the JUUL Litigation team at 800-898-2034 or by email. Members are Joseph.VanZandt@BeasleyAllen.com, Sydney.Everett@BeasleyAllen.com, Beau.Darley@BeasleyAllen.com, Davis.Vaughn@BeasleyAllen.com, Seth.Harding@BeasleyAllen.com or SooSeok.Yang@BeasleyAllen.com. Andy Birchfield (Andy.Birchfield@BeasleyAllen.com), who heads up the firm's Mass Torts Section, works closely with the team on the JUUL litigation.

X.
THE ASBESTOS LITIGATION

BAP1 Germline Mutations And Mesothelioma

As asbestos litigation has evolved, asbestos defendants' defenses have also evolved and become more technical. While it is universally agreed upon (outside the courtroom) that all kinds of asbestos can cause mesothelioma, defendants, propped up by junk, industry-supported science, now argue that only a small percentage of asbestos commercially used can cause mesothelioma. Along with that argument, defendants routinely say that the way asbestos was incorporated into various products eliminated asbestos' ability to be inhaled into the lungs. They argue that these "encapsulated" products were not threats to users of the product because the asbestos utilized was stuck in place and not capable of being inhaled. These are just a couple of the common arguments made by asbestos defendants and heard in courtrooms across the country.

Considering these arguments, defendants sometimes find themselves stuck in a challenging position in cases with limited alternative exposure to asbestos that the defendants can point to as causing the mesothelioma other than what the plaintiffs allege. This problematic issue for the defendants is simple. If it was not the asbestos that the plaintiff alleges they were exposed to that caused the mesothelioma, then what was it? Enter the defendants' relatively new BAP1 germline genetic mutation argument.

Major advances in genetic technology over the past decade have permitted the analysis and characterization of the human genome. This has led to the analysis of genetic alterations, mostly acquired, in tumor tissues and identifying inherited alterations in the genome that result in increased susceptibility to a host of tumors, including breast cancer, colon cancer, and mesothelioma. Without getting bogged down in the details, the defendants' argument is simple. They argue that a BAP1 germline genetic mutation, in and of itself, can cause mesothelioma. This is patently false and unsupported

by any reputable medical and / or scientific literature or experimental studies. The truth is that a BAP1 germline mutation may *predispose* someone to develop mesothelioma, but asbestos exposure is still a prerequisite to developing the deadly carcinogen.

The problem is that understanding the medical literature and an individual plaintiff's genetic abnormalities is very technical. Unfortunately, most lawyers do not understand these issues. As a result, retained defense experts can testify to things unsupported by the science, and defendants attempt to get this sort of misleading information into evidence. Therefore, it is crucial to have an experienced asbestos lawyer litigating these cases. Only by understanding the science related to this issue can plaintiff lawyers ensure that this false and misleading theory used by the defendants does not make it into the courtroom. Beasley Allen's Asbestos Litigation Team understands these highly technical issues and is prepared to refute them and protect our clients' interests.

If you have any questions, contact Charlie Stern, a lawyer in our Toxic Torts Section who has vast experience in asbestos litigation, at 800-898-2034 or by email at Charlie.Stern@BeasleyAllen.com.

$2.2 Million Mesothelioma Verdict Against Exxon Is Affirmed

A Washington appeals court has affirmed a $2.2 million verdict against ExxonMobil Oil Co. (Exxon) in a suit by plaintiff Wayne Wright. The negligence of Exxon had exposed a worker to asbestos, causing his death from mesothelioma. However, the three-judge appeals panel vacated the final judgment in the suit, finding that the trial court hadn't properly determined whether the settlements with other defendants were reasonable, as the full text of those settlements had not been provided to Exxon. The panel ordered further proceedings in the case.

Plaintiff Wright's father, who died in September 2015, was a worker for Northwestern Industrial Maintenance, which Exxon contracted in 1979 to remove old insulation that contained asbestos from pipes and pumps at an oil refinery. An autopsy revealed that he had suffered from mesothelioma. In addition to Exxon, Plaintiff Wright sued Shell Oil Co., Texaco Inc. and others. All of those defendants had settled claims with the plaintiff, leaving only Exxon to face trial in the suit. The jury returned a $4 million verdict in favor of the plaintiff, which the judge offset to $2.2 million based on the other settlement amounts. Exxon appealed, objecting to the jury instructions and evidence that the trial judge admitted.

The appeals panel found that the jury instruction for retained control, allowing the jury to find that Exxon controlled the conduct of the NIM workers, was a misstatement of the law. That was because Exxon's requirement that NIM workers follow its general safety guidelines did not meet the control threshold necessary for the instruction.

However, the panel found that the liability verdict still stands under the premises liability theory. The defenses of contributory negligence and assumption of the risk were rejected by both the trial court and the panel.

The plaintiff is represented by Craig Sims, Kaitlin Wright, Elizabeth McLafferty, Thomas Breen, William Rutzick and Lucas Garrett of Schroeter Goldmark and Binder. The case is *Wright v. ExxonMobil Oil Co.* (case number 81289-1-I) in the Court of Appeals of the State of Washington, Division One.

Source: Law360.com

The Asbestos Litigation Team

Asbestos litigation continues to be extensive nationwide. Beasley Allen's Asbestos Litigation Team is headed by Charlie Stern. Other team members are Will Sutton and Cindy Lopez. Rhon Jones, who heads our Toxic Torts Section, works with the team. Charlie has years of experience in asbestos litigation, and that's why he was selected to lead 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.

XI.
THE PARAQUAT LITIGATION

Paraquat Regulation In The United States

Paraquat is the most acutely toxic herbicide to be marketed over the last 60 years. China, the world's largest manufacturer of paraquat, banned its use in its own country in 2016 due to its extreme toxicity. Paraquat has been banned in dozens of countries, as shown in a few examples below:

- Sweden banned paraquat in 1983 due to high acute toxicity, irreversible toxic effects, and risk of accidents during handling and use.
- Kuwait banned paraquat in 1985 for all uses for health and environmental reasons.
- Finland banned paraquat in 1986 because it is very toxic even in small doses, resulting in death.
- Hungary banned paraquat in 1991 because of the accidental poisoning rate and high mortality rate.
- Austria banned paraquat in 1993 because of high acute toxicity, irreversible effects (especially on lungs) and numerous fatal accidents.
- Denmark banned paraquat in 1995 due to its persistence in soil, very toxic to non-target organisms and deaths in hares and rabbits eating or walking on sprayed grass.
- Slovenia banned paraquat in 1997 due to human and environmental toxicity. It is deadly in small amounts with no antidote and is used as a suicide drug.
- Cambodia banned paraquat in 2003 for all uses.
- Ivory Coast banned paraquat in 2004. It was prohibited from import, manufacturing, and use in agriculture.
- Syria banned paraquat in 2005.
- The United Arab Emirates banned paraquat in 2005.
- European Union banned paraquat in 2007.

Unfortunately, the United States continues to allow the use of this deadly herbicide. In 2020, the Environmental Protection Agency revisited the safety and regulation of paraquat in the United States and again allowed restricted use. Failing to ban or phase out paraquat, while many other countries in the world do, impedes transition to safer alternatives, and continues putting people at risk for toxic exposure.

Beasley Allen lawyer, Julia A. Merritt, heads the firm's Paraquat Litigation Team and is a member of the Plaintiffs' Executive Committee on the Paraquat multidistrict litigation (MDL). She will be happy to answer any questions about the status of this litigation. Beasley Allen continues accepting cases where clients applied paraquat and have Parkinson's Disease or Parkinson's-like symptoms.

The Paraquat Litigation Team

The Paraquat Litigation Team at Beasley Allen, consisting of lawyers in our Toxic Torts Section, handles the paraquat applicator cases. The lawyers on the team are Julia Merritt (Julia.Merritt@BeasleyAllen.com), who heads the team, Trisha Green (Trisha.Green@BeasleyAllen.com), and Matt Pettit (Matt.Pettit@BeasleyAllen.com). Rhon Jones (Rhon.Jones@BeasleyAllen.com), who heads our Toxic Torts Section, is also working with the team on this important litigation. You can contact these lawyers by phone at 800-898-2034 or by email for more information on the litigation, including the MDL.

XII.
MASS TORTS LITIGATION

Beasley Allen Plaintiff Survives Motion To Dismiss In Florida Federal Court

On Dec. 14, a Florida federal judge in *Scala v. Eisai, Inc., et al.* denied motions to dismiss Beasley Allen plaintiff Colleen Scala's claims that the weight loss drug Belviq, also known as lorcaserin hydrochloride, caused her breast cancer. The judge ultimately ruled that the plaintiff sufficiently pled a negligence claim based on a design defect theory.

Ms. Scala took Belviq from September 2015 to August 2019 and was diagnosed with breast cancer in May 2017. Ms. Scala alleges Belviq is unreasonably dangerous due to the propensity of its active ingredient lorcaserin to cause cancer.

Judge Anne C. Conway, presiding over the case, determined that the facts in Ms. Scala's complaint "plausibly show[ed] that Belviq was unreasonably dangerous" by, among other things, identifying lorcaserin "as a potential carcinogen in a clinical trial after it brought about malignant mammary tumors in rats." Judge Conway further determined that Ms. Scala's allegations were "sufficient because they put defendants on notice of the type of harm Belviq allegedly caused."

Other federal courts have come to similar conclusions, refusing to dismiss similar claims against the weight loss drug. On Nov. 29, 2021, an Illinois federal judge in *Govan v. Eisai., Inc., et al.* also denied motions to dismiss where a woman alleged that the weight loss drug Belviq caused her breast cancer. The judge in that case ultimately ruled that the plaintiff's claims of breach of warranty, negligent misrepresentation, and fraudulent misrepresentation and concealment could go forward. We will write on that case below.

Beasley Allen lawyers continue to overcome motions to dismiss in Belviq cases concerning various product liability theories. Our lawyers investigate claims on behalf of individuals prescribed Belviq and subsequently diagnosed with various forms of cancer, including pancreatic, colorectal, thyroid, and breast cancer. For more information, contact Melissa Prickett at Melissa.Prickett@BeasleyAllen.com or Roger Smith at Roger.Smith@BeasleyAllen.com.

Sources: Law360.com and Harrismartin.com *Scala v. Eisai, Inc., et al.,* Case No. 5:21-cv-00210-ACC-PRL; Doc. Nos. 29 and 66. *Govan v. Eisai., Inc., et al.,* Case No. 3:21-cv-00384-SMY, Doc. 37.

Belviq Plaintiffs Survive Motion To Dismiss In Illinois Federal Court

On Nov. 29, 2021, an Illinois federal judge in *Govan v. Eisai., Inc., et al.* denied motions to dismiss where a woman alleged that Belviq caused her breast cancer. The judge ruled that the plaintiff sufficiently pled breach of warranty, negligent misrepresentation, fraudulent misrepresentation, and concealment claims.

The *Govan* plaintiffs alleged that Ms. Govan took Belviq from 2014 to 2020 and was later diagnosed with breast cancer. They further alleged that Belviq was unreasonably dangerous in design and that defendants Eisai, Inc., and Arena Pharmaceuticals, Inc., knew or should have known of Belviq patients' increased risks for developing cancer, yet concealed them from the plaintiff's doctor.

Sources:https://www.harrismartin.com/publications/4/drugs/articles/28437/belviq-breast-cancer-case-survives-dismissal-motion-in-ill-federal-court/ *Govan v. Eisai., Inc., et al.,* Case No. 3:21-cv-00384-SMY, Doc. 37.

Philips Respironics Has Known For Years Their Machines Can Cause Harm To Users

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 United States. The device recall was due to the degradation of the polyester-based polyurethane foam used to reduce the sound and vibration of the device. When this breakdown occurs, black pieces of foam, and even chemicals that cannot be seen, are potentially inhaled or swallowed by the device user. This ingestion has been connected to the potential development of irritation to the skin, eyes, nose, and respiratory tract; inflammation; asthma; nausea; vomiting; and cancer.

Since Philips voluntarily undertook the recall, several FDA investigations began. After inspecting the company's records, facility operations, and product testing, investigators say that Philips may have known as early as 2016 that the sound abatement foam was capable of causing its users harm. One internal email cited by the FDA inspectors seems to imply that a Philips consumer made that company aware of the breakdown of the foam. Further, an email chain among Philips' staff dis-

cussed testing that confirmed consumer complaints about the foam's degradation when exposed to heat and humidity. Then, in that very same conversation, Philips' staff decided against changing the design of the foam to address this issue.

The FDA's investigation uncovered upwards of 222,000 complaints from consumers that referenced an issue with the device, with at least 110 directly referring to the breakdown of the foam. Yet with these warnings from customers and users of the devices, Philips still did not take corrective action until April of 2021. Moreover, though the recall was voluntarily initiated, Philips has underwhelmingly addressed repair and replacement options for the owners of recalled machines. Some representatives of Philips state it could take at least a year to repair or replace the recalled devices.

Beasley Allen lawyers are investigating claims for the users of the recalled machines who have suffered from the adverse effects of the recalled Philips Respironics machines. For more information, contact Beau Darley or Melissa Prickett at 1-800-898-2034 or email at Beau.Darley@BeasleyAllen.com or Melissa.Prickett@BeasleyAllen.com.

Sources: FDA.gov and NBCChicago.com

Edge Pharma Issues Nationwide Recall Of All Drug Products

On December 4, 2021, Edge Pharma, LLC issued a voluntary recall of all lots of all drugs compounded by the company. Edge Pharma stated that "[a]ll products are being recalled due to process issues that could lead to a lack of sterility assurance," which "could impact the safety and quality of non-sterile products." To date, Edge Pharma claims that it is unaware of any adverse events related to the recall and has not received any adverse event information.

The recall encompasses all compounded sterile and nonsterile drug products. The products are used for various indications and are packaged in "Containers, IV bags, Syringes, Drop containers, Vials, Bottles, and Jars." The names and concentrations of the drugs can be found at the following link: https://edgepharma.com/assets/recalledproducts.pdf.

Edge Pharma is notifying its customers by email, media, and the Food and Drug Administration (FDA). Consumers and institutions that have Edge Pharma products should stop using the products immediately and may either return or discard the recalled lots.

Adverse reactions of quality problems with the use of Edge Pharma product may be reported to the FDA's MedWatch Adverse Event Report through their online reporting form found here: https://www.fda.gov/safety/medwatch-fda-safety-information-and-adverse-event-reporting-program/reporting-serious-problems-fda.

Beasley Allen lawyers are monitoring the recall. We will provide any further updates as things develop. If you have any questions, contact Liz Eiland, a lawyer in our firm's Mass Torts Section, at 800-898-2034 or by email at Liz.Eiland@BeasleyAllen.com.

Source: U.S. Food and Drug Administration

XIII.
EMPLOYMENT AND FLSA LITIGATION

Outokumpu Stainless USA To Pay For Bad Conduct During Employment Case

Lawyers and parties on both sides in civil litigation have a clear and well-defined responsibility to follow all rules and conduct themselves ethically in handling pretrial discovery. Following a default judgment, resulting from what a judge describes as "repeated defense-side misconduct," in a case, the defendant, Outokumpu Stainless USA LLC, an Alabama steel mill, has agreed to pay plaintiffs more than $108,000 in attorney fee reimbursements. In the federal wage-and-hour case, the defendant reserves the right to contest the default judgment on liability for what the court had called a "subverted" litigation. However, both sides agreed the plaintiffs were entitled to $107,600 in fees plus expenses.

The trial judge had ordered the parties to calculate a reasonable reimbursement of costs incurred by Outokumpu workers due to misconduct by the company and its former law firm, Littler Mendelson. A hearing was scheduled for late December to consider the damages due to hundreds of former and current employees at the Outokumpu facility in Calvert, Alabama. The parties asked a magistrate to negotiate a final damages total. A joint statement on the fee agreement was submitted to U.S. District Judge Jeffrey U. Beaverstock.

In November, Judge Beaverstock issued a scathing decision on Outokumpu for what he called "calculated sabotage" that took the form of defense discovery stonewalling, repeated motions to compel, and a failed attempt by one of Outokumpu's former lawyers to falsely blame a third party for not answering a records subpoena. Judge Beaverstock said when granting plaintiffs default judgment:

> *[B]ad faith, stalling, inconsistent answers, falsehoods, and all-around subversive approach to discovery undermined this case and the ability to decide it on the merits.*

The Fair Labor Standards Act suit, filed in mid-2018, accused the company of shorting workers on hourly wages, overtime pay and bonuses. Discovery in the case was repeatedly delayed as plaintiffs' counsel said Outokumpu and a Littler team withheld timecard and paycheck records and breached court orders.

The court issued a discovery sanction in 2019 as the case headed toward trial. At a March hearing, the defendant's previous lawyer said that ADP, which handled Outokumpu's payroll, was to blame for some of the recent delays because it had not answered a key subpoena sent months earlier. But after ADP appeared at a contempt "show cause" hearing, it was revealed that the company had actually answered the subpoena and had been falsely blamed by the defense for its own withholding. Outokumpu had replaced its former lawyers by the time the firm was hit with a $63,600 cost-and-fees sanction order in favor of ADP.

Plaintiffs are represented by Ian D. Rosenthal of Holston Vaughan & Rosenthal LLC and Patrick H. Sims of The Sims Law Firm. The case *is William Hornady et al. v. Outokumpu Stainless USA LLC* (case number 1:18-cv-00317) in the U.S. District Court for the Southern District of Alabama.

Source: Law360.com

Beasley Allen Handles Employment Cases

Our firm has dedicated a portion of our law practice to helping victims of labor law abuse. Beasley Allen lawyers in our Consumer Fraud & Commercial Litigation Section pursue litigation on behalf of employees against employers in all industries. Every person deserves to be compensated for what they provide in the workplace and to be treated fairly and justly. Upholding the laws and the rights those laws bestow to individuals benefits every worker. Our firm welcomes any opportunity to investigate such practices. Contact Lance Gould, Larry Golston, Leon Hampton or Lauren Miles in our Consumer Fraud & Commercial Litigation Section concerning any employment issues. They can be reached at 800-898-2034 or by email at Lance.Gould@BeasleyAllen.com, Larry.Golston@BeasleyAllen.com, Leon.Hampton@BeasleyAllen.com or Lauren.Miles@BeasleyAllen.com.

XIV.
PREMISES LIABILITY LITIGATION

Negligent Security Liability In Alabama

Negligent security cases in Alabama can be difficult cases to pursue. Alabama law recognizes that a landowner or a landlord is not typically liable for injuries to those injured on their property when those injuries are caused by the criminal acts of a third party. While this litigation can be complex, there are clear exceptions to this general rule.

An exception to this bar for recovering against a landowner occurs when a special relationship is involved or where particular circumstances exist. A special relationship has been found to exist in a number of instances. One such example will be discussed below.

Particular circumstances have been found to exist where there is a pattern of criminal conduct which the landowner knew about or should have known about, and the landowner or operator on the property failed to take efforts to keep others on the premises from being injured.

Recently, lawyers at Beasley Allen settled a case where the defendant argued it was not responsible for the injuries caused to our client. The case was unique in that while the criminal activity occurred on the defendant's property, the injuries occurred off the property. The defendant was an automobile auction company that weekly sold hundreds of automobiles. The vehicles were kept behind a secured gate with the keys in them. A former employee began climbing the fence late at night, taking a vehicle, and exiting the premises. He was known to have stolen three vehicles and has been convicted for the theft of two of the vehicles.

After the former employee stole what was believed to have been the second stolen vehicle, he was driving through Birmingham at a high rate of speed. The criminal, who admitted that he was intoxicated and driving recklessly, ran through a stop sign, struck our client's vehicle, and seriously injured her.

Despite a hard-fought battle, Beasley Allen reached a settlement for our client. The auto auction company is no longer in business. We hope that these typed of cases and settlements encourage car lots and auction companies to take prompt action in reporting stolen vehicles and take aggressive action to ensure that criminals who steal vehicles from their lots will be arrested and prosecuted.

If you have any questions relating to premises law liability in Alabama, contact Ben Locklar, a lawyer in our firm's Personal Injury & Product's Liability Section, at 800-898-2034 or by email at Ben.Locklar@BeasleyAllen.com. Ben has successfully handled a number of premises liability cases for the firm.

XV.
WORKPLACE HAZARDS

Kendall Dunson Files Lawsuit For Worker Injured On The Job In Dump Truck Accident

Earlier this year, Benjie Covington was seriously and permanently injured on the job when the dump truck he was operating rolled over. Kendall Dunson, a lawyer in our Personal Injury & Product Liability Section, filed a lawsuit on his behalf against Big O's Trucking and Outokumpu Stainless, USA in Mobile, Alabama, and other defendants, due to improper loading and unsuitably maintained environment that led or contributed to the dump truck rolling over. Kendall says:

> *Our client was performing the job he promised, but the defendants failed to uphold their responsibilities to keep him safe on the job. Mr. Covington has endured various medical treatments, lost income, watched as medical bills have grown and is permanently impaired so that he will not be able to return to work.*

Our client was driving the dump truck for Big O's Trucking earlier on April 27. He drove the dump truck to defendant Outokumpu's location, where the dump truck was loaded improperly and required that the dump truck be emptied in preparation for reloading. The lawsuit explains that "[d]uring the dumping process, the [dump truck] rolled over due to the improper... load, the condition of the subject truck and the condition of the area designated for dumping the load." The combination of these factors caused the truck to roll over, leaving our client with a severe spinal cord injury.

The lawsuit alleges the defendants were negligent and wanton for failing to ensure a safe working environment, "train, direct and warn those in harm's way of the hazards associated with working in the subject environment." The defendants' failure to maintain the equipment for safe use, properly train and instruct Covington

"in the proper way to perform his responsibilities and to avoid injury," and "incorporate adequate safety devices and / or procedures and warning" support the plaintiff's allegations. Kendall has this to say:

Mr. Covington will have to grapple with the consequences of the defendants' poor decisions for the rest of his life. The defendants' must be held accountable for their negligent actions that changed Mr. Covington's life forever.

The lawsuit, *Benjie Anthony Covington v. Big O's Trucking, LLC, et al.*, was filed in the Circuit Court of Mobile County, Alabama. If you need more information on this case or have questions about workplace litigation, contact Kendall Dunson or Evan Allen, lawyers in our Personal Injury & Products Liability Section, at 800-898-2034 or by email at Kendall.Dunson@BeasleyAllen.com or Evan.Allen@BeasleyAllen.com.

XVI.
TOXIC TORT LITIGATION

Recent Bellwether Verdicts In The 3M Earplug Litigation

After 10 bellwether trials, the jury verdicts are split between the plaintiffs and 3M at five each. At the beginning of December, a federal jury returned a $22.5 million verdict against 3M in the eighth bellwether trial concerning the 3M Combat Arms version 2 earplugs (CAEv2). The jury found in favor of Army veteran Theodore Finley. He used the earplugs while serving in the Army from 2006 to 2014, awarding him $7.5 million in compensatory damages and $15 million in punitive damages. Notably, this was a case that 3M's lawyers picked to go to trial and resulted in the largest verdict against 3M.

Shortly after the Finley trial, 3M won back-to-back cases in the ninth and tenth jury trials in Pensacola and Tallahassee, Florida, in the claims brought against 3M by Carlos Montero and Carter Stelling. Carlos Montero served in the Army from 1995 to 2018, while Carter Stelling served in the Army from 2006 through 2010. Both juries determined the earplugs were not defectively designed or unreasonably dangerous.

More than 270,000 similar cases are pending as part of multidistrict litigation assigned to the U.S District Court in the Northern District of Florida. The cases typically involve allegations that the design defects with the 3M earplugs left military service members without adequate hearing protection, resulting in permanent hearing loss and tinnitus.

So far, the combined total of damages awarded by juries is over $52 million. Additionally, three claims are set for a consolidated trial from Jan. 10 through Feb. 4, 2022, and the remaining bellwether trials will take place later in the spring.

If you need more information about the 3M Litigation, contact Will Sutton, a lawyer in our Toxic Torts Section, at 800-898-2034 or email at William.Sutton@BeasleyAllen.com.

Sources: Reuters and Law360.com

EPA Science Advisory Board To Review New Data On The Health Effects Of PFAS

The Environmental Protection Agency (EPA) has developed four new draft documents with recent scientific data and new analyses that indicate negative health effects may occur at much lower levels of exposure to PFOA and PFOS (per- and polyfluoroalkyl substances or PFASs) than previously understood and that PFOA is a likely carcinogen. The EPA sought a review of these documents from the Science Advisory Board and an independent review through four public meetings of the Science Advisory Board. These meetings were to be conducted in December 2021 and January 2022.

Draft documents to the Science Advisory Board (SAB) PFAS Review Panel include proposed approaches to the derivation of a draft Maximum Contaminant Level Goal (MCLG) for PFOA and PFOS in drinking water. An MCLG is a non-enforceable maximum level of a contaminant in drinking water at which there are no known or anticipated adverse human health effects. In March 2021, the EPA published a final determination to regulate PFOA and PFOS in drinking water and expects to issue a proposed regulation in Fall 2022. The agency anticipates issuing a final regulation in Fall 2023. EPA also expects to publish health advisories for GenX and PFBS in Spring 2022.

Per-and polyfluoroalkyl substances (PFAS) are a group of chemicals used to make various products, including stain, soil, and water-resistant clothing, furniture, adhesives, food packaging, heat-resistant non-stick cooking surfaces, and insulation of electrical wire. Many PFAS, including perfluorooctane sulfonic acid (PFOS) and perfluorooctanoic acid (PFOA), are a concern because they do not break down in the environment, can move through soils and contaminate drinking water sources, build up (bioaccumulate) in fish and wildlife.

PFAS have been found in rivers, lakes and many types of animals on land and in the water. After manufacturers of PFOS and PFOA voluntarily stopped producing those PFASs, they began to produce a similar replacement PFAS such as GenX and PFBS.

Source: EPA.gov

XVII.
THE ONGOING ROUNDUP LITIGATION

Bayer Faces Billion-Dollar Class Action Suit In Germany Over Monsanto Takeover

A billion-dollar investor class action lawsuit has been filed against Bayer in Germany over its takeover of Monsanto. Plaintiffs include more than 250 institutional investors and a large number of private investors, and say Bayer misled them about the economic risks of the $63 billion acquisition. They seek damages estimated to be more than one billion euros ($1.13 billion).

It's claimed in the lawsuit that Bayer deceived shareholders about the risks of consumer lawsuits pending in the United States linked to Roundup, the glyphosate-containing weedkiller. Roundup was brought into

Bayer with the 2016 Monsanto acquisition.

We will monitor this lawsuit which appears to have tremendous merit for further developments. Stay tuned!

Source: *Insurance Journal*

Roundup Update

Monsanto had a recent victory in a trial court in California. During the week of Dec. 9, a California jury found that Bayer's Roundup weedkiller was not the cause of a woman's non-Hodgkin lymphoma. This is the second trial victory for Monsanto. It was conducted over zoom and had a number of technical issues. Complications from the virtual trial caused scheduling issues and impeded the impact of certain testimony presented to the jury. Lawyers for the plaintiff intend to appeal.

In August last year, Bayer filed a petition with the U.S. Supreme Court to reverse a lower court's decision upholding a $25 million verdict in damages awarded to California resident Edwin Hardeman. This request, which should be unsuccessful, is being watched closely.

On Dec. 10, the briefings for both sides were submitted to the Supreme Court to see if the land's highest court would take the case. On Dec. 13, the Court asked the Biden Administration for its views on whether the justices should hear Bayer AG's bid to dismiss claims brought by plaintiffs who contend their exposure to the weedkiller Roundup caused their cancers.

Bayer's attempt to have the Supreme Court review the decision in Hardeman is a legal maneuver attempting to limit Bayer AG's legal liability in thousands of pending Roundup cases. In the coming months, U.S. Solicitor General Elizabeth Prelogar will file a brief expressing the administration's views on the issue.

Bayer has lost all three appeals involving verdicts that sided with Roundup users in which the verdicts award tens of millions of dollars to Roundup victims. Further, the U.S. Supreme Court only accepts between 1% to 2% of the cases submitted for further review and relief.

Beasley Allen Roundup Litigation Team

Beasley Allen lawyers represent 3,500 clients who have been exposed to Roundup and developed non-Hodgkin's lymphoma. For more information, contact Rhon Jones, who heads our Toxic Torts Section and is in charge of this litigation. Will Sutton, a lawyer in our Toxic Torts Section, is also a litigation team member. They can be contacted at 800-898-2034 or by email at Rhon.Jones@BeasleyAllen.com or William.Sutton@BeasleyAllen.com.

XVIII.
CLASS ACTION LITIGATION

Class Action Settlements Around The Country

There has been a great deal of activity in class action litigation around the country. There have been a large number of settlements, with several receiving court approval. We will mention some of them below.

Capacitor Makers To Pay $160 Million To Settle Price-Fixing Trial

Capacitor maker Nippon Chemi-Con and its U.S. subsidiary agreed to pay $160 million to end antitrust claims just before closing arguments in the California federal trial. The latest settlement brings direct purchasers' settlements over the decadelong global conspiracy to fix the price of the electronic component to over $600 million. The $160 million settlement, agreed to by a class of about 1,800 U.S. companies with Japan-based Nippon Chemi-Con Corp. and its subsidiary United Chemi-Con, ended a jury trial over claims that more than 20 capacitor manufacturers carried out a price-fixing conspiracy from 2002 to 2014 and owed refunds of $427 million.

The latest settlement follows four previous rounds of settlements totaling $439.55 million against several defendants. The litigation dates back to July 2014, when Chip-Tech Ltd. filed the first suit in the consolidated case. The products at issue are electrolytic capacitors, which are fundamental in operating all electronic circuit boards, including those in computers, televisions, car engines and smartphones.

The direct purchasers are represented by Joseph R. Saveri, Steven N. Williams, Anupama K. Reddy and Christopher Young of the Joseph Saveri Law Firm Inc., and Eric Cramer and Mark Suter of Berger Montague PC.

The case is *In re: Capacitors Antitrust Litigation* (case number 3:14-cv-03264), and the MDL is *In re: Capacitors Antitrust Litigation* (case number 3:17-md-02801) both in the U.S. District Court for the Northern District of California.

Source: Law360.com

Mattel Settles Fraud Class Action For $98 Million

Mattel has agreed to pay $98 million to settle a class action accusing the company and its former top executives of violating the federal securities laws by understating the company's income tax expense by $109 million in the third quarter of 2017 and then "cooking the books" with its auditor, PricewaterhouseCoopers LLP (PwC), to cover it up to avoid a restatement.

Lead plaintiffs in *In re Mattel, Inc. Securities Litigation*, pending in the Central District of California, filed a motion for the preliminary approval of the settlement.

On Aug. 8, 2019, Mattel disclosed that it had received a letter from a whistleblower and was canceling a $250 million debt offering scheduled to close that day while investigating the allegations. The disclosure caused Mattel's stock price to drop 15% in a single day, wiping out $550 million in shareholder equity, as analysts and investors understood the import of the news.

Several months later, the company disclosed that it would be restating its financial reports for 2017 because of a $109 million tax misstatement in the third quarter and fourth quarters of 2017 and revising its financial reports for 2016, 2017 and 2018. Mattel's chief financial officer also resigned.

Mattel also reported the results of its Audit Committee's investigation of the whistleblower's allegations, which found that management knew of the accounting misstatement but failed to adequately assess or docu-

ment them and made "lapses in judgment" in concealing them. Not surprisingly, the Audit Committee also found that the company's management had not engaged in fraud but rather that the misstatements were caused by a "confluence of one-time events."

A second whistleblower hired as Mattel's director of tax shortly before the misstatement and observed the events in real-time disagreed with that assessment. He resigned in protest over the company's conduct.

As recounted in the plaintiffs' complaint, the whistleblower described the complete lack of internal controls at the company, and how Mattel's accounting executives decided to conceal the misstatement in the third quarter of 2017 and inadequate controls, because "at worst we might get a slap on the wrist from the Securities and Exchange Commission," whereas disclosing the truth would have been a "kiss of death." Thus, they concocted a plan to retroactively reclassify an asset, enabling them to make a material misstatement in the same amount in the fourth quarter of 2017 to offset the misstatement in the previous quarter without affecting 2017 year-end results. According to the whistleblower, after hatching the plan, the primary PwC partner in charge of the audit walked through the halls of Mattel, high-fiving people in congratulations.

PwC has admitted its prior certification of Mattel's internal controls was false and reissued its audit opinion for the affected periods. PwC is contributing to the settlement in an undisclosed amount. The matter is also being investigated by the SEC and prosecutors in the Southern District of New York.

The settlement class comprises persons who purchased or acquired Mattel stock between Aug. 2, 2017, and Aug. 8, 2019, and a subclass of persons who purchased or acquired the stock between Feb. 27, 2018, and Aug. 8, 2019, who had claims against PwC.

The case is *In re Mattel, Inc. Securities Litigation*, Case No. 2:19-cv-10860-MCS (C.D. Ca.). A consolidated derivative action concerning the same events is pending in Delaware's Court of Chancery.

Our firm has a consumer class action against Mattel arising from the unreasonably dangerous Rock 'n Play inclined infant sleeper that we have previously reported on several times, so this settlement is of some interest to our class members in that case. In addition, the Beasley Allen lawyers primarily handling the consumer class case, Demet Basar, James Eubank and Paul Evans, also handle securities cases. Feel free to contact Demet.Basar@BeasleyAllen.com, James.Eubank@BeasleyAllen.com or Paul.Evans@BeasleyAllen.com in our office if you have a concern about a securities matter.

JPMorgan And Traders Get Approval On $60 Million Spoofing Settlement

A New York federal judge initially approved a $60 million settlement between JPMorgan and a class of traders. They alleged they were harmed by a yearslong scheme to manipulate precious metals futures. U.S. District Judge Gregory H. Woods granted preliminary approval on Dec. 20, a month after he denied the settlement, citing a number of potential issues with the proposed deal.

The settlement, if finalized, would end six consolidated investor lawsuits against JPMorgan and three of its former traders. The litigation arises from criminal allegations that the traders placed and later canceled futures orders between 2008 and 2016 to create the false appearance of demand — an illegal technique known as "spoofing."

Judge Woods also certified the class, appointed Lowey Dannenberg PC as class counsel and named the current lead plaintiffs as class representatives. The settlement class includes all individuals and entities that purchased or sold any precious metals futures or options on the New York Mercantile Exchange or the Commodity Exchange Inc. from March 1, 2008, through Aug. 31, 2016. A final fairness hearing will be held on July 7, 2022.

Additional lawsuits focusing on JPMorgan traders' alleged spoofing of U.S. Treasury futures were consolidated before Manhattan federal Judge Paul Engelmayer in October 2020. In September 2021, the bank agreed to pay $16 million to close out the proposed class claims. In September 2020, JPMorgan agreed to a $920 million criminal penalty as part of a deferred prosecution agreement with the U.S. Department of Justice over the spoofing scandal. Before that, former JPMorgan trader Christian Trunz pled guilty to federal spoofing charges in August 2019.

The investors are represented by Vincent Briganti, Raymond P. Girnys, Christian Levis and Sitso W. Bediako of Lowey Dannenberg PC. The case is *In re: JPMorgan Precious Metals Spoofing Litigation* (case number 1:18-cv-10356) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

Court Approves $28 Million Wells Fargo Secret Recording Settlement

U.S. District Judge Rebecca Pallmeyer, an Illinois federal judge, has approved a $28 million settlement between Wells Fargo and a class of customers who claimed the bank used telemarketers to sell them card processing services without warning that the calls were recorded.

The settlement was between Wells Fargo Bank NA, financial services company First Data Merchant Services LLC and nearly 200,000 California businesses who say calls they received on the bank's behalf violated the state's Invasion of Privacy Act.

The settlement ends litigation over claims that banks, including Fifth Third and Wells Fargo Bank NA, hired telemarketers International Payment Services LLC and Ironwood Financial LLC to sell credit card and debit card payment processing services to businesses across the country. The companies then called merchants asking about their monthly or annual credit or debit card sales volume without disclosing that the calls were recorded, the businesses allege.

The plaintiffs are represented by Myron M. Cherry, Jacie C. Zolna, Benjamin R. Swetland and Jessica C. Chavin of Myron M. Cherry & Associates LLC.

The case is *Wang et al. v. Wells Fargo Bank NA et al.* (case number 1:16-cv-11223) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

Prison Phone Co. Agrees To $67 Million Settlement To End Fund-Forfeiture Suit

One of the country's largest prison telephone service providers agreed on Dec. 6 to pay $67 million to end customers' claims it wrongfully took possession of funds placed in prepaid accounts for calling inmates if the accounts went unused for a certain time.

After over six years of litigation, a class of Global Tel Link Corp. customers who set up a prepaid account to receive calls from incarcerated individuals asked a Georgia federal court to approve the settlement agreement. In addition to the $67 million settlement fund, the settlement agreement also requires GTL to update its inactivity policy to better inform customers that dormant accounts will be deemed inactive and balances forfeited.

Friends and family of prison inmates accused GTL of breach of contract, unjust enrichment and violations of the Federal Communications Act over its policy of moving prepaid phone credits from customer accounts into its own revenue stream after 90 days of inactivity.

The settlement also stipulates that the class will be expanded to cover customers nationwide who set up a prepaid account through GTL's interactive-voice response system and lost money due to the inactivity policy between April 3, 2011, and Oct. 6, 2021. The settlement class would therefore include a significantly larger group than the class of solely Georgia and South Carolina customers that was certified by U.S. District Judge Amy Totenberg in November 2020.

The Georgia class is represented by Michael A. Caplan, James W. Cobb, T. Brandon Waddell, Sarah Brewerton-Palmer and Ashley C. Brown of Caplan Cobb LLP, Barry Goldstein and Linda M. Dardarian of Goldstein Borgen Dardarian & Ho, James Radford of Radford & Keebaugh LLC and Andrew Raymond Lynch of Andrew R. Lynch PC.

The suit is *Githieya v. Global Tel Link Corp.* (case number 1:15-cv-00986) in the U.S. District Court for the Northern District of Georgia.

Source: Law360.com

Honeywell Investors Reach $10 Million Settlement In Asbestos Suit

Honeywell International Inc. investors asked a New Jersey federal judge to approve a $10 million settlement resolving class claims over the industrial conglomerate's alleged misrepresentations about asbestos-related liability.

Lead plaintiffs Charles M. Francisco III and Iron Workers Local 580 Joint Funds said the proposed settlement recovers about 12% of the settlement class' estimated damages of $80.5 million, guarantees a prompt payment in the face of continued litigation and appeals, and eliminates the risk that the class members would recover nothing.

The litigation, first filed in 2018, accused Honeywell and its executives of misleading investors about the amount of asbestos-related claims it faced stemming from its previous ownership of Bendix Friction Materials, an automotive brake manufacturer. The investors said:

- During the proposed class period between Feb. 9 and Oct. 19 of 2018, Honeywell's filings repeatedly estimated its Bendix-related asbestos liabilities at $616 million over the next five years.
- But the U.S. Securities and Exchange Commission questioned Honeywell's accounting of its Bendix-related liabilities, according to the investors.
- As part of their communications, Honeywell admitted in a letter dated Aug. 20, 2018, that it had not appropriately measured the liabilities.
- Honeywell ultimately revealed to the SEC that its actual Bendix-related liabilities were about $1.7 billion.

Iron Workers said it spent more than $4.08 million on Honeywell stock and suffered losses of $338,434 during the period in which investors say the company's stock price took a tumble stemming from the alleged deception. Francisco said he spent $232,660 on Honeywell stock and lost $30,638.

The parties have also agreed that Honeywell can terminate the settlement if the number of Honeywell shares represented by class members who opt-out of the settlement equals or exceeds a certain threshold. But the investors said those exact terms are confidential to avoid creating an incentive for a small group of class members to opt-out to "leverage the threshold to exact an individual settlement." Representatives for the parties did not immediately respond to requests for comment Wednesday.

The investors are represented by Joshua B. Silverman of Pomerantz LLP, Kim E. Miller, J. Ryan Lopatka, Lewis S. Kahn and Craig J. Geraci Jr. of Kahn Swick & Foti LLC and Vincent M. Giblin of DeCotiis Fitzpatrick Cole & Giblin LLP. The case is David Kanefsky v. Honeywell International Inc. et al. (case number 2:18-cv-15536) in the U.S. District Court for the District of New Jersey.

Source: Law360.com

Class Action Lawyers At Beasley Allen

Beasley Allen is heavily involved in class action litigation around the country. Dee Miles, who heads up 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@BealseyAllen.com, Paul.Evans@BeasleyAllen.com and Dylan.Martin@BeasleyAllen.com.

XIX.
THE CONSUMER CORNER

Alabama Woman Awarded $2.1 Million Verdict Against Walmart For False Shoplifting Accusation

Lesleigh Nurse of Mobile, Alabama, was awarded $2.1 million by a jury after winning a lawsuit against Wal-Mart after the megacorporation falsely accused her of shop-

lifting from the Semmes, Alabama, Wal-Mart.

On Nov. 27, 2016, Ms. Nurse used one of Wal-Mart's self-service checkout kiosks that repeatedly malfunctioned while scanning her items. When the machine's barcode scanner continued to freeze, the customer was assisted by a Wal-Mart employee to complete her purchase of $48 worth of groceries. Ms. Nurse was nonetheless stopped at the store's exit by Wal-Mart's asset protection manager. Ms. Nurse was ultimately arrested on a shoplifting warrant, but the criminal charge was dismissed for want of prosecution when no one from Wal-Mart showed up to court.

Beginning in December 2016, Ms. Nurse received demand letters from a Wal-Mart-affiliated law firm that essentially "offered to drop the matter if she paid them $200, according to CBS 42. This was more money than the subject groceries at the heart of Walmart's contention were even worth. The harassment continued until 2018. That's when Mobile attorney Vince Kilborn of Kilborn, Roebuck & McDonald filed a civil lawsuit on Ms. Nurse's behalf charging Wal-Mart with "abuse of process" along with several other civil claims, and exposed Wal-Mart's practice of using a little-known state law to collect money from people accused of shoplifting from the retailer regardless of legitimacy.

University of Nebraska law professor Ryan Sullivan testified during the Nurse case that Wal-Mart "routinely uses what are known as civil recovery laws in many states to get people they've accused of shoplifting to pay up." He explained that Wal-Mart had collected more than $300 million from approximately 1.4 million people it accused of shoplifting in one two-year period by using similar civil demand letters it sent Ms. Nurse. Walmart essentially turned its Asset Protection Department into a profit center for the company.

While defense lawyers for Wal-Mart maintain the practice is legal under Alabama law, Wal-Mart notably "never produced a video during the trial that would have proved Ms. Nurse shoplifted or that she did not." Again, at trial, the jury sided with Ms. Nurse and awarded her $2.1 million in punitive damages.

Vince did an outstanding job in this case for his client. We will keep our readers posted on any new developments regarding this case in the future. It's believed the result, in this case, will have far-reaching consequences for Wal-Mart. Stay tuned!

Sources: CBS 42 and Lipstickalley.com

The CFPB Renews Fight With Big Banking Industry's Addiction To Charging Consumers Fees

On Dec. 1, 2021, the Consumer Financial Protection Bureau (CFPB) announced its intent to take stricter action against the consumer banking industry after new research demonstrated the rapacious reliance on heavy account overdraft fees in consumer banking. The reports issued by the CFPB found overdraft and non-sufficient fund fees totaled an estimated $15.47 billion in revenue across the industry in 2019, far exceeding the amounts collected in ATM fees and regular account service fees. Moreover, larger banks with more than $1 billion in assets collected roughly three-quarters of that estimated 2019 total, with just three banks collecting more than a third, JPMorgan Chase, Wells Fargo and Bank of America. The CFPB's research also found that the industry's reliance on overdraft and NSF fees has stayed relatively steady.

Since 2015, these fees have brought in about two-thirds of the revenue collected each year by larger banks from the significant account fee types listed in their call reports. According to CFPB Director Rohit Chopra, regulatory intervention of these fees is necessary to correct a "clear market failure." In essence, the fees' profit margins are too irresistible for big banks to ignore and too easy to attain when big banks' overdraft policies are too complicated to understand and institutional legacy policies too inconvenient for a consumer to avoid.

Although Director Chopra did not elaborate on what specific practices the CFPB would consider unlawful, he said the agency is considering issuing "additional policy guidance" on this point. Chopra then promised the agency will pursue action against the big banks because of their unlawful overdraft fee practices, and the agency will seek to "uncover the individuals who devise and direct any illegal conduct."

The CFPB will also prioritize exams of banks that rely heavily on overdraft fees and pay "close supervisory attention" to banks with a larger percentage of customers frequently incurring overdraft fees or that charge more considerable overdraft fees. The agency's forthcoming rulemaking on consumer financial data access rights was teased to propose technology to empower dissatisfied consumers to "vote with their feet," thus holding banks accountable for maltreatment of their customers.

Industry reaction to the CFPB's findings was predictably critical, with Richard Hunt, President and CEO of the Consumer Bankers Association, saying on Twitter that the research "fails to reflect the innovations unveiled by America's leading banks to meet the evolving needs of customers." Hunt further opposed characterizing the current overdraft practices that saturate the banking market as anything other than a force driving competition to adapt to consumers' requests of policy reversal. Hunt claimed that many consumers view overdraft programs as providing a "beneficial" product that they "knowingly use" when faced with an unexpected cash crunch.

Hunt failed to note that federal law prohibits banks from charging overdraft fees unless a customer has affirmatively signed up for overdraft coverage because of their prior practices of covertly assessing exorbitant fees against their customers, then refusing to justify. To that end, federal regulators also encouraged banks to waive overdraft fees to help customers who might be struggling financially within the past year. Some banks acted to end their overdraft fees entirely or taken steps to help cash-strapped customers avoid incurring them, such as limiting how often the fees can be charged and debuting alternative low-balance services.

The Financial Services Forum, which represents some of the largest U.S. financial institutions, also issued a statement downplaying the significance of overdraft fees to the bottom lines of the biggest banks, saying the fees make up only a "small portion" of their overall revenue. And note that these banks waived "hundreds of millions of dollars" in overdraft fees last year for pandemic-affected customers.

In its reports last month, the CFPB recognized that large banks' overdraft fee revenue *did* fall more than 26% last year amid the pandemic, leading to a corresponding

dip in their reliance on these fees as a share of reported fee revenue. That share reportedly fell from 66.5% in 2019 to 62.4% in 2020, though the CFPB supposed pandemic-related stimulus payments likely contributed to this decline by keeping more consumers' accounts solvent.

When big businesses take advantage of those who oppose their financial interests, whether it be an agency, one person or a board they consider their industry equals, we are all worse off for the injustice. Until the CFPB clarifies their industry and policy guidelines, the research affirming and amplifying the demand for consumer advocacy must be utilized by alternative action through one of the few remaining vehicles for consumer relief – private litigation that threatens the industry's bottom line. Lawyers in our firm's Consumer Fraud & Commercial Litigation Section continue to pursue corporate abuses and seek justice for victims of corporate greed on both a local and national level and value all opportunities to pursue such litigation.

If you have questions or need help in this area of concern, contact Dee Miles, Lance Gould, James Eubank, or Lauren Miles, all lawyers in our firm's Consumer Fraud & Commercial Litigation Section. If you have knowledge or information relating to similar practices or need assistance, one of these lawyers will be glad to talk with you. Our firm is always interested in pursuing litigation on behalf of consumers who have been wronged, and our lawyers are available to handle cases.

Source: Law360.com

Chicken Price-Fixing Settlements Totaling $181 Million Get Final Approval

U.S. District Judge Thomas Durkin, an Illinois federal judge, has given final approval to settlements totaling $181 million that six chicken producers have agreed to pay to resolve claims that they conspired to fix the price of broiler chicken. Judge Durkin granted final approval to the settlements end-user consumer plaintiffs reached with Fieldale Farms, Peco Foods, George's, Tyson Foods, Pilgrim's Pride, and Mar-Jac Poultry.

The settlements were reached with Tyson for $99 million, Pilgrim's for $75.5 million, Peco for $1.9 million, George's for $1.9 million, Fieldale for $1.7 million and Mar-Jac for $1 million. The end-user consumer plaintiffs are still pursuing claims against 12 remaining defendants, including Perdue Farms, Koch Foods and others. These six defendants have agreed to cooperate with the plaintiffs by authenticating documents and providing witnesses for trial, which may be significant as the case moves forward against other producers.

Judge Durkin clarified which claims will be tried in the first track of cases that will go to a jury. No bid-rigging claims will be tried in that first round, which will instead focus on claims over supply reduction and alleged manipulation of the Georgia Dock price index (a benchmark rate from the Georgia Department of Agriculture that aids in setting the price of chicken.)

The consumers are represented by Hagens Berman Sobol Shapiro LLP and Cohen Milstein Sellers & Toll PLLC. The case is *In re Broiler Chicken Antitrust Litigation* (case number 1:16-cv-08637) in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

XX.
CURRENT CASE ACTIVITY AT BEASLEY ALLEN

A New Look At Case Activity At Beasley Allen

Our BeasleyAllen.com website provides all the latest information on the current case activity at Beasley Allen. The list can be found on our homepage, top navigation, or our Practices page of the website (BeasleyAllen.com/Practices/). 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
- Retirement Plans
- Toxic Exposure
- Whistleblower

Cases

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

- Auto Products
- Aviation Accidents
- Belviq
- Benzene in Sunscreen
- CPAP Devices
- Defective Tires
- JUUL Vaping Devices
- Mesothelioma
- On-the-Job-Injuries
- Paraquat
- Talcum Powder
- Truck Accidents

XXI.
RESOURCES TO HELP YOUR LAW PRACTICE

It is an honor and a privilege for our law firm to have long been recognized as one of the country's leading law firms representing only claimants involved in complex civil litigation. Beasley Allen has truly been blessed, and we understand the importance of sharing resources and teaming with peers in our profession. The firm is committed to investing in resources that will help our fellow 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. Some of the available resources are set out below.

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 important issues to be aware of early in the litigation based on years of handling aviation cases. He provides basic instruction on investigating an accident, preserving evidence, and insight into legal issues associated with aviation claims while weaving in anecdotal instances of military and civilian crashes.

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, print and online. 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 sections of our firm by phone toll-free at 800-898-2034 to discuss any cases of interest or to get more information about the resources available to help lawyers in their law practice. To obtain copies of any of our publications, visit our website at BeasleyAllen.com/Publications.

XXII.
PRACTICE TIPS

Practice Tips On Briefing

Rachel Minder, a lawyer in our firm's Consumer Fraud & Commercial Litigation Section, will give lawyers who handle civil litigation some recommendations on effective briefing in civil litigation. She says sometimes it seems as if the briefing is never-ending in civil cases. From the moment one of our lawyers files a case, they are often caught in a whirlwind of responding to or filing innumerable motions: motions to dismiss, motions to strike, motions to compel, motions to quash, motions for class certification, motions for summary judgment, motions ***in limine***, motions to exclude, to name a few. Even after completing a trial, briefing continues with motions for a new trial, motions for reconsideration, and often, appellate briefs.

Caseloads for trial judges increase the likelihood that motions will be decided on the briefs instead of scheduling a hearing on a motion. Even where a hearing is granted, a judge who has read the briefing beforehand often comes into the argument already siding with one party.

After a case is appealed in federal court, less than a quarter are even granted oral argument, as federal appellate judges decide appeals solely based on written briefs over 80% of the time.[1]

Accordingly, it is increasingly important to be efficient in your briefing to juggle this multitude of motions and be highly persuasive and thorough enough to get the judge in your favor early. So the following are some tips on briefing and I believe you will find them helpful and useful.

USE YOUR RESOURCES

One of the most efficient strategies for brief writing is to avoid "reinventing the wheel" where possible. There are several resources available to find examples of the type of brief you are drafting to get ideas on how to frame the issue and where to target your research. Typically, I begin looking for similar examples within our firm and ask our attorneys if anyone has briefed a certain issue or type of motion before looking elsewhere. Another great resource would be searching the trial documents and briefs in Westlaw and LexisNexis, as you can tailor your searches and find those documents that are on point with the issues you are briefing. Finally, using your network of peers and colleagues through local attorney groups or listservs is a great way to get examples or opinions on different legal issues from other perspectives.

WRITE IN A WAY THAT MAKES SENSE TO YOU

I often see lawyers struggle to write a brief or dread having to respond to a motion simply because they are going about drafting in a rote manner they were taught over their career and are not briefing in a way that works for them. Out of the dozens of attorneys in our firm who are briefing consistently, it would be unlikely to find two of us who start drafting in the same way. To write a stronger brief more efficiently, it is key to find what works for you and find your "groove" when writing. Does your writing flow better if you begin by fully

[1] Appellate Courts and Cases – Journalist's Guide, United States Courts, https://www.uscourts.gov/statistics-reports/appellate-courts-and-cases-journalists-guide#:~:text=More%20than%2080%20percent%20of,circuit%2C%20to%20present%20its%20case (last visited Dec. 13, 2021).

researching your argument and then draft your analyses around this research? Or do you write better if you put all your thoughts down first, leaving room to add support and authority later? Maybe you like to draft your headings first and fill in your argument under them, or maybe you craft your headings from natural breaks in your argument after it's all written? There are so many different ways to draft a brief, and going about your writing differently depending on what you are drafting may be helpful. If you haven't found the smoothest process for yourself yet, maybe try switching up certain aspects of your briefing process to see if another way feels better for you.

ORGANIZE YOUR BRIEF PERSUASIVELY

Probably the most important aspect of briefing is ensuring that your arguments are phrased persuasively in your favor. Not only does this mean "putting your best foot forward" in your argument and starting with your strongest arguments, but it also means drawing the reader—*i.e.*, the judge—to your side early, from the first page of your brief. Don't wait until the argument portion of your document to make your case and persuade the judge.

Start with a short, concise introduction explaining briefly why the motion should be decided in your favor. Continue to draft each section throughout in a subtly persuasive manner that helps make your argument. Draft your facts to tell the story in your favor, highlighting the facts that support your legal argument. Use your legal standard section in such a way that explains why the standard is or is not met, depending on how you want the motion to be decided. However, while persuasiveness is key, subtly emphasize your case without being too argumentative in the beginning sections and do not omit relevant information.

DON'T FORGET YOUR HOUSEKEEPING

Before you finalize your brief, it is always important to ensure that your document is in the best format possible for the court. If you've used authority from past briefs, make sure you double-check the accuracy of any cites and determine whether the citation is still good law. Review your citations to ensure they are in proper Bluebook format or the format required by your court, and check that each case has a full citation before short cites are used. If you don't already have a subscription to the Bluebook online, it is an invaluable resource for anyone doing any legal writing regularly.

As always, you should double- and triple-check the grammar and spelling used in your document and make sure that any format choices are consistent. For example, make sure the capitalization of your headings is consistent, and the spacing between your sentences is uniform. Finally, review your wording choices and decide if there is a more concise way to state your legal theories, avoiding using "legalese" or unnecessary phrasing.

XXIII. RECALLS UPDATE

A large number of safety-related recalls were issued during December. Significant recalls are available on our website, BeasleyAllen.com/Recalls/. We try 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 *Report*, at Shanna.Malone@BeasleyAllen.com if you have any questions or 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.

XXIV FIRM ACTIVITIES

Employee Spotlights

Clay Barnett

Clay Barnett, a member of the firm's Consumer Fraud & Commercial Litigation Section, focuses his practice on vehicle defect class action litigation. Clay joined Beasley Allen Law Firm in 2007 and pursued pharmaceutical companies for fraud and Consumer Protection Act violations for ten years before transitioning to product defect class actions. Clay has secured tens of millions in verdicts and settlements for his clients, including both states and individual consumers. He moved his practice to the firm's Atlanta, Georgia, office in 2018 to promote future growth of the office's product defect class action practice.

Before joining the firm, Clay spent five years with the Alabama Attorney General's Office. As a prosecutor for the criminal trials division, Clay tried jury and non-jury cases with offenses ranging from misdemeanor harassment to capital murder. Clay also served in the white-collar / public corruption division, where he prosecuted numerous public officials for misuse of office. In 2006, the U.S. Department of Justice (DOJ) appointed Clay as a Special Assistant United States Attorney. He and his prosecution team tried and convicted three high-profile defendants in the Federal District Court in Mobile, Alabama.

Clay says practicing law was something he knew was inevitable. He says, "With multiple attorneys in my family, I knew that the field is challenging, rewarding, but also meaningful."

Currently, Clay's pending cases involve manufacturers: Nissan, Infiniti, Toyota, Honda, Subaru, Mazda, Nissan, Ford and Hyundai/Kia. Clay is actively developing evidence in a Nissan/Inifiniti defect class action that involves false activation of the brands' forward collision avoidance automatic braking technology. The vehicles' radar sensors and cameras misread the terrain ahead and falsely trigger sudden and heavy braking that unavoidably surprises drivers and drivers of nearby vehicles, creating great risk of collision and harm.

Evidence is also being developed by Clay in litigation against Toyota, Honda, Subaru and Mazda for sourcing defective fuel pumps from Denso Corporation. The companies installed the defective pumps across their entire inventories from model year 2016 forward. The Denso pumps cause the Toyota, Honda, Subaru and Mazda vehicles to suffer driveability flaws ranging from weak acceleration to complete engine shutdown. The separate classes also name Denso Corporation as a defendant due to its manufacturing the defective fuel pumps.

Clay also represents owners of 2013-2019Ford F150 pickups. The trucks dangerously lose all hydraulic pressure within the front brake circuit. The defect involves complete and spontaneous loss of hydraulic pressure in the front brakes, frequently in the first three years of use. Clay seeks to force Ford to return to more reliable established hydraulic systems used by the industry for generations. He is also investigating the 2015-2019 Ford Expeditions and Lincoln Navigators, which feature the same defective braking components.

Clay filed suit on behalf of owners of Hyundai Tuscon and Kia Soul vehicles for risk of catastrophic engine failure and fire. Like many others built and sold by the two sister companies, these two models suffer serious internal engine design defects. Both manufacturers have faced serious engine defect and fire allegations in recent years because the two companies' problems appear to be systemic.

Clay's GM class action is brought on behalf of owners of full-size pickups and SUVs powered by the Generation IV Vortec 5300 V8 engine. These engines consume oil at such extreme levels that internal failures occur at unheard of rates. This class action defect is certified for trial and scheduled to be heard by a jury in August of 2022.

Clay has been part of successful trial teams litigating vehicle defects, including the Volkswagen Diesel Emissions Fraud class action that resulted in a $15 billion settlement for 2.0-liter vehicles is the largest consumer auto-related consumer class action in U.S. history and among the fastest reached of its kind.

Clay was a member of trial teams that successfully represented the states of Mississippi, Louisiana, Kansas, Utah, Alabama, Alaska and Hawaii in actions filed against a long list of brand and generic pharmaceutical companies in Average Wholesale Price (AWP) litigation. Clay has secured tens of millions in settlements for his states, in addition to winning two multimillion-dollar verdicts for the state of Mississippi – a $30.1 million verdict in 2011 and a $30.2 million verdict in 2013.

Helping people and the opportunity to exercise his natural penchant for learning how things work mechanically are what Clay says he enjoys most about practicing law. He says:

> *As a former prosecutor and current civil litigator, I've been able to make a positive impact in people's lives. Separately, I'm able to put my mechanical skills to use in litigation, which means that my self-taught mechanical skills show up regularly in depositions, hearings and trials.*

Clay is a graduate of the University of Alabama and the University of Alabama School of Law. He is a member of the Alabama State Bar, Mississippi State Bar, American Association for Justice, Alabama Association for Justice, and is in the process of joining the Georgia State Bar.

Clay enjoys coaching youth soccer, football and baseball in Atlanta. Between 2004 and 2012, Clay coached high school mock trial teams in the annual Alabama YMCA high school mock trial competition. Additionally, Clay head-coached two Alabama state teams in the National high school mock trial event (2006 and 2010). He served as chairman of the River Region United Way attorney campaign and a Britton YMCA board member.

Clay is married to Dr. Elise Plauche Barnett, a general and cosmetic dermatologist at Dermatology Consultants in Atlanta. They are proud parents of a son and daughter. Outside of work, Clay enjoys his free time with Elise and their children, coaching their kids' sports teams and tennis. A few times a year, he competes in endurance road course races around the Southeast in a BMW racecar he helped design and build.

Clay says that Beasley Allen stands out from its competition because the firm "encourages its lawyers to develop niche practices and then promotes the firm well to bring attention to its lawyers' specialty practices."

Clay is a tremendously talented lawyer and a definite asset to the firm. He works hard for his clients and is dedicated to their cases.

Chad Cook

Chad Cook, in our firm's Mass Torts Section, is currently responsible for many cases, including Transvaginal Mesh, Valsartan, Invokana, Xarelto and High Viscosity Bone Cement litigation. He assists in investigating new drugs and medical devices that potentially present a serious danger to consumers. Chad also serves as the firm's Pro Bono Coordinator.

Chad was one of 11 lawyers from around the country selected to oversee the consolidated litigation as part of the Plaintiffs Steering Committee (PSC) for *In re: Fosamax Products Liability Litigation (No. II)*. The litigation encompasses hundreds of cases against Merck Sharp & Dohme, Corp., involving femur fracture injuries and is consolidated in the US District Court for the District of New Jersey. He is also on the Plaintiff's Discovery Committee for *In re: Fosamax Products Liability Litigation, MDL-1789*, consolidated in the Southern District of New York Federal Court. Chad serves on the Fosamax Science and Administrative Committees for this litigation. The cases in this litigation involve claims of osteonecrosis of the jaw.

Chad also handles cases involving transvaginal mesh and bladder slings. He represents thousands of clients involving mesh products manufactured by several defendants, including American Medical Systems, Bard, Boston Scientific, Caldera and Johnson & Johnson. Transvaginal mesh is used to repair conditions such as pelvic organ prolapse (POP) and stress urinary incontinence (SUI). This mesh is used to shore up pelvic organs that have become displaced due to age, childbirth, hysterectomy, or obesity.

As a teenager, Chad explained that he was fortunate to know many of the older adults in his church. Chad recalls that several of the church leaders happened to be lawyers at that time. He says:

They were some of the noblest, admirable people I knew, and they would occasionally share stories with me about their practice and how they had made a significant impact in someone's life. Particularly those who didn't have any real options or the resources to fight for themselves. I believe that philosophy and those ideals are what ultimately led me to law school and to Beasley Allen 21 years ago.

As the firm's Pro Bono Coordinator, Chad tracks and monitors ongoing pro bono cases and encourages and facilitates additional pro bono opportunities. Pro bono work is one of the firm's top priorities, and with this system in place, Chad has an opportunity to assist our lawyers who want to serve clients in need. Chad has also helped establish internal support systems to provide additional assistance to pro bono lawyers when needed.

Chad says the part of law practice that he enjoys the most is maintaining close contact with a client long after representation has ended and seeing them thrive! He says:

We meet people at some of the lowest points in their lives. We have an opportunity, and really an obligation, to help them in their time of need. Getting a phone call or a card from a former client who is now flourishing is a phenomenal feeling.

Chad holds a B.S. degree from Auburn University Montgomery and a law degree from Thomas Goode Jones School of Law, where he has served as an instructor in Civil Procedure and Evidence and as a member of the Legal Studies Advisory Committee. He also serves as a mentor for the Thomas Goode Jones Professional Development Program, which allows law school students to connect with practicing attorneys, discuss the practice of law and promote professionalism.

Chad was selected to the National Trial Lawyers Association (NTLA) Top 100 Trial Lawyers list, an invitation-only organization. It is composed of the premier trial lawyers from each state or region who meet stringent qualifications as civil plaintiff and / or criminal defense trial lawyers. Those selected must meet rigorous selection criteria.

Chad is a member of the Alabama State Bar, District of Columbia Bar, Alabama Association for Justice, Section on Toxic, Environmental & Pharmaceutical Torts (STEP), Christian Trial Lawyers Association and Public Justice Foundation. He is also Past President of the Montgomery County Association for Justice.

Chad says that the opportunity to learn from and work with the lawyers at Beasley Allen is a true blessing. He compliments the firm saying, "Starting with our leadership, our firm is guided by Christian principles which serve as a compass for our daily work."

Chad is a very good lawyer who is another hard-working, dedicated seeker of justice for his clients.

Tabitha McGuire

Tabitha McGuire joined Beasley Allen in 2000. In 2002, she and her family moved away after her husband received orders from the United States Air Force. In 2006, Tabitha and her family moved back to Alabama, and she returned to the firm. Tabitha is currently a Paralegal in our Mass Torts Section and is responsible for assisting with the proton pump inhibitor litigation as the lead Legal Assistant, maintaining drug and device master files, reviewing medical records, completing case reviews, filing cases, motions, and other court documents. She prepares fact sheets and discovery responses, prepares for depositions, and maintains client contact. Additionally, Tabitha works closely with the lead and bridge attorneys, assists with the talcum powder litigation, and assists with other projects as needed.

Tabitha is married to Brennon, who is retired from the United States Air Force and is currently a Civil Servant for the Department of the Air Force. They have two beautiful daughters, Ceara and Kaylee. Ceara is on active duty in the United States Air Force, and Kaylee graduated from Wetumpka High School in 2020 and will be attending college soon for radiology. Tabitha enjoys being with her family and friends. She also enjoys going to cruise-in and car shows with her husband and his 1972 Plymouth Duster.

Tabitha says that she is thankful to work at Beasley Allen because the firm cares about each client and case. She says that she has made some of her closest friends while working at Beasley Allen. We are most fortunate to have Tabitha with us. She is a hard worker and is totally dedicated to the clients for whom she works.

Darneshia Ophelia Whitfield

Darneshia Whitfield joined Beasley Allen in 2007 as a Staff Assistant in the Mass Torts Section. She left the firm in 2013 for a few years and returned in 2020. Currently, Darneshia is a Legal Secretary in the Mass Torts Section in our Atlanta office. In her role, she is responsible for providing administrative support for attorney meetings, scheduling, travel, and hosting. She also supports client relations by ensuring that the client's case information is received, organized, and up to date and the timely filing of case-related matters.

Darneshia and her husband, Tommy, have been married for twenty years. They have three children, Carly, TJ, and Skylar. Carly is a CPA in Columbus, Ohio, TJ is in college in Jacksonville, Alabama, and Skylar is in the fifth grade. Darneshia enjoys spending time with her family and friends. She also enjoys reading, studying, watching movies, and traveling. The beach is one of her favorite travel destinations.

Darneshia says that her favorite thing about working at Beasley Allen is being part of a work family that loves God. She added, "our love for God trickles down and is reflected in our love for others to include our clients, our work family, and our community. Working as a family allows us to serve our clients and community better and to meet their needs with the best possible outcome." We are blessed and most fortunate to have Darnehia with us!

Todd Wall

Todd Wall has been a faithful and dedicated employee of the firm since September 2003. He works in our Information Technology department as an IT Specialist II, where he is responsible for the performance, security, and integrity of our SQL Servers and all databases contained. Additionally, Todd is responsible for installing, troubleshooting, and maintaining ProLaw, our firm's

case management software and assists with incoming calls and emails made to our Tech Support team. Todd continuously looks for automation opportunities to help our lawyers and employees in their daily jobs.

Todd and his wife, Stephanie, have been married for 14 years. They have two children, Michael (29) and Casey (25). Michael works in the foodservice industry, and Casey has been serving his country for the past six years in the U.S. Navy, stationed in Pensacola, Florida. They have one granddaughter, Shelby, who is 15 and is learning to drive. Todd enjoys spending time with his family, hiking, kayaking, and woodworking.

Todd says that he enjoys helping everyone in the firm, especially when he can make someone's job easier and more efficient, which is his favorite thing about working at Beasley Allen. Todd is an asset to the firm. He does excellent work, which is extremely important for the firm, and we are grateful that he is with us!

XXV.
SPECIAL RECOGNITIONS

Firm's Managing Shareholders

The firm's three Managing Attorneys, Tom Methvin, Chris Glover and Frank Woodson, serve a vital role at the firm. As managers for our three primary offices, they oversee the day-to-day operations with a keen eye on new and developing litigation and within the context of our bedrock principle – "helping those who need it most." Our managers guide the firm's other lawyers in the four sections and provide thought leadership on future planning and prospects for the firm.

Tom Methvin

Tom Methvin has been with Beasley Allen for 33 years. His first professional job after graduating from Cumberland School of Law in Birmingham was at Beasley Allen. In fact, that has been his only job, but the scope of his work has changed and has increased greatly. Tom became Managing Attorney for Beasley Allen at age 35 and has served in that role for 23 years. His vision, leadership, and passion have helped the firm become a national powerhouse in representing victims of wrongdoing.

Tom says he entered law practice to "help the least of these," an instruction from Matthew 25:40, one of his favorite Bible verses. He says it was also a principle his dad Bob instilled in him as he grew up. Tom says he wanted to follow previous generations who had served as lawyers, judges and in other elected offices in Alabama for over 200 years. Tom said his dad taught him the importance of helping the poor, less educated and less advantaged populations in society. Tom says that remains his favorite part of practicing law. He says:

> *A lot of the cases I have handled were for people who, through no fault of their own, did not have the same chances in life as many of us. They are the last people that need to be taken advantage of and have their money practically stolen, yet that is what happens.*

An example of the types of cases Tom handled earlier in his career involved a massive door-to-door sales and finance scam. Tom was the lead lawyer in the landmark predatory lending case, obtaining a verdict of $581 million, which is the largest predatory lending verdict in American history. Consumer advocates hailed this verdict because the defendant finance company shut down its business in Alabama due to the litigation and verdict. Tom has tried a total of 13 cases that have resulted in verdicts above $1 million.

As a visionary, Tom realized that if lawyers could focus on specific areas of law, the firm could more effectively carry out its mission of "helping those who need it most." So, he reorganized the firm's structure, placing Beasley Allen at the forefront of a practice that is common today – organizing a firm in sections based on case type. The structure allows our lawyers to remain current on emerging trends and innovative in their law practice.

Tom has also spearheaded the expansion of Beasley Allen into a nationwide firm. The firm's first case on the national stage positioned it to become a pioneer in another practice that is common today – Mass Torts Litigation. The firm handled cases in Mississippi that involved the diet drug Fen-Phen and obtained sizable compensation for the victims harmed by the drug. As the Mass Torts Section continued winning cases, it heightened the firm's national profile and helped grow its client base. Under Tom's leadership, the firm has expanded its locations with offices in Atlanta, Georgia, Dallas, Texas, and Mobile, Alabama, in addition to its Montgomery, Alabama, location.

In 2016, Tom recommended creating an Executive Board for the firm to the Board of Directors. The members are Tom, this writer, Greg Allen, Cole Portis, Dee Miles, Andy Birchfield, Rhon Jones, Gibson Vance, LaBarron Boone, Chris Glover, Ben Baker and Leigh O'Dell. They were charged by the Board to help lead the firm into the next generation. The Executive Board works with Tom, identifying new areas of legal work for the firm. The members also propose procedures and different approaches for daily operation it believes will prepare the firm for the future.

Tom celebrates the firm's employees for making Beasley Allen unique as a law firm, saying:

> *The people who work at Beasley Allen make it so special. They truly care for the people we represent, and their individual skillset makes them vital to all the firm's work. We attempt at all times to put our clients' interests first, ahead of ourselves.*

Over the years, a significant number of cases handled by our firm have substantially changed corporate conduct. By taking on challenging cases and winning significant verdicts, the firm has drawn attention to bad corporate behavior that hurts people and pressures bad actors to do better. We are blessed to have Tom in the major leadership role in the firm. His vision, dedication and work ethic have been a difference-maker for Beasley Allen and the clients we have been blessed to represent.

Chris Glover

Chris Glover joined Beasley Allen in 2008 after practicing law in Birmingham, Alabama, for several years. Ten years later, he became Managing Attorney for the firm's

Atlanta office. Chris' leadership and guidance helped the Atlanta office grow from two to 17 lawyers and added support staff in its first year. This growth positioned the firm to secure significant victories and millions of dollars in verdicts and settlements for its clients in the last three years.

Chris has helped develop new and increase existing resources, creating opportunities for growth in several practice areas, such as involvement in the national opioid litigation. The Atlanta Opioid Litigation Team has helped represent the State of Georgia in its lawsuit against opioid manufacturers and distributors.

Chris continues handling complex products liability cases involving serious injury or death. He has dedicated his practice to protecting the rights of survivors of catastrophic personal injury and victims of wrongful death. Chris has represented injured individuals and their families in a wide range of serious injury and death claims, including cases that involve defective products, car accidents, commercial truck accidents, workplace accidents and aviation accidents. Over the years, Chris' clients have received verdicts and settlements totaling over $100 million.

Chris was drawn to the legal profession "to help people who are hurting." He had this to say about his work as a trial lawyer:

My clients have just gone through the worst thing they will ever go through. They have lost a loved one, are paralyzed or injured in some way that their life will never be the same. It is hard but a tremendous opportunity to really help people. To do so, though, I have to work hard and know more about what happened to them than anyone. I love that challenge, but I take that challenge on because I want to see lives improved and wrongs righted.

Chris says Beasley Allen stands apart from the competition because of our lawyers and staff's dedication to our clients. He says:

Many firms have talented and smart lawyers. Our lawyers are just as talented and smart, if not more so, but what sets us apart is how we care for our clients. We also have resources on top of resources to face large corporations. However, our passion to help those who have lost sets us apart.

We see a very good future for our Atlanta office under Chris' leadership. We have tremendously talented lawyers and support staff with a broad range of experience in major litigation.

Frank Woodson

Frank Woodson is the Managing Attorney for the Beasley Allen Law Firm's Mobile office. He has practiced pharmaceutical product liability with the firm since 2001. Before joining our firm in Montgomery, Frank practiced in Mobile for 17 years. The Mobile office was opened in January 2021, and we now have seven lawyers and two support staff in Mobile. This office has been highly successful, and we consider it an extremely important part of Beasley Allen.

In May 2020, Southern District of Florida Judge Robin L. Rosenberg appointed Frank to serve on the Plaintiffs' Steering Committee for the Zantac national multidistrict litigation (MDL). Frank serves on the Zantac MDL's Bellwether Trial and Science/Expert committees and as co-chair of the Deposition/Discovery committee with Mikal Watts. He has served in similar leadership roles for past MDLs, including the Granuflo MDL, Lipitor and Vioxx. Frank has handled claims on behalf of individuals who died or suffered serious injuries due to these medications.

Frank provided his perspective on the firm, saying that its size is unique as a plaintiff's firm. He appreciates the firm's urging its lawyers to be active in professional legal organizations and committed to pro bono work. Frank is also pleased that the firm emphasizes the importance of giving back to its local community.

We also envision a very good future for the Mobile office. Frank, because of his past ties to the Mobile area and his many contacts in the legal community, is the perfect person to manage the Mobile office.

Focused Section Directors Help Guide Beasley Allen's Success

Beasley Allen was founded more than 40 years ago with a vision of "helping those who need it most." Since then, the firm has grown into a national firm, playing an essential role in some of the most recognizable in the country.

Much of that success comes from how the firm structured itself in the early years. As Managing Attorney, Tom Methvin organized the firm into specific practice areas, establishing Beasley Allen as a pioneer in a practice that has become commonplace today. Beasley Allen's litigation sections include Mass Torts, Toxic Torts, Consumer Fraud, and Personal Injury & Product Liability. We will discuss the role of each Section Director below.

Mass Torts Section

Beasley Allen lawyer Melissa Pickett serves as Section Director for Mass Torts, which focuses on cases involving an injury or death caused by a defective medical device or serious side effects or death caused by a medication. Working closely with Mass Torts Section Head Andy Birchfield, Melissa manages the day-to-day operations of the section's lawyers and staff and oversees all aspects of the cases they handle. A prominent Mass Torts litigation involves the e-cigarette giant JUUL. Beasley Allen represents dozens of school districts across the country, seeking to hold JUUL accountable for creating a national youth vaping epidemic. The section also handles claims of ovarian cancer linked to talcum powder use for feminine hygiene.

Toxic Torts Section

Tracie Harrison serves as Section Director of our Toxic Torts Section. She works with the Section Head, Rhon Jones, and oversees staff working with lawyers on lawsuits involving claims of injury or disease from exposure to a chemical or other dangerous substances. The Toxic Torts Section handles lawsuits involving cases of Parkinson's disease linked to exposure to the industrial weedkiller paraquat. The section also handles litigation involving

the weedkiller Roundup, linked to non-Hodgkin's Lymphoma and cases involving water contamination, among others.

Consumer Fraud & Commercial Litigation Section

Michelle Fulmer oversees the Consumer Fraud & Commercial Litigation Section as the Section Director, working with Section Head Dee Miles. Michelle ensures that the section runs smoothly and she helps resolve any issues that arise. The section handles cases involving financial harm resulting from breaches in security, defective products, insurance fraud, and investment fraud. Some cases the section is handling include the antitrust litigation involving Blue Cross Blue Shield and class actions against major vehicle manufacturers such as Honda, Toyota, Subaru, and Mazda.

Personal Injury & Products Liability Section

Sloan Downes serves as our Personal Injury & Product Liability Section Director. She works closely with the Section Head, Cole Portis, to ensure that all employees handling these cases have the resources they need to do their jobs. Some of the current cases the section handles involve trucking and aviation accidents, on-the-job injuries and deaths caused by defective products, including defective auto products.

Kimberly Youngblood

Kimberly Youngblood is the Director of Human Resources (HR), Information Technology (IT) and Marketing for Beasley Allen. She will mark her 15th year with Beasley Allen this year. Kimberly is responsible for overseeing and managing the daily operations of the three departments in our Administrative Section of the firm.

The Human Resources Department ensures the firm is compliant with all employment laws, facilitating the best benefits at the lowest pricing, assisting employees with issue resolution and / or life events, maintaining employment records, and facilitating employee appreciation events and giveaways. HR also manages all firm notaries, bar licenses, and group memberships of our attorneys.

The Information Technology Department works to ensure the security of our network, implementation and configuration of new technology, managing all firm technology equipment, and providing technical support to our employees. IT also manages the firm security and fire alarm systems for the buildings.

The Marketing Department is responsible for the ongoing maintenance of our firm's website, managing the firm's social media, facilitating awards and recognition for the work of our attorneys and firm, and obtaining media coverage for the work our firm takes on or completes.

Kimberly says her favorite part of working at Beasley Allen is its mission of "helping those who need it most," the firm leadership and the employees. She adds, "I feel I am truly blessed to work with amazing people who do amazing work for the firm."

Kimberly is happily married to her best friend, Steve Youngblood, and they have two sons, both with careers as first responders. One son Sgt. Christopher Youngblood works for the Montgomery Fire Department, and the other son Lt. Stephen Youngblood, Jr., is a police officer for the City of Millbrook. Kimberly says she and Steve are proud of their sons, their work, and their families. Kimberly and Steve have also been blessed with four grandchildren.

In her spare time, Kimberly says she likes to draw, enjoys the dying art of calligraphy, and reading. She also enjoys spending time with family and friends.

Kimberly has a vitally important role in our firm, and she does a tremendous job. Without a doubt, Kimberly is a great asset who works very hard to keep things rolling and in the right direction at Beasley Allen.

Chris Glover Named 2021 "Chad Stewart Award" Recipient

Chris Glover was awarded the 2021 "Chad Stewart Award" by Beasley Allen. Named after Chad Stewart, a lawyer in our firm, who passed away unexpectedly in 2014 at the very young age of 41, the award honors Chad's spirit of service to God, his family, and the practice of law. The annual award recognizes one of its lawyers who best exemplifies qualities Chad demonstrated in his life and law practice. Beasley Allen Managing Attorney Tom Methvin had this observation:

> *Chad's priorities were faith, family and firm, in that order. It is a pleasure to present this award to Chris, who exemplifies the same level of commitment to keeping his priorities in the right order. It is a pattern also lived out among our top leadership and encouraged across the firm.*

Chris is an award-winning and successful lawyer who endeavors to honor his commitment to God and his family while striving for excellence for his clients. He is married to the former Erin Henley, and they have two children, Kaitlyn and Andrew. They attend Christ Covenant Church in Buckhead, where Chris serves as an Elder and Community Group Leader. The family is active in their children's school, Whitefield Academy.

Chris is a former adult Sunday school teacher and a former deacon at Montgomery First Baptist Church. He is a board member for Urban TREC Homeless Ministry and TREC India Orphanage, and Jacksonville State University Alumni Association's Atlanta Chapter. In addition, Chris is a former baseball coach for Dixie Youth Baseball and a former YMCA football coach.

Driven by the firm's core principle, "helping those who need it most," Chris has dedicated his practice to protecting the rights of survivors of catastrophic personal injury and victims of wrongful death.

You can read additional information about Chris and his tremendous legal career in his spotlight in the Firm Activities portion of this *Report*. This information is also available on our website at beasleyallen.com/attorneys/. You can reach Chris at the firm by calling toll-free 800-898-2034 or email him at Chris.Glover@BeasleyAllen.com.

Lauren James Selected As 2021 MVLP Lawyer Of The Year

The Montgomery County Bar Association's Volunteer Lawyers Program (MVLP) selected Beasley Allen lawyer Lauren James as the 2021 Tom Methvin Lawyer of the Year recipient. The award, named after the firm's Managing Attorney, annually honors one Montgomery lawyer based on the total number of pro bono hours or complexity of cases staffed, the impact of the pro bono work and the benefit to low-income Montgomery County residents, successful recruitment of other attorneys for pro bono representation, and proven commitment to equal access and delivery of quality legal services to low-income Montgomery County residents. Lauren also received the MVLP's 2021 Medal of the Samaritan in recognition of her outstanding pro bono legal service.

Lauren is a lawyer in Beasley Allen's Mass Torts Section, where she is a member of the Talcum Powder Litigation Team. She previously worked as a law clerk in the section before being hired as a lawyer. Lauren explains that she was drawn to the legal profession because of her passion for serving others.

She says, "As a law student, I was encouraged to participate in pro bono activities. That helped create a commitment to pro bono work that has continued to this day. Pro bono work is particularly rewarding because you are serving those who would not otherwise have access to justice. Pro bono service is a lifelong commitment to obtaining justice for all people."

Last year, the group selected Lauren to serve in the MVLP Pro Bono Leadership Corps. (PBLC). The PBLC provides young lawyers with the support and training necessary to develop a strong habit of pro bono service in practice. Participants receive intensive training in various legal issues common to pro bono practice, mentoring, and other benefits to recognize their commitment to service.

Lauren earned a Bachelor of Science in Legal Studies from Faulkner University, where she was inducted into Alpha Chi (national collegiate honor society) and Sigma Tau Delta (international English honor society). She earned a law degree from Faulkner University Thomas Goode Jones School of Law, graduating *magna cum laude* earlier this year. While in law school, Lauren received four Best Paper awards and the Best Brief award in Faulkner Law's 1L Moot Court Competition. She was also a finalist in the school's J. Greg Allen Intra-School Mock Trial Competition.

Lauren was inducted into the Jones Public Interest Society, which recognizes law students for community, public, and pro bono service and received the Alabama State Bar's Pro Bono Law Student Award. Lauren served as Vice President for the school's Women's Legal Society, Articles Editor for the Faulkner Law Review, a Dean's Fellow, and a member of the Board of Advocates.

Lauren is also a member of the Alabama State Bar and its Young Lawyers and Women's Sections. She is also a member of the American Association for Justice and Hugh Maddox Inn of Court.

The Mobile, Alabama, native now resides in Montgomery, where she enjoys feeding the birds at the Wynton M. Blount Cultural Park. Lauren volunteers with the Montgomery Zoo and is a member of Landmark Church in Montgomery, serving as part of the Landmark Ambassadors program that welcomes new members and helps them become involved with the church.

Sources: Montgomery County Bar Association

XXVI.
FAVORITE BIBLE VERSES

Chris Glover, who manages our Atlanta office, furnished his favorite Bible verses this month. He says:

I chose these verse because it can be frustrating and discouraging to live in this fallen world, but we have hope. We have hope for the future when the futility of the fallen world will end, but we have hope today. We how are believers can experience because we have the firstfruits of the Spirit now.

For I consider that the sufferings of this present time are not worth comparing with the glory that is to be revealed to us. [19] For the creation waits with eager longing for the revealing of the sons of God. [20] For the creation was subjected to futility, not willingly, but because of him who subjected it, in hope [21] that the creation itself will be set free from its bondage to corruption and obtain the freedom of the glory of the children of God. [22] For we know that the whole creation has been groaning together in the pains of childbirth until now. [23] And not only the creation, but we ourselves, who have the firstfruits of the Spirit, groan inwardly as we wait eagerly for adoption as sons, the redemption of our bodies. [24] For in this hope we were saved. Now hope that is seen is not hope. For who hopes for what he sees? [25] But if we hope for what we do not see, we wait for it with patience. Romans 8:18-28

XXVII.
CLOSING OBSERVATIONS

Climate Change Patterns Heighten Urgency For Aggressive Action

The deadly tornados that struck parts of the country in December, killing over 100 people and causing massive destruction and economic loss, put the issue of climate change on the minds of all Americans. We can no longer ignore this deadly and most serious problem. It's literally a matter of life or death.

Record high temperatures in the Pacific Northwest, heat waves, devastating forest fires and droughts in the western U.S., torrential rain from hurricanes and extreme flooding in other parts of the country are indications, some say, of climate change. The United Nations (U.N.) reports that the impact of human-induced climate change over the last three decades has raised the earth's temperature. The Environmental Defense Fund warned that we are "poised to blow past" the 1.5 degrees Celsius (2.7 degrees Fahrenheit) warning limit by the early 2030s. Last November, the 26th annual Conference of

the Parties to the U.N. Framework Convention on Climate Changes (COP26). Participants represented 200 countries and met for 12 days, hammering out the countries' plans to address climate change and negotiate efforts to cap the rising global temperature.

Capping the earth's temperature rise to 1.5 degrees Celsius (2.7 degrees Fahrenheit) above the preindustrial temperatures is the internationally agreed threshold established to reduce global heating and was at the heart of the December 2015 Paris That year, 196 parties adopted the Paris Agreement during COP21. The legally binding international treaty on climate change is intended to limit global warming. All countries that signed the agreement are committed to developing and communicating action plans to reduce their countries' greenhouse emissions to reach the goals outlined in the Paris Agreement. Developed countries will lead the way by providing financial assistance to less developed countries at a higher risk of the negative impacts of climate change. The U.N. believes that "[b]y 2030, zero-carbon solutions could be competitive in sectors representing over 70% of global emissions."

Understanding why and how the climate is changing is essential

Human-induced factors that have intensified climate change include producing greenhouse gas emissions such as carbon dioxide, nitrous oxide, methane and fluorinated gases, including hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride. Greenhouse gases trap heat in the earth's atmosphere. The U.S. Environmental Protection Agency (EPA) reports that as of 2015, an estimated 47 billion metric tons of greenhouse gases had been emitted worldwide, representing a 43% increase since 1990. Globally, the primary culprit of greenhouse emissions was energy production, including fuels used by vehicles and buildings. This was followed by agriculture and land-use change and forestry (mainly due to deforestation).

Carbon is the most significant contributor to greenhouse gases. In the U.S., carbon dioxide accounts for 80% of greenhouse emissions, entering the atmosphere when fossil fuels, solid waste, trees and other biological materials are burned. Beginning in 1990, the U.S. has used land management to act as a net sink of carbon dioxide or removing more carbon dioxide from the atmosphere and what is stored in vegetation than what is emitted. Such an outcome is what the U.N. hopes to replicate worldwide and on a more consistent basis to reduce the amount of greenhouse gases that are trapping heat and driving up the earth's temperature.

The Center for Climate and Energy Solutions explains that "[a] warmer Earth... experiences more extreme weather events, like longer fire seasons, bigger and more frequent floods, and slower and stronger hurricanes." NASA reinforces this concept that a few degrees can make a huge difference. It says that if the earth's temperature rises by 2 degrees Celsius (above preindustrial temps), sea levels will rise, "resulting in increased coastal flooding, beach erosion, salinization of water supplies and other impacts on humans and ecological systems." The agency also illustrates other effects, including temperature extremes, droughts, water scarcity, extreme precipitation, changes in biodomes and ecosystems. Events that we are already experiencing.

Uniting to protect the earth, its resources and its inhabitants

The COP26, held in Glasgow, Scotland, adjourned with a package of decisions called the Glasgow Climate Pact. The Pact's provisions "include[e] strengthened efforts to build resilience to climate change, to curb greenhouse gas emissions and to provide the necessary finance for both." Countries that signed the Paris Agreement took the opportunity to reaffirm their commitment to supporting developing countries in their efforts to reduce greenhouse gases. The nations also agreed to work collaboratively to "reduce the gap between existing emission reduction plans and what is required to reduce emissions, so that the rise in the global average temperature can be limited to 1.5 degrees."

President Biden was one of the COP26 participants and announced recently that his administration plans to cut the government's carbon emissions by 65% by the end of the decade, according to the *Washington Post*. The plan "put[s] the federal government on a path to net-zero emissions by 2050" while adding clean electricity to the grid. Experts believe the federal government's actions could have a ripple effect across the country. There are critics on both sides of the plan. Some don't think the President is going far enough, while others believe the plan will harm the economies of states with more extensive fossil fuel reserves.

President Biden reinstated an order signed by President Barak Obama in 2015 with a goal of cutting the federal government's emissions by 40% over 10 years. While President Donald Trump revoked the order. He instructed government agencies to reverse course and focus on reducing waste and cutting costs rather than invest in clean energy to help protect our planet and its natural resources.

The world's economic and social future depends on whether or not the battle over climate change is won. Frankly, it's a battle we can't afford to lose. For that reason, all of our political leaders must write and work together in an effort to win this critically important battle.

Sources: United Nations, Environmental Defense Fund, U.S. Environmental Protection Agency; Center for Climate and Energy Solutions, NASA, and *Washington Post*

XXVIII.
OUR MONTHLY REMINDERS

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

2 Chron 7:14

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

Edmund Burke

Woe to those who decree unrighteous decrees, Who write misfortune, Which they have prescribed. To

rob the needy of justice, And to take what is right from the poor of My people, That widows may be their prey, And that they may rob the fatherless.

Isaiah 10:1-2

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

Martha Washington (1732 – 1802)

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

Louis Brandeis, 1937
U.S. Supreme Court Justice

Injustice anywhere is a threat to justice everywhere.

There comes a time when one must take a position that is neither safe nor politic nor popular, but he must take it because his conscience tells him it is right.

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

Martin Luther King, Jr.

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

Vincent Lombardi

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

Mark Twain (1835-1910)

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

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

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

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

Theodore Roosevelt Sr., December 16, 1877

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

Bryan Stevenson, 2019

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

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

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

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

XXIX.
PARTING WORDS

The New Year

As we enter 2022, it's a good time for us to reflect on 2021 and its many problem areas of concern and then look ahead to this New Year and its challenges. During 2021, we experienced the following: the devastating effects of the COVID-19 pandemic; climate change at a much higher level of intensity with its destructive effects; a wider spread of continuous gun violence and resulting deaths; a nation more divided than ever; the Jan. 6 insurrection at our nation's capitol; and the list goes on.

The American people must demand changes that will put our nation on the road to recovery in all areas of concern. Leaders in both political parties must put the interests of all of our people first and foremost on their agendas and start working together in harmony for the good of our nation. Clearly, we need more than just talking about our problems – it's high time for our leaders at every level of government to start dealing with and solving those problems once and for all.

God has blessed America, but we have allowed our people to suffer because of the division and hate-filled conduct that has become a political way of life. We have let money and greed become motivating factors for much of what happens in government. Putting God in control and obeying Him faithfully is the only real answer to our many problems. Our leaders must lead and govern and act in a manner that will honor and glorify God. My prayer is that this will happen during the New Year.

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218 COMMERCE STREET (36104)
POST OFFICE BOX 4160
MONTGOMERY, ALABAMA 36103-4160
TOLL FREE 1 (800) 898-2034
BEASLEYALLEN.COM

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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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