The JERE BEASLEY REPORT

April 2022

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LAW FIRM

I.
CAPITOL OBSERVATIONS

Judge Ketanji Brown Jackson Will Join The Supreme Court

President Joe Biden nominated Judge Ketanji Brown Jackson to the U.S. Supreme Court, and Judge Jackson began the Senate confirmation hearings late last month before the Senate Judiciary Committee. The perspective the nominee brings from her experience as a former public defender (and the first to serve on the Court if confirmed) rivals the importance of Judge Jackson becoming the first Black female Supreme Court nominee. When confirmed, she will replace retiring Justice Stephen Bryer, for whom the nominee once clerked. This highly qualified and deserving nominee will become the first African American female justice on the High Court.

Early in her career, Judge Jackson served as a public defender in Washington. She will be the first Justice with substantial criminal law expertise since Justice Thurgood Marshall departed the bench in 1991. The work in the cases Judge Jackson handled as a public defender "where she was assigned primarily to work on appealing convictions" should not be a negative. She simply did her job and did it well.

Judge Jackson's experience, perspective and evenhanded approach to deciding cases as a judge will be a welcomed resource to the High Court. She was appointed to the D.C. Circuit Court last year. Before that, the nominee served eight years with distinction as a U.S. District Court Judge, where she oversaw more than 500 cases, including several high-profile ones such as upholding a House Judiciary Subpoena of ex-White House Counsel Don McGahn regarding possible obstructions of justice charges leveled against President Donald Trump. Judge Jackson also handed down a guilty verdict in the trial against high-profile "Pizzagate" gunman Edward Welch. Judge Jackson also served on the U.S. Sentencing Commission.

Many of the attacks on Judge Jackson during the confirmation hearings were brutal and quite unprofessional by Senators who brought nothing of substance to the process. Senator Corey Booker gave a tremendous response to the attacks on the nominee and made it abundantly clear that Judge Jackson is highly qualified with a tremendous background as a person, as a lawyer and as a jurist, and that she will be a great addition to the Supreme Court. Nobody deserves the treatment by some of the senators that Judge Jackson has had to undergo thus far in the confirmation process. Senator Booker put everything in perspective with his comments, and I concur with the Senator. I am proud to say that I support Judge Jackson and predict that she will be a great justice on the highest court in the land.

Sources: Law360.com and *Washington Post*

II.
BIG TRUCK ACCIDENT LITIGATION

Federal Trucking Insurance Requirement Incentivizes Safety, Needs Updating

The U.S. highways are much deadlier than they were 10 years ago. According to the Federal Motor Carrier Safety Administration (FMCSA), the truck crash and fatality rate have more than doubled. Our lawyers see first-hand that individuals involved in collisions with large trucks suffer catastrophic, life-threatening injuries, and families lose loved ones due to the negligence of motor carriers. The American Association for Justice recently described a crisis in the trucking industry. It focused primarily on the trucking industry's failure to require trucking companies to have adequate insurance, leaving injured motorists with little to no recourse when insurance compensation falls short of covering medical bills and other costs related to a truck crash.

The FMCSA reports that a fatal truck crash costs approximately $4.4 million (based on the agency's 2005 calculations and adjusted for inflation). Families falling victim to these tragedies are often shocked to find that the minimum insurance required for interstate trucking companies remains $750,000. This amount has not been increased since Congress enacted the Motor Carrier Act of 1980, which established the minimum requirement. The amount has not kept pace with inflation or rising medical costs.

A recent case the firm's Atlanta office handled demonstrates the seriousness of this issue. Our client ran out of gas late one night in rural Georgia. She moved her vehi-

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cle completely off the roadway and onto the shoulder of the interstate. The defendant truck driver, traveling at a high rate of speed, fell asleep and drifted toward our client. He ultimately crashed into her parked vehicle, where she remained in the driver's seat. She was ejected 30 feet from where the impact occurred. Our client suffered numerous injuries, including a brain injury that permanently impaired her. She can no longer work, function normally, or enjoy her life the way she did before the crash.

During discovery, our lawyers learned that the defendant truck driver had numerous on-the-job accidents and that other negative aspects of his driving record should have resulted in his dismissal from his job with the defendant trucking company. Our lawyers settled the case against the defendant driver and trucking company for negligence and wantonness and negligent hiring, training, and supervising practices by the defendant company for $6 million – significantly more than the $750,000 minimum insurance required of trucking companies.

In a November 2014 report to Congress, the FMCSA examined the adequacy of the current motor carrier financial responsibility requirements. The report found that injuries and fatalities arising from crashes far exceeded the minimum insurance limits for interstate operators. Further, the report found in real terms that insurance premiums have actually decreased for the same level of coverage since the 1980s.

The trucking industry argues that insurance cost affects its bottom line. That is not the case, according to recent data from the American Transportation Research Institute, which shows that truck insurance premiums were one of the two largest percentage decreases in operational costs for the trucking industry in 2020. The best way for the trucking industry to control its liability, and by extension, its bottom line, is to put safety first, as the number of trucking-involved injuries and deaths have been increasing.

Insurance premiums are one way to incentivize trucking companies, encouraging them to enforce a safer approach to business. The trucking industry operates like the consumer automobile insurance industry when determining premiums. Both industries rate premiums according to a driver's experience meaning drivers with safe driving records pay less for their insurance than drivers with unsafe records. Lower premiums provide incentives for trucking companies to maintain safer practices. The top three factors that determine premium pricing are loss history, the company's driving record and the motor carrier safety record based on federal databases. Since trucking companies control these underwriting factors, their hiring practices and safety choices can substantially impact premiums.

It is time for Congress to revisit its more than 40-year-old insurance limit so that the rule works as it was intended – to incentivize increased safety and help reduce truck crashes.

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

Seatback Safety / Seat Crashworthiness

Most consumers don't realize that the seats in motor vehicles are actually important safety devices. It is well-known to the automakers that properly performing seats are necessary to protect vehicle occupants in rear-impact crashes. In fact, because the human body tends to move rearward in a rear impact, the seatback often provides the only crash protection for occupants. Victims of seatback failure often suffer spinal cord injury resulting in paralysis or death. Front seat occupants deserve safe and reliable seats in case of impact, and seat-failure injuries have been extensively studied. However, although the additional danger to backseat occupants from front seat failures is well known to the auto industry, it is much less publicized to the public.

A 2009 study conducted by researchers from the Center for Injury Research and Prevention at the Children's Hospital of Philadelphia studied the correlation of front seatback strength to the risk of injury to backseat children in a rear impact. Children sitting behind failed seatbacks are at great risk of being struck by a broken seat or even another vehicle occupant. In fact, the 2009 study revealed that children sitting directly behind a failed seatback in a rear-impact crash were subjected to a doubled risk of injury.

Beasley Allen lawyers continue to fight to hold automotive manufacturers accountable to ensure safe vehicles for the public. If you or a loved one were seriously injured in an accident involving seatback failure, or if you have any questions about this automotive defect, contact Graham Esdale, a lawyer in our firm's Personal Injury & Products Liability Section, at 800-898-2034 or by email at Graham.Esdale@BeasleyAllen.com.

Subaru And Denso Fuel Class Action Moves Forward

New Jersey Federal District Judge Joseph H. Rodriguez recently ruled that plaintiffs' claims in a lawsuit against vehicle manufacturer Subaru and fuel pump supplier Denso can proceed, finding that plaintiffs sufficiently alleged facts establishing liability. Though some of the claims were dismissed, plaintiffs are moving forward in sixteen states against Denso and twenty states against Subaru.

The lawsuit alleges that Subaru and Denso knowingly manufactured and sold vehicles and fuel pumps that were defective. Once the defect manifests, vehicles become inoperable without warning, placing the vehicles' occupants and other drivers on the road in harm's way.

Judge Rodriguez dismissed some strict product liability claims against Denso but allowed other strict product liability claims to continue in Alabama, Arkansas, Connecticut, and Maryland due to exceptions to the economic loss doctrine, which typically bars product liability claims with no personal injury or property damage. Judge Rodriguez ruled that in some states, like Alabama, the economic loss doctrine doesn't apply if there is no contractual relationship between the parties. He also ruled that in other states, like Maryland, the doctrine does not bar claims for serious safety defects such as the fuel pump defect in this litigation.

Plaintiffs are also moving forward with consumer fraud and common law fraud claims against Denso in 11 states based on their well-pleaded allegations regarding Denso's knowledge of, but failure to disclose, the defect.

Judge Rodriguez is also allowing many claims to continue against Subaru. Though he dismissed some implied warranty of merchantability claims because the plaintiffs' vehicles had not yet manifested symptoms associated with the fuel pump defect, he is allowing the claims to proceed in 12 states, ruling that the plaintiffs sufficiently alleged a defect rendering the vehicles unfit for ordinary driving.

The judge similarly allowed consumer fraud and common law fraud claims to continue against Subaru in over a dozen states. He found that, like Denso, Subaru knew, but failed to disclose, the defect to plaintiffs before they purchased their vehicles.

Judge Rodriguez also allowed the plaintiffs' strict product liability claims against Subaru in New Jersey, Oregon, South Carolina, and Maryland to proceed, holding that the plaintiffs' claims sufficiently pleaded strict liability claims based on a serious safety defect. Dee Miles, who heads Beasley Allen's Consumer Fraud & Commercial Litigation Section Head, had this to say:

> *Judge Rodriguez read all 225-pages of the plaintiffs' complaint and hundreds of pages of briefing and reached the right decision in most, if not all, states: that Subaru and Denso knowingly placed a seriously defective product into the stream of commerce without telling anyone for their own profit. We are evaluating whether we are going to replead some claims, but regardless, we look forward to starting discovery and moving one step closer to justice for our clients.*

The plaintiffs are represented by Beasley Allen lawyers Dee Miles, Demet Basar, Clay Barnet, Mitch Williams, and Dylan Martin, along with lawyers from Carella, Byrne, Cecchi, Olstein, Brody & Angello, P.C., Hagens Berman Sobol Shapiro LLP, Seeger Weiss LLP, DiCello Levitt Gutzler LLC, and Blood Hurst & O'Reardon, LLP. For those who want to follow the case, the lawsuit is styled *Cohen, et al., v. Subaru Corporation, et al.*, and is filed in the United States District Court for the District of New Jersey. We will keep our readers posted on any new developments in this important class case.

Car Seat Buyers Reach Settlement With Britax In Defect Lawsuit

Child car seat buyers included in a proposed class action asked a California federal court to give approval to their settlement with Britax Child Safety Inc., valued up to $2.6 million, to settle claims that it sold car seats prone to breaking in a crash. In a motion for appeal filed last month, named plaintiff Margaret Stevens asked the court to preliminarily approve the settlement and to certify the class, which includes "all California residents who bought a new Frontier ClickTight Harness-2-Booster Seat or Pioneer Harness-2-Booster Seat between Aug. 14, 2016, and Aug.14, 2020. The seats were made between Aug. 14, 2016, and Sept. 30, 2019," according to Law360.

Ms. Stevens initially filed the suit in August 2020 on behalf of herself and other California residents who bought a new Frontier ClickTight Harness-2-Booster Seat or Pioneer Harness-2-Booster Seat in the four years leading up to the complaint. In the suit, Stevens alleges she suffered "economic harm" because the seats were "defective" according to a Consumer Reports article about crash test results, and she would have paid less than $272 plus tax for the seat in March 2017 if she had known about it.

Stevens is represented by Gretchen Nelson and Gabriel S. Barenfeld of Nelson & Fraenkel LLP, Christine D. Spagnoli of Greene Broillet & Wheeler LLP, and Troy A. Rafferty of Levin Papantonio Rafferty Proctor Buchanan O'Brien Barr & Mougey.

The case is *Margaret Stevens et al., v. Britax Child Safety Inc.*, case number 2:20-cv-07373, in the U.S. District Court for the Central District of California.

Source: Law360.com

VW Atlas SUVs Recalled Over Airbag Troubles, Unexpected Braking

Volkswagen is recalling 222,892 vehicles in its Atlas SUV from model years 2019-2023 and 2020-2023 Atlas Cross Sport. The company says an electrical problem could be the source of delayed airbag deployment and unintended low-speed braking in the recalled vehicles. Volkswagen confirmed that it doesn't have a fix for the issue.

The National Highway Traffic Safety Administration (NHTSA) published documents related to the recall filing on March 23 explaining that the issue stems from a faulty door wiring harness according to VW, but VW has not named the component's supplier. The company noted that "excessive micro movement leading to fretting corrosion of the door wiring harness terminal contacts" can result in the delayed deployment of the vehicle's front driver or passenger side airbags "in a special side crash situation." A delayed airbag deployment could increase the risk of injury to vehicle passengers.

The filing documents say that the SUVs with the damaged harnesses could also develop other problems such as inadvertent parking-brake engagement at speeds "below approximately 1.8 mph," windows that lower by themselves or an airbag warning light in the Atlas' gauge cluster.

Some of the vehicles in the Atlas and Atlas Cross Sport lines escaped the defect. Although VW doesn't have a fix yet, it intends to send notices about the problem to customers on May 10, with a follow-up notice going out once a fix has been developed. Atlas owners with concerns about the recall can contact VW customer service at 1-800-893-5298 and reference recall 97GF. They may also contact NHTSA directly at 1-888-327-4236 or seek further information at NHTSA.gov.

Kendall Heiman, a clinical social worker in Lawrence, Kansas, was driving her 15-year-old son to a class on Jan. 5 when her 2021 Atlas Cross Sport malfunctioned, turning a normally routine two-mile round trip into what she describes as a "scary and dangerous ordeal." Her vehicle abruptly braked several times for no reason during the trip. Her experiences over the following weeks with VW and NHTSA led to the Associated Press investigating, and that investigation and news reports apparently got NHTSA's attention.

The AP found that since late 2020, 47 VW owners have complained to NHTSA about the same safety problems in their 2020 and 2021 VW Atlas and Atlas Cross Sport SUVs. Some drivers reported that they narrowly escaped collisions, though a review of the complaints found no reports of crashes.

But, I have to wonder if a recall would have happened had AP not gotten involved. Now, there has been a recall. We will continue to monitor the situation relating to the safety problems described above. We will update the report as needed.

Source: *Claims Journal*, Associated Press and Law360.com

IV.
PRODUCT LIABILITY UPDATE

Beasley Allen Settles Case For Child Paralyzed After Booster Seat Failed

After eight days of trial in Dekalb County, Georgia, a settlement was reached on behalf of Beasley Allen client Brittany Trice for her minor son, ZSR, II. The 4-year-old child was permanently paralyzed when his booster seat, manufactured by the defendant Dorel Juvenile Group, Inc., failed to protect him as the company promised it would during a head-on collision. Tom Willingham, a lawyer in our Atlanta office who led the trial team, says:

Dorel failed to protect our young client as promised, and as a result, this child will require round-the-clock care for the rest of his life. Dorel knew or should have known its booster seat was defective. The company violated Ms. Trice's trust and her then, otherwise healthy, 4-year-old son, whose life was completely turned upside down because of the defendant's actions.

In June 2018, Ms. Trice was driving southbound on Old Norcross Road in Dekalb County with her two children properly seated and belted in the backseat. Their vehicle was involved in a head-on collision with another vehicle. ZSR, II was riding in the Dorel Rise Booster Seat. During the crash, the child rolled out of the shoulder belt and suffered severe injuries to his spinal cord, resulting in paralysis from the neck down and leaving him dependent on a ventilator for life.

The complaint asserted that Dorel failed to properly test its Rise Booster Seat before negligently placing the defective product on the market. The defendant failed to warn consumers, including Ms. Trice, of the hazards posed by the company's Rise Booster Seat and, as a result, "failed to properly restrain and protect ZSR, II" and "caus[ed] him to suffer severe, permanent and catastrophic bodily injuries."

Beasley Allen lawyer Ben Baker, who was on the trial team, had this to say about the case:

Brittany trusted Dorel and trusted that its Rise Booster Seat would keep her little boy safe. Sadly, it did not. We are thankful that she and ZSR, II, now have something that will ease the burden they will have to carry for the rest of their lives due to the wrongdoing of others.

Mary Leah Miller added this comment:

Our client was injured when he was four years old, and it is has taken four years for him to have his day in Court. His mother believed, based on representations from the manufacturer the Rise backless booster seat was safe for him. Unfortunately, it was not. He suffered catastrophic injuries in the crash resulting in his quadriplegia and ventilator dependency. It has been a true honor and privilege to represent them and to have them place their trust in us. We are pleased with the outcome of this case.

Ms. Trice was represented in this important case by Tom Willingham, Mary Leah Miller and Ben Baker. The case, *Brittany Trice v. Dorel Juvenile Group, Inc., et al.*, was filed in the State Court of Dekalb County, Georgia, case number 18A70371. If you have any questions, contact Tom at 800-898-2034 or email at Tom.Willingham@BeasleyAllen.com.

V.
AVIATION LITIGATION

A Helicopter's Unique Design Heightens Its Safety Risks

Statistically, helicopters are the least safe aircraft. Recent data and anecdotal evidence from several fatal crashes in the U.S. in the first two months of this year support this statement. The U.S. Helicopter Safety Team (USHST) data shows that the number of fatal accidents per 100,000 hours of flight was 1.30 last month compared to 0.41 for the same time frame in 2021. The rolling five-year average for 2018 – 2022 is 0.80, increasing from 0.62 for 2014 – 2018. The high-profile helicopter crash in January 2020 that killed Kobe Bryant, his daughter and other passengers headed to a youth basketball game resulted in increased public interest and calls for increased helicopter safety. Still, fatal helicopter crashes continue to grow.

During the first two months of this year alone, eight people were killed in helicopter crashes:

- Jan. 14 – two were killed when their Bell 407 helicopter nosedived into a marsh near Houma, Louisiana;
- Feb. 16 – a crop-dusting pilot in California was killed when his Bell UH-1H crashed in an orchard near Coalinga;
- Feb. 19 – a Huntington Beach, California, police officer was killed when the McDonnell Douglas 500N he was traveling in appeared to be spinning out of control, according to witnesses, before slamming into Newport Bay; and
- Feb. 22 – four were killed when a Navy contractor's

Sikorsky S-61N helicopter nosedived into the Pacific Ocean during a training mission.

These crashes are under investigation by the Federal Aviation Administration (FAA) and the National Transportation Safety Board (NTSB). The U.S. Navy is also investigating the crash involving the Navy contractor aircraft. These investigations generally take two years before an official cause can be determined.

Mike Andrews, a lawyer in our Personal Injury & Product Liability Section, is the lead Beasley Allen lawyer for our aviation litigation. Mike says that investigators will likely consider potential causes usually investigated in aviation crashes and should also consider additional factors unique to helicopters. Mike has handled a number of helicopter cases. He explains how, due to a helicopter's design, a helicopter can experience other types of mechanical failures unique to its design and operation.

The following are a few examples Mike has observed in past cases and what may be considered as the investigations of these recent crashes unfold.

- **Pilot Error** – Pilot error is most often determined to be a contributing factor in helicopter crashes. Pilots are ultimately responsible for handling their aircraft safely. Still, it is essential to investigate potential mechanical failures that often spark a series of events requiring pilots to be at the top of their game for handling the resulting circumstances to reduce the risk to their lives and the lives of their passengers.
- **Main Rotor Damage** – The main rotor is a system of parts that rotate to create the aircraft's vertical lift. If a pilot loses the power to the main rotor or it otherwise malfunctions, the pilot will not be able to control the aircraft, resulting in a crash.
- **High Stresses Due to Fatigue and Operating Conditions** – Helicopter maintenance is extremely important given the heavy and unstable loads and intense vibrations that limit the lifespan of the aircraft's numerous components. Examining maintenance records will reveal if the owner, operator and mechanics followed the recommendations for updating and replacing necessary components. Components used beyond their limited lifespans can become defective, cause malfunctions and strain other parts of the aircraft, potentially damaging those components, too.
- **Blade-Airframe Strikes** – Helicopters are designed so that blades don't strike the airframe, but this can occur due to significant wind gusts or if there is severe input control by the pilot.[1]

If you have any questions, contact Mike at 800-898-2034 or by email at Mike.Andrews@BeasleyAllen.com. He will be glad to talk with you.

Sources: USHST, NTSB, *HoumaToday*, *USA Today*, *Navy Times*, Barnes W. McCormick and M.P. Papadakis

Chancery Approved Record $237.5 Million Boeing 737 MAX Damage Settlement

Delaware Chancery Court approved a $237.5 million settlement of derivative claims by Boeing Company stockholders. The claims targeted company leadership and a breakdown in safety measures that resulted in separate crashes of two 737 MAX jets in 2018 and 2019. The crashes claimed 346 lives and have cost the company $22.5 billion.

The settlement has been described as "the largest cash derivative order of its kind in the country," according to Law360. It was approved by Vice Chancellor Morgan T. Zurn and included $18.26 million for attorney fees and costs. A co-lead counsel in the case, Joel Friedlander of Friedlander & Gorris P.A., told the court that "the agreement secured for the company a significant portion of the $550 million in director and officer insurance available to Boeing's board." Friedlander said:

> *We sued Boeing's board because they failed in their fiduciary responsibility to monitor safety and protect the company and shareholders and customers from unsafe business practices and illegal conduct.*

Friedlander described the tragedy as a "generational corporate governance scandal." He said further: "The important message is, directors, cannot shortchange public safety."

The MAX crashes and the cause of the crashes kept the latest iteration of the 737 grounded for over a year. The tragedies and circumstances surrounding them cost Boeing $20 billion in nonlitigation costs and more than $2.5 billion in litigation costs, not to mention the questions raised publicly about the aerospace giant's safety culture. Law360 explained that "[t]he company was in the middle of a battle over the reach of Delaware's 'Caremark' corporate law standards for judging both director and officer liability for the most egregious and hardest-to-prove claims: knowing, bad faith breach of fiduciary duty." Vice Chancellor Zurn said in her decision: "In my view, the settlement – both monetary and non-monetary – reflects the strength of the claims and the road ahead in this case." She noted that under the *In re Caremark International Inc.* Derivative Litigation decision of 1996, the stockholders had to show that the company's leaders acted in bad faith based on *In re Caremark International Inc. Derivative Litigation* decision.

Friedlander said the settlement was "by far" the largest *Caremark* claim settlement in Delaware and the second-highest Caremark settlement anywhere.

A deferred prosecution agreement with the U.S. Department of Justice (DOJ) in January 2021 allowed Boeing to escape criminal prosecution in exchange for $2.5 billion. The DOJ charges included Boeing's lack of candor and conspiracy to defraud the Federal Aviation Administration regarding the 737 MAX during the development and approval process. According to the agreement with the government, $243.6 million would cover Boeing's criminal monetary penalty, $1.77 billion was set aside for compensation payments to Boeing's 737 MAX airline customers, and a $500 million crash victim beneficiaries fund.

The stockholder plaintiffs in the case are represented by Joel Friedlander, Jeffrey M. Gorris and Christopher M. Foulds of Friedlander & Gorris PA, and by Richard M. Heimann, Katherine Lubin Benson, Steven E. Fineman, Nicholas Diamand and Sean A. Petterson of Lieff Cabraser Heimann & Bernstein LLP.

The case is *In re: Boeing Co. Derivative Litigation*, case number 2019-0907, in Delaware Chancery Court.

Source: Law360.com

[1] Barnes W. McCormick and M.P. Papadakis, Aircraft Accident Reconstruction and Litigation, 33-34, Lawyers & Judges Publishing Company (2011).

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 in all aircraft-related litigation.

VI.
THE TALC LITIGATION

Bankruptcy Judge Allows J&J Texas Two-Step

The brand-new bankrupt talc unit of Johnson & Johnson (J&J) has survived motions to dismiss its Chapter 11 case. Judge Michael Kaplan, the New Jersey bankruptcy judge, said the bankruptcy presents the best way for talc injury claimants to receive recoveries. This highly controversial strategy apparently intended to force settlements by individuals who claim the company's baby powder caused cancer.

Judge Kaplan's ruling was obviously intended to benefit J&J because most, if not all, of the lawsuits filed by cancer victims will be blocked while the court urges negotiation. Despite this, Judge Kaplan wrote:

> *The Court remains steadfast in its belief that justice will best be served by expeditiously providing critical compensation through a court-supervised, fair, and less-costly settlement trust arrangement.*

The actions of the bankruptcy court will come at a cost. Each power exercised by the court can delay, limit or even foreclose litigation victims who are creditors, access to, and ability to recover through the American civil justice system. The current stay imposed by Judge Kaplan prevents plaintiffs from seeking relief through the judicial system for as long as it remains in effect.

A standard Chapter 11 reorganization case involves a debtor in bona fide financial distress. In these situations, the powerful features of the bankruptcy system are in place to produce an equitable result. However, this process requires the corporate debtor to bear the burdens of bankruptcy, such as transparency and judicial oversight of the business, to receive the benefits of the bankruptcy.

Financial distress does not exist when a financially secure debtor with ample assets uses corporate law loopholes to "manufacture insolvency."

J&J has a pristine credit rating as one of the biggest healthcare conglomerates in the world, yet it is employing a strategy by which the company sets up a subsidiary under a business-friendly Texas law and then put that entity into bankruptcy. This brought a temporary halt to the baby powder suits. J&J itself didn't file bankruptcy but has nevertheless benefitted from a rule that halts all litigation against a bankrupt company. Abusing the bankruptcy system to halt litigation and evade liability is devastating. J&J's use of the "Texas 2-Step" impedes ovarian cancer victims from trying their cases before judges and juries and recovering just compensation for the harms they suffered at the hands of J&J.

Judge Kaplan wrote that the tort system produces lottery-like results where some juries award multibillion-dollar judgments in favor of plaintiffs while others receive nothing.

Talc cases have been tried across the country. For plaintiffs who proved their cases, their verdicts provided justice in situations where time was of the essence. This is the civil justice system working as it is intended to work. This process is the cornerstone of the American legal system.

Thousands of other consumers with cancer are equally entitled to put their cases before a jury of their peers. However, if J&J is permitted to use the bankruptcy process to delay justice, many of these seriously ill claimants will never get their day in court. The court's decision will determine whether plaintiffs can rely on the tort litigation system or if healthy corporations like J&J can play "shell games," denying consumers access to justice. As cancer victims get sicker and some die, J&J saves money because it doesn't have to defend itself in court.

As AAJ CEO Linda Lipsen, a proactive defender of consumer rights and a strong advocate for the Rule of Law and Justice, had this to say:

> *Johnson & Johnson has now received a green light to evade accountability, limit compensation to cancer victims and undermine civil justice. Today's overreaching decision is a smack in the face to cancer patients and their families, and a complete abuse of the bankruptcy system by a massively profitable corporation.*

The case is *LTL Management LLC*, *21-30589*, U.S. Bankruptcy Court, District of New Jersey (Trenton).

Source: 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. Several key team members are currently focused on J&J's abuse of the bankruptcy system.

The following Beasley Allen lawyers are members of the Talc Litigation Team: Leigh O'Dell (Leigh.ODell@BeasleyAllen.com), Ted Meadows (Ted.Meadows@BeasleyAllen.com), Kelli Alfreds (Kelli.Alfreds@BeasleyAllen.com), Ryan Beattie (Ryan.Beattie@BeasleyAllen.com), Beau Darley (Beau.Darley@BeasleyAllen.com), David Dearing (David.Dearing@BeasleyAllen.com), Liz 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).

Charlie Stern and Will Sutton, lawyers in our Toxic Torts Section, are also 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.

VII.
OPIOID LITIGATION

Opioid Litigation Update

Johnson & Johnson, AmerisourceBergen Drug Corp., McKesson Corp. and Cardinal Health Inc. have agreed to move forward on a $26 billion global opioid settlement. This will be the second-largest multistate settlement agreement in U.S. history if completed.

The settlement agreement, meant to resolve thousands of lawsuits filed by states, cities, and counties against these four defendants for their role in the opioid crisis, was contingent on a certain percentage of states, cities and counties agreeing to the settlement. The settlement is structured as two separate agreements: AmerisourceBergen Drug Corp., McKesson Corp. and Cardinal Health Inc. reached an agreement with 46 states, and Johnson & Johnson has agreements with 45 states. The settlements require that 85% of the funds go toward programs to address the opioid crisis through treatment, education and prevention.

Washington, Oklahoma and Alabama did not agree to the global settlement. Beasley Allen lawyers represent the State of Alabama in its case. Alabama is pursuing its remedies outside the settlement agreement. The state currently has a case set for trial against McKesson on April 18 in the Circuit Court of Montgomery County, Alabama.

Beasley Allen also represents the State of Georgia, which has agreed to the Settlement. Georgia will receive as much as $636 million under the settlement agreement. Georgia is also actively litigating claims in a case filed against other pharmaceutical companies not part of this agreement. That suit is pending in Gwinnett County Superior Court and is set for trial in April 2023.

Purdue Pharma, one of the most prominent opioid manufacturers, is also attempting to settle with state and local governments through bankruptcy proceedings. A bankruptcy plan was previously approved by a bankruptcy court in New York but was later overturned by a federal district court because it contained involuntary releases of liability for its owners, the Sacklers, who had not filed for bankruptcy protection but were heavily involved in the day to day operations of Purdue, including directing its aggressive and misleading marketing of OxyContin.

In the negotiations between bankrupt drugmaker Purdue Pharma LP and the nine states that opposed its vacated Chapter 11 plan, the mediator reported that the sides reached a new agreement that will see contributions from the Sackler family members who own the debtor increase to at least $5.5 billion.

Under the terms of the new settlement, the Sacklers will increase their contributions to opioid abatement trusts from $4.325 billion to at least $5.5 billion, with the potential for the amount to increase to $6 billion depending on the proceeds realized from the Sacklers' sale of independent associated companies.

The increased consideration will come in the form of $1 billion in cash payable in installments over the next 18 years to a newly created supplemental opioid abatement fund; $175 million paid into the main master disbursement trust created under the plan; and up to $500 million in cash based upon the consideration achieved by the Sacklers selling their interests in independent non-Purdue entities. The additional funds will be divided among the nine states and territories that signed on to the new settlement. A distribution formula, agreed to by those states without any input from the Sacklers, was a part of the filing.

The case is *In re: Purdue Pharma, et al., case number 7:19-bk-23649*, in the U.S. Bankruptcy Court for the Southern District of New York.

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 represent the State of Alabama and 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.

VIII.
THE WHISTLEBLOWER LITIGATION

$1 Million Verdict In Whistleblower Lawsuit Against Birmingham Jefferson County Transit Authority

In a False Claims Act (FCA) case, a federal jury found in favor of the U.S. government, entering $360,000 in damages against the Birmingham Jefferson County Transit Authority (BJCTA). The case was brought by a former employee and former board chair. U.S. District Judge Corey L. Maze acted in accordance with the FCA in tripling the jury's verdict, ordering BJCTA to pay $1,080,000. The claims against the BJCTA included failing to comply with all federal regulations as required of grantees receiving funding from the Federal Transit Authority (FTA). Larry Golson, a lawyer in our firm's Consumer Fraud & Commercial Litigation Section, led the trial team in this case.

Whistleblowers, former employee Starr Culpepper and attorney O. Tameka Wren together are entitled to receive up to 25% ($270,000) of the award under the FCA. Ms. Culpepper worked at the BJCTA as the executive assistant for board support and later as contract administrator from January 2013 until being fired in April 2018 for alleged misuse of a credit card. Ms. Wren served as board chair from October 2017 until resigning the following January "for personal reasons," she said at the time.

Under the FCA, private individuals can bring lawsuits

on behalf of the government agencies against businesses and individuals who have allegedly defrauded the government. These parties that bring such a lawsuit are called "relators." The BJCTA receives grants from the FTA.

To be eligible to receive the funds, the BJCTA signs a Master Service Agreement, where, among other things, the BJCTA certifies that it would abide by all federal statutory and regulatory requirements, including the FTA Circular, when using federal funds. As part of the FTA Circular, the procurement procedures for procuring architectural and engineering services required the BJCTA to use the qualifications and procedures outlined in the Brooks Act. The Brooks Act is a federal statute, codified at Brooks Act, 40 U.S.C. §§1103-1104, that requires an agency such as the BJCTA to do the following:

- Publicly announce A&E services that are being sought;
- Evaluate the qualifications statements;
- Exclude price as an evaluation factor;
- Develop a shortlist of at least three A&E firms to discuss the proposed project;
- Rank the three A&E firms in order from the most qualified to the least;
- Evaluate an A&E offeror's qualifications;
- Conduct negotiations with only the most qualified offeror; and
- If agreement on price fails, negotiate with the next most qualified offeror until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

After the trial and verdict, Larry had this to say:

The jury heard evidence of Federal grant money projects being directed to a vendor that was not the most qualified to do the work, a blatant violation of the 'Brooks Act' requiring such funds to be awarded only to the most highly qualified vendor. An independent evaluation committee identified an architectural and engineering (A&E) firm from Maryland as the most highly qualified A&E vendor to whom the BJCTA should award contracts. The BJCTA was then required to engage in negotiations with that A&E vendor. Instead of awarding contracts to the firm ranked as the most highly qualified A&E vendor, the BJCTA awarded contracts to a local A&E firm with political ties to the City of Birmingham's former leadership. The local A&E firm was identified as the third most qualified. The jury, in this case, found that the grant-funded contracts were simply awarded to a company that the BJCTA board liked, not the most qualified. That is a violation of the Brooks Act. And because the BJCTA certified to the government that it was following the Brooks Act but was not, the BJCTA's misconduct amounted to a $1 million-plus False Claims Act verdict in favor of the whistleblowers acting on behalf of the government.

The FCA, codified at 31 U.S.C. §3729, was enacted in 1863 after Congressional investigations revealed the fraudulent use of Government funds during the Civil War. The "chief purpose" of the F.C.A. is to "provide for restitution to the government of money taken from it by fraud. (See *United ex rel Marcus v. Hess*, 317 U.S. 537, 551 63 S.Ct. 379, 388, 87 L.Ed. 443 (1943)). This is a case where the relators allege that the defendants fraudulently obtained and used federal grant funds that they were not entitled to and should not have received absent the falsification records, statements and / or certifications.

In addition to Larry Golston, Leon Hampton, Alison Hawthorne, Lauren Miles, and Jessi Haynes from the firm's Consumer Fraud & Commercial Litigation Section were on the trial team.

Recent Settlements In FCA Litigation

There have been a number of recent settlements in the False Claims Act litigation. We will mention several of these cases below.

TriMark To Pay Record $48.5 Million in False Claims Act Settlement

TriMark USA has agreed to pay $48.5 million to settle claims allegations that its subsidiaries improperly manipulated federal small business contracts intended for small businesses owned by service-disabled veterans. The U.S. Department of Justice (DOJ) announced that the $48.5 million settlement with TriMark USA constitutes the largest-ever False Claims Act (FCA) recovery based on small-business contracting fraud claims.

The settlement agreement resolves claims that TriMark Gill Marketing and Gill Group, Inc. took part in a scheme wherein small businesses owned by service-disabled veterans were used in a pass-through manner to illegally fulfill government contracts reserved for qualifying small businesses. As part of the settlement agreement, TriMark admitted that TriMark Gill Marketing selected contract opportunities for the small businesses to bid on, told them how to prepare and price the bids and "ghostwrote" emails for the small businesses to send to government officials "to make it appear as though the small businesses were performing work that TriMark Gill Marketing was performing; and affirmatively concealed TriMark Gill Marketing's involvement in the contract."

According to the qui tam lawsuit filed by relator Fox Unlimited Enterprises LLP, TriMark had between 700 and 1,000 employees and revenues of more than $400 million during the time frame and therefore didn't qualify as a small business under standards set by the Small Business Administration. The FCA allows private individuals or corporate entities with knowledge of fraud against the government to bring a lawsuit on behalf of the government and share in the recovery. The relator will receive $10.9 million of the settlement, according to court filings.

Source: Department of Justice

Athenahealth Whistleblower Settled For $18 Million In Kickback Case

A whistleblower will receive $390,000 for helping the U.S. government recoup $18.3 million from healthcare technology company Athenahealth Inc. U.S. District Judge Nathaniel M. Gorton in Boston approved the whistleblower's award in compliance with the False Claims Act (FCA). In October 2017, Geordie Sanborn filed a qui tam lawsuit alleging Athenahealth increased sales by utilizing various illegal incentive programs. The federal government intervened in January 2021 and agreed to an $18.3 million civil FCA settlement with the company.

Judge Gorton said Sanborn is entitled to legal fees for alerting the government of this alleged fraud. But the judge reduced the request of more than $700,000, saying Sanborn can't recoup the money he spent on claims the government did not advance. In addition to calling out the incentives programs, Sanborn's complaint alleged that Athenahealth falsely marketed its electronic health record technology as compliant with federal criteria. Because these compliance claims were not part of the settlement, Judge Gorton said, they cannot be factored into Sanborn's fee award. The judge wrote:

[Sanborn argues] that he is entitled to a fee award for both claims. There is little statutory basis to suggest that fees, costs and expenses must be reimbursed for the action as a whole while intervention and award of a relator's share, prerequisites to a fee award, proceed claim-by-claim.

Two other whistleblowers, William McKusick and Cheryl Lovell had also sought to recover attorney fees for filing a separate qui tam lawsuit against Athenahealth in December 2017. Judge Gorton rejected this request based on First Circuit precedent that, according to the judge, only allots fees to the first-to-file in a whistleblower action. Judge Gorton wrote:

Sanborn's complaint provided the government with all the information necessary to investigate the ... fraudulent marketing and referral programs two months before McKusick and Lovell filed theirs.

In the January 2021 complaint, Boston's federal law enforcement office accused Athenahealth of using all-expense-paid trips to "high-profile, bucket list experiences" as kickbacks for doctors and executives who bought its EHR product. According to the government, customers were treated to luxury accommodations and free food and alcoholic beverages at VIP events like the Masters, the Kentucky Derby and New York Fashion Week. The government also said Athenahealth used kickbacks in two other marketing strategies: a "lead generation" program that gave customers up to $3,000 to refer the EHR product to fellow medical practices and the payment of "conversion deals" to competitors who transitioned their clients to Athenahealth's product.

Athenahealth says it has since wound down all the marketing programs identified in the complaint. It was released from all civil liability tied to the claims as part of the $18.3 million settlement. Previously owned by Veritas Capital and Evergreen Coast Capital, the company was purchased by private equity firms Bain Capital and Hellman & Friedman for $17 billion in November.

The government is represented by Jessica J. Weber and David J. Derusha of the U.S. Attorney's Office for the District of Massachusetts and Nicholas C. Perros of the U.S. Department of Justice's Commercial Litigation Branch.

The cases are *U.S. et al. v. Athenahealth Inc.*, case numbers 1:17-cv-12125 and 1:17-cv-12543, in the U.S. District Court for the District of Massachusetts.

Source: Law360.com

Mallinckrodt Agrees To $260 Million Settlement Ending DOJ Medicaid Claims

Mallinckrodt ARD LLC has agreed to pay $260 million to settle claims by the government that the company underpaid Medicaid rebates for its Acthar gel products and paid illegal kickbacks to induce Medicare patients to buy its drugs, according to Law360.

The settlement, announced by the U.S. Department of Justice (DOJ) on March 7, resolves separate lawsuits. The lawsuits claimed that Mallinckrodt shortchanged Medicaid by hundreds of millions of dollars and simultaneously increased the price of Acthar. They also claimed that Mallinckrodt used a charitable foundation to make illegal copay subsidies for Acthar so it could market the drug as "free" to doctors and patients while increasing the price, the DOJ said. Principal Deputy Assistant Attorney General Brian M. Boynton, head of the DOJ's Civil Division, said in a statement:

The department is committed to protecting tax-payer-funded healthcare programs and their ability to supply reasonably priced pharmaceutical products to elderly and vulnerable populations. As this settlement demonstrates, the department will pursue those who seek to undermine these protections.

The DOJ said that Mallinckrodt will pay nearly $235 million to resolve the Medicare rebate allegations and another $26 million for the kickback allegations. In addition, the company also signed a five-year corporate integrity agreement with the U.S. Department of Health and Human Services Office of the Inspector General. The DOJ said this includes drug price transparency provisions and monitoring of the company's Medicaid rebate and patient assistance program activities. HHS-OIG Chief Counsel Gregory E. Demske said in a statement:

Drug company schemes to undermine Medicaid and Medicare payment rules harm these critical taxpayer-funded health programs. OIG will scrutinize Mallinckrodt's Medicaid rebate practices and Mallinckrodt will be required to provide advance public notice of price increases for Acthar and other drugs.

The settlement required approval from the U.S. Bankruptcy Court for the District of Delaware, which approved the settlement on March 2. Under the Medicaid Drug Rebate Program, which helps offset the federal and state costs of most outpatient prescription drugs dispensed to Medicaid patients, drug manufacturers must pay quarterly rebates to state Medicaid programs in exchange for Medicaid's coverage of their drugs the DOJ said.

The law requires manufacturers to pay inflation-based rebates for drugs to insulate the Medicaid program from drug price increases outpacing inflation, according to the DOJ. But prosecutors allege that Mallinckrodt knowingly underpaid rebates due for Acthar from 2013 until 2020. According to the complaint, Mallinckrodt began paying Acthar rebates in 2013 as if Acthar was a new drug rather than a drug approved since 1952, meaning the company ignored all pre-2013 price increases when calculating how much to pay. Prosecutors said Acthar's price was more than $28,000 per vial by 2013.

Under the settlement agreement, the DOJ said Mallinckrodt admitted that Acthar was not a new drug as of 2013 and agreed not to change the market date in the future. The DOJ says:

- When a patient obtains a prescription drug covered by Medicaid, they might have to make a partial payment, which can take the form of a copayment.
- These copay requirements are included to keep health care costs in check, including the prices that drug manufacturers can demand for their drugs.
- The federal anti-kickback statute prohibits a pharmaceutical company from offering or paying anything – including copays – to induce Medicare patients to buy the company's drugs.

But that's exactly what prosecutors allege Mallinckrodt did. In its complaint, the government said the company knowingly used a charitable organization to illegally pay patient copay fees for Acthar to counteract doctor and patient concerns about the drug's high cost.

The government is represented by Augustine Ripa, Michael Hoffman and Dan Schiffer of the DOJ Civil Division Commercial Litigation Branch, Fraud Section, Evan Panich of the U.S. Attorney's Office for the District of Massachusetts and Colin Cherico, Paul Koob and Matthew Howatt of the U.S. Attorney's Office for the Eastern District of Pennsylvania.

James Landolt, the whistleblower, will receive more than a $40 million cut of the $233.7 million settlement. He had flagged his concerns internally but resigned after lacking "confidence" the company would pay back hundreds of millions in Medicaid rebate underpayments.

The government took up the case in March 2020, concurring that Mallinckrodt knowingly underpaid the rebates between 2013 and 2020.

The Medicaid rebate case is *U.S. et al. ex rel. James Landolt v. Mallinckrodt ARD LLC*, case number 1:18-cv-11931, in the U.S. District Court for the District of Massachusetts. The kickback cases are *U.S. ex rel. Strunck et al. v. Mallinckrodt ARD LLC*, case number 2:12-cv-00175, and *U.S. ex rel. Clark v. Mallinckrodt ARD LLC*, case number 2:13-cv-01776, both in the U.S. District Court for the Eastern District of Pennsylvania.

Source: Law360.com

Nuclear Fuel Contractor Settles DOJ's FCA Claims For $10 Million

The U.S. Department of Justices (DOJ) announced last month that MOX Services LLC, a South Carolina nuclear fuel reprocessing contractor, agreed to pay $10 million to settle a 2019 federal lawsuit alleging that it submitted fraudulent claims to the U.S. Department of Energy, Law360 reported.

According to the DOJ, MOX (formerly CB&I AREVA MOX Services LLC) submitted hundreds of invoices from subcontractor and co-defendant Wise Services Inc. to the DOE for nonexistent materials. Mox was said to have received kickbacks from Wise for the fraudulent invoices in violation of the Fair Claims Act. The DOJ's Civil Division head Brian M. Boynton said in a statement:

> *It is vital that contractors on federally funded projects provide sufficient oversight of the companies they hire to ensure that the government is billed only for legitimate goods and services.*

The DOJ filed suit in February 2019, claiming that MOX selected Wise for multiple subcontracts between 2008 and 2016. The contracts covered several "unplanned" construction activities, including general labor and plumbing, electrical and carpentry services. MOX worked for the National Nuclear Security Administration (NNSA), constructing the Mixed Oxide Fuel Fabrication Facility at the agency's Savannah River site in South Carolina.

Wise submitted fraudulent reimbursement claims for "nonexistent construction materials" to Mox, which knowingly passed along $6.4 million in these types of claims to the NNSA. On Dec. 15, 2021, the "parties said they had 'negotiated a settlement in principle' following mediation earlier that month."

The U.S. is represented by U.S. Department of Justice's Fraud Section lawyers Don Williamson and Rory Skaggs, Civil Division Chief James Leventis Jr. and Assistant U.S. Attorneys Johanna Valenzuela and Sheria Clarke of the U.S. Attorney's Office for the District of South Carolina.

The case is *U.S. v. CB&I Areva MOX Services LLC et al.*, case number 1:19-cv-00444, in the U.S. District Court for the District of South Carolina.

Source: Law360.com

The Beasley Allen Whistleblower Litigation Team

If you are aware of fraud being committed against the federal or state governments, you could be rewarded for reporting the fraud. If you have any questions about whether you qualify as a whistleblower, contact a lawyer on our Whistleblower Litigation Team for a free and confidential evaluation of your claim. There is a contact form on our website, or you may email one of our lawyers on our team listed below.

Whistleblower litigation is still very active around the country. Beasley Allen's Whistleblower Litigation Team members 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, and we have increased our staffing to handle the influx of new cases.

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 prepare for what lies ahead. The experienced group of lawyers on our team is dedicated to handling whistleblower cases.

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

IX.
INSURANCE LITIGATION

The John Hancock Overcharging Class Action Suit Settlement

The $123 million settlement reached by the class of John Hancock life insurance policyholders is awaiting final approval. The class consists of about 1,300 John Hancock Life Insurance Co. universal life insurance policyholders who were subject to "cost of insurance" (COI) increases in 2018 and 2019. The settlement, which received preliminary approval in January of this year, is equal to 91.25% of the COI overcharges that John Hancock collected from class members through August 2021. That ratio is well above previous COI overcharge cases in New York federal court.

The case of *Fleisher v. Phoenix Life Ins. Co.* involved a 2015 decision in the same court, where the cash settlement equaled 68.5% of the COI overcharges. The judge in that case called it "one of the most remunerative settlements this court has ever been asked to approve." The most recent result is much better.

U.S. District Judge Alvin K. Hellerstein granted the law firm Susman Godfrey LLP's fee request on March 21. The firm will receive $34.4 million in fees, plus a pro-rata share of interest earned on the settlement fund and $1.4 million in expenses incurred. Each of the seven named plaintiffs in the class action will receive $25,000 in incentive awards.

In June 2018, a class of life insurance policyholders sued John Hancock after the company announced it was raising rates for approximately 1,500 policies. The suit claimed the increases were not based on the enumerated factors in the policies, was nonuniform and discriminatory, and was designed to cover past losses rather than respond to future expectations.

In January, Judge Hellerstein gave preliminary approval to the settlement between the policyholders and John Hancock. It established the $123 million cash fund and also a number of significant nonmonetary benefits.

Under the settlement, John Hancock agreed to a complete freeze on any COI increases for at least five years. The insurer is also giving up its right to challenge the validity of class policies for misrepresentations in the policy application or alleged claims of lack of insurance. Those extra benefits were said to be worth an additional $67.76 million. The settlement is awaiting final approval by the court.

The plaintiffs are represented by Seth Ard, Ryan Kirkpatrick, Zachary B. Savage, Ari Ruben, Amy Gregory, Steven Sklaver, Glenn Bridgman and Andres Healy 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

X.
SECURITIES LITIGATION

Former Goldman Sach's Executive Trial Of Bribes And Kickbacks

The trial in federal court of former Goldman Sachs managing director Roger Ng is getting lots of attention. He is accused of Foreign Corrupt Practices Act and money laundering violations for allegedly embezzling from the Malaysian state investment fund and conspiring to drain billions from 1MDB bond transactions in order to bribe government officials and enrich the conspirators to be a spectacle. The case is *U.S.A. v. Low Taek Jho et al.*, case number 1:18-cr-00538, in the U.S. District Court for the Eastern District of New York. The trial was expected to wind up fairly soon.

The government's star witness is former Goldman Sachs partner Tim Leissner. His cooperation with prosecutors is tied to his guilty plea to conspiracy to violate U.S. anti-bribery laws and conspiring to launder money from August 2018 and is particularly notable for its ludicrousness. Leissner admitted he had "lied a lot," including to federal authorities when he was first arrested and denying he had any difficulty keeping his lies straight.

Leissner admitted in his testimony that he sent fake emails for years to his future wife while pretending to be his ex-wife. This came after the jury had previously heard about Leissner's double bigamist marriages and multiple extramarital affairs with women tied to the Malaysian government, including the daughter of a former Malaysian ambassador to the U.S. and former CEO of Astro Malaysia Holdings.

The scandalous testimony overshadows earlier testimony that several senior Goldman bankers played an essential role in this scheme. At the same time, other bank personnel "allowed the scheme by overlooking or ignoring a number of clear, red flags." For example, Leissner specifically testified that ex-Goldman chief Lloyd Blankfein met in 2009 with then Malaysian prime minister Najib Razak just ahead of big bond deals for the country's 1MDB fund – and that the meeting came with an agenda.

Goldman Sachs collected approximately $600 million in fees for facilitating the corrupt bond transactions. In 2020, a Goldman Sachs subsidiary admitted "knowingly and willfully" conspiring to violate U.S. anti-bribery laws, agreeing to pay more than $2.9 billion in connection with a deferred prosecution agreement to resolve the U.S. government's criminal investigation into the bank's role in the affair.

While the settlement was described at the time as the largest monetary penalty ever paid to the U.S. government in a foreign bribery matter, Goldman Sachs could have further reduced the penalties assessed by cooperating with the Department of Justice, but the bank "significantly delayed producing relevant evidence, including recorded phone calls" where executives and control function personnel discussed bribery and other misconduct.

It is difficult to ignore that the criminal trial of an individual exposes massive frauds by corporate America far better than the federal agencies responsible for corporate oversight, regulation and enforcement of securities law. Unfortunately, the Goldman Sachs agreement allowed the parent company to evade true scrutiny over "corporate-wide" failures that enabled the fraud to be committed, and this trial elucidates the importance of private litigation to confront corporate fraud. This conduct is now coming to public view through the criminal trial discussed above.

Our firm is committed to being a strong and forceful voice for victims of corporate fraud and advocating for corporations to be held accountable to the law. Our

firm's Consumer Fraud & Commercial Litigation Section welcomes any opportunity to investigate suspected practices and is excited to engage with both new and established colleagues in federal securities law and state securities litigation. Contact Dee Miles, James Eubank, or Demet Basar in the section concerning any securities issues and / or questions at 800-898-2034 or email at Dee.Miles@BeasleyAllen.com, James.Eubank@BeasleyAllen.com, or Demet.Basar@BeasleyAllen.com.

Read more at: https://www.law360.com/articles/1472945

"Deep Fraud" And Special Purpose Acquisition Companies

Special Purpose Acquisition Companies (SPAC) are generally understood to be blank-check companies formed to raise money for their initial public offering (IPO), then use the money to acquire a private, legitimate company and bring the acquired company into the public market. These SPAC offerings were a veritable and inexplicable rage in 2021. There were 613 SPAC offerings that hit the U.S. market and raised around $162 billion. That surpassed the combined total of all previous years and almost raised as much money as the traditional domestic IPOs.

Media coverage justified the SPAC rage as driven by companies keen to leverage the SPAC merger process as timelier and less expensive than traditional IPOs. The SPACs highlighted high-profile SPAC sponsors, including celebrities, that typically receive approximately 20% of the SPAC equity in return for investing 3 to 4% of the total IPO proceeds, sweetened by "warrants" for each share bought in the IPO akin to a guaranteed bet on the success of the SPAC (a huge misalignment of interests between sponsors incentivized to get any deal done and the investors).

SPAC promotors exploited the coverage to propagate key misrepresentations of required SPAC disclosures, SPAC compliance requirements and limited SPAC legal liability related to projections compared to traditional IPOs. The media hype from celebrity SPAC sponsors was so successful in recruiting investors that the Securities Exchange Commission (SEC) issued a statement in March 2021 warning that "It is never a good idea to invest in a SPAC just because someone famous sponsors or invests in it or says it is a good investment."

Harvard Law School professor and former SEC official John Coates attributes the SPAC surge, at least in part, to media coverage by sophisticated securities industry insiders that reprises myths about SPAC law and its uncertainties. Professor Coates' recently published study, "SPAC Law and Myths," deconstructs a litany of myths SPAC promoters proliferate and underscores how SPAC myths "... illustrate a broader and underappreciated fact that complex financial-legal innovation permits promoters to exploit the 'credence good' character of professional advice, perpetuate 'deep fraud,' and distort markets and asset prices more and longer than conventional theory assumes."

The fraud is "indirect and insidious." SPAC promotors elicit money from these myths directed toward investors through all means of media channels and promoted through focused disinformation campaigns not subject to ordinary laws against fraud because the connection between their lies and investors' reliance is legally too remote. Likewise, the SEC is not a "merits" regulator, and proliferating untruths outside a specific context isn't violating any rule, regulation, or law.

However, skilled lawyers' innovative litigation in the courts may redress investors' inability to hold SPAC sponsors accountable for their actions and representations. So far, the case, *In re Multiplan Corp. Stockholder Litigation*, 2022 WL 24060 (Del. Ch. Jan. 3, 2022), continues to progress through the Delaware Court of Chancery. In that case, investors filed fiduciary claims against the Multiplan Corp. SPAC's sponsor and directors. An aiding and abetting claim was also filed against the company's financial advisor. That case particularly indicates national litigation involving liability for materially misleading disclosures is forthcoming. Because most SPACs are incorporated in Delaware, the case is likely to impact how future disclosures from SPAC sponsors look.

Likewise, in late 2021, investors filed three lawsuits against SPACs Pershing Square Tontine Holdings, E. Merge Technology Acquisition Corp., and GO Acquisition Corp, contending that at least these SPACs deliberately failed to operate the companies with the aim to merge at all. Thus, they are essentially illegally operating investment firms. If successful, the lawsuits would make SPACs subject to the rules under the Investment Company Act of 1940 and, as such, demand company registry with the SEC. Success in those cases also would introduce further possible recourse by holding the professionals SPACs hire to advise companies, investors, and entrepreneurs primarily responsible. This may explain why over 60 law firms known to earn significant fees from their work with SPACs collectively published a response to ICA lawsuits that nebulously deny the lawsuits' legitimacy.

While it is difficult to discount the current gaps in protection and recourse for SPAC investors, Beasley Allen lawyers anticipate the SEC's oversight and legislation to evolve along with the SPAC popularity. Until such time, private litigation must confront this kind of securities fraud. Our firm is committed to being a strong and forceful voice for victims of corporate fraud and advocating for companies to be held accountable to the law. Our firm is presently filing securities claims under all available avenues of federal law and related state laws on behalf of injured investors.

Sources: Law360.com, Businessofbusiness.com and Social Science Research Network

Beasley Allen Securities Litigation Team

Lawyers in our Consumer Fraud & Commercial Litigation Section welcome any opportunity to investigate suspected practices and are excited to engage with both new and established colleagues in federal securities law and state securities litigation. You can contact Dee Miles, James Eubank, or Demet Basar in our Consumer Fraud & Commercial Litigation Section concerning any securities issues and / or questions.

Our Beasley Allen Securities Team consists of Dee Miles, James Eubank, Demet Basar, Rebecca Gilliland and Paul Evans. They can be reached at 800-898-2034 or by email at Dee.Miles@BeasleyAllen.com, James.Eubank@BeasleyAllen.com, Demet.Basar@BeasleyAllen.com, Rebecca.Gilliland@BeasleyAllen.com and Paul.Evans@BeasleyAllen.com.

XI.
THE JUUL LITIGATION

An Update On The JUUL Litigation

A team of Beasley Allen lawyers, led by Joseph VanZandt, represent individuals suing JUUL, the top U.S. vape manufacturer, for its role in fostering a new generation of people that are likely to battle nicotine addiction for the remainder of their lives. Beasley Allen also represents several school systems in the JUUL litigation, with the collective aim to protect today's youth and recover resources spent fighting the vaping epidemic.

The JUUL litigation is massive. As of Feb. 23, 2022, approximately 3,215 cases are pending in this multidistrict litigation (MDL), naming 109 defendants. To date, 2,580 personal injury cases and 578 government entity cases have been filed in the MDL. There are also 616 complaints pending on the state level before the Superior Court of California's Judicial Council Coordinated Proceedings (JCCP), including 83 government cases (of which 78 are on behalf of school districts), 535 personal injury cases brought on behalf of over 3,600 individual personal injury plaintiffs, naming 26 defendants. There are also 15 pending cases filed by state Attorneys General, specifically: California, Illinois, Hawaii, New York, Louisiana, Mississippi, Minnesota, Washington, D.C., Pennsylvania, New Mexico, Massachusetts, Colorado, Alaska, and Washington.

The MDL's first personal injury bellwether trial was set to begin this month. However, on March 4, U.S. District Judge William H. Orrick reset the trial date to June 21, 2022, caused by a Covid-19-related backlog in the court's docket. The court recently held oral arguments related to summary judgment and Daubert motions. The parties await the court's rulings on these topics, but the court's tentative rulings during oral argument overwhelmingly favor the plaintiffs' positions.

In the first bellwether trial (a minor identified as "B.B."), the plaintiff is a Beasley Allen client and a 16-year-old minor from McMinnville, Tennessee, who started using JUUL in the seventh grade at 12. She had never tried any form of nicotine, but JUUL advertisements led her to believe JUUL was "safe and cool," something that young people could use without risk. She enjoyed the taste of JUUL's mango, fruit medley, and mint flavors, but JUUL's high nicotine concentration caused her to quickly become severely addicted to nicotine. She and her family have struggled with the physical and mental harm of her severe nicotine addiction. Beasley Allen's Joseph VanZandt will serve as trial counsel, alongside an amazing team of MDL lawyers, to seek justice for this deserving client in the first JUUL personal injury trial ever.

If you have a potential claim or need more information on JUUL, contact any of the lawyers on the JUUL Litigation Team at 800-898-2034 or by email. Members are Joseph.VanZandt@BeasleyAllen.com, Sydney.Everett@BeasleyAllen.com, Beau.Darley@BeasleyAllen.com, Davis.Vaughn@BeasleyAllen.com, Seth.Harding@BeasleyAllen.com, SooSeok.Yang@BeasleyAllen.com, and Clinton.Richardson@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.

Settlement In Altria Underage Marketing Suit

A class of Altria investors has asked a Virginia federal court to give its final approval to their $90 million settlement ending claims that the tobacco company knew Juul would improperly market its vapes to teens.

The class, certified in December, includes those persons who purchased Altria securities between October 2018 and April 2020. Both companies had told investors:

- They would exclusively seek out adult users, and Altria and JUUL were committed to solving youth vaping by preventing access and usage.
- That JUUL executives were actually studying and employing advertising techniques to target underage consumers "in the hopes they would create lifelong customers for JUUL's products."
- Altria knew JUUL would continue to target underage consumers even before it bought more than a third of the company.

The plaintiffs and their lawyers seek $27 million in attorneys' fees and just over $1.5 million in litigation expenses.

The approval motion also pointed out that the $90 million settlement is "one of the largest recoveries ever achieved in a securities class action in Virginia and the Fourth Circuit," emphasizing that the settlement is approximately "seven times the median securities class action settlement value between 2018 and 2020 in the United States."

The plaintiffs claimed they lost money due to misleading statements made by the tobacco giant regarding its purchase of a 35% stake in vaping company JUUL Labs Inc. The buy cost Altria $12.8 billion.

The companies' misrepresentations allegedly caused a series of Altria stock drops. Then federal regulators launched a number of investigations into the effects of vaping and the marketing tactics of JUUL, the suit noted. In February, the Federal Trade Commission's in-house judge dismissed the agency's 2020 complaint that Altria's purchase of JUUL violated antitrust law.

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

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

Source: Law360.com

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 has filed JUUL lawsuits nationwide on behalf of school districts. This litigation

seeks to protect students and recover resources spent fighting the vaping epidemic.

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

XII.
THE ASBESTOS LITIGATION

The Different Kinds Of Asbestos

Most folks have heard of asbestos and know it is a hazardous carcinogen. People now know that asbestos was used in various industries throughout the 20th century. If inhaled, it can lead to debilitating diseases like asbestosis, lung cancer, and mesothelioma. That said, precisely what asbestos is remains a mystery to many people, including lawyers who don't litigate in this field. So, what is asbestos?

Asbestos is the name used to describe a *group* of different naturally occurring minerals found in the ground worldwide. These minerals possess high tensile strength, flexibility, resistance to chemical and thermal degradation, and electrical resistance. Over the years, these naturally occurring minerals were mined and milled and then incorporated into thousands of different products. The six different naturally occurring minerals that fall under the heading of asbestos are chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite. It is generally agreed by medical professionals, industrial hygienists and regulatory bodies that all six fibrous minerals, collectively known as asbestos, are hazardous when inhaled and cause the diseases mentioned above.

Some asbestos fibers were used more commonly in commercial products than others. According to some, almost 90% of the asbestos products used through the 20th century were chrysotile-containing asbestos products. However, amosite and crocidolite were also used in many products. Additionally, tremolite and anthophyllite are known to form alongside chrysotile deposits, so it is not unusual to find tremolite and anthophyllite fibers contaminated in chrysotile-containing products

Why does any of this matter? Well, defendants in asbestos litigation often refer to chrysotile as the "friendly fiber" and argue that it is incapable of causing asbestos-related diseases. Plaintiffs vehemently disagree with this contention, even if we admit that there may be some differences between chrysotile and the other fibers' relative potency in causing some diseases. Because close to 90% of asbestos products were chrysotile-based, this defense can have massive repercussions in a case where the alleged product was a chrysotile-containing product. Knowing and understanding the science of causation related to all fiber types is paramount in asbestos litigation. Beasley Allen asbestos lawyers possess this specialized knowledge and can rebut defendants' false and misleading arguments related to fiber type and causation.

Sources: OSHA and CDC

Jury Awards $36.5 Million To Former Libby Miner With Lung Disease

A Great Falls, Montana, jury awarded Ralph Hurt of Oregon $36.5 million in damages after he was exposed to asbestos while working at a vermiculite mine in Libby. In the bellwether case, the jury awarded $6.5 million in compensatory damages and $30 million in punitive damages. The Associated Press explained that the bellwether case "could affect hundreds of additional claims filed against the company that once provided the mine's workers' compensation coverage."

The case is one of more than 800 lawsuits filed against Maryland Casualty Co., which Zurich Insurance now owns. From 1963 –1973, Maryland Casualty provided mine workers' compensation insurance coverage for W.R. Grace & Co., which operated the Libby vermiculite mine from 1963 to 1990. Maryland Casualty also advised on health-related topics, including worker safety recommendations and encouraging workers to have annual chest X-rays.

Judge Amy Eddy oversees a special asbestos claims court in Montana. She selected Hutt's lawsuit as the lead case to address some of the complex legal questions and establish parameters for the other cases against Maryland Casualty.

In March 2020, the Montana Supreme Court ruled that Maryland Casualty should have warned the plaintiffs, including Hutt, about the risk of exposure to airborne asbestos. This ruling cleared Hutt's and the other cases to go to trial. In their opinion, Montana Supreme Court justices pointed to an internal company memo from an assigned insurance defense counsel that recommended Maryland Casualty settle a 1967 workers' compensation claim against W.R. Grace. The counsel's advice to settling was intended to prevent the possibility of uncovering "all of the more damaging aspects of our own situation."

Hutt worked for W. R. Grace's Zonolite Division for 18 months in 1968 and 1969. However, his respiratory problems didn't surface until two decades later, when he worked as a logger at higher altitudes. According to the Associated Press, "Hutt now requires nearly continuous use of supplemental oxygen due to asbestosis." His case made it to trial more than two decades after the first news reports started up about the asbestos in Libby, the lung damage and hundreds of deaths caused by inhaling asbestos fibers, not only by mineworkers but by their families and other residents of the northwestern Montana town.

Source: Associated Press and The Montana Standard

The Beasley Allen Asbestos Litigation Team

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

Mass Torts Trial Lawyers Make A Difference

We will continue in this issue our focus on the role trial lawyers play in the regulation of corporate America. This time we are looking at some notable cases handled by lawyers in Beasley Allen's Mass Torts Section. Government regulation of pharmaceuticals and medical devices relies on the pharmaceutical and medical device companies to disclose all they know about their products – good and bad. When those companies fail to disclose important risks of serious injuries, lawyers help bring those risks out in the open and hold the companies accountable.

For more than 20 years, Beasley Allen lawyers have successfully handled a number of important cases involving pharmaceuticals and medical devices. More recently, we have expanded the scope of the section's work to include consumer products that have caused serious injuries.

Some of the Beasley Allen cases that have made a difference

Vioxx – 80 million people took the pain medicine Vioxx worldwide. In 2004, the Food and Drug Administration (FDA), physicians and finally the public learned what Merck had known for years – in some patients, Vioxx causes blood clots and narrowed blood vessels which in turn causes heart attacks and strokes. Earlier studies had shown heart risks, and Merck scientists worried about Vioxx causing heart attacks long before the first pill was ever sold. By the time of its withdrawal, Vioxx had caused heart attacks or strokes in over 100,000 people. Vioxx was removed from the market on September 30, 2004.

Andy Birchfield, who heads the Mass Torts Section, served as Lead Co-Counsel for the Vioxx MDL. Every lawyer in the section played a role in the Vioxx litigation. Specifically, Leigh O'Dell and Roger Smith worked with Andy on the settlement program. The MDL litigation team reached a then-record global settlement with the pharmaceutical giant, which paid $4.85 billion to compensate victims of Vioxx-related heart attacks and strokes.

Transvaginal Mesh – Beginning in 2011, plaintiffs began to file lawsuits against the manufacturers of transvaginal mesh from complications they sustained from the implantation of these products. These injuries included erosion of the mesh into the vaginal tissue, organ perforation, pain, infection, painful intercourse and urinary and fecal incontinence. Often women required surgery to remove the mesh, and oftentimes it was impossible to remove all of the mesh involved. Some women were ultimately adjudicated as disabled as a result of the personal injuries they sustained from polypropylene mesh.

This mass tort grew into one of the largest in history, involving more than 100,000 lawsuits and billions of dollars in damages. Beasley Allen lawyers were intimately involved in this litigation, with lawyers serving in leadership positions, including the Plaintiffs Steering Committee for five separate transvaginal mesh MDLs. As a result of these women coming forward and the resulting litigation, some of these polypropylene mesh products have been removed from the market, and physicians are now more aware of the issues caused by transvaginal mesh and the alternative treatments available for stress urinary incontinence and pelvic organ prolapse.

Talcum Powder Litigation – Johnson & Johnson's (J&J) Talcum Baby Powder was first introduced to the market in the 1890s and has since been used by tens or even hundreds of millions of people worldwide. However, what J&J did not reveal is that since the 1930s, there has been growing concern about the harmful effects of talc.

Meanwhile, women commonly used baby powder as part of their feminine hygiene routines, and this was, in fact, encouraged by the company. J&J knew that talc use could cause ovarian cancer.

J&J has been aware of the issues with talc and asbestos for decades and never warned consumers of these dangers. In the 1960s. The company started developing a cornstarch substitute for talc as they were concerned with future litigation; however, after they were able to influence many of the regulators in the country, including the FDA, J&J kept its talcum powder product on the market.

After several epidemiological studies were published showing the association between genital talc use and ovarian cancer, the first talcum powder ovarian cancer trial was conducted in South Dakota in 2013 – that jury found J&J at fault but failed to award money. Beasley Allen got involved shortly thereafter, and our lawyers are spent the last eight years trying these cases all over the country.

In 2016, Beasley Allen lawyers convinced three separate juries to find J&J at fault and award damages totaling $72 million, $55 million and $70 million, respectively. Shortly thereafter, body powder manufacturers started including cancer warning language on their bottles.

In 2017, Beasley Allen convinced two additional juries to find J&J at fault with awards totaling $110 million and $417 million.

A Beasley Allen lawyer also serves as co-lead counsel in the federal court talcum powder MDL, where 35,000 of these cases have been filed by plaintiffs from states throughout the country. Due to the ongoing efforts of the Beasley Allen Talc Litigation team and others, J&J pulled Talcum Baby Powder off the market in North America in the summer of 2020. With an estimated 10% of 22,000 yearly ovarian cancer cases in the United States believed to be caused by genital talcum powder use, the removal of this product from the shelves is saving thousands of lives every year.

The Talc Litigation Team lawyers continue working hard to secure just compensation for talc-related cancer victims. There is the hope that J&J will ul-

timately decide to discontinue sales of its talcum powder worldwide.

However, J&J's reprehensible corporate conduct continues. In October 2021, it used a controversial maneuver called the "Texas Two-Step" to shift its talc liabilities into a newly-created subsidiary, which subsequently filed bankruptcy. This maneuver has caused the talc litigation to come to a temporary halt as plaintiffs must wait for a resolution in bankruptcy court. Beasley Allen lawyers continue working to push these cases forward. They plan to appeal recent orders by the bankruptcy judge upholding the bankruptcy and extending the benefits of the bankruptcy stay to the J&J parent company. Beasley Allen will continue to fight J&J's efforts to limit their talc liabilities through bankruptcy.

JUUL E-Cigarette Multidistrict Litigation – In 2015, JUUL Labs, Inc. (JLI) released a vape and line of flavored e-liquid pods that caused an epidemic of youth nicotine use. As a result of JUUL's highly addictive and appealing product design and youth-targeted marketing, by 2017, JLI's sales increased by 700% and JUUL soon controlled over three-quarters of the e-cigarette market. JUUL causes respiratory, cardiovascular, and mental health harm, among other damages. Thousands of teens and young adults have been injured by JUUL.

Beasley Allen is honored to play a leading role in the resulting multidistrict litigation (MDL) proceeding in the Northern District of California. The MDL consists of over 1,200 personal injury cases, several class actions, 160 cases filed by government entities, as well as suits brought by 118 school districts, 20 counties, two cities, and 20 tribes.

JUUL has made an initial response by removing its kid-friendly fruit and dessert flavors from the market, changing its marketing practices, and increasing warnings on its product labels.

The MDL's first personal injury bellwether trial is scheduled to begin on June 21, 2022. The plaintiff in the first trial – a 16-year-old identified as "B.B" – is a Beasley Allen client. Beasley Allen's Joseph VanZandt will serve as trial counsel alongside an amazing team of MDL lawyers to seek justice for this deserving client in the first-ever JUUL personal injury trial.

Hormone Replacement Therapy – Individual Cases – Hormone replacement therapy (HRT) drugs, including Premarin, Prempro and Provera, are prescription drugs designed to treat symptoms of menopause. Premarin (estrogen-only) sales surged when the manufacturer ghostwrote a book and bought one million copies to place it on the bestseller list. The increased Premarin sales led epidemiologists to discover as early as the 1970s that unopposed estrogen caused endometrial cancer.

Drug companies later decided if estrogen were combined with progesterone, the risk of endometrial cancer would cease. Estrogen and progesterone drugs were then prescribed together for over 20 years until Prempro combined the two drugs into a single pill. The FDA approved Prempro conditioned upon the manufacturer studying if the combination drug increased a woman's risk of breast cancer.

The manufacturer never conducted the studies, but the government did. The Women's Health Initiative (WHI) study was released in 2003 and showed an unequivocal increased risk of breast cancer with Prempro.

The manufacturers misrepresented the safety and effectiveness of these drugs and concealed or understated their dangerous side effects. Even though the defendants were fully aware, they failed to warn consumers of the risk of breast cancer from combination hormone replacement therapy in any of their respective labels or promotional materials.

Beasley Allen started litigating these cases in the early 2000s, served on the Plaintiffs Steering Committee of the MDL, and as co-lead trial counsel in December 2011 when a Philadelphia, Pennsylvania, jury awarded $72.6 million to three plaintiffs in a Hormone Replacement Therapy (HRT) case. After hearing three weeks of testimony on the link between those drugs and breast cancer, the jury determined that the HRT drugs Premarin, Provera and Prempro caused the plaintiffs' breast cancer and set the value of actual compensatory damages in the case against Wyeth Pharmaceuticals. That trial resulted in Beasley Allen being nominated for the 2012 Public Justice Foundation Trial Lawyers of the Year.

The verdict was delivered in a reverse-bifurcated trial in which the jury first determined causation and damages before determining liability. Wyeth settled the case the day before the liability, and punitive damages phase were slated to begin. The terms and amounts are confidential. However, the settlement not only brought an end to the trial; it was also a watershed moment for the Hormone Replacement Therapy litigation.

After an early string of victories in the litigation, in 2009, Pfizer purchased Wyeth, the principal target and the maker of Premarin and Prempro. With Pfizer's purchase, a new litigation strategy emerged, and a series of defense victories piled up. The main strategy: beat the plaintiffs on causation in a reverse-bifurcated setting, if possible. This victory and the resulting settlement represented a stunning turnaround in the litigation that catapulted the breast cancer litigation towards resolution with billions of dollars being paid to victims.

Beasley Allen was a leader in litigating these cases with more trial settings than any firm in the country. In addition to the verdict referenced above, our firm was lead counsel in two additional HRT trials in 2012. One in Little Rock, Arkansas, resulted in a defense verdict (though the jury did find defendants failed to warn of breast cancer) and in a second trial in Salt Lake City, Utah. The jury returned a verdict of $5.1 million for the plaintiff. Soon after that, Pfizer resolved all Beasley Allen cases.

In 2012, after almost a decade of litigating individual plaintiff injury Prempro cases, Beasley Allen was

well-positioned and experienced to be appointed as co-lead counsel in the $200 million California Prempro consumer class action case is described below.

Hormone Therapy – California Class Action - Beasley Allen lawyers served as class counsel in a long-running class action case, which alleged that Wyeth, Inc., violated California consumer protection laws by conducting a long-term, systematic and widespread marketing campaign designed to misrepresent the benefits and health risks associated with their hormone replacement therapy (HRT) drugs (Premarin, Prempro, and Premphase). The Class Representative, April Krueger, asserted that Wyeth's marketing campaign misrepresented to California consumers that its HRT drugs lowered cardiovascular, Alzheimer's and / or dementia risk and did not increase breast cancer risk.

In September 2020, U.S. District Judge John A. Houston (S.D. of Calif.) issued an Order granting final approval of a $200 million-dollar settlement that provided refunds to qualifying class members who purchased Wyeth's HRT drugs between January 1995 and January 2003. The court's order also provided that any excess settlement funds would be distributed to California medical institutions specializing in the detection, treatment, prevention, and cure of breast cancer, women's cardiac issues, Alzheimer's, and early-onset dementia.

Following the court's final approval order, Beasley Allen solicited research proposals from a number of California medical institutions and interviewed key research scientists involved in the individual projects. Additionally, our firm helped develop the concept of an annual conference that will allow funded faculty, researchers, and project leaders to meet and collaborate (over six years) to discuss the results of their work and share ideas to advance the study, treatment, and cure for breast cancer, Alzheimer's disease, dementia, and cardiovascular disease in women. To date, over $142 million in residual funds from the Class settlement have been awarded to Scripps Health – MD Anderson, San Diego, the University of California, Davis, the University of California, San Diego, the University of California, San Francisco, the University of California, Los Angeles (UCLA Health), and the University of Southern California Keck Medicine.

Beasley Allen lawyers will continue their battles with those in corporate America who operate in a manner that violates laws and regulations. If you have any questions about any of the above, contact Melissa Prickett at 800-898-2034 or by email at Melissa.Prickett@BeasleyAllen.com. She will have the appropriate lawyer respond to your specific need.

More Judges Side With Plaintiff In Belviq Litigation

On March 9, two more Beasley Allen plaintiffs overcame motions to dismiss their design defect and punitive damages claims in Bergen County, New Jersey. Judge Estela M. De La Cruz presides over both cases, determined that the plaintiffs sufficiently pled all of their claims and that Arena and Eisai's arguments were without merit. The defense motions were denied in their entirety.

Similarly, a federal judge in the Northern District of New York, Judge David N. Hurd, also denied Eisai and Arena's motion to dismiss claims for negligence, design defect, failure to warn, and breach of express and implied warranties. Judge Hurd determined that Eisai and Arena's motions "cherry pick[ed]" the plaintiff's allegations to form their motion for dismissal and that plaintiffs' facts plausibly stated their claims.

Belviq, or lorcaserin hydrochloride, was FDA-approved in 2012 for weight management in adults with a BMI of 30 or greater (obese) or a BMI of 27 or greater (overweight) who also had at least one weight-related condition, such as high blood pressure, type 2 diabetes, or high cholesterol. An extended-release version of the drug, Belviq XR, was later approved in 2016. After its initial approval, the manufacturers conducted a four-year clinical trial, which ultimately showed an increased risk of certain cancers, the most prevalent being pancreatic, colorectal, and lung cancer. The clinical trial concluded on May 14, 2018, but results were not posted until more than a year later, on July 16, 2019. Belviq was later recalled in January 2020 due to these findings.

Beasley Allen lawyers continue to investigate and handle cases on behalf of individuals prescribed Belviq and were subsequently diagnosed with cancer. For more information, contact Melissa Prickett or Roger Smith, both lawyers in our Mass Torts Section, at 800-898-2034 or by email at Melissa.Prickett@BeasleyAllen.com or Roger.Smith@BeasleyAllen.com.

Sources: *Barabach v. Eisai, Inc., et al.*, BER-L-003555-21; Trans ID: LCV2022967959 ; McCauley v. Eisai, Inc., et al., BER-L-003557-21; Trans ID: LCV2022967972 ; Reynolds-Sitzer v. Eisai, Inc., et al., Case No. 1:21-cv-0145, Doc. 26

CPAP Shortages Caused By Pandemic And Exacerbated By Recall

On June 14, 2021, Philips Respironics issued a voluntary recall of over 15 million CPAP, BiPAP, and ventilator devices, at least half of which are used daily in the United States. The device recall was due to the degradation of the polyester-based polyurethane foam used to reduce the sound and vibration of the device. When this breakdown occurs, black pieces of foam, and even chemicals that cannot be seen, are potentially inhaled or swallowed by the device user. This exposure has been connected to the potential development of irritation to the skin, eyes, nose, and respiratory tract, inflammation, asthma, nausea, vomiting and cancer, among other injuries.

Many patients in need of a new or replacement CPAP to treat their sleep apnea have been suffering on a long waiting list that has developed from the height of the COVID-19 pandemic to the present. This shortage seems to have resulted from supply chain issues caused by the pandemic and exacerbated by the recent recall. Some individuals have reported waiting eight months or longer to receive a CPAP.

Beasley Allen lawyers are currently investigating claims related to the devices recalled by Philips where users have developed lung cancer, asthma, chronic respiratory injuries, or kidney disease. For more information, contact Beau Darley, Alexa Wallace or Melissa Prickett, lawyers in our Mass Torts Section, at 800-898-2034 or by email at Beau.Darley@BeasleyAllen.com, Alexa.Wallace@BeasleyAllen.com, or Melissa.Prickett@BeasleyAllen.com.

Sources: WWLTV and *New York Times*

Check Valisure List Before Shopping For Sunscreen

Beasley Allen is one of five firms serving as interim class counsel in the Johnson & Johnson (J&J) Sunscreen multidistrict litigation (MDL) proceeding. The litigation involves the marketing and sale of benzene-contaminated sunscreen products. The independent laboratory, Valisure, announced that it detected benzene in 26.5% of the after-suncare products it tested. Last year J&J Consumer Inc. finally recalled five of their Neutrogena and Aveeno sunscreen spray product lines – two months after the Valisure announcement. Benzene is a known carcinogen, and exposure has been linked to cancer and other illnesses.

As the days get longer and the weather gets warmer, it is important to remember not to replace one cancer risk (benzene) with another (UV radiation from the sun). Skin cancer is the most commonly-occurring cancer in the United States. One in five Americans will develop skin cancer in their lifetime. Regular use of sunscreen helps to lower your risk. You can find a list of sunscreens for which benzene was not detected on Valisure's website.

David Byrne, a lawyer in the Mass Torts Section, leads the team pursuing a federal class action lawsuit on behalf of consumers who purchased recalled J&J sunscreen products. If you or someone you know has experienced harm from using sunscreen products, call Melissa Prickett or David Byrne at 800-898-2034 or email Melissa.Prickett@BeasleyAllen.com or David.Byrne@BeasleyAllen.com.

Sources: American Academy of Dermatology and Valisure

JPML Hears Arguments On Proposed Infant Formula MDL

Last month, we reported on our firm's involvement in litigation surrounding the development of Necrotizing Enterocolitis (NEC) in premature infants fed cow's milk-based infant formula products. NEC is a gastrointestinal condition that affects approximately 1 in 1,000 premature babies. NEC can be extremely serious, with most cases resulting in surgery and 20-30% resulting in death. For more than 30 years, epidemiological studies have shown that premature infants fed cow's milk-based formula and milk fortifiers are at significantly higher risk of developing NEC than infants who exclusively received breast milk. Despite knowing these risks, defendants Abbott Laboratories, Mead Johnson & Company, and Mead Johnson Nutrition Company continue to manufacture and market these products targeted toward premature infants.

In recent months, Abbott and Mead Johnson, who manufacture Similac and Enfamil products, respectively, have had increasing numbers of lawsuits filed against them by individuals injured by their products. In January, Abbott filed a petition with the Judicial Panel on Multidistrict Litigation (JPML) requesting that all federal court cases related to NEC and infant formula be consolidated into a multidistrict litigation before Judge Stefan Underhill in the District of Connecticut. The JPML heard oral arguments on this petition on March 31 in New Orleans. We anticipate a ruling from the JPML in the coming months.

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.

XIV.
EMPLOYMENT AND FLSA LITIGATION

A Joint Initiative To Target Workplace Retaliation

In November 2021, the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission ("EEOC"), and the Department of Labor (DOL) announced a joint initiative to protect workers on issues related to unlawful, retaliatory conduct. The initiative's goals include educating the public and engaging with employers, business organizations, labor organizations, and civil rights groups in 2022.

According to EEOC Chair Charlotte A. Burrows, not only is retaliation a "persistent and urgent problem" in American workplaces, charges alleging retaliation have increased as a percentage of the total of EEOC charges filed each year for the last twenty years. Burrows went on to say:

> *Together, working with our interagency partners and with employers, we must tackle this urgent problem and help ensure that employers have effective strategies for taking immediate action to stop retaliation.*

Seema Nanda, Solicitor of Labor, believes that labor law enforcement can only work where workers speak out for themselves and others and when the workers do not fear or suffer from retaliation. In a press release related to this initiative, Nanda further stated:

> *In the U.S. Department of Labor's fight against wage theft, misclassification, discrimination, unsafe or unhealthy workplaces, and other unlawful employment practices, we will use all tools available to protect workers from retaliation. This collaboration among federal labor enforcement agencies will form a bulwark against unlawful retaliation.*

Previously, while there was a Memorandum of Understanding (MOU) between the agencies, none connected the NLRB, EEOC, and DOL as directly as the agencies are now due to this initiative. While there will be increased educational opportunities for employers, there is also an increased likelihood that the initiative will uncover evidence of more acts of retaliation, triggering scrutiny by all three agencies. With this coordinated effort, there is a possibility of increased litigation in these areas, which could include injunctive relief and expanded remedies for violations. With injunctions and restraining orders, there is an increased chance of stopping employer retaliation early and often.

Additionally, the agencies intend to broadly interpret what constitutes retaliation, which could include termination, disciplinary actions, poor references to former employees, false accusations of poor performance, and threats related to immigration status.

While the agencies aim to address a broad range of racial and economic injustice, their substantial focus appears to be protecting immigrant workers. There is potential for the NLRB to seek U and T visa petitions for workers who come forward to file charges or for those serving as witnesses of retaliation.

Lawyers in our Consumer Fraud & Commercial Litigation Section are well-versed in investigating and pursu-

ing employment retaliation claims. We are monitoring the outcomes of this initiative and hope to see these actions by the NLRB, EEOC, and DOL put a stop to retaliation against employees.

Sources: EEOC, JD Supra, National Law Review, Employer Labor Relations

Stop Working, Receive Benefits: Second Circuit Ruling Sides With Pension Plan

According to the Second Circuit court of appeals, employees must stop working as a condition to receive early retirement benefits. In *Metzgar v. U.A. Plumbers and Steamfitters*, a three-judge panel held that the Employee Retirement Income Security Act (ERISA) was not violated when plan administrators required participants to "separate from all employment with a contributing employer before receiving pension benefits." The plan administrators interpreted the plan to require such separation, while the workers alleged they were unlawfully forced to choose between keeping their pension or their jobs.

This dispute began in 2011 when seven workers were drawing pension benefits while still employed, but plan administrators suddenly determined the Internal Revenue Code did not allow workers to simultaneously draw a salary and pension benefits. The plan gave full and exclusive discretionary authority to plan administrators to determine questions of coverage, and before the 2011 change, workers who were over 55 were able to draw from their pension in addition to being compensated for work in non-disqualifying employment. The administrators reviewed Internal Revenue Code requirements and believed the term "retirement" meant to sever employment instead of changing from a disqualifying to a non-disqualifying role.

Plaintiffs argued this interpretation would render the plan's provision meaningless, which allows post-retirement employment as long as such employment is in a non-disqualifying role. The employees claimed the changed interpretation violated ERISA's anti-cutback rule and that the plan administrators breached their fiduciary duty and wrongly denied them their benefits.

Central to the dispute is the court's deferral to the plan administrator's interpretation of the terms and requirements contained within the plan. Since the plan in its text placed discretionary authority with its administrators, the court would only disturb their conclusion if it was found to be arbitrary and capricious. The court explained that it would only consider the interpretation arbitrary and capricious if it was "without reason, unsupported by substantial evidence or erroneous as a matter of law."

The appeals court further explained that in holding such interpretation as reasonable, they are not suggesting it is the only reasonable interpretation. Their job, the judges clarified, is not to weigh which interpretation is more reasonable but to determine if the interpretation given is arbitrary and capricious. If followed by other circuits, this ruling has the potential to shift considerable power to plan administrators and their "reinterpretation" of plan requirements.

For any questions or more information on this issue, contact James Eubank or Rebecca Gilliland, lawyers in our Consumer Fraud & Commercial Litigation Section, at 800-898-2034 or by email at James.Eubank@BeasleyAllen.com or Rebecca.Gilliland@BeasleyAllen.com.

The Beasley Allen Employment Litigation Team

The following lawyers are on the Employment Litigation Team at Beasley Allen: 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.

XV.
PREMISES LIABILITY LITIGATION

A Result Coming From The Callaway Case In Georgia

If you look closely, you will find that many streets across the United States are named after influential people or significant events. In a prior issue of the *Report*, we wrote about a tragic case involving Auriel Callaway, a pregnant mother. She was tragically killed in a rain of gunfire at the Clarke Gardens Apartment complex where she lived. We had the privilege of representing the family of Auriel Callaway, including her then three-year-old son, who was walking alongside his mother when a stray bullet hit her.

Auriel was beloved in her community, and recently, the Athens community honored her by renaming a road in Athens, Georgia, after her. Formerly Carriage Court, the road leading into Clarke Gardens will now be named "Thumpa Avenue" after the nickname friends and family used to refer to Auriel lovingly. Athens-Clarke County Commissioner Mariah Parker spoke to a crowd of Thumpa's friends and family on Dec. 23, 2021, after the community rallied to have the street renamed.

Sadly, this shooting should have never happened. Notwithstanding numerous prior instances of violent conduct in the complex, the owners and management took no meaningful action to boost the security of the property. The result was a mostly peaceful group of residents being tormented by a few troublemakers and their violent friends.

In these circumstances, owners and management must be accountable for their properties because failure to do so means the properties will become breeding grounds for violent crime in the communities and surrounding homes and businesses. While most businesses are responsible, Beasley Allen lawyers are dedicated to holding those who are not accountable for the loss of life and heartbreak when innocent people are killed or hurt on the premises.

If you are interested in learning more about premises liability or negligent security, contact Parker Miller, a lawyer in our Atlanta office who is a leader in litigation involving premises liability and negligent security, at Parker.Miller@BeasleyAllen.com or 800-898-2034.

Two Settlements In The Surfside Collapse Case In Florida

There have been two significant settlements in the massive litigation arising from the Champlain Towers South condominium collapse in Surfside, Florida. The 12-story tower collapsed in the early morning hours of June 24, killing 98 people. One settlement would allocate $83 million to those who lost property in the disaster. This was strictly an economic loss settlement. The second settlement involves death cases and cases for bodily injury.

The Economic Loss Settlement

Eleventh Judicial Circuit Judge Michael Hanzman in Miami-Dade County said the first settlement, which would avoid a potentially protracted battle between economic loss plaintiffs and the families of wrongful death victims, was negotiated by competent counsel and "passes muster with flying colors."

The settlement, if given final approval, would allow the court to avoid having to litigate over Florida Statute 718.119, which says unit owners "may be personally liable for the acts or omissions of the association in relation to the use of the common elements," up to the value of their units, when damages against the condominium association exceed the limit of its liability coverage.

According to the order, the settlement would allow victims with only property loss claims to receive some compensation and exit the litigation with a release of any potential claims under 718.119, reducing their risk. Any owners who are unhappy with the settlement would be able to opt-out. Judge Hanzman said:

This settlement mitigates both sides' litigation risk, allows victims to begin receiving much-needed compensation, and appears eminently fair and reasonable.

The Second Settlement

The second settlement involved death and general injury claims. The Miami Herald reported that the victims of the Champlain Towers South collapsed, and three major defendants agreed to settle for a total of $55.55 million. According to the Miami Herald's breakdown of the settlement terms, payments (all of which will be paid by the defendants' insurance firms) will be paid as follows:

- The law firm Becker, which represented Champlain South's condo association before the collapse, will pay $31 million. Engineering firm Morabito Consultants, hired to inspect Champlain South for its 40-year recertification, will pay $16 million.
- DeSimone Consulting Engineers, which served as the structural engineer for a luxury condo built just feet away from Champlain South called Eighty Seven Park, will pay $8.55 million.

Plaintiffs claimed Becker lawyers were "callous, reckless, and [showed] conscious disregard" for the safety of Champlain South residents and argued that Becker "had knowledge of complaints from residents regarding the building's condition for years before the collapse," still, they took no action to address those concerns.

The DeSimone involvement in the settlement is significant because, as the Miami Herald explained, "it is the first of the defendants associated with Eighty Seven Park to settle. The plaintiffs have partially blamed construction at Eighty Seven Park for the collapse" and have sued additional firms that worked on the project, as well as the tower's condo association. Several other defendants associated with Eighty Seven Park, including the development team, continue to fight and defend the case.

Conclusion

Judge Hanzman must approve the settlement agreements. The firms' insurance companies will pay the settlement amount to the receiver in charge of the Champlain South condo association and distribute the funds among the plaintiffs at Judge Hanzman's direction. Plaintiffs include owners and renters of condo units and loved ones of the 98 people killed in the tragic collapse.

The plaintiffs also asked Judge Hanzman for permission to amend their complaint to add four new defendants related to Eighty Seven Park, the luxury residential tower next door that was completed in 2019. They want to add the project's architect, Stantec Architecture Inc.; Geosonics Inc., which provided vibration monitoring services for the building; Florida Civil Inc., which was responsible for producing the dewatering plans and procedures on the project; and the 8701 Collins Avenue Condominium Association Inc.

The plaintiffs have already named Miami-based developer Terra Group LLC, general contractor John Moriarty & Associates of Florida Inc., and consultants NV5 Inc. and DeSimone Consulting Engineers LLC in connection with the Eighty Seven Park project.

According to Law360, "The victims allege that the Eighty Seven Park developers improperly gained the right to build higher and bigger, including by 'buying' a street between the two properties from the city of Miami Beach." Plaintiffs also allege that "the developers performed destructive work dangerously close to Champlain Towers, causing tremors that cracked walls and tiles, and sloped the Eighty Seven Park property in ways that made water flow into the Champlain Towers site."

Source: Law360.com and *Miami Herald*

Apartment Manager And Complex Ordered To Pay $3 Million Over 2016 Homicide

The parents of a man shot to death at a St. Louis apartment complex in 2016 have tried their case, and they received a $3.026 million jury verdict returned against the complex's manager and owner. Last month a St. Louis jury found Mills Properties Inc. and its subsidiary Park Val Partners LLC responsible for the death of 26-year-old Jose Garcia Jr. in March 2016. It ordered the companies to pay his parents, Celsa and Jose Garcia Sr., $3 million. The parents sued Mills and Park Val in 2018, alleging negligence and lax security at the complex.

Mills Properties manages more than 25 apartment complexes in St. Louis and Columbia, Missouri. The victim was fatally shot by Adnan Husidic at the 188-unit Park Val Apartments in the doorway of a woman's apartment. The woman had recently broken up with Husidic and had begun dating the victim.

Husidic, who was acquitted of murdering Garcia Jr. in 2017, claimed he killed Garcia Jr. in self-defense. The civil lawsuit accused Mills Properties, Park Val and Husidic of wrongful death, negligence and battery. According to the *St. Louis Post-Dispatch*, the Garcias "claimed the complex was unsafe, allowed crime to fester there for years and failed to fix the locks on the outer door of the woman's apartment building, enabling the shooter Hu-

sidic to enter and kill Garcia, Jr." The Garcias and Husidic previously reached a confidential settlement.

The *St. Louis Post-Dispatch* also reported that "[h]alf of the $3 million in punitive damages against Mills Properties and Park Val goes to the state Tort Victims' Compensation Fund as required by Missouri law." Kevin Carnie Jr., a lawyer with the firm of Simon Law, located in St. Louis, represented the Garcia family.

Source: *St. Louis Post-Dispatch*

XVI.
THE PARAQUAT LITIGATION

The Court's Ruling On Defendants' Motions To Dismiss In The Paraquat MDL

The Paraquat Products Liability Litigation MDL was formed on June 8, 2021, (Case No. 3:21-MD-3004), with Chief Judge Nancy J. Rosenstengel of the Southern District of Illinois presiding.

On Feb. 14, 2022, Judge Rosenstengel entered an order on partial motions to dismiss filed by defendants Chevron and Syngenta. The court's order can be found on the court's web page regarding the Paraquat Litigation: http://www.ilsd.uscourts.gov/mdl/mdl3004.aspx. As discussed below, the motions to dismiss were granted in part and denied in part.

Defendants argued that many claims should be dismissed because they are time-barred by applicable statutes of repose in six states: Illinois, Georgia, Connecticut, Iowa, Indiana, North Carolina. In a 33-page order, the court addressed each state's law and allowed the claims in these states to go forward. Plaintiffs alleged that Syngenta and Chevron fraudulently concealed the dangers of using paraquat.

Specifically, plaintiffs argued that "[d]efendants knew or should have known that paraquat was a highly toxic substance that can cause severe neurological injuries and impairment, and plaintiffs had no reason to suspect that working with paraquat could cause them to develop Parkinson's disease due to defendants' efforts to conceal the harmful nature of the product." (Order, p. 5).

The court agreed with the plaintiffs and held that the defendants' fraudulent concealment could toll the statutes of repose for Illinois, Georgia, Connecticut, and Iowa. Further, in Iowa, Indiana, and North Carolina, statutes of repose do not apply to allegations involving exposure to an inherently dangerous substance that causes a latent disease.

The court further held that the plaintiffs' public nuisance claims were repetitive of their product liability causes of action and dismissed all public nuisance claims.

Beasley Allen lawyer Julia A. Merritt is a member of the Plaintiffs' Executive Committee on the Paraquat MDL. The Paraquat Litigation Team would be happy to answer any questions about the status of this litigation or the intricacies of the intake process, including the Plaintiff's Assessment Questionnaire. Beasley Allen continues accepting cases where clients applied paraquat and have Parkinson's Disease or Parkinson's-like symptoms. Contact Julia Merritt if our firm can assist you in your 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.

XVII.
WORKPLACE LITIGATION

Jury Verdict In Seattle Crane Collapse Lawsuit

A jury awarded over $150 million last month to the families of two people who died and the three people injured when a crane collapsed in Seattle on April 19, 2019. The crane was toppled by gusting winds after workers removed the pins holding the 20-foot sections together too soon, causing the tragedy that state regulators called "totally avoidable," the *Seattle Times* reported. Two ironworkers fell to their death. Two others were killed as they were traveling by vehicle in the area when the crane collapsed – Alan Justad, a former city planning official, and Sarah Wong, a 19-year-old Seattle Pacific University student, all fell to their deaths.

Justad and Wong's families filed wrongful death suits against the companies involved in crane operations at the Google building project. Their cases were included in the jury's verdict on March 14. The verdict included three others who were injured or had their vehicles struck by the crane or debris. The jury found three companies — Omega Morgan, Northwest Tower Crane Service and Morrow Equipment Co. responsible and to have caused $150 million in damages. But Morrow Equipment — assigned 25% of the blame by the jury — was not a defendant and thus not involved in the trial and will not have to pay anything as a result of the verdict. However, separate claims in another suit are being pursued against Morrow Equipment.

The collapse took place at South Lake Union, a Google campus and was the largest construction project in Seattle at that time. The jury assigned 75% of the responsibility for the collapse to two of the defendants – Northwest Tower Crane and Omega Morgan. The site's ironworkers were from Northwest Tower Crane, and the mobile crane used to disassemble the tower crane was supplied by Omega Morgan. The building being demolished was 300 feet high and located on a busy street. Two of the victims killed were in a uber car.

Lawyers for the plaintiffs credited Northwest Tower Crane and Morrow Equipment Co. for acknowledging some responsibility and changing practices in response to the collapse. But Omega Morgan was criticized for consistently denying any blame. Wong's family will receive about $72 million, Justad's will receive about $52 million, and the remainder will be divided among the three people injured in the tragedy.

The families of the two ironworkers, Andrew Yoder and Travis Corbet, have filed a separate lawsuit set for trial in late May.

Source: *Seattle Times*

On-The-Job Injuries – Assumption Of The Risk vs. Comprehension And Appreciation Of The Danger

While an individual can sustain catastrophic injuries in almost any setting, an individual's place of work may be the most likely as that is often where they spend a large portion of their active waking hours. Beasley Allen lawyers have handled a myriad of such cases over the years, including cases in which an employee is harmed by defective industrial equipment while attempting to perform their job duties.

In such cases, defense attorneys are apt to assert that the employee "assumed the risk" in performing an inherently dangerous job duty or using an inherently dangerous piece of equipment.

In such cases, it is important to keep in mind that for an injured party to have assumed the risk, they must have known the facts that created the danger and comprehended and appreciated the nature of the danger they confronted. *Dean v. Toyota Indus. Equip. Mfg., Inc.*, 246 Ga. App. 255, 258, 540 S.E.2d 233, 236 (2000)(citation omitted).

For example, in *Dean*, the Georgia Court of Appeals held that a forklift manufacturer was precluded from summary judgment on the issue of assumption of risk in a product liability action against a forklift manufacturer where the plaintiff was struck by a forklift when he stepped out from behind a wall at his place of work. The court issued this ruling despite the evidence that the employee (1) knew the forklifts had no backup alarms, (2) knew they were dangerous without the alarms, and (3) had warned other employees to watch for forklift traffic. The fact that the plaintiff pointed to evidence that he had no idea the forklift was in the vicinity at the time of the accident was still sufficient to create a material issue of fact.

This is an extremely important second step of the analysis and can be a valuable tool in combatting a defense lawyer's attempts to prevent a case from reaching a jury based on the "assumption of the risk" defense.

XVIII.
TOXIC TORT LITIGATION

PFAS Litigation Update

Beasley Allen lawyers have learned in ongoing litigation handled by the firm that manufacturers continue to face new liabilities related to forever chemicals, also known as PFAS. Lawyers in the firm have handled a number of cases involving PFAS and have several ongoing at present.

On Feb. 28, Colorado Attorney General Phil Weiser filed a lawsuit on behalf of the people of Colorado against chemical manufacturers of AFFF firefighting foam.[2] This suit joins dozens of similar lawsuits filed by cities and states seeking recovery for the cost of clean-up, restoration, and monitoring related to contaminated sites. [3]

Bucks County, Pennsylvania, and the district attorney have filed a similar lawsuit that includes counts of deceptive trade practices and civil conspiracy.[4] The local water utility has already had a pending lawsuit since 2018 to recover the cost of removing PFAS from drinking water. [5]

At least two class actions for deceptive trade practices have been filed against the cosmetics industry, including CoverGirl, Burt's Bees, bareMinerals, and L'Oreal. Plaintiffs allege that these companies' cosmetic products contain PFAS that can be absorbed into the bloodstream. These companies often promote their products as "natural," "clean," and "free of harsh chemicals," which plaintiffs allege misleads buyers. Federal efforts are also underway by the introduction on June 17, 2021, of the No PFAS In Cosmetics Act. No hearing on this act has been set. [6]

Judge Orders Second Wave Of 500 Plaintiffs To Prepare For Trial

Will Sutton, a lawyer in our Toxic Torts Section, represents several veterans in the second "wave" of 500 plaintiffs selected to prepare their cases for trial against 3M in the earplug litigation. Other lawyers around the country are preparing approximately 1,000 cases for trial against 3M involving similar claims on behalf of veterans. The most recent jury awarded $110 million in its verdict to two service members.

U.S. District Judge M. Casey Rodgers, the Florida federal judge overseeing the multidistrict litigation over veterans' claims that 3M Co. earplugs damaged their hearing, recently ordered a second "wave" of 500 cases to be prepared to go to trial. The judge set 500 more cases to be prepared for discovery, bringing the total number of cases being worked on for trial to 1,000, following a Nov. 1, 2021, order. Judge Rodgers also set deadlines for depositions and discovery requests in the cases brought by service members and veterans. These plaintiffs allege they have experienced tinnitus and hearing loss stemming from 3M's CAEv2 earplugs.

The plaintiffs also argue that 3M and a subsidiary, Aearo Technologies LLC, supplied defective CAEv2 earplugs to the military. Defendant 3M counters that the military bears some responsibility for how the earplugs were designed and delivered. Despite having some influence over the earplug, "the U.S. Army made it clear it would only buy the device if it could be worn under a helmet and stored in a military traveling case," Law360 reported. Judge Rodgers ruled 3M can't tell juries the government dictated or approved any aspect of the earplug's design or its instructions and warnings.

3M recently appealed the first verdict of the 11 trials so far to the Eleventh Circuit to try ending the litigation, which has become the largest federal multidistrict litigation in U.S. history. 3M argued that veterans' state-law product defect and failure-to-warn claims were preempted due to 3 M's role as a federal contractor under the government contractor defense.

The veterans' claims involve allegations that the defective earplugs caused significant hearing loss and tinnitus. They further allege that 3M knowingly sold the earplugs to the United States military without disclosing defects that hampered the effectiveness of the hearing protection device.

[2] https://coag.gov/press-releases/2-28-22/

[3] https://coag.gov/press-releases/2-28-22/

[4] https://www.buckscountycouriertimes.com/story/news/2022/03/01/bucks-county-lawsuit-against-3-m-other-pfas-forever-chemicals-manufacturers/9322524002/

[5] https://www.buckscountycouriertimes.com/story/news/2022/03/01/bucks-county-lawsuit-against-3-m-other-pfas-forever-chemicals-manufacturers/9322524002/

[6] https://www.jdsupra.com/legalnews/pfas-in-cosmetics-continue-to-draw-4783959/

In July 2018, 3M reached a $9.1 million settlement over the Combat Arms earplug problems with the Department of Justice. This resolved claims that 3M defrauded the government by knowingly selling the defective earplugs.

The multidistrict litigation was initially created *in April 2019 and has proceeded rapidly to the trial stage in many lawsuits. The case 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.

If you have any questions, contact Will Sutton at 800-898-2304 or by email at William.Sutton@BeasleyAllen.com.

Sources: Reuters and Law360.com

Long Beach And Others Get Approval Of $550 Million Monsanto PCB Settlement

A $550 million class settlement received preliminary approval from a federal judge in California. The settlement was reached by Long Beach and other local governments with Bayer, AG's Monsanto Co. and subsidiaries of Pfizer and Eastman Chemical. The settlement, if approved, will resolve claims by the localities that they acquired increased costs due to Monsanto's contamination of waterways.

In an order on March 14, U.S. District Judge Fernando M. Olguin granted preliminary approval to the proposed nationwide settlements that would resolve claims that Monsanto's manufacture and supply of polychlorinated biphenyls (PCBs) contaminated the cities' water, necessitating costly treatment to remove the chemicals. Judge Olguin said the deal is a "fair and reasonable outcome" for the class members.

Along with Long Beach, the cities of Chula Vista, San Diego, San Jose, Oakland and Berkeley, California, Spokane and Tacoma, Washington, and Portland, Oregon; the counties of Los Angeles and Baltimore; the Port of Portland, Oregon; and the mayor and City Council of Baltimore filed the operative settlement in June 2021. Judge Olguin, in his order, appointed the localities as class representatives for the more than 2,500 settlement class members affected by water impaired by PCBs. Judge Olguin said:

> *The named plaintiffs, through their in-house counsel, 'have been actively involved throughout the litigation, including the evaluation of the claims, the preparation of the complaint, the preparation, organization and production of discovery, [and] the technical expert-intensive development of the cases.'*

Under the settlement agreement, three funds will be created to compensate the three main identified harms and a fourth to deal with special needs and costs:

- $42.8 million for the need to monitor PCBs in stormwater,
- $250 million for the need to comply with the Clean Water Act's National Pollutant Discharge and Elimination System and
- $150 million for sediment remediation.
- The fourth fund of $107 million created will compensate "special needs and costs of class members."

According to Law360, "Monsanto also agreed to pay for all costs and expenses needed to implement the settlement, including the administration process. And class counsel — Baron & Budd PC, Gomez Trial Attorneys and Gordon Wolf & Carney — agreed to request no more than $98 million in attorney fees, which Monsanto will pay separate from the settlement."

After several unsuccessful attempts to get initial approval of the settlement, Judge Olguin granted the motion, finding the terms of the agreement to be fair and that the release of liability is now not too broad.

Collectively, the plaintiffs filed the class action in the Central District of California. They asked for relief to cover the costs related to addressing the contamination, including "testing and monitoring water sources, removing PCBs from sediment areas, reducing PCB levels in stormwater and complying with any regulations that require additional measures."

Until Congress outlawed the chemicals in 1979, PCBs were used in many products such as paint and ink to hydraulic fluids and industrial equipment. PCBs are known carcinogens that "weaken the immune system, decrease resistance to viruses and infections, and hurt the reproductive, nervous, neurological and endocrine systems. Studies in animals showed that even the smallest level of PCBs will affect the immune system." Along with Monsanto, the plaintiffs named as defendants Eastman Chemical Co. subsidiary Solutia and Pfizer Inc. subsidiary Pharmacia.

A previous incarnation of Monsanto — referred to as "Old Monsanto" — ran businesses focused on agricultural products, pharmaceuticals and nutrition, and chemical products. Pharmacia now runs the pharmaceuticals business, Solutia operates the chemical products business and "New Monsanto" runs the agricultural products business. Other localities, including Los Angeles County, the city of Los Angeles and Oakland, have filed similar public nuisance suits against Monsanto.

Long Beach and the other local governments are represented by Scott Summy, Carla Burke Pickrel and John P. Fiske of Baron & Budd PC, John Gomez of Gomez Trial Attorneys and Richard Gordon and Martin Wolf of Gordon Wolf & Carney, among others. Monsanto is represented by Mark D. Anstoetter and Brent Dwerlkotte of Shook Hardy & Bacon LLP. The case is City of Long Beach et al. v. Monsanto Co. et al., case number 2:16-cv-03493, in the U.S. District Court for the Central District of California.

Source: Law360.com

XIX.
CLASS ACTION LITIGATION

Beasley Allen Welcomes Fourth Circuit's Upholding $40 Million Class Settlement

The Fourth Circuit Court of Appeals rejected one policyholder's efforts to overturn a $40 million class action settlement, finding that the lower court in Maryland did not abuse its discretion in approving the agreement reached between the policyholders and Banner Life Insurance and William Penn Insurance Companies. Dee Miles, Rachel Minder, and Paul Evans, lawyers in our firm's Consumer Fraud & Commercial Litigation Section, helped negotiate the settlement on behalf of the plaintiffs in the class action lawsuit. Dee, who heads the section, had this to say:

> *We were confident that the objector, in this case, didn't have a meritorious objection to the class, and it is*

unfortunate that the class members' relief was delayed as a result of a meritless objection. Nonetheless, we are thrilled that the policyholders will now be made whole by this certified and now-affirmed class settlement.

The Fourth Circuit's three-judge panel refused to part from the common standard for class action settlements on appeal, giving substantial deference to the lower court. The Fourth Circuit stated that this case could be the poster child for the deferential standard because the case was "chock-full of the most esoteric principles of life insurance accounting imaginable." The 25-page published opinion clarified the standard in the Fourth Circuit for objections to class settlements as follows: Objectors must specify and support their objection, while the proponents of the settlement must demonstrate it is fair, reasonable, and adequate despite the objection. In affirming the approval of the settlement, the Fourth Circuit held:

The district court did a commendably careful job in evaluating the Allen Trust's arguments and determining that they did not justify refusing to certify the class.

The named plaintiffs, represented by Beasley Allen lawyers and co-counsel, alleged the companies unfairly increased the cost of insurance charges on certain universal life insurance policies in 2015. In May 2019, Maryland Federal District Court Judge Richard D. Bennett approved the $38.2 million class-wide settlement between plaintiffs and defendants Banner Life Insurance Co. and William Penn Life Insurance Co. This settlement consisted of more than 10,750 universal life policyholders.

However, before the Maryland court could give final approval, one policyholder objected to the settlement, the 1988 Trust for Allen Children (Allen Trust). The Allen Trust argued that the settlement releases but provides no compensation for the speculative damages termed "Deficit Account Harm." Such "harm" was the basis for a separate class action filed by the Allen Trust after the Banner Life/William Penn settlement was announced. Prior to granting final approval of the settlement, the district court permitted the Allen Trust discovery to assist in determining whether the objection was meritorious, which the Fourth Circuit acknowledged was "an extremely unusual occurrence" that was within the district court's discretion.

Beasley Allen and co-counsel from Geoff McDonald & Associates, The Finley Firm, Boles Holmes White and Paulson & Nace represented the named plaintiffs and successfully argued before the U.S. District Court Judge that the settlement was fair, reasonable, and adequate to all class members, notwithstanding the lone objector's arguments. Further, the so-called "Deficit Account Harm" was nothing more than negative policy account value—an aspect known to and considered by plaintiffs Banner and William Penn during settlement discussions and in structuring the settlement ultimately reached.

The Allen Trust appealed to the Fourth Circuit, asking the court to allow the claims it raised in a separate lawsuit to proceed in individual litigation without regard to the overlapping factual predicate between the two suits. The named plaintiffs and defendants filed separate responses with the Fourth Circuit, asking it to affirm the district court's order. In affirming the district court's approval of the settlement as fair to the class, the Fourth Circuit recognized the "settlement was reached after an extensive motions practice, extensive discovery and investigation of Banner and William Penn policies by Plaintiffs' counsel and multiple settlement discussions and negotiations."

The case is *1988 Trust for Allen Children v. Banner Life Insurance Company*, case number 20-1630, in the U.S. Court of Appeals for the Fourth Circuit.

Sources: Law360.com

Ferrari Brake Defect Class Action Lawsuit

Class action lawyers in our firm's Consumer Fraud & Commercial Litigation Section recently filed a class action lawsuit against Ferrari North America, Inc., Ferrari N.V., Ferrari S.P.A., Robert Bosch, LLC, and Robert Bosch GMBH. The case involves defective master cylinders Ferrari installed in its 2010-2015 458 Italia, 2014-2015 458 Speciale, 2015 458 Speciale A, 2012-2015 458 Spider, 2016-2019 488 GTB, and 2016-2019 488 Spider vehicles (the "vehicles").

The class alleges that the vehicles' master cylinders leak brake fluid, causing the vehicles to lose all or partial braking ability. For example, plaintiff Jeffrey Rose was running errands on June 4, 2021, when his 2018 Ferrari 488GTB populated a "brake fluid low" message on the dash. Plaintiff Rose says he carefully and slowly drove his vehicle home, but when he attempted to apply the brakes in his driveway, his brakes were non-responsive, and his vehicle rolled into a pond.

The lawsuit also alleges the defendants have long known about the brake defect plaguing its vehicles, but they failed to remedy it or notify the consuming public. After many consumer complaints submitted to the National Highway Traffic Safety Administration (NHTSA) and highly publicized road accidents, Ferrari recalled the vehicles on Oct. 23, 2021. However, the recall was untimely and offered an inadequate repair that still places consumers at risk of losing all or some of their braking ability. Hence, our lawyers filed the class complaint to provide consumers with adequate remedies.

For those who want to follow the case, the lawsuit is *Jeffrey Rose v. Ferrari North America, Inc., Ferrari N.V., Ferrari S.P.A., Robert Bosch, LLC, and Robert Bosch GMBH* and is filed in the U.S. District Court for the District of New Jersey. The plaintiff and putative class members are represented by Dee Miles, Clay Barnett, Mitch Williams, and Dylan Martin from our firm, and lawyers from Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., Cuneo Gilbert & Laduca, LLP, and Burger Law, LLC. We will keep our readers posted on any new developments in this class case.

Class Action Settlements

There have been a number of other significant class action settlements and one key U.S. Supreme Court decision during March, with several of them having received court approval. We will include some of these cases below.

Judge Approves $264 Million Settlement Ending Mylan EpiPen Price-Hike Litigation

U.S. District Judge Daniel D. Crabtree preliminarily approved a $264 million settlement between healthcare company Viatris (previously Mylan) and a certified class of consumers alleging they overpaid for EpiPen or authorized generic versions. The Kansas judge signed the order on March 14 that is expected to end claims that Mylan and Pfizer Inc. colluded to block generic versions

of EpiPen from entering the market. The drug is used in emergencies to treat severe allergic reactions.

Judge Crabtree ordered a fairness hearing for July. However, the settlement ends claims brought on behalf of class members nationwide who purchased the epinephrine auto-injectors indirectly from Mylan Pharmaceuticals Inc. Law360 reported that the plaintiffs alleged they paid higher prices because Mylan had conspired with EpiPen›s manufacturer Pfizer Inc. to block cheaper, generic versions of the product. The settlement provides full or partial reimbursement to those who bought between Aug. 24, 2011, and Nov. 1, 2020.

The consumer claims are part of broader multidistrict litigation that commenced after the price of an EpiPen climbed to $600 in 2016 from the $100 it had been less than a decade earlier.

The suit claimed that Mylan and Pfizer had "preyed" on consumers for nearly a decade, "bilking them for hundreds of millions of dollars" because the companies had blocked competition to the EpiPen. The result of the "illegal scheme to monopolize the market" allowed Mylan to charge wildly-inflated prices for the EpiPen.

The class plaintiffs are represented by Paul J. Geller, Stuart A. Davidson, Bradley M. Beall, Brian O. O'Mara, Arthur L. Shingler III and Lea Malani Bays of Robbins Geller Rudman & Dowd LLP, Lynn Lincoln Sarko and Gretchen Freeman Cappio of Keller Rohrback LLP, Elizabeth C. Pritzker and Jonathan K. Levine of Pritzker Levine LLP, Matt Tripolitsiotis and Duane L. Loft of Boies Schiller Flexner LLP, W. Mark Lanier, Rachel Lanier and Cristina Delise of The Lanier Law Firm, Warren T. Burns and Spencer Cox of Burns Charest LLP and Rex A. Sharp, Ryan C. Hudson and Ruth Anne French-Hodson of Sharp Law LLP.

The case is *In re: EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation*, case number 2:17-md-02785, in the U.S. District Court for the District of Kansas.

Source: Law360.com

Record $50 Million Settlement Reached In Telemarketing Suit

Fifth Third Bank, Vantiv Inc. and National Processing Co. will pay out an "unprecedented" $50 million to settle the remaining claims in litigation over recorded telemarketing calls. A motion for preliminary approval was filed in Illinois federal court last month. The settlement is nearly double what Wells Fargo agreed to pay in the case and three times larger than the previous record settlement under the California Invasion of Privacy Act, according to the motion.

In the suit, business owners alleged that banks including Fifth Third and Wells Fargo Bank NA hired telemarketers International Payment Services LLC and Ironwood Financial LLC to sell credit card and debit card payment processing services to businesses across the country. The companies then called merchants asking about their monthly or annual credit or debit card sales volume without disclosing that the calls were recorded. The proposed settlement will apply to approximately 313,215 potential members who received about 1,153,324 recorded phone calls between May 2014 and July 2016. Under the settlement, individuals can submit a claim of up to $5,000 for each call they receive.

U.S. District Judge Rebecca Pallmeyer gave her final approval to a $28 million settlement between Wells Fargo and a class of customers in December. That settlement resolved claims against Wells Fargo and financial services company First Data Merchant Services LLC. That settlement pays up to $5,000 for each call a settling class member received between March 7, 2011, and May 7, 2014. Wells Fargo paid the settlement administrator the entire amount after Judge Pallmeyer gave the agreement her early approval. Class members are now set to get paid since final approval has been granted.

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

The case is *Wang et al. v. Fifth Third Bank et al.*, case number 1:16-cv-11223, in the U.S. District Court for the Northern District of Illinois.

Source: Law360.com

$84 Million Settlement In Overbilling Suit

Central Payment Co. LLC, a payment processing company, has agreed to pay in settlement up to $84 million to resolve merchant allegations of overbilling. The settlement was reached shortly before a scheduled trial. According to Law360, the company "agreed to establish a settlement fund of up to $84 million to pay cash benefits to a class of merchants who accused the company of overcharging for its payment processing services. Central Payment was acquired by payments company Total System Services Inc., also called TSYS, which has itself merged with Global Payments Inc."

The class of merchants, led by a pair of small businesses called Custom Hair Designs By Sandy LLC, and Skip's Precision Welding LLC, sought preliminary approval of the proposed settlement. The approval motion said:

> *By any objective measure, this settlement is fair, reasonable and adequate, and merits preliminary approval. The settlement provides much-needed, immediate relief to small businesses, many of which have struggled through the pandemic.*

Both merchants had retained Central Payments to process credit and debit card payments made by their customers but alleged that Central Payments charged fees that weren't in line with the terms of its contracts. They and a class of merchants who contracted with Central Payments accused the company of racketeering, breach of contract, fraudulent concealment and unfair dealing, court filings show.

Under the terms of the settlement, Central Payment will pay a minimum of $58.8 million. The settlement fund includes the benefits for the merchants as well as administrative costs and attorneys' fees, among other expenses. A representative for TSYS and Global Payments said that the settlement resolved an outstanding matter from before TSYS acquired Central Payment. The representative told Law360:

> *This settlement resolves pre-existing liabilities at Central Payment that TSYS inherited through its acquisition and was fully accrued for financially. We resolved this issue solely to avoid the time and expense of litigation. It is immaterial.*

Custom Hair Designs and the class are represented by Tyler W. Hudson, Eric D. Barton and Melody R. Dickson of Wagstaff & Cartmell LLP and by E. Adam Webb and

Matthew C. Klase of Webb Klase & Lemond LLC.

The case is *Custom Hair Designs By Sandy LLC et al. v. Central Payment Co. LLC*, case number 8:17-cv-00310, in the U.S. District Court for the District of Nebraska.

Source: Law360.com

KPMG And Investors Reach $35 Million Settlement Over Miller Energy Audit

Accounting giant KPMG has agreed to pay $35 million to a class of Miller Energy Resources Inc. investors who said the firm helped the now-defunct company falsify financials about oil and gas assets. A proposed settlement was filed in Tennessee federal court. Law360 reported that "[t]he class asked the court to approve the settlement, arguing that the agreement follows an extensive, six-year litigation process that included discovery and lengthy negotiations between the parties."

The original suit was filed in 2016, alleging Miller Energy paid $4.45 million for oil and gas assets in Alaska in 2009 that it claimed to be worth $480 million. Investors said two years after the purchase, they pressured Miller Energy to hire an accounting firm, and during that time, the U.S. Securities and Exchange Commission also began questioning the value of the assets.

Miller Energy hired KPMG, which endorsed the figures. But, when it became public that KPMG had understated extraction costs, Miller Energy's stock declined in value and led to the company being delisted from the New York Stock Exchange in 2014.

In their suit, the investors claimed that KPMG's actions had, in effect, shielded the energy company from investor scrutiny by vouching for its financial statements instead of exposing its fraud. In 2017, the SEC fined KPMG $6.2 million for its audit failures.

The case is *Cosby v. Miller et al.*, case number 3:16-cv-00121, in the U.S. District Court for the Eastern District of Tennessee.

Supreme Court Rejects Google's Appeal In Investor Suit

The U.S. Supreme Court on March 7 refused to accept Google's appeal of a Ninth Circuit decision. A shareholder suit had accused 'the tech giant of concealing software issues that exposed half a million users' data," according to Law360. The High Court refused Alphabet Inc.'s (Google's parent company) certiorari petition to reverse a lower court's ruling that vacated the dismissal of shareholder class action filed in October 2018. Shareholders filed the suit after Google "admitted to finding and patching a software 'bug' months earlier." The security oversight allowed third-party app developers access to the private profile data of 500,000 users of the tech company's now-defunct Google+ social media platform.

Google said it declined to disclose the incident as soon as it was discovered because the data did not trigger reporting standards, but the state of Rhode Island, which is suing on behalf of its employees' retirement system, claims the information was material and concealed from them in an effort to keep Google›s stock price artificially inflated.

A California federal judge dismissed the suit in early 2020, saying the statements being challenged as «misleading» were just generic affirmations about the importance of privacy to users and Google›s general commitment to transparency and data protection and thus «too vague.» But a Ninth Circuit panel decided last summer to partially revive the lawsuit, saying that at least two of the challenged statements, pulled from SEC filings published after the bug was allegedly discovered, failed to disclose the bug when discussing cybersecurity risks. The appeals court panel also concluded:

> *The market reaction, increased regulatory and governmental scrutiny, both in the United States and abroad, and media coverage alleged by the complaint to have occurred after disclosure all support the materiality of the misleading omission.*

The full Ninth Circuit declined to rehear the case en banc, leading Google to appeal to the Supreme Court in October. Google continued to argue that risk disclosures should focus on the possibility of future harm and not on an event that has already occurred. According to the petition, there is currently a circuit split over whether "risk factor" disclosures should be "forward-looking only, or also must include past information." Google said it was asking for "clarity." The Supreme Court declined Google's petition.

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 and Commercial Litigation Section, leads the effort. Other lawyers in the section who handle class action cases are Demet Basar, Lance Gould, Clay Barnett, James Eubank, Mitch Williams, Rebecca Gilliland, Rachel Minder, Paul Evans and Dylan Martin. They can be reached at 800-898-2034 or by email at: Demet.Basar@BeasleyAllen.com, Lance.Gould@BeasleyAllen.com, Clay.Barnett@BeasleyAllen.com, James.Eubank@BeasleyAllen.com, Mitch.Williams@BeasleyAllen.com, Rebecca.Gilliland@BeasleyAllen.com, Rachel.Minder@BeasleyAllen.com, Paul.Evans@BeasleyAllen.com and Dylan.Martin@BeasleyAllen.com.

XX.
THE CONSUMER CORNER

FDA Investigates Abbott Laboratories' Baby Formula Linked To Infants' Illnesses And Deaths

In February, the Food and Drug Administration (FDA) announced a recall and investigation of infant formulas manufactured by Abbott Laboratories Inc. After a number of consumer complaints; the agency began investigating the formulas to determine if they were the cause of Cronobacter sakazakii and salmonella infections in infants, resulting in at least two deaths. The FDA encouraged Abbott to expand the recall later in the month after the second death was reported. The Centers for Disease Control and Prevention (CDC) is also investigating the tainted formula.

The formula is shipped throughout the country, and the cases have come from three different states. All the patients are said to have consumed powdered infant formula produced from Abbott Nutrition's Sturgis, Michigan facility. Abbott initially recalled its Similac, Alimentum and EleCare

powdered infant formulas due to potential contamination by Cronobacter and salmonella. The FDA confirmed that the most recent patient consumed Abbott Nutrition's Similac PM 60/40 product with the lot code 27032K800. The agency explained that this is a specialty formula for certain infants who would benefit from lowered mineral intake and was not included in the previous recall. Abbott expanded the recall to include this specialty blend of formula.

Law360 reported that FDA onsite inspectors examined environmental samples from the Michigan plant and discovered they were positive for Cronobacter sakazakii. Investigators also found internal records that indicate Abbott has disposed of products because of such contamination in the past.

The FDA advised consumers not to use Similac, Alimentum or EleCare powdered infant formula if the first two digits of its code are between 22 and 37; the code on the container includes "K8," "SH" or "Z2," and the expiration date is April 1 or later. The agency warned that Cronobacter causes severe, life-threatening infections (sepsis) or meningitis (inflammation of the membranes that protect the brain and spine). Cronobacter infection may also cause bowel damage and may spread through the blood to other parts of the body.

Frank Yiannas, FDA deputy commissioner for food policy and response said, "As this is a product used as the sole source of nutrition for many of our nation's newborns and infants, the FDA is deeply concerned about these reports of bacterial infections. We want to reassure the public that we're working diligently with our partners to investigate complaints related to these products, which we recognize include infant formula produced at this facility, while we work to resolve this safety concern as quickly as possible."

One parent whose daughter suffered adverse effects after ingesting the formula filed a proposed class action lawsuit in Florida federal court. According to Law360, Luis Alfredo Suarez filed the lawsuit on behalf of his daughter, identified in the suit as A.S. The suit alleges that after A.S. ingested formula from one of the tainted batches, she developed symptoms of gastrointestinal distress. The lawsuit says Abbott failed to keep the tainted formula from reaching the marketplace and consumers.

Sources: FDA and Law360.com

Appellate Court Panel Requires Amazon To Face Toxic Cream Suit

Last month, a suit demanding that Amazon include Proposition 65 warnings on certain products sold on its platform was revived by a California appellate panel. The products in question are face creams containing mercury. The three-judge panel agreed with plaintiff Larry Lee in its published opinion, finding that Lee's claims are based on Amazon's own conduct in exposing consumers to the creams, and Amazon failed to provide the warnings, as Law360 reported. The panel determined that Lee's claims are not blocked by protections of Section 230 of the Common Decency Act because the claims are not attempting to hold the retail giant as a speaker or publisher of third-party content. The panel said:

> *If a traditional retailer knew that the creams it sold in a brick-and-mortar store contained mercury, there would be no question that it would have some obligation to provide Proposition 65 warnings. Nothing in the text or purposes of the CDA suggests it should be interpreted to insulate Amazon from responsibilities under Proposition 65 that would apply to a brick-and-mortar purveyor of the same product. If that were the case, then Amazon would have a competitive advantage over brick-and-mortar that Congress didn't intend under the CDA. It would also counter the purposes of California's Proposition 65, which requires warnings for chemicals known to cause cancer or reproductive toxicity.*

The panel further noted that skin-lightening creams that contain mercury are more than likely to be made overseas. That's because the U.S. Food and Drug Administration bars using mercury in cosmetics, making it more likely that Amazon may be the only business that can be compelled to provide a Proposition 35 warning for these creams.

The panel also cited another California appellate opinion involving Amazon's liability for products sold on its website, *Bolger v. Amazon.com LLC*. That 2020 ruling held that Amazon is liable for a defective battery sold on the website because the online retailer put itself in the stream of distribution and should be treated the same as a brick-and-mortar retailer. Rachel Doughty of Greenfire Law PC, a lawyer for Lee, said in a statement:

> *This case represents a continuation of the sea change we are seeing in the law to finally reflect the reality of online marketplaces – both legislatively and in interpreting existing laws. The court looked at what voters intended when they adopted the Toxic Enforcement Act and determined it was that California consumers be warned of reproductive and cancer health risks prior to exposure, and found no basis to give Amazon a pass.*

Last year other appellate courts weighed in on the Amazon issue. In June, the Texas Supreme Court, answering a question certified by the Fifth Circuit, found that Amazon couldn't be held liable for defective products because it isn't a "seller" under state product liability law, as it doesn't hold the title to the products. Following that ruling, the Fifth Circuit said Amazon couldn't be held liable for a defective remote since it only controls the transaction process and the delivery.

Another appellate decision out of California in April expanded the Bolger ruling to hold that the retailer can be held liable for defective products sold on its Fulfilled by Amazon platform. In the instant case, the panel also reversed the lower court's conclusion that one test finding a high level of mercury in one unit of a skin-lightening cream is insufficient to conclude that other units of the same cream also contain mercury. The panel said:

> *Because it was the active ingredient, while there might be variation in the actual concentration of mercury from one unit or batch to another, there would not be units in which mercury was completely absent. Significantly, [Amazon's expert], too, agreed that the levels of mercury found in the tested samples indicated it was an intentional ingredient, not a contaminant.*

Lee is represented by Rachel S. Doughty and Jessica L. Blome of Greenfire Law and Jonathan Weissglass of The Law Office of Jonathan Weissglass. The case is Lee v. Amazon, case number A158275, in the Court Of Appeal Of The

State Of California, First Appellate District Division Two.

Source: Law360.com

XXI.
CURRENT CASE ACTIVITY AT BEASLEY ALLEN

A New Look At Case Activity At Beasley Allen

Our BeasleyAllen.com website provides the latest information on the current case activity at Beasley Allen. The list can be found on our homepage, top navigation, or the Practices page of our 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 the Cases page of our 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

It's important to know that Beasley Allen is a firm that only handles litigation for persons, companies and governmental entities that have been injured or damaged in some manner. All of us at the firm are humbled and pleased that our law firm has consistently been recognized as one of the country's leading law firms representing solely claimants involved in complex civil litigation. We consider that to be 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.

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.

Webinars

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

The Jere Beasley Report

We also consider *The Jere Beasley Report* to be a service to lawyers and the general public. We provide the *Report* at no cost monthly, 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 litigation sections of our firm by phone toll-free at 800-898-2034 to discuss any cases of interest or to get more information about the resources available to help lawyers in their law practice. To obtain copies of any of our publications, visit our website at BeasleyAllen.com/Publications.

XXIII.
PRACTICE TIPS

Interviewing Your Client To Identify Sources Of Potentially Relevant ESI For Preservation In Anticipation Of Litigation

By: Suzanne H. Clark, Mass Torts Discovery Counsel at Beasley Allen

One method of identifying ESI that is potentially relevant to litigation is to interview your clients regarding common sources of ESI in their possession, custody and control. Interviews may need to be held at various times in the case, including at case intake and, as necessary, throughout litigation when discovery requests are served on your client.

Below are topics and sources for attorneys to assess prior to the client interview, followed by sample interview questions for the client relating to identifying ESI and ESI sources. Attorneys should also take the opportunity to re-iterate the need for preserving relevant information during the ESI client interview.

Before the client interview, assess the pleadings and discovery requests to prepare to inform the client as to relevant case specific topics for identification and preservation. Next, prepare to inform the client as to relevant sources of information, including Electronically Stored Information ("ESI"), to be identified and preserved. ESI is used in Federal Rule of Civil Procedure 34(a)(1)(A) to refer to discoverable information "stored in any medium from which the information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form." Common relevant sources of ESI expand over time with changes in technology, and the below list is not comprehensive and should be supplemented as appropriate. Also, assess the pending discovery requests for specific sources of ESI requested by defendant(s).

Examples of ESI Sources:

- Emails
- Word documents
- Spreadsheets
- GIFs/JPGs
- PowerPoints
- Videos
- Calendar invites
- Contact Info
- Tweets
- Snapchat pics
- Facebook posts
- TikTok posts
- Instagram posts
- DELETED files
- "Slack" space
- Text Messages
- Temporary files
- SharePoint posts
- OneNote files
- Container files (zip)
- Peloton stats
- FitBit/AppleWatch
- Nest Data
- Ring Data
- CCTV footage
- Hard Drive
- Drives
- Network Drives
- Web Servers
- Phone
- Apps
- Geolocation
- Biometric Data
- Smart Watch
- Nest
- Ring
- Peloton
- Document Repositories
- MS Office Suite
- OneDrive
- OneNote
- SharePoint
- Third-Party Apps
- DropBox
- Doodle
- SurveyMonkey
- Google Docs
- Instant Messaging
- Ephemeral Data

Depending on the needs and requirements of your litigation and based on the clients' answers to the Client Interview Questions below, you may need to collect additional information from the client regarding email, social media, and application (i) accounts, (ii) usernames, and (iii) passwords. Physical, electronic devices may also need to be collected and accessed. You may also need to follow up with the client(s) regarding written permission (from themselves and other co-owners) to access and collect the information contained in these ESI Information Sources, including the above-described accounts and devices. This can all be done defensibly and securely through a third-party vendor or other means, depending on the case.

Sample Client Interview Questions re ESI Information Sources:

1. **What email, social media, smartphone or tablet apps have you used or are you using?**

- Are these personal accounts or work accounts?
- Do you communicate about litigation-related issues from work accounts?
- For what time period did you use the apps?
- Could they contain information related to the litigation?
- Who did you communicate with?
- Who else has access to view or modify this information?

2. **Have you posted, commented, liked, shared, messaged, or otherwise communicated about anything relevant to the claims alleged in this lawsuit?**

3. **Have you posted or otherwise communicated about anything relevant to the injuries alleged in this lawsuit on any injury forum?**

4. **What devices (computers, phones, tablets) have you used or are you using?**

- For what time period did you use them?
- Could they contain information related to the litigation?
- Who did you communicate with?
- Who else has access to view or modify this information?
- Where are these devices stored now?
- Are there any you no longer have access to?

5. **What storage devices or services (USB drives, CDs, DVDs, external hard drives, SD cards, thumb drives, remote or "cloud"-based storage, e.g., Dropbox, iCloud, OneDrive, Google Drive, etc.) have you used or are you using?**

(Repeat the above sub-questions, as appropriate.)

6. **Do you have health-related online accounts or apps with HCPs?**
7. **Are there any other sources of information or information storage places, electronic or paper, that you have used or are currently using?**
8. **Do you communicate about your health-related issues from email, social media, smartphone or tablet apps accounts or devices associated with your employment or work?**

If you have any questions or need more information, contact Suzanne Clark at 800-898-2034 or by email at Suzanne.Clark@BeasleyAllen.com.

XXIV.
RECALLS UPDATE

A large number of safety-related recalls were issued during March. 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 *Jere Beasley 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

Debra Kay Bullard

Kay Bullard is a paralegal who works in the firm's Personal Injury and Product Liability Section. She works with Warner Hornsby, a lawyer in the section. Under Warner's direction, Kay is responsible for contacting clients to gather specific information and working with medical providers to obtain detailed documentation needed in preparation for their cases. In addition, she drafts documents from correspondence to initial complaints, discovery, and motions throughout each case. She also manages the attorney's calendar and ensures the files and exhibits are well-organized for trial. Kay will celebrate 19 years with the firm in August, and we are so thankful to have her with us!

Kay is married to Perry, who retired from law enforcement after 30 years. Kay says that Perry is now doing taxidermy full-time and "doing what he loves!" Kay has twin daughters, Erin and Jessi, two stepdaughters, Joni and Haley. Kay and Perry are caring for their six-year-old grandson, Colton, which Kay says keeps them on their toes! They also have a precious Shih Tzu, Gracie, and a shop cat, Baby, whom they love. Kay and her family are members of the Prattville Community Church.

Kay says that she enjoys being outside in her yard and planting. She also loves working on crafts with her sisters. She tries to schedule a "family craft" two or three times a year. Kay says that her favorite thing about working at Beasley Allen is working on cases, getting to know the clients and obtaining a favorable outcome for each.

Kay is a hard-working paralegal who does very good work and is dedicated to the clients and their cases. Seeking justice for them is her goal. We are fortunate to have Kay with the firm.

Kendall Dunson

As a member of the firm's Personal Injury & Product Liability Section, Kendall handles product liability, general personal injury, and workplace injury and death cases involving defective industrial and work-related machinery. He has worked on numerous cases to compensate clients for their losses and influenced corporations to design and manufacture safer products.

Most recently, Kendall was part of the litigation team that secured a $151 million verdict for Travaris "Tre" Smith, who was left paralyzed after the 1998 Ford Explorer he was riding in crashed and rolled over. The jury agreed with Smith in finding that Ford failed to meet its own safety guidelines for the Explorer's rollover resistance requirement and attempted to cover up the vehicle's defective design.

Kendall has also been involved in several other multi-million-dollar lawsuits, including a $24.75 million verdict in a premises liability case; an $18.79 million verdict in a commercial truck product liability case; a $5.75 million verdict in a maritime lawsuit; and a $4.7 million verdict in a seat belt failure case. He and Mike Andrews, another Beasley Allen lawyer, also secured an $8 million jury verdict on behalf of a woman who was seriously injured when her Volkswagen suddenly accelerated out of her control and crashed.

Kendall was also a trial team member that handled a wrongful death case against a corporate defendant, resulting in one of the largest jury verdicts in Selma, Alabama. That suit influenced the corporate defendant to outfit its entire fleet of trucks with audible backup alarms. Kendall also handled the lawsuit involving a bus collision case in Huntsville, Alabama, which caused the deaths of four students and numerous personal injuries. The suit resulted in the contract cancellation between Madison County and the defendant, which had the duty to transport students to school in the county safely.

Kendall says he was inspired to practice law by two sources. One was a legal television series popular in the 1980s called "L.A. Law," which initially piqued his interest in the legal field. As he began to explore the field, Kendall says he realized the importance of the court system to the Civil Rights movement. Landmark court cases decided by the courts in that fight were a major inspiration to his pursuing a legal career.

Kendall says helping clients whose lives have been devastated by a serious disabling injury or who have lost a loved one is his favorite part of practicing law. He adds:

It's not possible to erase what has occurred, but it is

possible to bring them justice through obtaining a monetary return to ease the burdens placed on them by defective products or negligent actors. Every so often, the cases we handle result in design changes that will prevent others from being injured or killed similarly in the future. Changes in design or conduct are an added benefit to case results, and that feature usually brings the clients or their families comfort, knowing they were not injured or a loved one's loss of life was not in vain.

Over the years, Kendall has participated in numerous legal and community organizations, including a task force charged with reconfiguring Alabama's method of rendering legal services to the state's underprivileged population. Kendall has served as the president of the Alabama Lawyers Association and the Capital City Bar Association. He is the Past President of the Montgomery County Bar Association and has the distinct honor of being its first African American President.

Kendall also served on the Alabama Curriculum Committee for the Board of Examiners, where he authored the new Tort Section and videotaped the presentation to be viewed by all taking the Alabama Bar Exam. He is currently a member of the Alabama State Bar and serves on the Diversity Committee and the Client Security Fund committees, positions appointed by the Alabama State President.

In 2017, Kendall was inducted into the American Board of Trial Advocates (ABOTA), completed a term as a board member for the National Bar Association and was named a 2017 Alabama Law Foundation Fellow. He was inducted into the American College of Trial Lawyers two years later.

Kendall is regularly selected to Best Lawyers and Midsouth Super Lawyers and has been named to the Lawdragon 500 Leading Lawyers in America and LawDragon 500 Leading Plaintiff Consumer Lawyers lists. Kendall is also a charter member of the 100 Black Men of Birmingham.

He is married to Samarria Munnerlyn Dunson. Samarria was elected as a Montgomery Municipal Court Judge in 2020. Kendall and Samarria have three children. The family worships at First Baptist Church and Resurrection Catholic Church.

Kendall says that Beasley Allen is unique as a firm because of the collection of excellent attorneys in multiple legal disciplines, all united to make a difference in the lives of those who need it most. He says:

We understand our clients could not face large corporations and powerful industries without our assistance. I'm honored to be able to assist our clients in making their communities a better and safer place to live and raise their families.

Kendall is a tremendously talented trial lawyer. He does an excellent job in court and has the universal respect of his peers. We are blessed to have him at Beasley Allen.

Kathy Eckermann

Kathy Eckermann, who is my Executive Assistant, has been with the firm for 21 years. She handles the normal legal matters that come to my office. Kathy is also responsible for various administrative projects, including editing and distributing the daily devotion emails, maintaining the "Today" email distribution list, managing my calendar and files, scheduling meetings for the Board and me. Kathy does an outstanding job, and I am very thankful to have her in my office in a most important role and with the firm.

Kathy and her husband, Eddie, have been married for 41 years. They have two children and three grandchildren. Their daughter, Leah, is married with two children, and they live nearby. Their son, Aaron, is married and lives outside of Los Angeles, California. Kathy and Eddie also have two dogs: a Maltese, Bryant, and a lab-mix, Serena. Most of Kathy's spare time is spent enjoying their two grandchildren who live near them. She also visits her mother, who lives in a nursing home, as often as possible. Kathy also enjoys playing the piano, church, and taking frequent trips to California to visit their youngest grandchild and family.

Kathy told Chris Harper, who prepared this part of the *Report*, that her favorite thing about working at Beasley Allen is that "I have the honor of working directly for the founder of the firm, a man who believes in putting God first and family second in our lists of priorities." She also told Chris that she has the privilege of hearing what she describes as "my boss' wonderful and inspiring stories." Kathy says she is also very grateful for the opportunity to be involved in helping to share scripture and Biblical wisdom through the distribution of the daily devotional emails.

Kathy has been a blessing for me and to the firm. I will confess that working for me is not always easy. Over the years, I have been considered to be a little bit "controversial" and sometimes "overly aggressive" in certain areas. As a result, Kathy's role in my office isn't always easy. But I can say without reservation that she handles things extremely well, and she can be described as "a people person" who truly enjoys helping folks. Kathy is a talented employee who does outstanding work in a sensitive position in the firm.

Robert E. Mozingo

Robert "Bobby" Mozingo works in the firm's Personal Injury and Product Liability Section as Chief Investigator. In his role, his responsibilities include assigning cases and carrying out the day-to-day operations of a team of seven investigators, five of which are located in our Montgomery office and two located in our Atlanta office. Bobby will celebrate 29 years with the firm in December of this year, and we are fortunate to have Bobby leading this very important role.

Bobby has been married to his wife, Vicki, for 37 years. Vicki currently works two days a week at her nursing job and the other three days keeping two of their "wonderful" grandchildren. Bobby says he and Vicki have a total of five "precious" grandchildren, Carter (10), Kalie (9), Rhett (4), Collier (1), and Perry Collins (8 months). Two of Bobby's most favorite hobbies are hunting and fishing. He also enjoys visiting with family and friends at the lake or the beach. He says that he throws in a mountain trip every now and then, which makes his day.

Bobby says one of his favorite things about working at Beasley Allen is being able to come to work knowing that he has a very loyal group of investigators and support staff to work alongside. Bobby does a tremendous job holding down an important position in the firm. We are thankful that Bobby is with us, and we value his work and that of his team. That work is critically important to the mission of the firm.

Leigh O'Dell

Leigh O'Dell, a member of the firm's Mass Torts Section, has been very busy helping to lead litigation related to tal-

cum powder products. Much of Leigh's recent work has involved women's health-related issues, including transvaginal mesh and Gardasil litigation. She is proud of the impact her work has on the lives of women who suffered due to the actions of bad corporate actors. Leigh serves as Co-Lead Counsel for the Talcum Powder Ovarian Cancer multidistrict litigation (MDL) against Johnson & Johnson.

Previously, Leigh helped guide the litigation on behalf of consumers as part of the Plaintiffs Steering Committee (PSC) for five separate transvaginal mesh MDLs. As a member of the PSCs, Leigh provided leadership and experience to shepherd and support the efforts to obtain justice for nearly 100,000 women affected by these unreasonably dangerous products. Leigh also worked on the Gardasil litigation. Gardasil is a vaccine manufactured and marketed by Merck & Co. Inc. to prevent cervical cancer. Consumers reported adverse side effects, including Guillain-Barre syndrome, lupus, seizures, rheumatoid arthritis, multiple sclerosis and even death.

Earlier in her career, Leigh devoted more than eight years to the Vioxx litigation. She was a trial team member for five of the 17 bellwether trials throughout the country. Leigh also served on various Vioxx MDL committees, including the law and briefing, trial package and settlement liaison committees. The litigation team reached a then-record global settlement of $4.85 billion to compensate victims of Vioxx-related heart attacks and strokes.

As a person with deep faith convictions, Leigh is driven by a strong sense of purpose: to "stand in the gap" for her clients and others who are suffering and often facing overwhelming challenges. Like other aspects of her life, she is very intentional in her law practice and her influence within the profession. For Leigh, the culmination of her work and experience has been about answering a higher calling, but it is nothing short of inspirational to others.

Early in her career, Leigh realized there was more she could do to impact the world. Despite her love of serving clients and standing for justice, she took a leap of faith to step away from law practice and embark on a new avenue of service in vocational ministry.

For more than seven years, Leigh worked full-time developing and directing large arena events that shared the love of Jesus Christ with women throughout the United States and the world, including South Korea, Paraguay, Ukraine, Moldova, and the United Kingdom. While many would fear that yielding to a call to ministry would set them back in their career advancement, Leigh believes these opportunities had quite the opposite effect. She knows that her time in vocational ministry was invaluable, teaching her to serve others, grow in leadership skills, and expand her capacity, all of which have enhanced her skills and passion as an advocate.

Leading legal groups have recognized Leigh's work, including the National Trial Lawyers, Mass Torts Trial Lawyers Association, Best Lawyers and Super Lawyers. She is a member of various professional organizations and helps guide and instruct both talented young lawyers and lawyers who are transitioning into complex civil litigation mid-career by teaming with Emory University School of Law's Institute for Complex Litigation.

Leigh serves on the Board of Directors for several nonprofit organizations and ministries, including Children's Hope Ministry, Telling the Truth Ministries (the worldwide media ministry of Stuart and Jill Briscoe), Joni and Friends (the ministry of Joni Eareckson Tada, which serves individuals with disabilities and their families), and the Jimmy Hitchcock Award.

Leigh is a tremendously talented lawyer who does outstanding work. She works extremely hard and is dedicated to the clients she works for in their quest for justice. We are truly blessed to have Leigh at Beasley Allen.

XXVI.
SPECIAL RECOGNITIONS

Mobile Office Supports Local Bar Associations

Beasley Allen's Mobile office has been actively involved with the Mobile Bar Association (MBA) and the Baldwin County Bar Association in recent months.

We are proud to announce that one of our lawyers, Matt Griffith, has been appointed to Mobile Bar Association's Executive Committee, where he will serve through 2024. MBA provides professional development and cultivates networking opportunities for its membership. The Executive Committee governs the professional organization.

Last September, after Hurricane Ida made landfall in neighboring Louisiana, becoming the second-most damaging and intense hurricane to make landfall in that state, Beasley Allen lawyers in the Mobile office donated food supplies to the MBA's can drive for victims of storm damage.

In February, Beasley Allen helped sponsor a Mardi Gras Parade Viewing social at the Athelstan Club for all MBA members and their families. We also agreed to sponsor the April 2022 Young Lawyers social and have been planning a fun event for those attendees this month.

Several lawyers in the Mobile office are also members of the Baldwin County Bar Association. MBA partners with the Baldwin County Bar Association to present the Mobile/Baldwin Bench & Bar Conference. It's an annual event where lawyers and judges can mingle and obtain continuing legal education credits (CLE) credits. Last November, Beasley Allen helped sponsor the event. Dana Taunton, a lawyer in our Montgomery office, gave a presentation at the conference about preserving objections. She also participated in a discussion panel with Alabama Supreme Court justices.

We look forward to continuing our strong relationship with local bar associations. If you have any questions about the Mobile office, contact Frank Woodson at 800-898-2034 or by email at Frank.Woodson@BeasleyAllen.com

XXVII.
FAVORITE BIBLE VERSES

Willa Carpenter has served Beasley Allen lawyers and staff employees for nearly three decades, first as a receptionist and then as the firm's Human Resources Liaison beginning in 2001. "Miss Willa," as she is known at the firm, has been described as "the heart" of the firm, serving as its spiritual leader. Willa officially retired last month, and her collection of Chaplain-like duties that has been a unique benefit available to our lawyers, staff and their families will be greatly missed.

Willa provided guidance and support to the firm's lawyers

and employees as a certified counselor through the American Association of Christian Counselors. She has years of experience at the firm and through her church. Willa has met with many of our lawyers and employees about issues they were facing. Her peaceful nature and nurturing spirit, both spiritual gifts she inherited from her parents, have helped Willa bridge the gap between supervisors and their staff by offering grace, advice and prayer when needed.

Willa also coordinated the firm's weekly devotions, which she has said were a wonderful testament to the spirit of Christian fellowship that exists at the firm and an acknowledgment of our need for God's blessings on our firm. Before COVID, our devotions were when employees could voluntarily meet to be refreshed through God's Word and fellowship over lunch. Miss Willa did not allow COVID to stop this tradition entirely. Although employees could no longer meet together in person, Miss Willa ensured that devotions arrived each week in our email inboxes to continue refreshing us with God's Word.

Willa and her husband, Sam, have three children and six grandchildren. They are faithful and active members of First Assembly Church of God. The Carpenters have spent many years serving in events, ranging from celebrating a couple's anniversary to larger group prayer meetings and dinner parties. They believe that family and friends are their greatest assets.

We have truly been blessed to have Willa with us, and while her retirement "is just a formality," she says her heart will always be with the Beasley Allen family. We know she continues to be a light in so many lives here and in the other areas where God places her.

Willa shares these verses to encourage us.

Looking away (from all that will distract) to Jesus, Who is the Author (Leader) and the Source of our faith (giving the first incentive for our belief) and is also it's Finisher (bringing it to maturity and perfection). He, for the joy (of obtaining the prize) that was set before Him, endured the cross, despising and ignoring the shame, and is now seated at the right hand of the throne of God. (Hebrews 12:2)

This is my confidence and my comfort. As we steadfastly look to Jesus and follow His commandments, we will also enjoy the prize of eternal life with Him. Jesus suffered severally, even to death on the cross for our sake, so from the moment that we receive Him as our Lord and Savior, until He returns to earth, through every trial and hardship, He is with us, the Author and Finisher of our faith.

For He has said, in Matthew 28:20, "Lo, I am with you always, even to the end of the age."

Oh, how we need to stay mindful of this truth! All around us and even with us, there is pain, suffering, fear, lawlessness, and a lack of love and compassion in this world; but Jesus says to us (believers), "Let not your heart be troubled; you believe in God, believe also in me. I go to prepare a place for you, and if I go and prepare a place for you, I will come again and receive you to Myself, that where I am, there you may be also. (Jonn 14:1-3).

XXVIII.
CLOSING OBSERVATIONS

The Way Our Government Should Really Work

Congress approved a $1.5 trillion government spending bill last month, which included $13.6 billion in aid to Ukraine. President Joe Biden signed the bill the same day, and it is highly significant that the bill received bipartisan approval in the House and Senate. The funding package, as Ukraine and Russia remain embroiled in battle, will provide humanitarian and other support to Ukraine. This action is the way our national government, in a spirit of unity, should work.

The war in Ukraine was brought about by one man, Vladimir Putin, a deranged madman who appears to be unhinged. Russia's invasion of Ukraine commenced on Feb. 24, 2022, and as this *Report* is going to print, the horrible and tragic war is ongoing with no let-up in sight. Clearly, Russian military forces have not performed as well as Putin hoped. It is just as apparent that the Ukraine people are paying a heavy price. It's good to see our national government at the Executive and Congressional levels working in unity to support Ukraine and its people and oppose Putin.

The *New York Times* provided a detailed breakdown of the U.S. relief package, including "weapons, military supplies and one of the largest infusions of U.S. foreign aid in the last decade." It "also covers the deployment of U.S. troops to Europe and money for domestic agencies to enforce sanctions."

Specifically, the U.S. relief package for Ukraine provides $6.9 billion in traditional foreign aid to strengthen Ukraine's security and economy, including resources to counter disinformation and Russian propaganda, food assistance, health care, refugee assistance, and grants and loans for military supplies. It includes $3.5 billion in military supplies to replace those the U.S. provided to Ukraine in February and March and "to keep dispatching additional shipments" to Ukraine. Additionally, it includes $3 billion for U.S. deployments and intelligence programs. Finally, it provides $175.5 million for the U.S. to enforce sanctions and other aid.

The U.S. must continue, along with members of NATO, to support Ukraine and its people and to keep intense and constant pressure on Russia. This war must come to an end, and hopefully, it will be sooner than the experts predict. In addition to the military and economic aid, we must constantly pray in earnest for the Ukraine people, for an end to the war, and peace in the country and the region.

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

The Need For Unity In America

Over the years, I have seen many changes and lots of problems in our country. As we all know, there were a number of wars on foreign soil involving our country during the past 80 years. There have also been significant political differences during that period in our country. Sadly, America has experienced racism in multiple forms over the years, which affected generations of Americans. That is a problem that plagues us today.

But I can say without reservation that I have never seen our country as divided as it is today. This division has been detrimental to all Americans. Unfortunately, a segment of our population appears to be motivated in many of their actions and omissions by hate and prejudice. That is a sad commentary on our country, a Republic governed by a written Constitution and the Rule of Law, and we must all take stock of where we are as a nation. The U.S. Constitution calls for liberty and justice for all, but we must admit that America, the "Land of the Free," and the "Home of the Brave," is far from reaching that standard in reality.

My prayer is for unity in America and for our elected officials at every level to lead the way in needed efforts to preserve our form of government and to make sure it works for all of our people. God has blessed America, and it's up to all Americans to make our country truly the Land of the Free with Liberty and Justice for all. The mandate in 2 Chronicles 7:14 is one that will, without a doubt, work, and it's time for all Americans to understand and accept that reality and then be a part of bringing about the victory.

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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.

beasley allen
LAW FIRM

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