The JERE BEASLEY REPORT

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LAW FIRM

I.
CAPITOL OBSERVATIONS

The Life And Legacy Of Dr. Martin Luther King, Jr.

In 39 short years, Dr. Martin Luther King, Jr. left an extraordinary mark on the history of our country and the world. The King Institute, established to help "disseminate King's visionary ideas," details his life and the legacy of his civil rights work. Dr. King dedicated his life to fighting injustice, namely discrimination in the U.S. and oppression of the marginalized worldwide. This man's courage and dedication to a just cause and his many sacrifices in the service of justice may be unparalleled in this country's history. Dr. King was a servant-leader without a doubt, and his life was ended way too soon.

Dr. King graduated high school at 15 and eventually earned his Ph.D. in systematic theology from Boston University. His career began as a pastor at Ebenezer Baptist Church in Atlanta, Georgia, and later Dr. King was the pastor at Dexter Avenue Baptist Church in Montgomery, Alabama. That's when he started what the late John Lewis referred to as "Good Trouble," and the rest is history.

Along the way, Dr. King championed the vision that all men are created equal and should have the same rights and privileges. He became one of the highest-profile leaders of the Civil Rights Movement in this country. In his legendary "I Have a Dream" speech (published in its entirety on the NPR website), Dr. King expressed his vision, saying he had a dream that, among other things, one day his children would "not be judged by the color of their skin but by the content of their character."

A key component of Dr. King's activism was encouraging fellow activists to participate in nonviolent protests, adapting Mahatma Gandhi's philosophy. This approach challenged discrimination and demonstrated a stark contrast between civil rights activists and those fighting to maintain the vestiges of racism. Dr. King also encouraged civil disobedience and was jailed 29 times for such acts – quite often on fabricated charges. Once, he was jailed in Montgomery for going 30 miles per hour in a 25 miles per hour zone. He also led the famous Montgomery Bus Boycott, which fellow civil rights activist Rosa Parks initiated.

Dr. King's leadership in the Civil Rights Movement helped achieve victories such as the overturning of the *Plessy v. Ferguson* "separate but equal" doctrine and the passage of the Civil Rights Act of 1964. The Civil Rights Act was a significant milestone in outlawing discrimination based on race, color, religion, sex or national origin. This act required equal access to public places, and employment, enforced desegregation in public schools and was thought to "guarantee" the right to vote.

Dr. King actively opposed discrimination in other parts of the world, including apartheid in South Africa. In 1964, he was awarded the Nobel Peace Prize at 35, making him the youngest to receive the award at that time. Dr. King donated the entire accompanying monetary prize of $54,123 (the equivalent of over $480,000 today) to further the Civil Rights Movement's efforts.

Before his death, Dr. King said he wanted to be remembered as someone who "tried to give his life serving others." He was assassinated on April 4, 1968, in Memphis, Tennessee. His legacy lives on today and serves as a reminder that one person's vision can spark hope and inspiration in others to build on past successes and keep marching forward.

"We cannot walk alone. And as we walk, we must make the pledge that we shall always march ahead. We cannot turn back." – Dr. Martin Luther King, Jr. (1929 – 1968)

Sources: The King Institute, History Channel and NPR

II.
BIG TRUCK ACCIDENT LITIGATION

Truck Driver Fatigue

Lawyers at Beasley Allen have handled a number of motor vehicle accident cases over the past several years that involved drivers of big trucks who were fatigued, causing serious accidents resulting in serious injuries or death. We know from experience that fatigue for truck drivers is a very serious safety problem.

The Driver Fatigue and Alertness Study, conducted in October of 1996 by the U.S. Department of Transporta-

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tion, Transport Canada and the Trucking Research Institute, found that fatigue leads to increased lapses of attention; slower information-processing and decision making; longer reaction time to critical events; more variable and less effective control responses; decreased motivation to sustain performance; increased subjective feelings of drowsiness; decreased watchfulness, and decreased alertness to danger (Wylie, et al., 1997).

There is little dispute that these problems can become deadly behind the wheel of a tractor trailer truck. Thus, it was no surprise that researchers found that driving while drowsy increased an individual's crash risk by four to six times (Klauer, et al., 2006).

Chris Glover, the Managing Attorney in our Atlanta office, recently settled a case that was a classic example of how dangerous driver fatigue really is. Chris' client was parked on the shoulder of Interstate 85 in Hall County, Georgia. A roadside attendant was parked behind the client's vehicle and was in the process of helping her refuel when a tractor trailer collided with the side of the attendant's vehicle and the rear of the client's vehicle. The attendant was killed, and Chris' client was ejected from her vehicle. She suffered catastrophic injuries in the incident. During the pretrial discovery process, it was learned that the tractor trailer driver was severely fatigued, so much so that he did not even attempt to apply brakes before the collision.

Accidents like this one and countless others could be prevented if truck drivers followed the Federal Motor Carrier Safety Administration's rules for hours of service. These rules were put in place to keep the drivers of these massive and potentially dangerous vehicles safe and protect occupants of other vehicles sharing the road with them.

Beasley Allen lawyers are committed to fighting for justice on behalf of persons whose lives are forever altered by the negligence of truck drivers and the companies that employ them. The civil justice system is needed to make sure the companies and their drivers follow the rules required to keep the highways safe. If you have any further questions regarding this issue, contact Chris Glover at 800-898-2034 or email at Chris.Glover@BeasleyAllen.com.

Tread/Belt Separation Heavy Truck Tire Case

Lawyers in our firm recently settled a severe personal injury claim with the tire manufacturer and distributor involving a heavy truck tire's tread/belt separation for $37.5 million. Our injured client lost control of his truck when the front steer tire failed due to a tread/belt separation. The separation caused the tire to completely lose air pressure. Our tire experts established that the tire components within the tire did not meet the manufacturer's internal design specifications. Unfortunately, our client suffered life-altering injuries that will require 24-hour nursing care for the rest of his life.

Tread/belt separation or detreading is one of the ways a defective tire can cause loss of vehicle control, which happened in this case involving our client. It is foreseeable and preventable. Tires are a critical safety device that should not be used beyond their recommended life. Still, while a tire's exterior may appear in good condition, internal damage that is not visible can be disastrous.

Many factors can cause a tire to be defective, including wear and tear. Over time, a tire's rubber components break down, allowing oxygen to permeate the rubber leading to the deterioration of other internal components. The most common cause of tread separation is manufacturing defects. Bonding problems in the tire manufacturing process, contaminants introduced into the tire during the tire making process, under-vulcanization, old ingredients, improper sized components, or something as simple as air being trapped in between the layers of the tire during manufacturing – all of these can cause tread separation and other tire failure and often crashes that seriously injure or kill unexpecting travelers. If you have any questions or need more information, contact Ben Baker at 800-898-2034 or email at Ben.Baker@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 litigation. Most truck 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 email Sloan.Downes@BeasleyAllen.com. She will have the appropriate lawyer contact you.

III.
AN UPDATE ON MOTOR VEHICLE LITIGATION

Beasley Allen, Other Firms File Lawsuit Over 15-Passenger Van Crash in Atlanta

Chris Glover, the Managing Attorney in Beasley Allen's Atlanta office, represents nine plaintiffs in a lawsuit against Chrysler Group LLC and others. Those claims involved nine passengers who were injured or killed in a horrific van accident that occurred near Atlanta last spring.

On April 24, 2021, 16 women from We Are Living Proof, a sober living community, were traveling along I-85 just outside downtown Atlanta in a 2002 Dodge Ram passenger van on the way to a recovery meeting. Suddenly, the van went out of control, rolled onto its side, and slid across two lanes of the interstate before bursting into flames. According to news reports and witness accounts, bystanders frantically helped rescue passengers from

the burning van. Seven of the women died, and the remaining nine were severely injured.

Chris filed the lawsuits against Chrysler Group (known as FCA US LLC), its parent company Stellantis N.V., Sober Living Recovery, the van driver, and others. He represents Alexis Furubotten, Ebony Marks, Amy Proffitt, and Rikiah Gatlin, all of whom were injured in the accident, and the families of Kristie Whitfield, Tina Rice, Normisha Monroe, Heidi Lesley, and Rose Patrick, all of whom died in the crash. Co-counsel with Chris in this litigation, Alan Hamilton, a partner with the firm Shiver Hamilton, joined the injury case filing with his clients Brittnee Bekerman, Morgan Brewner, and Ericka Obi. Shiver Hamilton also filed separately on behalf of two of the other victims who died, Ashleigh Paris and Alisha Carroll.

Chris had this to say about this tragic accident:

The tragic van accident was the result of a perfect storm of events, all of which could have been avoided and the lives and injuries spared had certain precautions been in place. This vehicle was tragically unstable. The National Highway Traffic Safety Administration and others have warned for years against using these vehicles because of their dangerous propensity to lose control and roll over. These vehicles were discontinued the next year after the one holding these women was sold, yet nothing was done to protect the many lives impacted by this dangerous design. Chrysler was well aware of its dangers before they ever sold this van.

Alan Hamilton, our co-counsel in this litigation, added his assessment:

This was a relatively minor tip-over. Everyone should have walked away. It's a tragedy that due to the vehicle's design, these women were trapped in a fiery inferno.

There are other law firms and lawyers involved in this litigation. They include P. Gerald Cody, Jr. and Gus McDonald of McDonald & Cody, LLC, James "Jeb" Butler of Butler Law Firm, Scott Pryor of Scott A. Pryor, Attorney at Law, LLC, Haynes Studstill of Studstill Firm, LLP., Christine Koehler of the Koehler Firm; Michael T. Sterling of Dreyer Sterling LLC; Sarah R. Jett of the Law Offices of Gary Martin Hays & Associates, P.C.; Jonathan Rosenburg of Bader Scott Injury Lawyers LLC; Charles E. Johnson III (Trip) of Foy & Associates, P.C.; Scott Pryor of Scott Pryor Law; and Stephen Lynch of Morgan & Morgan.

Beasley Allen Has 3 Of 10 Top Settlements In 3 States

Casemetrix has reported that in 2021 our firm had 3 of the top 10 settlements in motor vehicle accidents in the states of Georgia, South Carolina and Florida. Our three settlements listed were in Georgia cases handled by Chris Glover, Managing Attorney in our Atlanta office. Darren Penn was co-counsel in one of these cases.

Source: Casemetrix

Common Misconceptions Relating To Seatbelt Failures

Lawyers in our firm's Personal Injury & Products Liability Section are currently investigating and pursuing a number of cases involving various seatbelt-related defects. Many auto accidents involve either ejection from the vehicle upon impact or the occupant moving around unrestrained inside the vehicle during the impact. The most common misconception in these cases is that the injured person was not belted. But, this initial assumption is often not the case. Our lawyers know from manufacturer recalls, government investigations, and our litigation that seatbelts, even when used properly, can and do fail quite often.

Seatbelts fail in many ways, including false latching of the buckle, spooling out of the belt, retractor failure, and pretensioner failure. The following is a brief explanation of each:

- False latching occurs when the belt buckle feels, looks, and sounds buckled despite not actually locking into place.
- Belt spooling occurs when all or part of the seatbelt webbing releases during an accident.
- A retractor failure prevents the belt from locking tightly around the occupant, thus doing away with the safety aspect of the belt altogether.
- Pretensioner failure occurs when the mechanism intended to tighten slack in the belt malfunctions or fails, thus failing to provide proper seatbelt geometry during a crash.

Every instance of seatbelt failure described above can result in serious injury or death. Beasley Allen lawyers continue to aggressively pursue actions to prevent these types of injuries from occurring and ensure that manufacturers are held responsible for failures. If you or a loved one was seriously injured by a seatbelt failure, or if you have any questions about this matter, contact Sloan Downes, Director of the Personal Injury & Products Liability Section, at 800-898-2034 or email at Sloan.Downes@BeasleyAllen.com. Sloan will direct you to a lawyer in the Section who handles these cases.

Class Action Lawsuit Involving The Nissan Automatic Emergency Braking

Dee Miles, Clay Barnett, and Mitch Williams, lawyers in our firm's Consumer Fraud & Commercial Litigation Section, are handling a very important class action lawsuit against Nissan of North America, Inc., and Nissan Motor Company, Ltd. (together Nissan).

The lawsuit, filed in the Middle District of Tennessee, alleges Nissan equipped its 2017 or newer Nissan brand vehicles with defective Automatic Emergency Braking (AEB) systems that place them at risk of misdetecting obstacles within the vehicles' path resulting in unintended activation of the vehicles' braking system while driving and without warning to the driver.

Specifically, it's alleged that the radar is incapable of distinguishing between a true obstacle, such as another vehicle, and objects such as railroad tracks, cattle grates, metallic road signs, low-hanging traffic lights, and other overhead or ground objects.

From numerous consumer reports from Nissan owners, internal data, Nissan's technical service bulletins, and Nissan's service campaign and Canada recall, Nis-

san has been aware of the AEB Defect well before many of these class vehicles were first sold. The class alleges Nissan concealed this information from the public for corporate gain.

Many car manufacturers utilize advanced driver assistance systems (ADAS) such as AEB, lane departure warning, lane keeping assist, autonomous driving, and adaptive cruise control. Customer complaints about these systems can include braking without warning, failing to keep the vehicle centered within the lane, overaggressive lane management, or system deactivation.

If anyone has experienced failure of ADAS safety systems in their vehicle, please contact Dee Miles, Clay Barnett, Mitch Williams, or Dylan Martin by email at Dee.Miles@BeasleyAllen.com, Clay.Barnett@BeasleyAllen.com, Mitch.Williams@BeasleyAllen.com or Dylan.Martin@BeasleyAllen.com or phone at 800-898-2034. You can also go to our firm website BeasleyAllen.com.

Aerospace Engineering Expert Can Testify In GM Engine Defect Case

There was an important ruling in a Beasley Allen case against General Motors LLC (GM) last month involving an expert witness's testimony. The ruling by U.S. District Judge Edward M. Chen says GM can't stop our classes of drivers alleging engine defects in their vehicles from using expert testimony from Dr. Werner J.A. Dahm, a professor with experience in aerospace engineering. The judge noted that the expert has lots of experience relating to the issue at hand.

Judge Chen did partially grant GM's motion, limiting some testimony for Dr. Dahm, but rejected the automaker's argument that he is unqualified for automotive topics and should be disqualified altogether. The judge said:

> *GM's characterization of the requisite expertise ... however, is too narrow and overstates the topics on which Dr. Dahm opines. Dr. Dahm need not demonstrate past experience investigating the precise issues in this litigation.*

Judge Chen noted that in this class action Dr. Dahm need only to be able to testify on combustion, lubrication, ring sealing, heat transfer and related aspects of the engines in the class vehicles. The judge said in that regard:

> *It is undisputed that Dr. Dahm has extensive training, expertise in and has published widely on the topics of fluid dynamics, combustion, heat transfer and engines.*

Judge Chen also pointed to a response from Dr. Dahm, who noted that the fields of mechanical and aerospace engineering are closely related and that they are both based on the same major technical disciplines. Judge Chen noted that Dr. Dahm said:

> *The main technical subjects involved in this litigation, including fluid dynamics, combustion, heat transfer, lubrication, and engines, are taught to students of both mechanical and aerospace engineering, and engineers practicing in these fields may have degrees in either mechanical or aerospace engineering.*

Consumers said in the putative class action that the Generation IV Vortec 5300 LC9 engine contained internal defects that cause the engine to consume high amounts of oil and could lead to safety risks. The primary cause of the defect is the piston rings installed by GM. Some of those risks include the engine shutting off while on the road and catching fire.

The classes cover owners of Chevrolet Avalanche, Silverado, Suburban and Tahoe vehicles and GMC's Sierra, Yukon and Yukon XL vehicles from model years 2011 to 2014 with LC9 engines. The parties also agreed to follow a bellwether process for class certification.

Plaintiffs and the proposed classes are represented by Dee Miles, Clay Barnett and Mitch Williams of Beasley Allen Crow Methvin Portis & Miles PC; John E. Tangren, Adam J. Levitt and Daniel R. Ferri of DiCello Levitt Gutzler LLC and Jennie Lee Anderson and Lori E. Andrus of Andrus Anderson LLP.

The case is *Raul Siqueiros et al. v. General Motors LLC* (case number 3:16-cv-07244) in the U.S. District Court for the Northern District of California.

Source: Law360.com

Kia Recalls 410,000 Vehicles; Air Bags Might Not Work In Crash

Kia is recalling more than 410,000 vehicles in the U.S. to fix a problem that can stop the airbags from inflating in a crash. The recall covers certain Forte small cars from the 2017 and 2018 model years and Sedona minivans and Soul small SUVs from 2017 through 2019. The electric Soul also is included. The Korean automaker says the airbag control computer cover can contact a memory chip and damage the electrical circuit. That could stop the airbags from inflating.

Dealers will inspect the computer and either update software or replace it. Owners will be notified by mail starting March 21. Kia says in documents posted on Jan. 28 by U.S. safety regulators that the problem surfaced in Korea last July. The company says it has 13 customer complaints and 947 warranty claims, but no crashes or injuries were reported. Obviously, if airbags don't work properly, a safety problem exists in a crash. We will monitor this situation.

Source: Associated Press

Toyota And Family Settle Lexus Seat Defect Claims

Toyota Motor Corp. has settled a products liability lawsuit filed by the parents of two children. The settlement came about while the case was on appeal. The lawsuit involved defective front seats in a Lexus that failed severely, injuring the two children during a collision. Toyota and the parents, Benjamin and Kristi Reavis, filed joint motions to dismiss the two appeals in December. As part of the settlement, a Fifth Court of Appeals judgment issued in May, awarding the Reavis family $194.4 million in damages, was vacated.

The Reavis family filed suit against Toyota in November 2016, saying the accident happened while Benjamin Reavis was driving his family's 2002 Lexus ES 300 down a State Highway, with all family members properly restrained, when they were rear-ended by a car driven by Michael Mummaw.

Mummaw, his passenger and the Reavis adults all came out of the accident without major injury. But during the "otherwise survivable collision," the two front seats in

the Lexus collapsed backward, hitting the Reavis children in the head and causing skull fractures and other severe and permanent injuries.

After the trial in federal court, the jury in August 2018 determined that two Toyota companies – Toyota Motor Corp. and Toyota Motor Sales USA Inc. – were 95% responsible for the children's injuries, while Mummaw was 5% responsible. The jury awarded a combined verdict of more than $242 million, including about $144 million in punitive damages against Toyota.

The Reavis family asked a Dallas County district court judge after the verdict to reduce Toyota Motor Corp.'s punitive damages to keep the verdict within state caps on damages. The verdict was reduced to $194.4 million against Toyota Motor Corp. and $19.4 million against Toyota Motor Sales USA Inc., totaling $208.9 million after accounting for a shared $5 million liability.

Toyota appealed the damages judgment in December 2019, arguing that it should be reversed on six grounds, including that the Reavis family's state court design defect claims were preempted by federal law and that the evidence was insufficient to support a jury finding that the front seats were defective.

In May, a split panel of the Fifth Court of Appeals in Dallas rejected Toyota's assertions and affirmed the majority of the damages award. The panel found that Toyota Motor Corp. was responsible for $194.4 million in damages but released the company's sales arm from liability based on a request from the family.

Toyota appealed the Fifth Court of Appeals' decision and the trial court's denial of the company's post-judgment motion to seal several trial exhibits to the Texas Supreme Court in July.

The Reavis family is represented by Harry M. Reasoner, Marie R. Yeates, Thomas S. Leatherbury and Michael A. Heidler of Vinson & Elkins LLP, Frank L. Branson and Debbie Branson of the Law Offices of Frank L. Branson and Eugene A. "Chip" Brooker Jr. of Brooker Law PLLC. The cases are *Toyota Motor Sales USA Inc. et al. v. Benjamin Thomas Reavis et al.* (case numbers 21-0241 and 21-0575) in the Supreme Court of Texas.

Source: Law360.com

IV.
PRODUCT LIABILITY UPDATE

Fifth Circuit Sends $500,000 Remington Ruling To Louisiana High Court

The Fifth Circuit Court of Appeals remanded a lawsuit against Remington Arms Co. LLC to the Louisiana Supreme Court. The plaintiff alleges she was shot when a Remington rifle was discharged without a trigger pull. The federal appeals court noted that the state's product liability law is ambiguous. It asked that the court determine whether the law precludes the plaintiff's design defect claims in the lawsuit or if the $500,000 judgment the plaintiff received should stand.

According to the opinion, the plaintiff, Precious Seguin, was shot in the hip while hunting with her father and two others when her father's firearm was accidentally discharged. She alleged in her suit that the gun was defectively designed in a way that led to it firing without her father pulling the trigger.

The plaintiff and Remington filed cross-motions for summary judgment. Remington argued that a section of the state law bars all claims against firearms manufacturers except manufacturing defects, and as a result, the suit is precluded. The district court found that reading the statute literally produced an "absurd" result and ruled in the plaintiff's favor.

Remington appealed, arguing that the statute's language says that no firearm maker can be held liable unless the injury is caused by the "unreasonably dangerous construction or composition" of the product and that this language refers solely to manufacturing defects. Because that issue of state law has not been answered by Louisiana's courts, the panel certified the question to the state's highest court.

However, Circuit Judge James L. Dennis wrote in dissent that certifying the question was not necessary, as there are clear controlling precedents in Louisiana high court decisions that require the circuit court to affirm the plaintiff's victory. Applying the statute literally, as Remington argues, would create an absurd result that breaks sharply with state and federal principles of product liability law, Judge Dennis wrote. Doing so would effectively immunize firearm manufacturers from any and all design defect claims, even if they were aware of the design defect when the gun was sold, which would, in turn, incentivize the marketing of unsafe firearms in Louisiana. Judge Dennis wrote:

> *To my knowledge, no other state, jurisdiction, or institute has completely insulated firearms manufacturers from design defect and inadequate instruction or warning claims.*

Judge Dennis called Remington's proposed interpretation of the law a "colossal and unwelcome aberration" in laws designed to protect consumers and ordinary citizens, and said the state's Supreme Court has already held that when a law as written would have an absurd result, the statute must be construed to have a reasonable result under the spirit of the law.

The plaintiff is represented by Timothy W. Monsees and Robert A. Thrasher of Monsees & Mayer PC, Andrew A. Lemmon of Lemmon Law Firm LLC and Jordan L. Chaikin of Chaikin Law Firm PLLC. The case is *Seguin v. Remington Arms Co. LLC* (case number 17-30499) in the U.S. Court of Appeals for the Fifth Circuit.

Source: Law360.com

V.
THE TALC LITIGATION

Talc Litigation Update

As previously reported, on Oct. 14, 2021, the newly-created subsidiary of Johnson & Johnson (J&J), LTL Management LLC (LTL), filed for bankruptcy under Chapter 11. The case is currently proceeding in the United States Bankruptcy Court for the District of New Jersey. This filing in bank-

ruptcy has delayed justice for persons in the over 38,000 talc-related claims pending in litigation against J&J.

The Official Committee of Talc Claimants (the TCC), a committee of lawyers representing people who have sued J&J, alleging that its talc products cause mesothelioma and ovarian cancer, moved to dismiss the bankruptcy proceeding, saying it was filed in bad faith. There is "good cause" to dismiss the case under Section 1112(b) of the Bankruptcy code since the case was clearly filed in "bad faith." Lawyers for the TCC contend with just cause that J&J's sole purpose in creating LTL was to "hinder and delay talc claimants." It should be noted that the burden to prove good faith rests on LTL. A hearing on the motion to dismiss is scheduled for Feb. 14.

J&J's corporate maneuvering has been widely and aptly dubbed a "Texas Two-step." Step one involves forming a subsidiary and electing to have specific legal claims attach to the new subsidiary while leaving the related assets with the original company. Step two has that subsidiary declare bankruptcy to hinder and damage those claims.

Ultimately, we will see whether J&J's tactic of using Chapter 11 bankruptcy to spin off its substantial talc liabilities will work. It's important to remember J&J itself is not filing for bankruptcy. This Chapter 11 case by LTL is "masquerading" as a legitimate bankruptcy to steer the personal care giant's massive tort litigation away from the jury trial system.

An MDL involving 35,000 talc injury claims against J&J is pending in New Jersey. Overall, as stated above, J&J is facing more than 38,000 lawsuits alleging its talc products were tainted with asbestos, causing cancer.

On Jan. 19, U.S. Bankruptcy Judge Michael Kaplan undid the U.S. Trustee's split of the tort committee in the Chapter 11 case. The judge said the U.S. Trustee's office didn't have the right to override the North Carolina court order forming the original committee. In a summary bench ruling, Judge Kaplan rejected arguments that the U.S. Trustee's Office had the authority to create two new committees out of the committee created by the bankruptcy judge in North Carolina. Judge Kaplan exercised his authority to review its decisions, saying he would exercise that authority with an order reinstating the original, single committee.

At issue was a notice filed by U.S. Trustee Andrew Vara late last month saying he had disbanded the case's original tort claimants committee – appointed by U.S. Bankruptcy Judge J. Craig Whitley after the case was filed in North Carolina in October and before he transferred it to New Jersey in November – and appointed two new tort committees in its place.

Judge Kaplan will hear together the claimants' motion to dismiss the company's Chapter 11 case and the motion of LTL to make permanent the injunction that has stopped the prosecution of talc claims against J&J and others. The proceedings are to start on Feb. 14, and Judge Kaplan has set aside that entire week for the hearings, and he committed to rule by Feb. 28.

In a related matter, U.S. District Judge Freda L. Wolfson, who is overseeing the MDL, issued a ruling on Jan. 21 saying that she won't decide LTL's bid to extend its Chapter 11 litigation shield to other company affiliates. Judge Wolfson said that the issue should stay in bankruptcy court. The extension bid by the LTL, the judge said, is considered to be a "core" to the pending Chapter 11 proceeding. It was also said to meet the Third Circuit's factors for keeping an adversary proceeding in the bankruptcy venue.

Sources: Reuters and Law360.com

Beasley Allen Talc Litigation Team

Beasley Allen lawyers Ted Meadows and Leigh O'Dell head the Beasley Allen Talc Litigation Team. Andy Birchfield, who heads our Mass Torts Section, has been directly involved in all phases of the talc litigation. The team handles claims of ovarian cancer linked to talcum powder 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).

VI.
OPIOID LITIGATION

New York Jury Reaches Verdict In Opioid Trial

In late December, a jury in New York reached a verdict, finding Teva Pharmaceuticals liable for its role in fostering a public nuisance, i.e., the opioid crisis. The trial lasted for six months and isn't technically over. That's because the trial was bifurcated into two phases. The trial initially included dozens of defendants, but these companies were whittled away by settlement during the trial.

The suit was jointly tried by the State of New York and Nassau and Suffolk Counties, New York. The plaintiffs' case against Teva focused on the marketing of Actiq and Fentora by its subsidiary, Cephalon. Actiq and Fentora are fentanyl-based products intended only to treat breakthrough cancer pain for opioid-tolerant patients, but the evidence presented showed that these products were marketed for other, off-label uses.

Fentanyl, which exists in both licit and illicit forms, is 100 times more potent than morphine and can be highly deadly in very small doses. The plaintiff's closing trial ar-

guments centered on video parodies made by Teva sales staff, including one where a dubbed over Dr. Evil plots to shift prescribers from Fentora from Actiq, which was being phased out.

The trial also included claims made by the two counties against Anda, Inc., a subsidiary of Teva that acts as a pharmaceutical distributor, for failing to respond appropriately to suspicious orders of opioids ordering pharmaceuticals from Anda.

The jury was not asked to assess damages in this trial phase. An abatement phase should commence later this year to assess how much Teva should pay to abate the opioid crisis in New York.

More Opioid Cases Head To Trial

Now that an Ohio federal jury has found that major pharmacy chains including CVS and Walgreens are liable for creating a public nuisance by failing to flag suspicious opioid sales in Lake and Trumbull counties, the judge overseeing the case, U.S. District Judge Dan Aaron Polster, will preside over the abatement phase of the trial starting on May 9.

The remedy could be more than $1 billion per county to pay for addiction treatment and prevention. The trial, which ended just in late November, was the first jury trial over the opioid crisis and the first federal bellwether solely against pharmacies instead of drugmakers or distributors.

Another federal bellwether case set to start trial this spring in San Francisco against Walgreens, Teva and Endo in a 2018 suit alleging the drug companies created a public nuisance with improper opioid marketing and dispensing activities. Outside of the multidistrict litigation, West Virginia's suit against drugmakers will start on April 4 in a bench trial in Charleston, South Carolina. Another bench trial before the state's mass litigation panel over cities' and hospitals' claims against drug distributors will start on July 5.

At least two more state suits over the crisis will go to trial in the coming year. The Florida Attorney General's suit against Teva, McKesson and others is set to start on April 4, and the State of Washington's suit against Johnson & Johnson is scheduled to begin on May 9. The trial in Washington's suit against the three largest drug distributors – McKesson, AmerisourceBergen and Cardinal Health – is still ongoing.

The cases are *City and County of San Francisco et al. v. Purdue Pharma LP et al.* (case number 3:18-cv-07591) in U.S. District Court for the Northern District of California, *In Re: Opioid Litigation*, (case number No. 21-C-9000) in the Circuit Court of Kanawha County, West Virginia, *the State of Florida v. Purdue Pharma LP et al.* (case number 2018-CA-001438) in the Sixth Judicial Circuit Court and *Washington v. Johnson & Johnson* (case number 20-2-00184-8SEA) in King County Superior Court.

Source: Law360.com

Rhode Island Agrees To $91 Million Opioid Settlement With Distributors

A trio of drug distributors will pay $90.8 million to settle claims from Rhode Island saying that the distributors helped fuel the opioid crisis. AmerisourceBergen Corp., Cardinal Health Inc. and McKesson Corp have agreed with Rhode Island to settle the state's opioid claims.

The settlement resolves the state's claims against the three distributors and is outside the scope of the $21 billion nationwide settlement between distributors and other states. The proposed national agreement is aimed at ending thousands of lawsuits filed by states and local governments and is geared overwhelmingly toward treatment and prevention of opioid abuse.

A spokesperson for the Rhode Island attorney general's office confirmed to Law360 that the state was not taking part in the nationwide settlement. Rhode Island's announcement said that with this $90.8 million settlement, it will now see about $114 million in opioid recovery funds. That's because the state has also reached settlements with Johnson & Johnson and McKinsey & Co.

Rhode Island is represented by Adi Goldstein, Miriam Weizenbaum, Kate Sabatini, Dan Sutton and Neil F.X. Kelly of its Attorney General's Office, Fidelma Fitzpatrick, Robert J. McConnell, Vincent Greene, Kate E. Menard, Linda Singer and Donald Migliori of Motley Rice LLC.

The case is *State of Rhode Island v. Purdue Pharma et al.* (case number PC-2018-4555) in the Rhode Island Superior Court.

Source: Law360.com

Three More States Join $26 Billion Opioid Settlement With J&J And Others

The states of Georgia, New Mexico and Nebraska have joined the proposed $26 billion opioid settlement with Johnson & Johnson (J&J) and the three largest drug distributors in the country. This development came because these states were holdouts and hadn't joined the nationwide settlement. That has now changed as they join other states in the settlement.

Under the nationwide settlement, the bulk of the suits would be ended. Specifically, in that settlement, $21 billion would come from the distributors over the next 18 years, and over the next nine years, J&J will pay about $5 billion.

The deadline to sign on to the settlement agreement was extended to Jan. 26, which gave more states time to consider the benefits of the settlement. At press time, no other hold-out state had come on board.

The following is a breakdown of the settlements reached by Georgia, Nevada and New Mexico with J&J and the distributors: Georgia will receive nearly $636 million; Nevada will receive nearly $300 million from the settlement and a U.S. Department of Justice grant, and New Mexico will receive $65 million.

Under the terms of the nationwide settlement, J&J agreed to stop its opioid sales. The drug distributors also agreed to share data about opioid shipments with an independent monitor. The participating states' share will be determined by a formula that considers the number of overdose deaths within their borders, how many of their residents have substance abuse disorder, their population, and the number of opioids prescribed.

Source: Law360.com

Endo's Newest Opioid Settlement Earmarks $65 Million For Florida

Endo Pharmaceuticals will pay as much as $65 million to settle the opioid litigation in Florida. This is the latest

in a series of settlements the drugmaker has agreed to in various states. This settlement will extricate Endo from an opioid suit that has targeted several drug companies and had been moving toward trial. It would also cover suits brought by local governments in Florida.

According to the settlement agreement, Endo will pay $55 million that will be used to alleviate the opioid crisis and $5 million apiece for state and local litigation costs. In an announcement, the Florida Attorney General's Office said that Endo «deceptively marketed opioid medications by downplaying the associated risk of addiction» and that it «failed to monitor [and] report, and negligently shipped, suspicious orders of opioid medications.»

The money will "help restore communities devastated by opioid abuse" and "protect Florida families," Florida Attorney General Ashley Moody said in the settlement announcement. Florida's opioid suit targeted several other drug companies in addition to Endo.

Endo has reached several settlements, including:

- a $50 million settlement in New York,
- a $63 million settlement in Texas and
- a $7.5 million settlement in Louisiana.

Endo says it "is continuing to litigate opioid claims not covered by its settlements and to pursue settlements that it believes are in its best interests while remaining focused on its primary goal of achieving a global settlement." At the same time, Endo is exploring other strategic alternatives and may seek to implement one or more of those alternatives if it is unable to achieve a global settlement.

The case is *State of Florida, Office of the Attorney General, Department of Legal Affairs v. Purdue Pharma LP et al.* (case number 2018-CA-001438) in the Sixth Judicial Circuit Court of the State of Florida.

Source: Law360.com

The Beasley Allen Opioid Litigation Team

Beasley Allen's Opioid Litigation Team continues to work on a large number of existing cases. There has been no slowdown of activity in this litigation. 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.

VII.
THE WHISTLEBLOWER LITIGATION

Justices Call Solicitor General Into Fraud Standards Case

The U.S. Supreme Court on Jan. 18 asked U.S. Solicitor General Elizabeth B. Prelogar to weigh in on a dispute over fraud pleading standards. This came as the justices were considering arguments concerning a Georgia hospice company's alleged kickback scheme.

The Federal Rule of Civil Procedure 9(b), which is the regulation at issue, requires plaintiffs to state the circumstances of an alleged fraud "with particularity" at the pleading stage. Most circuits have adopted one of two split approaches to the rule. While this issue has previously come before the high court on several occasions, it never won certification.

There is now hope among False Claims Act litigators on both sides that the justices' current interest in the suit by Jolie Johnson against Bethany Hospice and Palliative Care LLC will bring clarity to this issue. It's believed that an answer on this issue will likely be forthcoming on this visit to the high court. Plaintiff Johnson welcomed the prospect of government input in the case in a brief last month, saying:

> *Respondent argues ... that the government has no interest in pleading standards applicable to relators – but Rule 9(b) applies to relators and the government alike. Moreover, even if Rule 9(b) principally affects relators, the government is the real party in interest in those cases, and whether relators can bring such cases affects the government's law enforcement efforts. Given that interest, a [call for the view of the solicitor general] would be appropriate here.*

Plaintiff Johnson previously worked as a marketer for an offshoot of the health care provider, Bethany Hospice and Palliative Care of Coastal Georgia LLC, where her wife, Debbie Helmly – now deceased – also worked as an administrator.

The plaintiffs alleged that Bethany paid doctors for referring patients to the hospice provider in violation of the Anti-Kickback Statute. By submitting claims to Medicare for patients obtained through the kickback scheme, the company also violated the False Claims Act, according to the plaintiffs.

The plaintiffs said Bethany only accepted patients covered by the federal health care programs to support their claims. This meant that if patients came to Bethany through a kickback scheme, the company billed the government for that patient's care. The plaintiffs also described how Bethany's billing department generated monthly reports to calculate each doctor's compensation for their referrals.

But the firsthand knowledge by the two women of Bethany's referral, patient vetting and billing practices did not amount to "reliable indicia" sufficient to overcome their lack of an actual case of fraudulent billing to present to the Eleventh Circuit.

The high court has asked solicitors general to weigh

in on Rule 9(b) cases a few times over the past decade. As recently as 2014, Donald B. Verrilli Jr. discouraged the justices from hearing a case against a pharmaceutical company, saying circuits had mostly abandoned the representative example rule.

Plaintiff Johnson and the Helmly Estate are represented by Mike Bothwell of Bothwell Law Group and Tejinder Singh and Erica O. Evans of Goldstein & Russell PC. The case is *Johnson et al. v. Bethany Hospice and Palliative Care LLC* (case number 21-462) at the U.S. Supreme Court.

Source: Law360.com

Eleventh Circuit Revives Whistleblower Case Over Veterans' Home Loan Fees

A panel of the Eleventh Circuit Court of Appeals has revived a lawsuit by whistleblowers alleging Mortgage Investors Corp. (MIC) defrauded the Department of Veterans Affairs by misleading it into backing home loans for military veterans. The whistleblowers alleged MIC charged improper fees when veterans refinanced their home loans under a Veterans Affairs-backed program by disguising closing and other fees, which are not allowed under the program, as title examination fees, which are allowed.

The lower court granted summary judgment against the whistleblowers based on the materiality element of a False Claims Act (FCA) claim, which the United States Supreme Court explained was "demanding" in a 2016 case, *Universal Health Services, Inc. v. United States ex rel. Escobar*. The lower court interpreted *Escobar* as requiring proof that Veterans Affairs stopped payments and rescinded loan guarantees once it learned of MIC's fraud.

The Eleventh Circuit reversed the lower court's order, reasoning that the government's decisions to pay a claim or not when aware of fraud is relevant to materiality under *Escobar*, but "the significance of continued payment may vary depending on the circumstances." The Eleventh Circuit found that a jury question existed as to whether MIC's misrepresentations to the government about the fees were material. The appeals court explained that to determine materiality, the jury should weigh the facts that Veterans Affairs issued warnings to the mortgage industry about the fees, required fee repayments, and was legally required to continue backing the loans.

The Eleventh Circuit's interpretation of *Escobar* is a welcomed clarification, which explains that contractors defrauding the government are not absolved from FCA liability simply because the government continued to pay claims.

Lawyers in our firm's Whistleblower Litigation Group wrestle with these issues and others in our fight to expose corruption in governmental contracting. We encourage those who witness corruption in their workplace regarding a government contract to seek confidential legal counseling to protect themselves and the taxpayers of this country who are also victims of the fraud.

Source: Westlaw

High Court Refuses To Take Petition Involving Post-Firing Retaliation Fight In FCA Case

The U.S. Supreme Court on Jan. 24 refused to take William Beaumont Hospital's petition, asking the Court to determine if the False Claim Act's anti-retaliation whistleblower protections also shield former employees. The Court rejected the hospital's petition that challenged a split Sixth Circuit panel decision extending the FCA's anti-retaliation protections to former employees who said they faced retaliation after leaving an employer. The justices gave no reason for rejecting the case. But the refusal to take the petition is undoubtedly significant.

The challenged Sixth Circuit decision from March had dismissed a lower court›s partial dismissal of an amended complaint from Dr. David Felten against his former employer, William Beaumont Hospital of Royal Oak, Michigan. The Sixth Circuit panel wrote in the 2-1 opinion:

> *If employers can simply threaten, harass and discriminate against employees without repercussion as long as they fire them first, potential whistleblowers could be dissuaded from reporting fraud against the government.*

According to the Sixth Circuit's opinion, the Tenth Circuit is the only other federal appeals court to have decided the same issue. In 2018, the Tenth Circuit held in Potts v. Center for Excellence in Higher Education Inc. that «the [FCA›s] anti-retaliation provision unambiguously excludes relief for retaliatory acts occurring after the employee has left employment.»

It was stated in a brief filed by Dr. Felten's lawyers that the hospital paid $84.5 million to settle fraud cases Felten and other whistleblowers had brought. The Sixth Circuit's decision was said in brief to comport with high court precedent. It was further observed that newly proposed legislation from Iowa Republican Sen. Chuck Grassley, architect of the modern FCA, would make clear that ex-employees can sue under the law for post-employment retaliation.

Dr. Felten is represented by Julie Bracker and Jason Marcus of Bracker & Marcus LLC. The case is *William Beaumont Hospital v. U.S. ex rel. David Felten* (case number 21-443) in the Supreme Court of the United States.

Source: Law360.com

The Beasley Allen Whistleblower Litigation Group

Whistleblower litigation is still very active around the country. Beasley Allen's Whistleblower Litigation Group lawyers are still very busy handling cases under the False Claims Act (FCA). Our lawyers don't see any slowdown in the whistleblower litigation. 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.

It's quite evident 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 in Beasley Allen's Whistleblower Litigation Group 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 listed below are in the Whistleblower Litigation Group: 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 the whistleblower litigation, working with the litigation group. The lawyers can be reached by phone at 800-898-2034 or email.

VIII.
INSURANCE LITIGATION

John Hancock Insureds Reach $123 Million Settlement In Overcharging Suit

A New York federal judge, on Jan. 10, preliminarily approved a $123 million class action settlement for about 1,300 policyholders that will end litigation accusing John Hancock of overcharging for life insurance. The order by U.S. District Judge Alvin K. Hellerstein gives initial approval to the settlement as being "fair, reasonable and adequate," subject to the right of any class member to challenge the agreement and show cause, if any exists, why a final judgment dismissing the action shouldn't be entered after the notice period.

Judge Hellerstein said the settlement with John Hancock Life Insurance Co. of New York was sufficiently reasonable to allow the parties to go forward with sending out notice of the agreement. In his order, the judge also found that the court was likely able to certify the settlement class – defined as owners of any universal life insurance policy issued by John Hancock who were subject to "cost of insurance" increases in 2018 and 2019 – because the plaintiffs' claims present common issues that are typical of the class, their counsel will "fairly and adequately" represent the class and common issues predominate over any individual issues affecting the class members. A memorandum from class counsel to the court states:

> *After litigating this exceptionally complex case for three-and-a-half years, on the eve of the close of discovery, plaintiffs negotiated an extraordinary settlement that entitles the class to 91.25% of all [cost of insurance] overcharges collected by Hancock from the class policies through August 31, 2021.*

There were benefits other than monetary benefits in the settlement. These non-monetary benefits included in the settlement are:

- Hancock agrees to a complete freeze on any new COI increase for at least the next five years, which is a very significant concession in a pandemic era where life insurance death benefit claims are skyrocketing, the December memo states.
- Hancock gives up its right to challenge the validity of class policies for misrepresentations in the policy application and for alleged lack of insurance interest.

Seven proposed class representatives pursued the case, including Phyllis Poplawski, a policyholder, and lead plaintiff Jeffrey Leonard, in his capacity as trustee of the Poplawski 2008 Insurance Trust. Each plaintiff and class member owns or has owned at least one "Performance Universal Life" policy issued by Hancock between 2003 and 2010. Those policies require any cost of insurance charges be based on the insurer's expectations of "future mortality, persistency, investment earnings, expense experience, capital and reserve requirements, and tax assumptions" and other factors.

In early 2018, Hancock announced that it was raising the cost of insurance rates for approximately 1,500 policies, leading the plaintiffs to file their suit in June of that year. The court's order says the class excludes those with policies linked to "individual actions" and those with policies that "have previously reached settlements with John Hancock."

The suit alleged that the rate increase was applied discriminatorily, based on impermissible factors, and was imposed so the insurer could cover past losses rather than respond to future concerns linked to the policyholders. The complaint states:

> *John Hancock is applying increases to some [Performance Universal Life] policies and not others, and applying wildly different increase amounts on those policies that they are picking on, without any contractual or acceptable actuarial reason for that discrimination. The "massive" cost of insurance increases ranged from 17% to 71%.*

A final approval hearing will be scheduled within 110 days of the settlement's preliminary approval, according to the court's order, making the end of April the deadline.

The plaintiffs are represented by Steven Gerald Sklaver, Amy Gregory, Andres C. Healy, Ari S. Ruben, Beatrice Catherine Franklin and Zach Savage of Susman Godfrey LLP. The case is *Leonard et al. v. John Hancock Life Insurance Co. of New York et al.* (case number 1:18-cv-04994) in the U.S. District Court for the Southern District of New York.

Source: Law360.com

Insurers Must Produce Required Insurance Information Post-Verdict

A Georgia state court has ruled that a Florida couple who won a $200 million jury verdict over their son's death in a boating accident can subpoena insurers from the boat manufacturer and parent companies of the insurer to determine what insurance policies exist that could satisfy the verdict. Stone Mountain Judicial Circuit Chief Judge B. Chan Caudell of the Rabun County Superior Court granted the request by Stephen and Margaret

Batchelder (plaintiffs) to conduct post-trial discovery to determine if there are additional insurance policies that cover Tennessee boat maker Malibu Boats LLC, that is responsible for about $140 million of the total verdict.

A jury in north Georgia found that Malibu Boats LLC, formerly known as Malibu Boats Inc., and defunct affiliate Malibu Boats West Inc., negligently failed to warn of a hazard that contributed to Ryan Batchelder's death in 2014. The boat manufacturer is challenging that verdict through a pending motion for a judgment notwithstanding the verdict or a new trial. The lawyers for the plaintiffs are seeking post-trial discovery to determine the collectability of the verdict.

In a motion requesting the post-trial discovery in late November, the plaintiffs sought to subpoena five insurance companies based on their belief the parent companies of the defendants' insurers could satisfy the large judgment. The plaintiffs told the court information about additional coverage had been deliberately hidden from them.

The plaintiffs stated in their motion that Malibu's insurers had rejected almost a dozen settlement offers within their policy limits during almost six years of litigation and refused to resolve the dispute. According to the plaintiffs, only $2 million was offered in settlement by the insurers despite being warned that the insurers faced an excess verdict.

Counsel for the plaintiffs, Andrew S. Ashby of Ashby Thelen Lowry, told Law360 that the plaintiffs tried time and again to reach a resolution with Malibu, and he believes the insurance companies were grossly negligent in not putting forth a good faith effort to resolve the litigation ahead of trial.

The court's order on Jan. 19 grants the request by the Plaintiffs for copies of all insurance and reinsurance policies that may force Malibu's insurers to pay any claim related to the verdict or the handling of the claims. The order says subpoenas can be sent to Malibu's insurers and their parent companies, Chubb INA Holdings Inc., Chubb Group Holdings Inc. and Starr International Co. Inc.

The court also granted the plaintiffs' request for post-judgment discovery on Malibu Boats West for any insurance and assets it may have. The defunct entity hasn't challenged the verdict, so the plaintiffs can now examine whether any of the verdict could be collected via assets or policies held exclusively by the Malibu Boats West entity.

The jury also found that Malibu Boats LLC was a legal successor to the now-defunct Malibu Boats West, so exploring the defunct entity's ability to pay the damages awarded could be complicated by outstanding challenges to the verdict and the damages from Malibu Boats LLC.

Malibu Boats West was found by the jury to be 10% at fault in Ryan Batchelder's death and assigned $40 million in punitive damages as well as 10% of the $80 million in general damages. Malibu Boats LLC was assigned 15% of the blame, so it must give up 15% of the $80 million in general damages as well as an additional $80 million in punitive damages. The jury did not assign any responsibility or damages to Malibu Boats Inc. Dennis Ficarra, Ryan Batchelder's great-uncle, was found to be 75% at fault, but he was not sued and was not involved in the case as a defendant.

The Plaintiffs are represented by Andrew S. Ashby, Maxwell K. Thelen and Seth A. Lowry of Ashby Thelen Lowry, and Donald R. Fountain, Ben J. Whitman and Julie Littky-Rubin of Clark Fountain La Vista Prather & Littky-Rubin.

The suit is *Batchelder et al. v. Malibu Boats LLC et al.*, (case number 2016-cv-0114) in the Superior Court of Rabun County, Georgia.

Source: Law360.com

New Healthcare Law, "No Surprises Act," Already Under Fire

There is new legislation in effect for 2022 that any person with health insurance should know. The Consolidated Appropriations Act of 2021 was enacted on Dec. 27, 2020, and contains many provisions to help protect consumers from surprise bills, including the No Surprises Act under title I and Transparency under title II. As the Centers for Medicare & Medicaid Services (CMS) notes, the No Surprises Act is intended to protect consumers from high and often unexpected medical costs associated with out-of-network providers, including air ambulance services.

In the past, when a person went to a hospital, let's say after a car accident, and in an emergency, they received care from the hospital and the various physicians/healthcare providers. Often, even if the hospital is in-network, some other providers are out-of-network. Out-of-network providers, because they do not have a contract with the consumer's health insurance company, are allowed to "balance-bill" the consumer the remainder of the charges for services not paid for by insurance. That almost always results in large, surprise bills. This Act is intended to address those situations, and a few others, where unexpected medical bills are common (like when a person is transported by air ambulance).

So, what does the Act change? According to CMS, the interim final rules put in place certain consumer protections, including:

- Establishing an independent dispute resolution process to determine out-of-network payment amounts between providers (including air ambulance providers) or facilities and health plans.
- Requiring good-faith estimates of medical items or services for uninsured (or self-paying) individuals.
- Establishing a patient-provider dispute resolution process for uninsured (or self-paying) individuals to determine payment amounts due to a provider or facility under certain circumstances.
- Providing a way to appeal certain health plan decisions.

Litigation by interest groups to stop some of these provisions has already begun. Three lawsuits – including one from the American Medical Association and the American Hospital Association – have accused regulators of stacking the deck against providers by telling arbitrators to presume that insurers' median rates for services reflect the appropriate payment. The big questions seem to revolve around this presumption. In-network rates are included in the calculations, and the result is the Act practically defaults to an in-network payment to the providers regardless of the network status.

This statute is going to create some conflicting interests for lots of people. On the one hand, surprise billing

is an issue – especially in the air ambulance arena. On the other hand, healthcare providers that are not in-network will likely end up getting paid contract amounts to which they have not agreed. This will likely result in rising medical costs to compensate for underpayment elsewhere.

Beasley Allen lawyers are monitoring the Act's status. Still, in the meantime, if you receive a surprise bill for services after Jan. 1, 2022, from an out-of-network provider, you should be aware of your payment options that are impacted by this new Act. If you have any questions, contact Rebecca Gilliland, a lawyer in our Mobile office, at 800-898-2034 or email at Rebecca.Gilliland@BeasleyAllen.com.

Source: Law360.com

IX.
SECURITIES LITIGATION

Securities Litigation To Watch In 2022

The New Year holds new challenges for securities lawyers, according to Law360's breakdown of securities litigation to watch this year. Securities lawyers can expect a carryover of issues from last year. The online legal publication discusses a number of areas that will be involved in securities litigation this year. We are placing Law360's complete information relating to securities litigation on our website. You can go to BeasleyAllen.com for the comprehensive report from Law360.

The views set out by Law360.com are just some of the looks occurring in the securities litigation world. Our firm is actively involved in securities litigation. Dee Miles, Demet Basar, James Eubank, Rebecca Gilliland and Paul Evans, lawyers in our firm's Consumer Fraud & Commercial Litigation Section, are available to help consumers with the complicated issues involved in this area of litigation. They can be reached by phone at 800-898-2034 or email at Dee.Miles@BeasleyAllen.com, Demet.Basar@BeasleyAllen.com, James.Eubank@BeasleyAllen.com, Rebecca.Gilliland@BeasleyAllen.com and Paul.Evans@BeasleyAllen.com.

Source: Law360.com

Teva Reaches $420 Million Settlement To End Investors' Price-Fixing Suit

Teva Pharmaceutical Industries Ltd. has agreed to pay $420 million to resolve an investor class action accusing the company of being at the center of an industry-wide price-fixing scheme. The investor class asked a Connecticut federal judge to grant preliminary approval of an all-cash settlement to resolve securities claims against Teva, which is facing criminal charges over the alleged conspiracy to fix generic-drug prices.

The settlement comes less than a year after U.S. District Judge Stefan R. Underhill certified a class of investors who held shares or notes in Teva between 2014 and May 10, 2019. That is when a coalition of 44 states' attorneys general started litigation accusing the company of colluding with more than a dozen rivals to keep generics' prices artificially high.

Investors filed their suit in November 2016, following media reports that Teva was the subject of several investigations into alleged pharmaceutical price-fixing. The investors amended their complaint in 2019 to encompass the filing of the state enforcers' lawsuit. Then, in August 2020, the U.S. Department of Justice hit Teva with an indictment for its alleged part in three price-fixing conspiracies between May 2013 and December 2015. The criminal charges came as part of a broader probe of the generics industry that has seen five companies reach agreements with the DOJ. Only Teva and Glenmark Pharmaceuticals Inc. are currently fighting the government's case.

The investors are represented by Joseph A. Fonti, Javier Bleichmar, Evan A. Kubota, Benjamin F. Burry and Thayne Stoddard of Bleichmar Fonti & Auld LLP, and Marc J. Kurzman, Christopher J. Rooney and James K. Robertson Jr. of Carmody Torrance Sandak & Hennessey LLP.

The case is *In Re Teva Securities Litigation* (case number 3:17-cv-00558) in the U.S. District Court for the District of Connecticut.

Source: Law360.com

X.
AVIATION LITIGATION

First Ex-Boeing Employee Trial Over 737 MAX Moved To March

Mark Forkner, the former Boeing 737 MAX test pilot, will be the first to go to trial over Boeing's mishandling of the aircraft's federal regulatory approval. U.S. District Judge Reed O'Connor, who is overseeing the trial, granted Forkner's defense counsel's request for more time to prepare for the trial, *Law360* reported. You will recall that Forkner was indicted in October on federal criminal charges for deceiving the Federal Aviation Administration (FAA) during its review of the 737 MAX. The trial is now slated to begin on March 7.

Forkner was the chief technical pilot for the MAX program and Boeing's primary contact with the FAA. He was responsible for advising how pilots should be trained to fly the new iteration of the 737. Boeing's internal communications turned over to federal investigators demonstrate the pressure Forkner was under to keep the MAX on schedule for certification.

One of the significant differences between the MAX and previous generations of the aircraft was the new flight control software Maneuvering Characteristics Augmentation System (MCAS), which was added to the plane to overcome the latest iteration's aerodynamic design defects. The MCAS was linked to two fatal Boeing 737 MAX crashes that claimed 346 lives. Forkner "allegedly withheld critical information from regulators," as U.S. Attorney Chad Meacham explained at the time of Forkner's indictment. Withholding this information "hampered the [FAA's] ability to protect the flying public and left pilots in the lurch," Meacham explained.

The U.S. Department of Justice has said it expects there will be other indictments that result from the MAX debacle and vowed to "vigorously prosecute individuals undermining public safety," according to *Law360*.

The case is *U.S. v. Mark A. Forkner*, case number 4:21-cr-00268, in the U.S. District Court for the Northern District of Texas. Beasley Allen lawyer, Mike Andrews, han-

dles all types of aviation litigation for the firm, involving both civilian and military aircraft and represents families in the Boeing litigation.

Sources: Law360.com

Split Seventh Circuit Issues Ruling In Boeing 737 MAX Derivative Suit

Boeing's bylaws won't allow it to avoid a shareholders' federal derivative lawsuit, according to a split Seventh Circuit Court of Appeals panel. The decision, issued Jan. 7, addresses shareholders' claims that allege Boeing's current and former board directors and officers gave false and misleading proxy materials about the 737 MAX jets development and operation from 2017 to 2019. The decision revived the lawsuit filed initially by the Seafarers Pension Plan in Illinois federal court in a 2-1 vote.

In June 2020, a Northern Illinois district court dismissed Seafarer's lawsuit because of a forum selection clause in Boeing's bylaws. The clause established Deleware Chancery Court as the "sole and exclusive forum" for such proceedings brought against Boeing. The Chicago-based company is incorporated under Delaware law.

The Seventh Circuit decision reversed the lower court's dismissal, finding that Delaware corporation and federal securities laws supersede Boeing's forum selection bylaw. The panel did not rule on the merits of Seafarers' claims. It only found that Seafarers' "chosen forum in the federal district where Boeing is headquartered seems appropriate for the case." U.S. Circuit Judge David Hamilton wrote for the majority:

> *Delaware corporation law gives corporations considerable leeway in writing bylaws, including bylaws with choice-of-forum provisions, but it respects federal securities law and does not empower corporations to use such techniques to opt out of the [Securities Exchange Act of 1934].*

Seafarers allege in the suit:

- Boeing's false and misleading proxy statements hurt the company by "enabling the improper re-election of directors who had for years tolerated poor oversight of passenger safety, regulatory compliance, and risk management during the development of the 737 MAX airliner."
- The false and misleading statements were used to obtain shareholder votes to reelect and entrench the very board members whose oversight failures led to the 737 MAX disasters, as well as to approve executive compensation packages and reject shareholder proposals that sought to separate the roles of the CEO and the board chairman, according to court documents.

As you will recall, the 737 MAX was involved in two fatal overseas crashes in five months: the October 2018 crash of Lion Air Flight 610 in the Java Sea, which killed 189 people, and the March 2019 crash of Ethiopian Airlines Flight 302, which killed 157. There was then:

- an unprecedented 20-month global grounding of the jets,
- multiple investigations targeting Boeing›s missteps in the jet›s development and
- the Federal Aviation Administration's oversight lapses,
- a huge number of lawsuits from crash victims' families, shareholders, airline customers and others accusing Boeing of shortcutting safety in its pursuit of profits.
- The FAA in November 2020 cleared the 737 Max to return to service.

Seafarers filed this suit in December 2019, and Boeing invoked its forum bylaw to get the action dismissed. The panel's majority said that the bylaw completely eliminates shareholders' right to assert derivative claims under the Securities Exchange Act, in violation of Congress' mandate that federal courts retain exclusive jurisdiction over those claims. The majority said:

> *If it can be applied to this case, the bylaw will force plaintiff to raise its claims in a Delaware state court, which is not authorized to exercise jurisdiction over Exchange Act claims if that's correct, checkmate for defendants.*

The majority said nothing in Delaware case law clears a path for a forum bylaw to foreclose a plaintiff from exercising their rights under the Securities Exchange Act of 1934 and that "Delaware is not inclined to enable corporations to close the courthouse doors entirely on derivative actions asserting federal claims subject to exclusive federal jurisdiction."

Boeing has been sued in a number of shareholder derivative suits over the 737 MAX. The company's board of directors in November reached a $237.5 million settlement to end a separate shareholder derivative action in Delaware Chancery Court alleging they failed to oversee development of the 737 MAX jets adequately. The settlement in that consolidated case, spearheaded by New York and Colorado pension funds, is still awaiting court approval.

Seafarers Pension Plan is represented by Carol V. Gilden, Richard A. Speirs, Amy Miller, Steven J. Toll and Megan Kistler of Cohen Milstein Sellers & Toll PLLC. The case is *Seafarers Pension Plan v. Robert Bradway et al.* (case number 20-2244) in the U.S. Court of Appeals for the Seventh Circuit.

Source: Law360.com

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 email Mike.Andrews@BeasleyAllen.com. Mike is the lead lawyer in our firm on all aircraft-related litigation.

XI.
THE JUUL LITIGATION

Update On JUUL Bellwether Trials

The first bellwether trial in the JUUL multidistrict litigation (MDL) is set to begin in April 2022 against JUUL Labs, Inc., and a group of Altria defendants. The plaintiff

in the first bellwether trial (identified only as "B.B.") is a 16-year-old minor from McMinnville, Tennessee. B.B. started using JUUL at only 12 years old in the seventh grade, when JUUL marketing was rampant in her area. She had never tried any form of nicotine but quickly became addicted over the course of about one month.

B.B. is still heavily addicted to nicotine, has experienced various emotional and cognitive issues associated with addiction, and has suffered from asthma exacerbation resulting in difficulty breathing and shortness of breath. B.B.'s story is representative of thousands of young people in the United States that have become addicted to nicotine through JUUL products.

The second personal injury bellwether trial is set to begin in June 2022, and the third personal injury bellwether is set for September 2022. The fourth bellwether trial of 2022 will likely be a school district case in November. To date, over 3,000 cases are pending in the JUUL MDL – over 2,500 personal injury claims and 522 government entities (school districts, cities, counties, and tribes). In the California state court litigation in Los Angeles Superior Court, an additional 3,400 personal injury cases are pending and 83 government entity cases. Additionally, 14 states' attorneys general have filed suit against the e-cigarette manufacturer.

A bellwether for class action claims against JUUL is expected in early 2023. Additionally, Judge Orrick, the MDL judge, recently ruled that the parties must begin working up a second round of personal injury bellwether cases for trial. The next round of bellwether cases will pull from all cases filed around the country, rather than those filed only in the Northern District of California, where the MDL resides.

Beasley Allen's Joseph VanZandt serves on the JUUL Plaintffs' Steering Committee (PSC), and he will be part of the team that tries the first personal injury bellwether case in June for a Beasley Allen client. Joseph and Mass Torts Section Head Andy Birchfield heads our firm's efforts to hold JUUL accountable for the damage they have done to thousands of youth around the country. Beasley Allen's Beau Darley serves on the PSC for the California state court litigation. Lawyers at Beasley Allen continue to take new JUUL cases for individuals, school districts, and other government entities that JUUL has impacted. You can contact Joseph VanZandt (Joseph.VanZandt@BeasleyAllen.com) or Beau Darley (Beau.Darley@BeasleyAllen.com) if you want to discuss a case.

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 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) heads the firm's Mass Torts Section and works closely with the team on the JUUL litigation.

XII.
THE ASBESTOS LITIGATION

The Sad And Tragic Story Of Libby, Montana

For almost 100 years, a mineral called vermiculite was extensively mined outside the small town of Libby, Montana. A few different companies operated the mine during the first half of the 1900s. Still, by the time W.R. Grace and Co., the multi-national conglomerate chemical company, purchased the mine in 1963, the widespread despair caused by the vermiculite mining was well known in the town and by W.R. Grace.

The reason for this widespread death and despair is that the vermiculite found in the Libby mine is highly contaminated with asbestos. Because of this, miners, millers, and even residents of the community were exposed to massive amounts of asbestos for all their lives.

By 1963 when W.R. Grace took over the mine's operation, the executives at W.R. Grace were aware of this. Despite that, W.R. Grace distributed its leftover asbestos-laden vermiculite for use in local playgrounds, backyards, gardens, roads and a number of other popular locations in the town.

All of this remained hidden to the nation at large until 1999, when a group of investigative journalists reported on this tragedy. In a series of articles titled "Uncivil Action: A Town Left to Die," the journalists exposed what had been happening in Libby since the early 1900s. The damage discovered was shocking. Libby is a town of fewer than 3,000 residents, and the amount of relative destruction is hard to comprehend. Thousands of people had died over the years, and countless more suffered from major breathing problems.

Meanwhile, W.R. Grace made a fortune. The damage was so bad that in 2009 the EPA declared a Public Health Emergency in Libby, a first for the agency. Work to clean the town and rid it of its contamination continues today.

This is an extreme example of the level of greed and indifference displayed by some corporate actors. Unfortunately, in asbestos litigation, we run into examples of this sort of wantonness frequently. That is why Beasley Allen lawyers doggedly protect our clients from such bad actors.

If you have any questions about asbestos litigation, contact Charlie Stern at 800-898-2034 or email at Charlie.Stern@BeasleyAllen.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 expe-

rience 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.

XIII.
THE PARAQUAT LITIGATION

Update On The Paraquat MDL Litigation

The Paraquat Products Liability Litigation multidistrict litigation (MDL) was formed on June 8, 2021 (Case No. 3:21-MD-3004). Currently, 575 lawsuits have been consolidated in the MDL before Chief Judge Nancy J. Rosenstengel of the Southern District of Illinois. Each of the Orders discussed below can be found at the Court's website: www.ilsd.uscourts.gov/mld/mdl3004.aspx.

The parties have been diligently selecting early trial cases according to the Court's Order No. 12, which laid out the bellwether selection process. Counsel for the plaintiffs were directed to choose eight cases for early trial; counsel for Chevron was directed to select four, and counsel for Syngenta was directed to choose four. On Jan. 7, 2022, the court entered its Order Identifying Early Trial Selection Cases. Sixteen cases were designated for early trial selection procedures. In all of these sixteen cases, the parties voluntarily waived their rights to have the cases remanded for trial in the state where they experienced paraquat exposure and consented to have the trial in the Southern District of Illinois before Judge Rosenstengel.

Consistent with the court's desire to move the cases along quickly and efficiently, the court previously ordered that limited fact discovery for these early trial selection cases will conclude at the end of March 2022. The pretrial conference will occur on Oct. 27, 2022, and trial will begin on Nov. 15, 2022. Because Parkinson's disease is progressive, a speedy trial calendar is in the best interest of the injured plaintiffs in these cases.

Judge Rosenstengel is holding monthly status conferences via Zoom that are open to the public. The upcoming status conferences are set for Feb. 4, 2022; March 4, 2022; and April 1, 2022, at 10 AM CST.

As stated above, Julia Merritt from our firm represents plaintiffs in the case. Judge Rosenstengel has shown a strong interest in moving the cases forward in Multidistrict Litigation. Julia says: "Parkinson's is a progressive disease. [For] the clients, time is not on their side. So we really need to push the cases forward for them."

The plaintiffs developed the disease after years of exposure to the herbicide, which is used to kill weeds before crops are planted and is customarily used on farms. Paraquat is sold with restrictions in the U.S. but banned in Europe. The MDL is also notable for the judge introducing an "extensive plaintiff assessment questionnaire."

The case is *In re: Paraquat Products Liability Litigation v. Syngenta Crop Protection LLC et al.* (case number 3:21-md-03004) in the U.S. District Court for the Southern District of Illinois.

Beasley Allen lawyer, Julia A. Merritt, is a member of the Plaintiffs' Executive Committee on the Paraquat MDL. She will be happy to answer any questions about the status of this litigation. Beasley Allen is continuing to accept cases where clients applied paraquat and have Parkinson's Disease or Parkinson's-like symptoms. Contact Julia if our firm can assist you in paraquat applicator cases.

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) heads our Toxic Torts Section and works with the team on this important litigation. You can contact these lawyers by phone at 800-898-2034 or email for more information on the litigation, including the MDL.

XIV.
MASS TORTS LITIGATION

Some Infant Formulas Linked To Necrotizing Enterocolitis

Necrotizing enterocolitis (NEC) is a dangerous gastrointestinal problem that affects one in every 1,000 premature babies. The condition damages developing intestinal tissue, often leading to perforations in the baby's intestine that allow bacteria and other harmful substances to leak into the abdomen or bloodstream. Many of these stricken babies require surgery to repair the necrotic intestinal tissue, and about 20-30% do not survive. Other long-term complications associated with NEC include parenteral nutrition-associated cholestasis and liver dysfunction, poor growth/malnutrition, metabolic bone disease, short bowel syndrome, sepsis/severe infection, and neurocognitive impairment.

One of the most common causes of NEC in premature infants is bovine-derived (cow's milk) infant formulas and nutritional supplements. The science is well-established that premature infants fed cow's milk formula (as opposed to human breast milk) have a *significantly* greater risk of developing NEC.

This conclusion is supported by the United States Surgeon General, The National Institute of Health, The Centers for Disease Control and Prevention, and the American Academy of Pediatrics. One well-designed meta-analysis of six combined population studies that included 869 preterm formula patients found a 362% increased risk of NEC among babies fed only bovine-derived formula nutrition instead of infants fed breast milk either from the infant's mother or from a donor.

The most common bovine-formulated product lines on the market are Enfamil (manufactured by Mead Johnson and Co.) and Similac (made by Abbott Industries). Both manufacturers have known for decades that cow's milk products greatly increase the risk of NEC in premature infants, yet neither manufacturer provides a warning of NEC with its products. Instead, they unabashedly *promote* the products to parents, hospitals and physicians as a safe and nutritional breast milk alternative.

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

Number Of Complaints Increase In The Belviq Litigation

Belviq, as we have previously reported, is a weight-loss drug that works by manipulating brain chemicals like serotonin to reduce appetite. Initially introduced to the American market in 2013 after FDA approval in 2012, the agency requested the withdrawal of this weight-loss drug. This came after findings of increased cancer risk were discovered in February 2020, leaving the drug on the market for seven years.

A five-year double-blind placebo-controlled study of 12,000 patients in eight countries began on Jan. 24, 2014. The study intended to determine cardiovascular risks, as similar weight-loss drugs withdrawn from the market previously exhibited such complications. The study concluded that Belviq did not compromise cardiovascular health in the same way as the other weight-loss drugs.

However, when the FDA reviewed the study's findings, the FDA saw 7.7 percent of the patients treated with the active drug were diagnosed with some type of cancer. This means that more patients taking Belviq were diagnosed with cancer than those in the placebo group receiving an inactive drug.

As a result, in January 2020, the FDA alerted the public of the increased risk for cancer when taking Belviq. Less than one month later, the drug maker agreed to cease the sale and production of Belviq.

The most common types of cancers linked to Belviq are pancreatic, colorectal, and lung cancer. Since beginning investigating claims against the manufacturers of Belviq, the Beasley Allen team has filed fourteen cases: one claim based on pancreatic cancer, seven for breast cancer, two for colorectal, one for kidney cancer, one for thyroid cancer, one for esophageal, and one for brain cancer. All but two claims have been filed in New Jersey state court. The other two claims have been filed in the Western District of Missouri and the other in the Middle District of Florida.

Beasley Allen lawyers in our Mass Torts Section continue to investigate cases of Belviq users adversely affected by this drug and suffering from a cancer diagnosis. For more information, contact Ryan Duplechin or Melissa Prickett at 800-898-2034, or email at Ryan.Duplechin@BeasleyAllen.com or Melissa.Prickett@BeasleyAllen.com.

SoClean Sues Philips Involving The Recalled Sleep Apnea Machines

SoClean Inc. has filed suit against Koninklijke Philips NV (Philips), saying that it is trying to link the problems that caused its sleep-apnea machines to be recalled to ozone-based cleaning products. SoClean Inc. is an independent supplier of ozone-based sanitizing systems. Philips was said to be lying to the public when it tried to link problems with the sleep apnea machine to companies that produce and supply ozone-based cleaning methods.

According to Reuters, Philips said in its June recall notice that "it had determined that the polyester-based polyurethane foam used in the recalled models before April 2021 could emit toxic fumes and that the foam also could degrade under certain circumstances, releasing small particles that users might inhale through the devices' airways."

The recall notice affected companies such as SoClean when Philips also said the foam degradation "may be exacerbated by use of unapproved cleaning methods, such as ozone." SoClean says in its complaint that Philips knew its statements were false from its own tests and that its' July update letter confirmed that the foam degradation was caused by contact with high humidity or water – not ozone.

SoClean states in its complaint, filed in Boston, which seeks $200 million in damages, that:

- Philips points the finger at SoClean's ozone cleaners to divert attention away from Philips' poor choice of materials and obvious design flaws.
- SoClean's sales have plummeted, its brand has been tarnished, and an enormous amount of goodwill has been lost.
- CPAP caused distributors to drop SoClean's products.
- CPAP caused users to stop using SoClean products.
- CPAP caused SoClean to be named as defendants in multiple lawsuits saying its' cleaning products are unsafe.
- The false statements by Phillips were first listed in an April filing with the U.S. Securities and Exchange Commission.
- Philips repeated the warning on its website, in a July "update" letter to healthcare providers, in its second-quarter financial statement in July, in business conversations, and public interviews.
- The false statements were listed in warning notices from the U.S. Department of Veterans Affairs, the 11,000-member American Academy of Sleep Medicine, several sleep institutes and associations and healthcare providers across the country.

SoClean is suing Philips for false and unfair advertising under the federal Lanham Act and Massachusetts law, among other claims. SoClean is seeking $200 million in actual damages plus unspecified amounts of enhanced damages and attorneys' fees allowed under those statutes.

The lawsuit filed is *SoClean Inc. v. Koninklijke Philips NV*, U.S. District Court for the District of Massachusetts No. 21-cv-11662.

Source: Reuters

XV.
EMPLOYMENT AND FLSA LITIGATION

Former Executive Prevails In $155 Million Retaliation Claim Against Farmers Insurance

Plaintiff Andrew Rudnicki, a Senior Vice President who oversaw Farmers' in-house legal division, filed suit against Farmers for retaliation after being terminated in 2016. Farmers claimed several reasons for terminating

Rudnicki's employment, including making sexist comments to coworkers, not taking appropriate action when female employees complained about the underrepresentation of women in management, and not properly handling potential document preservation policy violations.

However, Rudnicki was immediately fired after Farmers settled a discriminatory pay class-action lawsuit for approximately $4 million. In that lawsuit, Rudnicki gave deposition testimony that supported the plaintiffs' allegations that Farmers discriminated against female attorneys. Rudnicki claimed his cooperation and assistance in the settled discrimination suit and his age, gender, and disability were the true reasons for his termination.

A Los Angeles jury concluded that Farmers violated the Fair Employment and Housing Act (FEHA) and California's public policy prohibitions on retaliatory firings. Rudnicki was awarded $5.4 million in compensatory damages, $3.4 million for economic damages, $1 million for future economic damages, and $1 million in noneconomic damages. The jury also awarded Rudnicki an impressive $150 million in punitive damages. The amount of punitive damages will be challenged either through a post-trial motion or on appeal. Nonetheless, at this stage, it's a certainty that Rudnicki's legal victory sends a message that juries won't hesitate to punish an employer who acts egregiously, especially against an employee who was trying to do the right thing.

Beasley Allen lawyers handle similar employment retaliation claims. For more information or to discuss a potential case, contact Larry Golston, Leon Hampton, or Lauren Miles, lawyers in the firm's Consumer Fraud & Commercial Litigation Section, at Larry.Golston@BeasleyAllen.com, Leon.Hampton@BeasleyAllen.com, or Lauren.Miles@BeasleyAllen.com.

Riot Games Agrees To Pay $100 Million In Settlement Of Class-Action Gender Discrimination Lawsuit

Video game developer Riot Games – publisher of the League of Legends video game franchise – has agreed to settle a 2018 gender-based discrimination class-action lawsuit with California state agencies as well as current and former women employees, the *Washington Post* reported. Under the terms of the settlement, Riot Games will pay $80 million to the members of the class action lawsuit and $20 million towards the plaintiffs' legal fees.

Filed in November 2018 by Melanie McCracken and Jess Negron, the Los Angeles-based lawsuit came on the heels of a blistering exposé published by games news site *Kotaku* alleging a culture of sexism at Riot Games. This sexism manifested itself in workplace behaviors ranging from unwanted sexual advances and harassment to a hiring and promotion process that excluded female candidates thought to be insufficiently into gaming.

In 2019, Riot Games agreed to settle the lawsuit filed by McCracken and Negron for $10 million, but California's Department of Fair Employment and Housing (DFEH) intervened and blocked the settlement. DFEH argued that the female victims of discrimination were entitled to as much as $400 million, and therefore the proposed $10 million settlement was not adequate.

Under the final settlement, "all current and former California employees and contractors who identify as women and worked at Riot Games between November 2014 and present-day, qualify for a settlement award," according to the *Washington Post*. At least 2,3000 workers are eligible for a share of the $80 million settlement. Those who worked at Riot Games longer or started working there earlier are entitled to a larger allocation of the settlement funds.

Further, as part of the settlement, Riot Games also agreed to workplace policy reforms. These include greater transparency around pay scales for job applicants, not relying on prior salary history to set employees' pay or assign job titles, and the creation of a pipeline for current to former temp agency contractors to apply to work for Riot Games.

As the *Washington Post* noted, the company is also required to implement a policy requiring the presence of a woman or member of an underrepresented community on employment selection panels. Genie Harrison represents the plaintiffs in this case.

If you are aware of gender or sexual discrimination, harassment, retaliation, or gender or sexually motivated violence occurring in the workplace and are interested in pursuing a lawsuit, our law firm has lawyers ready to help. Contact Larry Golston, Leon Hampton or Lauren Miles, lawyers at our firm's Consumer Fraud & Commercial Litigation section, and handle class action litigation on our firm's website BeasleyAllen.com or call 800-898-2034.

Source: *Washington Post*

The Beasley Allen Employment Litigation Team

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. The following lawyers are on the Employment Litigation Team: Lance Gould, Larry Golston, Leon Hampton and Lauren Miles. 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.

XVI.
PREMISES LIABILITY LITIGATION

Crime Is An Indicator Of Poor Management In Apartment Complexes

Lawyers in our firm have handled a number of cases involving premises liability. Many of these cases will have leases involved. Most folks generally think of an apartment lease agreement as just the document that confirms a tenant's right to move into an apartment complex. While that is undoubtedly true, the lease agreement is also a powerful tool to manage the complex. Buried in the legalese and boilerplate language, lease agreements set forth specific requirements related to who can stay

on and occupy the property, how to handle trash, prohibited conduct (including drugs, loud music, loud profanity, and other illegal or threatening behavior), and specific reasons the landlord can terminate the agreement. These lease agreement provisions are central to complex management in that they arm the landlord with the ability to terminate a lease and eject problem residents and their guests.

While some problems can always be anticipated due to a complex's higher population density, rampant crime is never acceptable and is almost always an indicator of poor lease management. Parker Miller, our lead negligent security and premises liability lawyer, who is in the Atlanta office, explained it this way:

Most complexes with a history of rampant crime do not start out that way. Instead, management first fails to monitor the property and know what takes place in the complex. If the complex prioritizes staying knowledgeable and then quickly and consistently responds to the conduct in a meaningful way, then bad actors get the message that this is not a good place to carry out bad deeds. Outside observers may be led to believe that a troubled community is full of bad actors, but many times, that is not the case at all. A community full of decent people can live a life of torment when a complex lets a few bad eggs terrorize it with impunity. Poor training and low priority for the quality of living for tenants are major culprits here. Unfortunately, the longer the complex tolerates bad conduct, the worse it will get, as bad actors will start targeting the complex because they do not fear reprisal there

There are various ways a complex can head this bad conduct off, and it starts with a simple approach: enforce the lease agreement promptly and consistently. If security measures are needed, implement those as well. "Criminals want to conduct their activity in the most convenient place possible. If a complex is troubled, that is not a coincidence. They are selecting that complex because they know they can enter, remain, and then exit the property after carrying out their business without ever being confronted or detected."

Recently, Parker settled a $2 million Georgia negligent security apartment complex case where management issues led to criminal activity. Currently, Parker is handling numerous major premises liability cases, including negligent security cases, across the State of Georgia. If you have any questions about these cases, contact him at Parker.Miller@BeasleyAllen.com or 800-898-2034.

$5 Million Jury Verdict In Carbon Monoxide Wrongful Death Suit

Clare Castleman's family was awarded $5 million after a Baldwin County jury found her Fairhope apartment complex building's management company responsible for her death. The following is a brief account of testimony heard by the jurors during the trial:

Clare Castleman, a tenant at The Palladian at Fairhope, called maintenance after one of her alarms activated after running errands on March 25, 2019. Maintenance determined a combination smoke/carbon monoxide detector was the source of the alarm and then removed all the detectors from Ms. Castleman's unit. Hours later, Ms. Castleman died after being found unresponsive in her apartment. Her car, which had keyless ignition, was running in her enclosed garage, producing the carbon monoxide that killed her.

The verdict was against Birmingham-based Gateway Management Company, which manages The Palladian. David Cain, a lawyer with the Mobile firm of Cunningham Bounds, who represented the family, said:

This was a tragic incident and never should have happened. Had Gateway Management trained its employees properly and met safety compliance codes within its facilities, Clare Castleman would be alive today. We are thankful for the jury's verdict against Gateway and hope this will change the way Gateway manages properties in the future. There was no evidence during the trial that showed Gateway has done one single thing since Clare's death to ensure this does not happen again. In fact, it was confirmed during trial that Clare's apartment building -- today, almost three years later -- still does not meet safety code compliance.

This was a tremendous result. The legal team representing the family, led by David Cain, did an outstanding job for them.

Source: AL.com

XVII. WORKPLACE HAZARDS

Daikin America Faces $233,103 OSHA Fine Over Workers' Fatal Toxic Exposure

The U.S. Department of Labor Occupational Safety and Health Administration (OSHA) announced a proposed $233,103 fine against Daikin America, Inc. in Decatur, Alabama, after concluding an investigation of toxic chemical exposures resulting in two employees' deaths and another employee's serious injury, including respiratory failure. It appears similar to a toxic exposure incident at the same plant in 2019.

As we reported in the January issue, Kendall Dunson, a lawyer in our firm's Personal Injury & Products Liability Section, filed a lawsuit last year on behalf of Will Delashaw's family. Will was one of the workers fatally injured after he was exposed last July to a toxic chemical that was unknown at the time due to Daikin's failure to document the toxic chemicals it uses properly. Now, federal investigators have determined Will and the other workers were exposed to several toxic chemicals, including fluorocarbons. Will and two of his co-workers were wearing personal protective equipment (PPE) and respirators at the time of the exposure. However, federal investigators also discovered the PPE and respirators were not adequate. One worker was treated for respiratory failure before returning home. Another worker succumbed to his injuries on Aug. 10, and Will's death followed weeks later, Sept. 28. Will was waiting for a lung transplant at the time of his death. Kendall says:

The OSHA findings come as no surprise to us based on our own investigation of the on-the-job toxic exposure incident last July for our client. The agency's findings support our client's claims that Daikin failed to protect its employees. The citations are serious, and the proposed steep fine demonstrates a pattern of bad behavior on Daikin's part because it appears this is the second fatally toxic exposure incident since 2019.

The agency cited Daikin for nine serious violations and one willful violation. In addition to using improper PPE and respirators, the findings report cited Daikin for:

- Failing to institute critical safe work practices that OSHA requires.
- Failing to monitor air quality and assess chemical exposures.
- Failing to provide written procedures that clearly identify the required level of respiratory protection.
- Failing to communicate the hazards associated with the chemicals to its workers.

OSHA defines a willful violation as one "in which the employer either knowingly failed to comply with a legal requirement (purposeful disregard) or acted with plain indifference to employee safety." Kendall says:

Daikin should have been actively protecting its employees all along, but there were obvious steps it refused to take after the 2019 incident to prevent the latest fatal exposure. This type of disregard for human life speaks volumes about what the company values most – its bottom line.

In 2019, two workers were exposed to toxic chemicals at the Decatur, Alabama, plant. One died nine weeks after the exposure. The other worker spent five months at the University of Alabama Birmingham hospital. She was able to return home but was forced to be on oxygen 24 hours a day until her death last Sept. due to complications from COVID. Kendall says:

OSHA's citations and proposed fine send a strong message to employers that fail in their duty to protect their workers – the agency will work to hold wrongdoers accountable. The federal probe continues and could result in criminal charges, too.

If you have any questions, contact Kendall Dunson, a lawyer in our firm's Personal Injury & Products Liability Section, at 800-898-2034 or email at Kendall.Dunson@BeasleyAllen.com. Kendall has vast experience in workplace litigation.

Sources: OSHA

Workplace Litigation In Alabama Involving On-The-Job Accidents

In Alabama, an employee injured on the job is limited to the benefits payable under the Alabama Workers' Compensation Act (Comp Act). Two exceptions to this statutory limitation are:

- when the injury was caused by a third-party, such as a product manufacturer who sells a dangerous or defective piece of equipment to the employer, and
- when the injury was caused by the willful conduct of a co-employee, section 25-5-11(c), Code of Alabama, provides that "willful conduct" of an employee can occur when the co-employee has "[a] purpose or intent or design to injure another" or where a co-employee participates in the "willful and intentional removal from a machine of a safety guard or safety device provided by the manufacturer of the machine." (For the full language of "willful conduct," see § 25-5-11(c)).

Alabama courts have found that the failure to maintain a safety device in some circumstances is equivalent to removing that device and can constitute willful conduct. In other words, if a product manufacturer provides a safety device on a piece of machinery and a co-employee responsible for the maintenance and service of that equipment fails to ensure the safety device is in good working order, resulting in injury or death to another employee, the co-employee can then be subjected to liability outside of the limitations placed by the Comp Act.

Recently, Beasley Allen lawyers settled a case against an Alabama employer for workers' compensation benefits and against several co-employees for what was asserted to be "willful conduct" as defined under the Comp Act. In our case, an employee was killed when a Vertical Reciprocating Conveyor (VCR, or freight elevator) fell three stories. The employee was in the process of unloading supplies from the VCR when the cable that raised and lowered the VCR broke, resulting in the elevator suddenly collapsing. The employee was pulled into the falling VCR and was tragically killed.

When installed by the manufacturer, the VCR had a safety brake, referred to as a falling platform safety device. This device was designed so that if the VCR dropped or fell, a cam mechanism would cause the brake to turn into the guide rail, lock into place, and keep the VCR from falling.

Our investigation revealed that the cam brake system had not been properly inspected and maintained. In fact, our lawyers learned through discovery that the VCR had fallen previously under similar circumstances without injury being caused to anyone on that occasion. Had appropriate measures been taken by those responsible for maintaining and servicing the VCR, the employee would not have died. The young man who lost his life was survived by his fiancee', three minor children, and other family members.

If you have any questions, contact Ben Locklar, a lawyer in our firm's Personal Injury & Products Liability Section, at 800-898-2034 or email Ben.Locklar@BeasleyAllen.com. Ben handles workplace injury and wrongful death litigation for the firm.

XVIII.
TOXIC TORT LITIGATION

EPA Conducts Public Meetings Of The Science Advisory Board PFAS Review Panel

The United States Environmental Protection Agency (EPA) has convened a panel of experts to review approaches for estimating heath risks associated with

per- and polyfluoroalkyl substances (PFAS). The board conducted a series of meetings available to the public online. The EPA also posted public comments that were submitted to the board.

The expert panel sought clarifications from the EPA on a number of specific factors considered by the agency when developing recently published documents for the board's consideration. The panel asked questions about how the EPA derived lifetime exposure assessments for drinking water and to what extent diet is a factor to those exposed. PFAS have been linked to a number of suspected health effects, including cancer.

In addition to comments from the panel, a number of industry groups, public health officials, and independent experts provided comments. Commenters sought clarity in the EPA's methods of data and literature review. In 2016, EPA set a lifetime health advisory for two PFAS in drinking water, PFOS and PFOA. EPA has asked the panel to review documents that provide approaches for deriving maximum contaminant goals for PFAS that could lead to enforceable water standards.

Sources: Bloomberg and EPA

PFAS Litigation Continues To Grow

Litigation over so-called forever chemicals will most likely keep growing this year. We have previously reported that this group of chemicals – per- and polyfluoroalkyl substances (PFAS) – has thousands of uses, including nonstick cookware and firefighting foam, and got its nickname from the chemicals' longevity.

A multidistrict litigation in South Carolina federal court alleges that firefighting foam, called aqueous film-forming foam (AFFF), has contaminated the water. The foam has been linked to a variety of health problems, such as high blood pressure and thyroid disease, according to court documents. Various manufacturers, including 3M, make it. The AFFF lawsuits in the MDL and other courts are brought by states, municipalities and water authorities.

The chemicals can leach into the environment in various ways, and the litigation is expected to grow as more pathways of exposure are discovered. There are also a number of class actions by private homeowners whose property values typically drop because of known PFAS exposures.

$110 Million Verdict In Florida 3M Military Earplug Bellwether

A Florida federal jury on Jan. 27 found in favor of two service members who suffered hearing damage from using 3M earplugs, awarding the men $110 million in damages. This is the largest verdict in the sprawling multidistrict litigation's bellwether series to date, according to lawyers for the plaintiffs. The Pensacola jury awarded U.S. Army veterans William Wayman and Ronald Sloan each $15 million in compensatory damages and $40 million in punitive damages. They had experienced tinnitus and hearing loss allegedly stemming from 3M's CAEv2 earplugs.

Wayman and Sloan's lawyers told Law360 in a statement that this is the largest verdict in the bellwether process to date in multidistrict litigation that includes nearly 300,000 service members who claim they suffered hearing damage after using the earplugs.

Wayman and Sloan are represented by Shelley Hutson of Clark Love & Hutson PLLC, Bryan Aylstock of Aylstock Witkin Kreis & Overholtz PLLC, Michael Sacchet of Ciresi Conlin LLP and David Buchanan of Seeger Weiss LLP. The individual cases are *William Wayman v. 3M Co. et al.* (case number 7:20-cv-00149) and *Ronald Sloan v. 3M Co. et al.* (case number 7:20-cv-00001), both in the U.S. District Court for the Northern District of Florida.

The MDL is *In re: 3M Combat Arms Earplug Products Liability Litigation* (case number 3:19-md-02885) in the U.S. District Court for the Northern District of Florida.

Source: Law360.com

XIX.
CLASS ACTION LITIGATION

U.S. Supreme Court Declines To Take Case Involving $425 Million Equifax Data Breach Settlement

The U.S. Supreme Court refused an appeal of a landmark settlement between Equifax and consumers. The consumer credit reporting agency is required to pay consumers up to $425 million over a 2017 data breach. The Jan. 10 ruling by the high court affirmed an Eleventh Circuit decision last June decision upholding a Georgia district court's approval of the agreement minus service awards for class representatives. The Eleventh Circuit reduction of those awards, which would have paid each of 100 class representatives $2,500, was in keeping with its own September 2020 decision in *Johnson v. NPAS Solutions*.

The petition was filed by David R. Watkins and Theodore H. Frank, two of 388 objectors out of a class of an estimated 147 million members. Several other objectors had also appeared in the appeal before the Eleventh Circuit but chose not to continue further in pursuit of the matter.

U.S. District Judge Thomas W. Thrash Jr. of the Northern District of Georgia issued the order approving the settlement in January 2020 after issuing an initial ruling from the bench a month earlier. The settlement agreement resolved multidistrict litigation over a 2017 data breach at Equifax that exposed about 147 million consumers' personal data. Besides compensating affected consumers, Equifax has also agreed to pay $77.5 million in attorney fees. The company will also be required to spend $1 billion to improve its own data security.

Under the agreement, Equifax will pay $380.5 million into a settlement fund to be used for class members' benefits, attorney fees, litigation costs, and notice and administration expenses. Each class member could be reimbursed up to $20,000 for out-of-pocket losses related to the data breach, compensated up to $25 per hour for up to 20 hours spent dealing with the breach, and receive up to 10 years of credit monitoring and identity protection services. Equifax additionally agreed to compensate class members who already had credit monitoring by up to $31 million and provide seven years of identity restoration services to those who had personal information stolen.

The company further agreed to pay an additional $125 million, if needed, to satisfy claims for out-of-pocket losses and potentially $2 billion more if all 147 million class members signed up for credit monitoring.

Finally, Equifax must spend at least $1 billion on data security over five years. The settlement was hailed by Judge Thrash as "the largest and most comprehensive recovery in a data breach case in U.S. history." It resolves more than 300 class actions filed against Equifax throughout the country that were consolidated into a multidistrict litigation in the Northern District of Georgia, where the company is headquartered.

In their petition to the Supreme Court, the objectors Watkins and Frank questioned whether the district court had acted inappropriately by adopting an opinion, possibly verbatim, that was ghostwritten by class counsel without posting the draft publicly and whether the class representatives adequately represented class members when the settlement agreement did away with state-specific claims for no additional value.

In its opinion, the Eleventh Circuit said the district court had fairly directed plaintiffs' counsel to draft an order summarizing the case and to seek Equifax's approval, despite concerns from objectors about the ghostwritten order. The panel said, "ghostwriting remains most unwelcome," but there was no resulting prejudice in the Equifax case.

The objectors Watkins and Frank are represented by Tyler R. Green, Tiffany H. Bates and Patrick Strawbridge of Consovoy McCarthy PLLC. The class is represented by Kenneth S. Canfield of Doffermyre Shields Canfield & Knowles LLC, Amy E. Keller of DiCello Levitt Gutzler LLC, Norman E. Siegel of Stueve Siegel Hanson LLP, and Roy E. Barnes of Barnes Law Group LLC.

The case is *David R. Watkins et al. v. Brian F. Spector et al.* (case number 21-638) in the Supreme Court of the United States.

Source: Law360.com

Additional Settlements In Class Action Litigation

There have been a significant number of important settlements in class action litigation around the country in recent weeks. We will mention several of them below.

$50 Million Gold Price-Fixing Settlement Against Barclays And Others Approved

A New York federal judge has granted preliminary approval to the final settlement ending claims that banks illegally fixed prices on the gold market. U.S. District Judge Valerie E. Caproni signed off last month on the $50 million settlement reached by Barclays Bank PLC, Scotiabank, Societe Generale and the London Gold Market Fixing Ltd.

Judge Caproni gave preliminary approval to the third and final settlement in the putative class action, which brings the total amount in settlement for the plaintiffs to $152 million. Separately, the judge approved $28.2 million in attorney fees and $8 million in litigation expenses for Berger Montague and Quinn Emanuel Urquhart & Sullivan LLP out of the previously approved $102 million in settlements reached with Deutsche Bank and HSBC.

The newly approved settlement applies to people who traded in gold or financial instruments with gold as their underlying asset between January 2004 and June 2013. In seeking approval in November, the traders had estimated the class to number in the "many thousands." In his order, Judge Caproni said over 18,000 settlement notices were distributed to potential class members.

A hearing for final approval of the last $50 million settlement was said to be expected this summer. The $102 million comes from the first two settlements only, and approval of the remaining settlements with the last four defendants will be sought at a fairness hearing to be held in August.

The March 2014 putative antitrust class action represents 18 consolidated suits claiming that several banks were involved in a wide-ranging conspiracy to fix prices on the gold market. London Gold Market Fixing members held secret meetings to share information on the real-time price of gold to set a rate beneficial to them, including Barclays, HSBC and Deutsche Bank. The latest settlement is the third such settlement in the class action, following one in December 2016 with Deutsche Bank AG for $60 million and another in December 2020 with HSBC Bank for $42 million. UBS AG was dismissed from the suit in 2018.

The gold traders are represented by Merrill G. Davidoff, Martin I. Twersky, Michael C. Dell'Angelo, Candice J. Enders, Mark R. Suter and Zachary D. Caplan of Berger Montague, and Daniel L. Brockett, Sami H. Rashid, Jeremy D. Andersen, Alexee Deep Conroy and Christopher M. Seck of Quinn Emanuel Urquhart & Sullivan LLP.

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

Source: Law360.com

$454 Million Glumetza Antitrust Settlement Approved

U.S. District Judge William H. Alsup said on Jan. 20 he will grant final approval to $454 million in settlements resolving direct Glumetza buyers' class claims that drugmakers plotted to delay the generic version of the blockbuster diabetes drug. But, Judge Alsup said he did not approve the attorneys' $112.8 million fee request, saying he is still weighing the request.

Objections were raised to the 25% fee requirement by direct purchaser class members McKesson Corp., AmerisourceBergen Corp. and Cardinal Health Inc. National wholesalers McKesson, AmerisourceBergen and Cardinal Health also objected to the "unprecedented" attorney fee award of $112.8 million, telling Judge Alsup that class counsel is seeking to be paid five times their regular rates.

The antitrust claims were filed by a group of direct

and indirect buyers in fall 2019 after the price of the diabetes medication was said to have jumped by nearly 800% in 2015 from $5.72 per pill to more than $51 apiece.

The buyers allege that Bausch Health Cos. Inc., formerly Valeant Pharmaceuticals, and its subsidiaries Santarus, Salix Pharmaceuticals and Assertio Therapeutics Inc., formerly Depomed, entered into a corrupt settlement in 2012 with Lupin Pharmaceuticals Inc. to resolve patent infringement litigation that involved a promise not to compete, as well as market allocation, in violation of the Sherman Act.

The buyers accused Glumetza makers of paying Lupin $3 million to delay the launch of generic Glumetza until Feb. 1, 2016, and allegedly promising Lupin that they would not launch an authorized generic of Glumetza until February 2017. The direct buyers say the generic blood sugar drug could have gone on pharmacy shelves as early as December 2012, with Glumetza's authorized generic launching simultaneously, and the delay caused overcharges in the hundreds of millions of dollars.

In early 2020, Judge Alsup ruled that even though the allegedly unlawful settlement that blocked Lupin from marketing its Glumetza generic was reached in 2012, and the lawsuit was filed seven years later, the direct purchasers' claims were within the statute of limitations.

On Aug. 15, 2020, Judge Alsup certified a class of direct purchasers, consisting of "all persons or entities in the United States and its territories who directly purchased Glumetza or generic Glumetza from a defendant from May 6, 2012, until the date of this order." The parties reached three settlements — Bausch's $300 million settlement, Lupin's $150 million settlement and Assertio's $3.85 million settlement — just ahead of trial. Judge Alsup preliminarily approved the settlements in September 2021.

Judge Alsup said at the close of the hearing that he will allow the plaintiffs' $2.4 million in expense reimbursement and intends to grant final approval of the settlement, but said, "I don't have answer on the attorney fees." "Stand by, stay tuned, an order will be coming out soon," the judge said.

The direct purchaser class is represented by Hilliard Shadowen LLP, Hagens Berman Sobol Shapiro LLP and Sperling & Slater PC. Bausch Health is represented by Arnold & Porter and Cravath Swaine & Moore LLP.

The case is *In re: Glumetza Antitrust Litigation* (case number 3:19-cv-05822) in the U.S. District Court for the Northern District of California.

Source: Law360.com

$18.25 Million Investor Fraud Settlement By Merit Medical Gets Initial Approval

An $18.25 million class settlement resolving Merit Medical Systems Inc. stockholders' consolidated stockholder claims that the company misrepresented its success in integrating new acquisitions was approved by a preliminarily approved by a California federal judge on Jan. 3. U.S. District Judge David O. Carter granted preliminary approval to the investors' settlement reached in December, in which Merit Medical agreed to pay $18.25 million in cash, finding that the settlement is likely "fair, reasonable and adequate to the settlement class."

Judge Carter certified a settlement class of all people who bought Merit common stock from Feb. 26, 2019, through Oct. 30, 2019, and who were damaged, according to the order. The suit, filed in December 2019, accuses Merit of misleading investors, including a group of public pension funds for the cities of Atlanta and Baton Rouge, Louisiana, about its integration of late 2018 acquisitions Cianna Medical Inc. and Vascular Insights LLC, and of overstating its sales expectations of their products. The suit alleges:

- By not giving shareholders the true picture of its financial health, Merit, which makes disposable medical devices for a variety of procedures, artificially inflated its share prices, which then dipped in July 2019 following disappointing quarterly results.
- The stock price declined by 25% in the span of one trading day, from $54.84 per share to $41.
- The following quarter's lower-than-expected financial results prompted another stock drop of 29% in late October 2019, tumbling from $29.11 to $20.66.

In his order, Judge Carter granted preliminary approval of the proposed settlement and set a hearing for April 13.

The shareholders are represented by David R. Kaplan, Hani Y. Farah and Steven B. Singer of Saxena White PA and Jonathan D. Uslaner, Lauren M. Cruz and John Rizio-Hamilton of Bernstein Litowitz Berger & Grossmann LLP.

The case is *In re: Merit Medical Systems Inc. Securities Litigation* (case number 8:19-cv-02326) in the U.S. District Court for the Central District of California.

Source: Law360.com

Morgan Stanley To Pay $60 Million To Settle Data Security Lawsuit

Morgan Stanley has agreed to pay $60 million to settle a lawsuit by customers who said the Wall Street bank exposed their personal data when it twice failed to properly retire some of its older information technology.

A preliminary settlement of the proposed class action on behalf of about 15 million customers was filed in Manhattan federal court. It requires approval by U.S. District Judge Analisa Torres.

Members of the class action would receive at least two years of fraud insurance coverage. Each class action member can also apply for reimbursement of up to $10,000 in out-of-pocket losses. The customers claimed that in 2016 the company resold wealth management data centers with unencrypted equip-

ment to unauthorized third parties before it decommissioned them. The centers contained customer data. Settlement documents confirm that Morgan Stanly has made "substantial" upgrades to its data security practices.

The customers also said some older servers containing customer data went missing after Morgan Stanley transferred them in 2019 to an outside vendor. Morgan Stanley later recovered the servers. Morgan Stanley said in an email on Jan. 3 it had notified all customers who may have been affected.

Morgan Stanley agreed to pay a $60 million civil fine in October 2020. The fine was paid to settle accusations by the U.S. Office of the Comptroller of the Currency concerning the incidents, including that its information security practices were unsafe or unsound. The case is *In re Morgan Stanley Data Security Litigation*, U.S. District Court, Southern District of New York, No. 20-05914.

Source: Reuters

Mattel And Investors Get Approval On $98 Million Settlement Over Tax Misstatement

A California federal judge on Jan. 18 preliminarily approved a $98 million settlement in a class action brought by investors against Mattel and PwC, claiming the companies misled them by understating an income tax expense and conspiring to conceal the error.

In his order, U.S. District Judge Mark C. Scarsi approved the settlement between the companies and the class of investors led by the DeKalb County Employees Retirement System and the New Orleans Employees' Retirement System.

Two class actions filed in December 2019 and January 2020 against Mattel and PwC were consolidated. It was contended that Mattel and PwC orchestrated a cover-up of a $109 million tax misstatement for the third quarter of 2017. The investors said Mattel later overstated its losses by the same amount to hide the error. The exposure of that misconduct was said to have led to plunging stock prices and economic losses for the investors.

Judge Scarsi certified the class of investors in October and granted PwC›s request to restrict claims against it to a subclass of Mattel investors who bought stock from February 2018 – when they claimed the firm made a misstatement about the company›s finances – through August 2019. The primary class of investors covers those who bought stakes in Mattel from August 2017 through August 2019.

The investors are represented by John Rizio-Hamilton, Jonathan D. Uslaner, Richard D. Gluck and Lauren M. Cruz of Bernstein Litowitz Berger & Grossmann LLP and Jacob A. Walker of Block & Leviton LLP.

The case is *In re: Mattel Inc. Securities Litigation* (case number 2:19-cv-10860) in the U.S. District Court for the Central District of California.

Source: Law360.com

Wells Fargo's $40 Million Settlement With Foreclosed Homeowners Approved

U.S. District Judge William H. Alsup granted final approval on Jan. 6 to a $40.3 million class action settlement. The settlement resolves claims that Wells Fargo Bank wrongly denied loan modifications to homeowners causing them to lose their homes to foreclosure.

Roughly two years after Judge Alsup granted final approval of an $18.5 million settlement concerning the San Francisco-based bank's erroneous denial of trial loan modifications where borrowers later lost their home to foreclosure, on Jan. 6, the judge approved a nearly $21.8 million supplemental settlement for hundreds of additional class members, bringing the total settlement amount to $40.3 million for 1,246 class members.

The proposed supplemental class settlement covers 741 new class members who fell within the original class settlement's class definition but were not part of an initial list of 505 borrowers provided by Wells Fargo.

The borrowers allege that from 2010 to 2018, a calculation error in Wells Fargo's software caused certain homeowners who should have qualified for loan modifications to be deemed unqualified for financial assistance.

Borrower Alicia Hernandez filed a putative class action against Wells Fargo in 2018, claiming the bank denied loan modification and repayment plans to her and other borrowers who were eligible for them under the Home Affordable Modification Plan (HAMP), a recession-era federal program for which Wells Fargo received billions of dollars from the federal government.

To streamline the HAMP application process, Wells Fargo developed software that applied the government's formula to assess existing loans. But in 2013, Wells Fargo discovered a glitch in its software. It implemented a partial fix in 2015, but a related error continued until 2018, at which point Wells Fargo publicized the error and did a comprehensive fix, according to the settlement documents. The bank sent apology letters to affected homeowners and provided between $5,000 and $15,000 in compensation to certain homeowners.

In early 2020, Judge Alsup certified a class of Wells Fargo borrowers who qualified for loan modifications between 2010 and 2013 but were not offered a home loan modification or repayment plan by Wells Fargo and whose homes Wells Fargo sold in foreclosure. That spring, the borrowers reached an $18.5 million settlement with Wells Fargo. That settlement also set aside $1 million to compensate those who endured severe emotional distress due to the software error that led to the foreclosure of their homes.

Under that settlement, each class member is entitled to receive between $14,000 and $120,000, depending on factors such as their unpaid princi-

pal balance, period of delinquency and how much they received from Wells Fargo in remediation. But shortly after the court finalized that settlement, Wells Fargo identified hundreds of new class members who had their homes foreclosed on as a result of the error.

Wells Fargo agreed to a supplemental settlement of nearly $22 million to provide new class members with compensation for economic harm using the same formula as in the first settlement. The new class members had the same opportunity as the original class members to apply for additional settlement amounts for severe emotional distress.

Judge Alsup preliminarily approved the supplemental class settlement in mid-2021. Under the supplemental class settlement, each class member will receive between $14,000 and $116,502 in economic damages payments. Wells Fargo will also pay $1.45 million to supplemental class members who suffered severe emotional distress due to the foreclosure of their homes.

Class counsel told Judge Alsup at the hearing on Jan. 6 that they sent out notices of the settlement to the 741 supplemental class members but that 52 could not be reached. At least 21 of those people are believed to be deceased, and no known next of kin have been located. Class counsel said there are 31 living supplemental class members who have not yet been located.

The borrowers are represented by Michael L. Schrag, Jeffrey B. Kosbie and Linda P. Lam of Gibbs Law Group LLP and Richard M. Paul III, Ashlea Gayle Schwarz and Laura C. Fellows of Paul LLP.

The case is *Hernandez et al. v. Wells Fargo Bank NA et al.* (case number 3:18-cv-07354) in the U.S. District Court for the Northern District of California.

Source: Law360.com

Teva Gets Nod For $420 Million Price-Fixing Deal With Investors

A Connecticut federal judge granted preliminary approval to a $420 million deal resolving an investor class action accusing Teva Pharmaceuticals of orchestrating an industrywide price-fixing scheme, holding that the agreement is reasonable and there are no obvious red flags.

U.S. District Judge Stefan R. Underhill gave his blessing to the all-cash deal and set a settlement hearing for June 2. If finalized, the agreement would rest the investor claims against Teva, which is facing criminal charges over the alleged conspiracy to fix generic-drug prices. A certified investor class asked for approval last month, noting that the deal would be the Connecticut district's second-largest securities class action settlement.

Judge Underhill preliminarily appointed the Ontario Teachers' Pension Plan Board and Anchorage Police & Fire Retirement System as class representatives. Lawyers with Bleichmar Fonti & Auld LLP have been preliminarily appointed class counsel for the settlement class, and Carmody Torrance Sandak & Hennessey LLP will serve as class liaison, according to the order.

The investors filed their suit in November 2016, following media reports that Teva was the subject of several investigations into alleged pharmaceutical price-fixing. After fending off a dismissal motion, the investors amended their complaint in 2019 to encompass the filing of the state enforcers' lawsuit.

The U.S. Department of Justice hit Teva with an indictment in August 2020 for its alleged part in three price-fixing conspiracies between May 2013 and December 2015. The criminal charges came as part of a larger investigation of the generics industry that has seen five companies reach agreements with the DOJ.

In March 2021, Judge Underhill certified the class of investors who held shares or notes in Teva between 2014 and May 10, 2019, when a coalition of 44 states' attorneys general launched litigation accusing the company of colluding with more than a dozen rivals to keep generics prices artificially high.

The investors are represented by Joseph A. Fonti, Javier Bleichmar, Evan A. Kubota, Benjamin F. Burry and Thayne Stoddard of Bleichmar Fonti & Auld LLP, and Marc J. Kurzman, Christopher J. Rooney and James K. Robertson Jr. of Carmody Torrance Sandak & Hennessey LLP.

The case is *In Re Teva Securities Litigation* (case number 3:17-cv-00558) in the U.S. District Court for the District of Connecticut.

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 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.

XX.
THE CONSUMER CORNER

CPSC Approves New Crib Mattress Safety Rule

The U.S. Consumer Product Safety Commission (CPSC) has announced it will impose new standards for infant mattresses used in cribs and play yards. This was done in response to nearly 500 baby injuries over the past decade. The agency says that by the fall of this year, man-

ufacturers will be required to correct several design issues in their crib mattresses and after-market mattresses that resulted in a number of asphyxiation and suffocation deaths. From January 2010 to April 2021, nearly 139 deaths and 355 nonfatal injuries were tied to baby beds.

The CPSC said some infant beds are overly soft, which can cause suffocation, and some have caused cuts due to sharp springs. Makers of baby play-yard mattresses will also be required to meet the same standards of the original mattress so infants don't suffocate in the gap between the bedding and the walls of the play yard, the agency said.

The commission voted 4-0 to approve the requirements. Richard Trumka, a commissioner of the CPSC, said in a statement on Jan. 26:

[W]e fixed a long-standing gap in safety standards for baby products. We've long known that the safest place for a baby to sleep is on their back, on a firm, flat surface, with nothing else cluttering the space. But until today, CPSC did not have safety standards for the one item left in the baby's sleep space – the mattress.

The new mandates will also require more labeling and marking to clarify safety hazards to buyers. These rule changes came a week after the agency declared all so-called baby lounger pillows unsafe and told consumers to stop buying them entirely. We will mention below more on that warning by the CPSC.

Source: Law360.com

Baby Deaths Prompt Calls By CPSC To Recall Leachco Infant Lounger

Despite two infant deaths linked to Leachco Podster loungers, the company refuses to recall the product voluntarily. So, last month, the U.S. Consumer Product Safety Commission (CPSC) warned the public to "immediately stop using" the Podster loungers.

Leachco disputes the warning, explaining that the loungers are not intended for sleeping. It received support from two special interest groups, the Juvenile Products Manufacturers Association (JPMA) and First Candle, an organization advocating for safe infant sleep practices that issued statements of support.

The CPSC confirmed that it "is aware of two infants who were placed on a Podster and suffocated when, due to a change in position, their noses and mouths were obstructed by the Podster or another object." The agency reminded consumers that infant loungers "are not safe for sleep" and that babies should be repositioned if they fall asleep in positions other than on their backs, as recommended.

"The best place for a baby to sleep is on their back on a firm, flat surface in a crib, bassinet, or play yard without blankets, pillows, or padded crib bumpers," the CPSC said.

The infant loungers in question include the Podster, Podster Plush, Bummzie and the Podster Playtime. The CPSC estimates that 180,000 loungers have been sold, and consumers can view photos of them on the agency's website.

In a statement shared with *Newsweek*, the CPSC said that it will continue investigating Leachco loungers. The statement said:

Following the deaths of two infants, the Consumer Product Safety Commission made a formal public health and safety finding in order to officially and quickly warn the public to stop using the Leachco Podster infant loungers due to risk of suffocation. This warning comes several months after a different brand of infant loungers was recalled. Infant loungers like Podsters are not safe for sleep yet Leachco has so far refused CPSC's request to conduct a voluntary recall of the product. It is important to remember that under federal law, consumers' use is considered in deciding whether a product is defective.

The agency noted that it will consider other actions, including potentially litigating, "to protect consumers from this hazard."

Sources: Law360.com, *Newsweek*

XXI.
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 Accidents
- Aviation Accidents
- Belviq
- Benzene in Sunscreen

- CPAP Devices
- Defective Tires
- JUUL Vaping Devices
- Mesothelioma
- NEC Baby Formula
- On-the-Job-Injuries
- Paraquat
- Talcum Powder
- Truck Accidents

XXII.
RESOURCES TO HELP YOUR LAW PRACTICE

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

XXIII.
PRACTICE TIPS

Practice Tips: How To Get ESI From Defendant Corporations And What To Do With It Once You Have It

Suzanne Clark, Mass Torts Discovery Counsel for Beasley Allen, writes on ESI discovery this month. She gives practice tips for lawyers who handle litigation in the civil justice system. It's necessary for lawyers and staff personnel to understand how to contact ESI Discovery. So, let's see what Suzanne has to say on the subject.

The Practice Tips

What is the best way to get documents and ESI from the big corporations that have injured our consumer clients, then analyze, review, and turn it into an order of proof?

It is a David versus Goliath situation.

So David triumphed over the Philistine with a sling and a stone; without a sword in his hand he struck down the Philistine and killed him. 1 Samuel 17:50

The truth is, David was very good with a sling shot. David's use of the sling shot was a practiced skill that he learned over time to protect his sheep from lions and bears. Meaning God prepared him over his lifetime to be ready and able to oppose and defeat Goliath.1 Samuel 17: 34-37

Just as David had his sling shot, as consumer plaintiff's counsel, we have tools available that we can use to face the big data of corporate defendants. To tackle our giant, I ask three questions: What do we need to prove our case? How do we get what we need? What do we do with it once we get it?

What do we need to prove our case?

When contemplating drafting a Request for Production under Rule 34, I imagine myself standing in the shoes of the cast of characters at the defendant corporation. Next, I think about what defense counsel would ask their client about the case. What documentation do our attorneys and experts need to read to get a complete picture of the facts? What is the science, manufacturing, testing, regulatory, marketing, and sales information surrounding the drug or device? How do the people in those departments do their job daily? How is this documented? Where is this documentation stored? I don't want only final reports; I also want the drafts, notes, data, presentations, meeting minutes and communications that built those reports. I want email with attachments

and thread groups (forwards, replies, etc.), but I also want data from collaborative platforms and instant messaging. I want to know how people at the corporation stored, organized and utilized documents and ESI. Finally, I think about how to go about getting this information.

How do we get what we need?

Of the discovery tools available to us under the Federal Rules of Civil Procedure[1], I will focus on Requests for Production.

Three Practice Tips for RFPs:

1. Take advantage of the right to specify form of production under Rule 34(b)(1)(C).[2]
2. Hold defense accountable to the requirement that their objections be specific under Rule 34(b)(2)(C).
3. Don't let objections lie. Put a process in place to resolve objections and have them withdrawn, sustained, or overruled.

"The amendment to Rule 34(b) permits the requesting party to designate the form or forms in which it wants electronically stored information produced."[3] Specifying form of production is how we get the metadata we want to use. Receiving documents and ESI produced with metadata versus a production of static images or PDFs is key to our next step: analyzing and reviewing productions to build an order of proof, discussed below.

Under Rule 34(b)(2)(C), an "objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest."[4] Boilerplate objections are no longer tolerated by judges.[5] Hold producing parties accountable to this standard by noting and addressing any boilerplate objections and requesting the producing party inform whether any documents were withheld.

Along these same lines, catalog and address all of the defendant's objections. This is a tedious process, but if done effectively can increase the value of your case. The workflow for managing requests and objections is to (i) document the rationale for your request, (ii) log and categorize requests and objections, (iii) log your response to the objections, (iv) confer with defense counsel to request they withdraw the objections, (v) seek court intervention through a motion to compel, (vi) organize your motion so the judge can see which objections have been withdrawn and which need resolution, and (vii) log the judge's rulings sustaining or overruling objections. Going through this process will help to ensure you have received the relevant, not privileged, and proportional discovery you are entitled to under Rule 26(b).

What do we do once we receive productions of documents and ESI?

Three Practice Tips for Incoming Productions:

1. Use a robust document review platform.
2. Start with a 50,000-foot view. Look at custodians, date ranges, and other metadata like file names, folder paths, and document types. Conduct a smart review using analytics like email threading, grouping similar documents, and conceptual clustering.
3. Utilize experts to home in on key documents.

The gold standard for document review platforms is Relativity. Relativity comes with built-in data security, helps organize documents, maintains the authenticity of the evidence, and has robust search, filtering, and tagging capabilities. It provides a centralized place for litigation team members to work with documents while preserving work product for use by the entire team over the litigation lifecycle.

Early Case Assessment (ECA) allows attorneys to get a picture of the evidence immediately upon ingestion into Relativity. We can look at individual documents and derivative evidence, i.e., evidence based on or derived from another source. We can see trends or groups of things, which can show us, for example, a prevalence of knowledge, like how many emails about a certain topic occurred in a certain time frame. ECA also allows us to identify gaps in productions, such as missing custodians, date ranges, or metadata.

Linear document review starting with BATES000000001 is outdated and not efficient or effective. Instead, using a tool like Relativity, we can review based on batches and searches made up of various criteria: custodian, date range, keywords, etc. Within those searches, we can organize documents by email thread group so that we read an entire email conversation together. We can even exclude non-inclusive emails and only read the messages and attachments that provide the full picture without wasting time on less inclusive near duplicates. Finally, we can make sure documents are

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[1] Requests for Production (Rule 34), Subpoenas (Rule 45), Interrogatories (Rule 33), Requests for Admissions (Rule 36), and Fact and Records Custodian Depositions (Rule 30 and Rule 30(b)(6)).

[2] Form of Production is also often handled through an ESI Protocol, but keep in mind when negotiation an ESI Protocol that as requesting party, you already have the right to designate form of production, which can give you an advantage in these negotiations.

[3] *See*, Committee Notes on Rules, 2006 Amendment, Fed. R. Civ. P. 34.

[4] "Rule 34(b)(2)(B) is amended to require that objections to Rule 34 requests be stated with specificity…" *See* Committee Notes on Rules, 2015 Amendment, Fed. R. Civ. P. 34.

[5] See, "Say It with Me—I Will Not Use Boilerplate Objections", American Bar Association, Donald R. Winningham III, Jul 23, 2019, available at https://www.americanbar.org/groups/litigation/committees/mass-torts/articles/2019/fall2019-say-it-with-me-i-will-not-use-boilerplate-objections/. *See also*, "Beware the Boilerplate: Reasonable Inquiry is Required for Discovery Responses and Objections, Rule 26(g)(3)'s mandatory sanctions may prove to be a wildcard," American Bar Association, Kaitlyn B. Samuelson, July 31, 2019, available at https://www.americanbar.org/groups/litigation/committees/pretrial-practice-discovery/practice/2019/beware-the-boilerplate-reasonable-inquiry-is-required-for-discovery-responses-and-objections/.

coded and organized to route them appropriately and prevent duplication of work product, i.e., documents are reviewed and then escalated for further review, added to a case chronology, or excluded from future review if they are not helpful.

As a final tip, expert witnesses are a great resource for learning documents and identifying substantive production deficiencies, not to mention drafting requests for production. Discussions with experts about what document types they typically see in like litigation, allows us to quickly search and retrieve the documents the experts will need for their reports, and identify if any types of documents are missing, which can then be used to (i) start the conferral process if the documents have been requested and not produced, or (ii) provide the information needed to make additional requests.

Discovery of documents and ESI is an integral part of the litigation lifecycle and an essential practice to prove and add value to our cases. Many discovery tools, both rules-based and technology-based, allow us as consumer plaintiffs' counsel to stand toe to toe with our corporate defendant foes.

If you have any questions or comments on ESI Discovery, contact Suzanne Clark at 800-898-2034 or email Suzanne.Clark@BeasleyAllen.com.

XXIV.
RECALLS UPDATE

A large number of safety-related recalls were issued during January. 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.

XXV.
FIRM ACTIVITIES

Employee Spotlights

Holly Busler

Holly Buster joined Beasley Allen in 2000, and she has been a dedicated employee for over 21 years. She is a Paralegal in the firm's Consumer Fraud & Commercial Litigation Section, working with Lance Gould. In her role as a Paralegal, Holly assists Lance with case investigations, correspondences, research, pleadings, discovery, calendering, organizing files, document review, communicating with clients and attorneys, and other tasks as assigned.

Holly and her husband, Trent, have been married for 13 years. They have four children, Taylor (22), Drew (20), Pruitt (11), and Georgia (5). Taylor is a graduate of the University of Alabama with a Business degree in Accounting. Drew is working towards a certification as an electrician. Pruitt is in the sixth grade and loves sports, hunting, hiking, and anything outdoors. Georgia is in pre-school and loves dance, tumbling, swimming, hiking and playing with friends. Holly and her family live in Wetumpka, Alabama.

Holly says she enjoys spending time with her family the most, whether watching their children play sports; football, baseball, or softball. She says she and Trent also love watching their nieces and nephews play sports when they can make their games. Holly loves sewing, crafting, re-purposing furniture, and building projects with her husband in her spare time. Holly says the favorite thing about working for Beasley Allen is the people with whom she works. We are fortunate to have Holly with us!

Casie Coggin

Casie Coggin, a Legal Assistant in the firm's Personal Injury & Products Liability Section, joined Beasley Allen in 2017. She currently works as a Paralegal with Ben Locklar. In that role, Casie works on cases involving eighteen-wheeler and other motor vehicle crashes, motorcycle helmets, and various other injury and product-related cases.

Casie and her husband, Mark, have been married for 21 years. They have two children, John David (18) and Faith (16). John David will be graduating high school this year and heading to school for underwater welding. Faith plans to pursue culinary arts with a focus on baking and pastries. The family also has three dogs that are spoiled to their core and a leopard gecko named Spot that Casie says will likely live forever. Spending time with family is Casie's number one priority, and she says it brings her the most joy! She also loves to read, listen to books, sit next to a good fire, watch movies, musicals or plays and attend museums.

When asked what her favorite thing about working at Beasley Allen was, she replied, "I truly love the people I work with. I have worked with several firms over the years, and I am very thankful to have finally landed at Beasley Allen. The attorneys and staff treat each other with respect and kindness." She added, "Having an atmosphere where Christ is spoken and shared is an amazing opportunity in this day and age." We are blessed to have Casie with us!

Graham Esdale

Graham Esdale, a lawyer in our firm's Personal Injury & Product Liability Section, focuses his practice on products liability and workplace injury cases. He has been involved in a number of the firm's notable cases, including product defects. Graham was trial counsel in a $114.5 million jury verdict against a bucket truck manufacturer, a landmark case.

Graham was also a leader in investigating personal injury and wrongful death claims related to Toyota Sudden Unintended Acceleration (SUA) problems. He was one of the first lawyers in the country to file a lawsuit against Toyota alleging that a Toyota Camry, in which our clients were riding, crashed after experiencing an SUA event. The crash resulted in the death of one client and a se-

rious injury to the other. The lawsuit, *Bookout, et al. v. Toyota*, ended with a $3 million compensatory damages jury verdict. The *Bookout* jury informed the judge that it also wanted to award punitive damages. However, Toyota settled the case the night before the punitive damages phase of the trial began.

Growing up watching his father Bob Esdale litigate cases played a major role in Graham's decision to become a lawyer. He says, "I saw the difference my dad made in peoples' lives." Graham explains that while many of his dad's clients couldn't pay with money, they still paid him because they valued what he did for them. He recalls how it was customary for his dad to "occasionally show up with some fresh fish, an old set of golf clubs or a used car that had seen better days."

Graham began his legal career with the Jefferson County District Attorney's Office. As a prosecutor, he was involved in over 150 trials and was a member of the homicide and sex abuse division. Graham entered private civil practice in 1994, focusing on products liability and workplace litigation. He then left Birmingham and joined Beasley Allen in 1996.

Working with others as a team, including lawyers, paralegals, secretaries and investigators, with a common and sometimes inconceivable goal for clients is what Graham says he enjoys the most about his job. Graham says:

> *There is a camaraderie and shared experience from helping each other get prepared and present evidence to a jury that is hard to describe. It is a bonding experience even though there are some high anxiety moments.*

Graham is Immediate Past President of the Alabama Chapter of the American Board of Trial Advocates (ABOTA). He is a member of the Federal Bar Association and the State Bar Judicial Liaison Committee. Additionally, Graham serves as a Board Member for the River Region Board of Magic Moments.

Graham has regularly been named to the Best Lawyers in America and Midsouth Super Lawyers. He was named the Best Lawyers 2020 Product Liability Litigation – Plaintiffs "Lawyer of the Year" in Montgomery. Graham was also selected to Lawdragon 500 Leading Lawyers in America, named one of America's Top 100 High Stakes Litigators, and received a lifetime achievement award from America's Top 100 Attorneys. He and other *Bookout* trial team members were finalists for Public Justice 2014 Trial Lawyer of the Year.

Graham is married to the former Leigh Ann Hibbett of Florence, Alabama, and they have two children. Whitney is a physician assistant in cardiovascular surgery at Huntsville Hospital, and Robert is attending college in Montgomery.

Ted Meadows

Ted Meadows, a lawyer in our firm's Mass Torts Section, co-leads Beasley Allen's talc litigation. Ted started working on talc litigation in Johnson & Johnson (J&J) Baby Powder cases in 2013 and continues to help lead the charge in cases where talcum powder caused ovarian cancer. He has helped lead five trials that resulted in verdicts against J&J totaling $725 million. No lawyer in the country has co-led more Baby Powder trials. It all started when Ted helped lead a trial team to a $72 million jury verdict against J&J on Feb. 22, 2016. After a month-long trial, a City of St. Louis, Missouri, Circuit Court jury found J&J liable for injuries and death resulting from the use of its talc-containing products such as J&J's Baby Powder and Shower to Shower body powder for feminine hygiene.

All of the early work by Ted and the Talc Litigation Team set the stage for Beasley Allen to be chosen by a federal court as co-lead counsel in the talc/ovarian cancer multidistrict litigation (MDL). This early work also paved the way for other law firms to have an opportunity to try and win blockbuster verdicts for ovarian cancer victims.

Ted says that by far, his favorite part of practicing law is being involved in making a positive difference in the life of someone in need and pursuing cases that make a positive difference in our world. He says: "What a privilege!"

Ted says he enjoys trying cases in front of juries, and he describes the U.S. jury system as the greatest in the world, bringing about a safer society for us all. He says he loves standing by brave clients as a jury reads a guilty and sometimes historic verdict against a large corporate defendant such as a pharmaceutical or cosmetic industry giant.

Ted has also been a leader in the firm's work on cases involving Lotronex, Meridia, Guidant Ancure Stent, Sulzer, Smith & Nephew Knee Replacement litigations, and Hormone Therapy (Prempro) litigations. After co-leading a trial team to a $72.6 million verdict, he was selected to serve on the Plaintiffs' Steering Committee in the Prempro MDL. That verdict was a catalyst that brought about settlements for all Prempro breast cancer victims and positioned Beasley Allen to be named as co-lead counsel in a $200 million California class action.

The Prattville, Alabama, native credits his dad for nudging him to consider practicing law and for paving the way for the job that helped Ted establish his law career. His dad was an Air Force pilot with no legal experience but shared that he saw something in Ted that "would seem to make for a good lawyer." Ted thanks his dad and George Howell, the Prattville lawyer he clerked for during college and law school, saying:

> *Those formative years showed me that being an attorney could be more than just arguing a position for the sake of argument or making money – rather, it could be a way to step into the life of real people and help them through the darkest of days. Much thanks to George and my dad for seeing things in me that I couldn't see in myself and encouraging me down the path to becoming an attorney, and especially an attorney for people who are hurting.*

An award-winning attorney, Ted has been recognized for his legal achievements. The following are the awards and honors:

- Public Justice named him a finalist in their annual "Trial Lawyer of the Year" Award for his work in the talcum powder litigation in 2016. Ted was also nominated for the award in 2012 and 2017.
- Ted's talc verdicts were listed in the National Law Journal's Top 100 Verdicts of 2016 and 2017.

- The National Law Journal selected his hormone replacement therapy verdict as No. 30 on its list of Top 100 Verdicts of 2011.
- Ted is regularly selected to the Midsouth Super Lawyers list and named the Lawdragon 500 Leading Plaintiff Consumer Lawyers.
- Ted received the Alabama State Bar Continuing Legal Education Award to recognize efforts to continue and enhance professional competence.
- Ted has been recognized as an "advocate" by the National College of Advocacy.

Ted practiced law in Prattville, Alabama, for about 10 years before joining Beasley Allen. He had this to say about our firm:

While I've always focused on helping the injured and defrauded, coming to Beasley Allen allowed me to do so on a much larger scale. The resources and quality personnel available through Beasley Allen are like none I've ever seen at any other firm in the country. Over the last 20 years, I've practiced all over the country and worked with lots of law firms. I can honestly say that there is no other plaintiffs' firm out there that cares more about their clients and does what is necessary to support trial lawyers like me as we attempt to provide the best possible representation. This includes hiring the absolute best team of support personnel and lawyers to handle every case.

Ted is married to the former Carla Musgrove of Eufaula, Alabama. They have two grown children, Nathan and Amanda, and a grandson, Jaxton. Ted is an avid triathlete, having competed in numerous endurance events, including Ironman Florida, Escape from Alcatraz, Marine Corps Marathon and Ironman Augusta 70.3 (where he has twice qualified for the USA Triathlon Age Group National Championships). He and Carla are members of the River Region United Way Tocqueville Society, which advances the common good by creating opportunities for a better life for all. They are also involved in similar efforts to advance the common good through churches and other charitable groups, both locally and worldwide.

Tara Oliver

Tara joined Beasley Allen in 2016 as a Legal Assistant in the firm's Personal Injury & Products Liability Section. She currently works in the same section and is now Paralegal to Evan Allen. Tara is a very hard worker and is a dedicated employee. We are fortunate to have her with us!

Tara has one daughter, Dylan, and three puppies, Rooney, Gracie Lou, and Sadie Mae. Dylan just turned 16 and recently got her driver's license. She is a straight-A student at Saint James School and is on the girls' varsity tennis team. Tara says she enjoys traveling with her daughter, working in her yard, and spending time with friends.

Tara says that her favorite thing about working at Beasley Allen is the people. She added, "I have made some truly great friends that I consider my family. My co-workers are so supportive and always find time to help or assist with issues that arise without giving a second thought."

XXVI.
SPECIAL RECOGNITIONS

An Update On Beasley Allen's Mobile Office

January 2022 marked the first anniversary of our firm's Mobile office. Frank Woodson returned to manage the Mobile office, where he had practiced for 17 years before joining Beasley Allen. Frank was joined in Mobile by Evan Allen, who works in the firm's Personal Injury & Product Liability Section. In the 12 months since opening, the office has grown more than three-fold, beginning in February when Matt Griffith joined the Toxic Tort Section to work on the opioid litigation for the State of Alabama and State of Georgia and pollution cases for municipalities in North Alabama against carpet manufacturers located in Georgia.

In May, the office expanded again when Wyatt Montgomery joined the firm's Personal Injury & Product Liability Section. Originally from Washington County, Alabama, Wyatt moved from Birmingham after several years of plaintiff practice to get closer to home. Frank convinced his paralegal, Renee Lindsey, to move closer to the coast, which she did in June.

The firm didn't have to look far when it came time to add lawyers to the Consumer Fraud & Commercial Litigation Section in the Mobile office. Rebecca Gilliland and Jessi Haynes had worked at the firm's main office in Montgomery but left to move to Milton, Florida, and Daphne, Alabama, respectively. The new Mobile office allowed Rebecca and Jessi to rejoin the firm. The latest hire in Mobile is Wyatt's new paralegal Anna Adams.

As the Mobile location enters its second year, Frank anticipates adding another paralegal, which will bring the office count to six lawyers and three support staff. Beasley Allen lawyers in Montgomery also work on Mobile-area cases when their expertise on a particular case is needed. Frank says:

Our primary focus is discussing the type of cases our Products Section handles with other lawyers in the area and seeking referrals of those types of cases. We set goals on the number of cases we would like to get and exceeded them.

Beasley Allen obtained two seven-figure verdicts for clients in the Mobile County Circuit Court in the four years preceding the Mobile office opening. There have been many other cases handled by Beasley Allen lawyers in the Mobile area over the past 20 years.

Frank credits the success of our Mobile office to results and building relationships with lawyers in the area. Our mission goal in Mobile is to have an office that responds to the needs of clients and to do things the right way and for the right reason. We will have additional staffing and access to the necessary resources to be successful in Mobile.

XXVII.
FAVORITE BIBLE VERSES

Amber Killough, a Paralegal in our firm's Mass Torts Section, sent in her two favorite Bible verses. She says

these are the ones she has been leaning on lately.

I praise you, for I am fearfully and wonderfully made. Wonderful are your works; my soul knows it very well. Psalm 139:14

And blessed is she who believed that there would be a fulfillment of what was spoken to her from the Lord. Luke 1:45

Ted Meadows, the lawyer in our Mass Torts Section who was featured in this issue, furnished some key scriptures for the *Report* this month. He says:

The last couple of years have taken a toll on us all, or at least I know they have on me – I find myself feeling blue at times. Lately, I've been trying to remind myself of all the great things in my life and specifically asking God to fill me with Joy. This includes a daily effort to read scripture and itemize all blessings! It helps me view things more so through the lens of God, as opposed to the lens of the world (which can be quite depressing). I find that sometimes my attitude can be easily adjusted by just changing my perspective! Verses that help me along this path include Galatians 5:22-23, 1 Thessalonians 1:6, John 3:16 and Philippians 4:4.

But the fruit of the Spirit is love, joy, peace, longsuffering, kindness, goodness, faithfulness, [1]gentleness, self-control. Against such there is no law. Galatians 5:22-23

And you became followers of us and of the Lord, having received the word in much affliction, with joy of the Holy Spirit. 1 Thessalonians 1:6

For God so loved the world that He gave His only begotten Son, that whoever believes in Him should not perish but have everlasting life. John 3:16

Rejoice in the Lord always. Again I will say, rejoice! Philippians 4:4

Melissa Prickett, a lawyer in our Mass Torts Section who serves in a supervisory role in the Section as its Director, furnished her favorite scriptures for the *Report* this month. She said these verses are comforting to her "in this season of my life and with everything going on in the world today."

The Lord is my light and my salvation; whom shall I fear? The Lord is the stronghold of my life; of whom shall I be afraid? Psalm 27:1

Don't worry about anything; instead, pray about everything. Tell God what you need, and thank Him for all He has done. Philippians 4:6

God is our refuge and strength; always ready to help in times of trouble. Psalm 46:1

For I know the plans I have for you, declares the Lord; plans to prosper you and not to harm you, plans to give you hope and a future. Jeremiah 29:11

XXVIII.
CLOSING OBSERVATIONS

Beasley Allen, Minority Lawyers Help Advance Diversity And Inclusion In The Legal Profession

Our law firm takes great pride in being a firm with tremendous diversity in its ranks. Minorities are well represented in the firm, including lawyers and support staff, and we take great pride in that reality. Two of the firm's veteran minority lawyers, LaBarron Boone and Navan Ward, have shared insight into the firm's approach to diversity and note that the firm's culture plays a significant role in creating an inclusive environment.

These two outstanding lawyers are also leading two national legal professional organizations. Navan heads the American Association for Justice, and LaBarron is President of The National Black Lawyers. The leadership by Navan and LaBarron is helping drive a more extensive discussion within the legal profession regarding diversity and inclusion.

Both Navan and LaBarron also have a history of accomplishments in the courtroom, handling numerous cases that have helped shape consumer law. More of this story on diversity and inclusion is available on the firm's website, www.BeasleyAllen.com. I encourage our readers to take the time to read this story.

XXIX.
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

XXX.
PARTING WORDS

Beasley Allen Reaches Our 43rd Anniversary On Jan. 15

Our law firm was started on Jan. 15, 1979, in Montgomery, Alabama. The original office was located in a small building on Hull Street. In the beginning, I was the only lawyer in the firm, and that was the case for a time. The firm has grown to over 90 lawyers and 300 support staff and has three additional locations serving clients nationwide.

Founded on the principle of "helping those who need it most," the firm was established to provide legal service to both individuals and businesses who have been wronged by no act of their own. That principle still serves as the bedrock for the firm's work. This firm has had an impact on many lives over the last four decades. From the employees to the clients to those in our community and beyond, the firm has invested and used its resources to improve lives and support charitable causes close to home, throughout the country and the world.

The firm has taken on powerful corporate interests in the name of consumer and worker health and safety. Our efforts positioned the firm at the forefront of consumer litigation, and it is now recognized nationally for helping shape the landscape for this area of the law. As a result of our work:

- safety standards have improved in industries such as farming equipment (rollover protection structures have been added to tractors),
- dangerous drugs such as Vioxx have been pulled from the market,
- pharmaceutical and beauty industry giants such as Johnson & Johnson have removed talc from products such as Baby Powder,
- pharmacies, health care companies and other bad corporate actors that have defrauded the federal and state governments, including through Medicare and Medicaid benefits, have been held accountable for their actions, and
- companies like BP, whose careless actions devastated the environment, have faced significant fines and other costs to help compensate and restore communities impacted by the companies' actions.

Our mission of "helping those who need it most" has never been more critical than it is today.

Beginning in 2020, we witnessed, along with the rest of humanity, how fragile we are as the coronavirus spread relentlessly through our communities, crippling our healthcare system and leaving death and devastation in its wake. The COVID-19 pandemic shut down businesses, sent unemployment skyrocketing and brought the U.S. economy to its knees.

In a time of so much uncertainty, the need for advocates – in the legal system and other aspects of life – also climbed sharply. At that time, many law firms were downsizing or were even forced to close their doors.

However, during the pandemic, Beasley Allen has been blessed to take a different approach – we expanded the firm and increased our availability to those needing our help. This growth was possible because of the employees who remained dedicated to the firm's mission. In such a difficult time, it would have been easy for our employees to give in to the challenges forced upon us by a necessary time of quarantine. They did not. Instead, they persevered, worked together, and kept their focus on "helping those who need it most." They continued to provide the same level of care our clients have always deserved.

In 1979, after losing a race for Governor, I left politics and started what is now the Beasley Allen Law Firm. I established a permanent set of priorities with God first, then family and work. Putting God first has always kept everything else in its proper place and opened the door to success – even in the middle of challenging times. Maintaining these priorities will carry our firm into the future and allow us to continue "helping those who need it most" for years to come.

I want Beasley Allen's lasting legacy in law, and as a firm that represents only clients in litigation referred to as plaintiffs, to be that "Beasley Allen did the right thing and they did it the right way." Our firm has been blessed, and it has been our mission to bless others. To God goes all the glory!

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

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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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