Shook, Hardy & Bacon L.L.P.

MARCH 14, 2013

PRODUCT LIABILITY LITIGATION REPORT

CONTENTS

LAW FIRM NEWS

SHB Public Policy Partner Comments on Damages Cap Ruling

Shook, Hardy & Bacon Public Policy Partner **Mark Behrens** provided commentary for a March 1, 2013, *Thomson Reuters News & Insight* **article** discussing a Fifth Circuit Court of Appeals ruling that upheld Mississippi's $1-million cap on pain-and-suffering damages in civil actions. Behrens, who submitted an *amicus* brief in the case on behalf of Mississippi business groups and medical organizations, acknowledged that the decision is not binding on state courts, but suggested that it could influence them and could be extended to the state's $500,000-cap on non-economic damages in medical malpractice cases. He also noted that such tort-reform initiatives were intended to address the state's former reputation as a magnet for personal-injury lawsuits once jury awards began to skyrocket in the early 2000s.

Behrens Testifies During State House Hearing on Asbestos-Related Recoveries

Shook, Hardy & Bacon Public Policy Partner **Mark Behrens** recently provided testimony in support of a bill (H.B. 153) currently pending in Illinois before the General Assembly. Testifying during a House Judiciary Committee hearing on March 6, 2013, Behrens discussed how dozens of companies with asbestos liabilities have gone bankrupt and how transparency was needed to prevent asbestos claimants from double-dipping, that is, recovering from the trusts set up in bankruptcy to pay claims against former asbestos defendants and then in suits for compensation against still viable asbestos companies. These trusts operate independently of the tort system, making the situation, according to Behrens, "fertile ground for inequity." Behrens testified on behalf of the U.S. Chamber of Commerce's Institute for Legal Reform. Introduced by Rep. Dwight Kay (R-Glen Carbon), the bill would require plaintiffs to disclose their trust claim information within 30 days of the start of discovery in their personal-injury lawsuits. *See The Madison-St. Clair Record*, March 7, 2013.

SHB Attorneys Question Effects of Commonality Requirement in Florida Class Actions

Shook, Hardy & Bacon Global Product Liability Partner **Frank Cruz-Alvarez** and Associate **Talia Zucker** recently co-authored a **post** for the Washington Legal

SHB offers expert, efficient and innovative representation to clients targeted by class action and complex litigation. We know that the successful resolution of products liability claims requires a comprehensive strategy developed in partnership with our clients.

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Foundation's (WLF's) blog "The Legal Pulse." Titled "Will 'Sea Change' in Florida Class Action Standards Unleash a Flood of Suits?," the post discusses a Florida Supreme Court decision that they claim waters down the commonality requirement for the certification of a class action. According to the authors, in *Soper v. Tire Kingdom, Inc.,* No. SC11-1462 (Fla. Jan. 24, 2013), the court quashed "another well-reasoned Third DCA opinion that was fully aligned with [the U.S. Supreme Court's *Wal-Mart v. Dukes* decision thus passing] up an ideal opportunity to correct" its mistake in an earlier ruling. They conclude that the decision "is undoubtedly favorable to potential plaintiffs, but only time will tell if they will take advantage."

Wajert Discusses Asbestos Exposure Standard Pending Before Pa. Supreme Court

Shook, Hardy & Bacon Toxic Tort Partner **Sean Wajert**, who filed an *amicus* brief in support of the defendants in asbestos-related litigation currently pending before the Pennsylvania Supreme Court, commented on the court's causation standard for a recent article appearing in *Law360*. Noting that the court recently rejected the "each and every breath" theory of exposure under which any exposure is deemed sufficient to establish causation, Wajert acknowledged that "it takes a long time for lower courts to implement" such changes.

Still, contending that the state's intermediate appellate court incorrectly reinstated asbestos mass-tort claims supported by "generic, nonspecific" expert affidavits regarding exposure, Wajert said, "the supreme court here in Pennsylvania was very clear on what they were trying to do, and it's potentially important for them to reaffirm the view that this is how causation is going to be shown going forward." According to Wajert, the court has articulated a general rule that "if a disease is a 'dose-response' disease, then it is internally inconsistent for plaintiffs' experts to base their conclusion simply on whether you had an exposure. One can imagine that there are other chemicals and substances where the rule could come into play very significantly. We know that the fundamental principle of toxicology is that the dose makes the poison." *See Law360*, March 1, 2013.

CASE NOTES

Sixth Circuit Finds *Mensing* Exception in Generic Drug Labeling Suit

The Sixth Circuit Court of Appeals has determined that when a branded drug manufacturer changes its product labeling and the generic manufacturer fails to follow suit, a state law claim against the generic drug maker for inadequate warnings is not preempted by federal law. ***Fulgenzi v. PLIVA, Inc.,* No. 12-3505 (6th Cir., decided March 13, 2013)**. The court agreed with the plaintiff that her case was different from *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011), in which the U.S. Supreme Court

held that state failure-to-warn claims could not be maintained against generic drug makers, because it would be "impossible for them to comply simultaneously with their state duty to adequately warn and their federal duty of sameness (federal law requires generic drug labels to be the same as their branded counterpart)." Accordingly, the court reversed the district court's dismissal of the suit and remanded it for further proceedings.

Pharmaceutical Company to Pay $44.6 Million to Resolve Off-Label Marketing Claims

A federal court in New Jersey has imposed an $18-million criminal penalty on Par Pharmaceutical Cos., which entered a guilty plea to one charge of introducing a misbranded drug into interstate commerce. *United States v. Par Pharm. Cos.*, No. n/a (U.S. Dist. Ct., D.N.J., sentencing March 5, 2013). The court also ordered the company to forfeit $4.5 million, the value of the misbranded appetite-stimulating drug Megace® ES sold since 2005. The company will also reportedly pay $20.5 million to the United States and $2.1 million to certain other states to settle three qui-tam actions filed under the False Claims Act. The company faces further separate settlements under Medicaid.

The drug was apparently approved by the U.S. Food and Drug Administration (FDA) to treat anorexia, cachexia or other significant weight loss experienced by AIDS patients. The company allegedly promoted the drug for the treatment of non-AIDS-related geriatric wasting, an unapproved use and for which the drug's approved labeling lacked adequate directions. According to the government, the company launched a long-term-care sales force to market the drug to this demographic and allegedly encouraged providers to switch medications for elderly patients, claiming that its drug—known in this population to increase the risk of deep vein thrombosis, cause toxic reactions in those with impaired renal function, and mortality—was more effective.

As part of its **plea**, the company also entered a corporate integrity agreement that will require it to change is business practices, including a prohibition on linking sales representatives' compensation to the volume of the drug's sales. The company has also agreed to dismiss with prejudice litigation that it filed in 2011 challenging FDA regulations on off-label promotions as a violation of its First Amendment rights.

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MDL Panel Vacates Hearing on Request to Transfer Avon Beauty Product Suit

The Judicial Panel on Multidistrict Litigation (MDL) was scheduled to consider later this month whether to consolidate for pre-trial proceedings two putative class actions claiming that Avon Products Inc. deceptively markets a line of beauty products as anti-aging. *In re Avon Anti-Aging Skincare Cream Mktg. & Sales Practices Litig.*, MDL No. 2435 (J.P.M.L., scheduling order vacated as moot, March 4, 2013). Because the suit filed in a California federal court was transferred to the Southern

District of New York under 28 U.S.C. § 1404, the panel determined that the motion for transfer under § 1407 was moot, and it vacated the MDL hearing session order. One of the named plaintiffs had apparently asked for the cases to be transferred to an MDL court in New York; Avon supported this request because its headquarters and testing laboratories are within that jurisdiction.

Details about a U.S. Food and Drug Administration (FDA) warning letter challenging the legality of Avon claims for its Anew® products appear in the October 25, 2012, **issue** of this *Report*. Information about one of the lawsuits that followed the warning appears in the November 8, 2012, **issue** of this *Report*.

Florida Supreme Court Limits Economic Loss Doctrine to Products Liability Suits

Answering a question certified to it by the Eleventh Circuit Court of Appeals, the Florida Supreme Court has, in the context of a dispute between an insured and its insurance broker involving purely economic losses, ruled that the state's "economic loss rule is limited to products liability cases." ***Tiara Condo. Ass'n v. Marsh & McClennan Cos.*, Inc., No. SC10-1022 (Fla., decided March 7, 2013)**. The rule, created by the courts, prohibits a tort action if the only damages suffered are economic losses. According to the five-member court majority, the rule was subject to "unprincipled expansion" over the years to other types of cases and that this expansion "was unwise and unworkable in practice." The two dissenting jurists contend that the majority has expanded the use of tort law "at a cost to Florida's contract law. Now, there are tort claims and remedies which, because of the economic loss rule, were previously the only remedies available."

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Lawsuits Target Florida Compounding Pharmacy for Alleged Contaminated Products

Plaintiffs in Los Angeles, Las Vegas and New Orleans have reportedly filed lawsuits in the last six months against a compounding pharmacy in Florida, alleging that it sold contaminated surgical dye that injured and blinded patients whose surgeons used it. Franck's Compounding Lab apparently recalled the dye—Brilliant Blue G, a stain used during eye surgery—after reports of eye infections and blindness and Food and Drug Administration (FDA) **warnings** to doctors about the product. In a warning letter relied on by at least one plaintiff, FDA called the company's dye adulterated because it was prepared under insanitary conditions. *See Courthouse News Service*, March 11, 2013.

ALL THINGS LEGISLATIVE AND REGULATORY

GAO Calls on CPSC to Improve SaferProducts.gov User Metrics

The U.S. Government Accountability Office (GAO) has issued a **report** to Congress titled "Consumer Product Safety Commission: Awareness, Use, and Usefulness of

SaferProducts.gov." GAO analyzed the methods that the U.S. Consumer Product Safety Commission (CPSC) has used to inform the public about its product safety incident reporting database and found that the agency failed to establish any metrics to measure whether its outreach has been successful. Apparently, no data are gathered about users thus making it difficult for GAO to assess "whether a broad range of the public has used the site" and limiting CPSC's "ability to target its marketing and outreach efforts to increase use of the site."

GAO recommended that CPSC (i) "establish and incorporate metrics to assess efforts to increase awareness and use of SaferProducts.gov," (ii) "look for cost-effective ways of gathering additional data about site use," and (iii) "implement cost-effective usability improvements to the site." According to GAO, some of the site's search functions posed challenges to consumers and "some consumers expressed concern about registering with the site and said this might prevent them from completing a report." Other consumers apparently believe that the site focuses on "safe rather than unsafe products."

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CPSC Issues Final Rule on Third-Party Conformity Assessment Bodies

The U.S. Consumer Product Safety Commission (CPSC) has published a final **rule** "establishing requirements pertaining to the third party conformity assessment bodies (laboratories) whose accreditations are accepted to test children's products in support of the certification required by the Consumer Product Safety Act (CPSA), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA)." Effective on June 10, 2013, the rule addresses "the general requirements and procedures for CPSC acceptance of the accreditation of a third party conformity assessment body, and it addresses adverse actions that may be imposed against CPSC-accepted third party conformity assessment bodies. The final rule also amends the audit requirements for third party conformity assessment bodies and amends the Commission's regulation on inspections." *See Federal Register*, March 12, 2013.

Play Yard Maker Agrees to $400,000 Civil Penalty to Resolve CPSC Allegations

Chicago-based Kolcraft Enterprises, Inc. has **agreed** to resolve safety and reporting violation allegations by paying a $400,000 civil penalty and implementing internal controls and procedures to ensure that that all reporting to the U.S. Consumer Product Safety Commission (CPSC) is "timely, truthful, complete and accurate." While denying staff allegations that it knew about latch-related defects posing a fall hazard to children and that it knowingly violated the reporting requirements of 15 U.S.C. § 2064(b), despite apparently receiving about 350 reports that the play yards collapsed unexpectedly and injured some 21 children during a nine-year period preceding its report to CPSC, the company also waived its rights to administrative or judicial review. CPSC has provisionally accepted the settlement; it is subject to public comment until March 19, 2013. *See Federal Register*, March 4, 2013.

Sequester Could Affect Ability of Federal Agencies to Prevent Entry of Unsafe Products

According to a news source, the U.S. Consumer Product and Safety Commission's (CPSC's) efforts to ensure that consumer goods entering the United Sates meet safety requirements may be thwarted as a result of the congressional budgetary impasse referred to as "sequestration" and its impact on U.S. Customs and Border Protection (CBP). Evidently, both agencies will experience significant budget cuts if the sequestration runs its full course.

The 5-percent across-the-board spending cuts translate to a $6-million loss from CPSC's $115 budget, and CBP's budget is expected to be reduced by more than a half-billion dollars. A CPSC spokesperson has reportedly indicated that CBP cuts have forced adjustments in port inspection operations, stating, "CPSC has scaled back on our more compliance oriented exams during this time period and will be focused on high risk shipments." Cargo may be conditionally released to an importer's premises for testing, he indicated, "given the reduction in resources available at ports of entry."

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"This week is National Consumer Protection Week, and I think more than ever we need to focus on how we can best protect consumers against unreasonable risks of harm," said CPSC Commissioner Nancy Nord, who has long sought to rein in the agency, on her March 8, 2013, blog. "Though we have done an admirable job of that over the years (doing things like improving portable generators and improving crib safety), we need to zero in on our priorities, given our limited resources. The sequester cut CPSC's budget, so we must be sure that we are laser-focused on our mission. We cannot afford to waste resources chasing secondary violations, paperwork slip-ups, and minor infractions … We need to identify where and when there is the greatest risk of harm from a consumer product, and be there to protect the consumer from it." *See Bloomberg BNA Product Safety & Liability Reporter,* March 11, 2013.

NHTSA Seeks Comments on LED Stop Lamp Report

The U.S. National Highway Traffic Safety Administration (NHTSA) seeks **comments** on a technical report, "Effectiveness of LED Stop Lamps for Reducing Rear-End Crashes: Analyses of State Crash Data," as part of the agency's effort to "analyze the crash-reduction benefits of light-emitting diode (LED) stop lamps and LED center high-mounted stop lamps (CHMSL) using real-world crash data." According to NHTSA, its research included laboratory experiments that suggest LED lamps were more beneficial than incandescent lamps at preventing rear-impact collisions. That analysis, however, does not apparently support a firm conclusion about whether LED stop lamps and LED CHMSL are more effective than incandescent lamps, NHTSA reports. Comments are requested by June 28, 2013. *See Federal Register,* February 28, 2013.

NHTSA Denies Rollover Petition

The U.S. National Highway Traffic Safety Administration (NHTSA) has **denied** a petition for rulemaking requesting that the agency establish a federal motor vehicle safety standard to prevent a vehicle from being steered into a rollover at any speed. Apparently, the petitioner applied for a patent on a device that he believes will enable vehicles to meet the standard he requested. In issuing the denial, NHTSA stated that (i) the petition "lacks sufficient data to support proposing and promulgating a safety standard," and (ii) the requested standard "might create conflicts with existing safety standards." *See Federal Register,* March 1, 2013.

FDA Issues Draft Guidance on Medical Product Labeling and Latex

The U.S. Food and Drug Administration (FDA) has issued draft **guidance** related to accurately labeling medical products not manufactured with natural rubber latex. Titled "Draft Guidance for Industry and FDA Staff: Recommendations for Labeling Medical Products To Inform Users That the Product or Product Container Is Not Made With Natural Rubber Latex," the guidance offers recommendations on the "appropriate language to include in the labeling of a medical product to convey that natural rubber latex was not used as a material in the manufacture of the product or product container."

FDA cites concerns that statements submitted for inclusion in medical product labeling such as "latex-free," "does not contain natural rubber latex," or "does not contain latex" are not accurate because "it is not possible to reliably assure that there is an absence of the allergens associated with hypersensitivity reactions to natural rubber latex in the medical product." The agency will accept comments on the draft guidance until June 10, 2013. *See Federal Register*, March 5, 2013.

Environmental Group Calls on FDA to Ban Sunscreen Ingredient

Citing test **results** from Australia's National Measurement Institute (NMI), environmental advocacy group Friends of the Earth (FOE) has called on the U.S. Food and Drug Administration (FDA) to prohibit the use of a potentially hazardous nano-scale ingredient—anatase titanium dioxide—purportedly found in many popular sunscreen and cosmetic products. According to FOE, studies have shown that the anatase form of titanium dioxide (and, in particular, nano-scale anatase titanium dioxide) can increase the formation of free radicals when exposed to sunlight and water, and a number of scientists have questioned the safety of its use in sunscreens and other skin products. Although the products NMI tested are reportedly sold in Australia, FOE notes that several of the brands tested are also sold in the United States and other global markets and "therefore may use similar ingredients in their formulations."

FOE is calling for an immediate ban on the use of anatase titanium dioxide in sunscreen and cosmetics and for safety testing and labeling of nano-ingredients in sunscreen and other body-care products. "Europe will require the safety testing and labeling of nano-ingredients in sunscreens starting in July 2013. However, the U.S. government continues to reject calls for adequate safety testing and labeling," according to an organization press release.

Campaign for Safe Cosmetics co-founder Janet Nudelman asked, "We know that companies in the United States are incorporating nano-scale titanium dioxide in sunscreens and cosmetics, the question is, are they using it in anatase form? We encourage the FDA to give this serious public health issue the attention it deserves. Moreover, all nano-scale ingredients need to be adequately tested for safety before being used. Congress urgently needs to enact legislation that would more strictly regulate the cosmetics industry to ensure that nano-scale ingredients are labeled and to guarantee the personal care products we use every day are free from harmful chemicals in the first place." The Campaign for Safe Cosmetics has apparently requested that cosmetics manufacturers "remove carcinogens and other harmful chemicals from their personal care products; the laboratory findings on sunscreens reaffirm that immediate action by these companies to ensure product safety is critical." *See Friends of the Earth News Release,* March 5, 2013.

Federal Judiciary Facing Broad Effects of Budget Sequestration

Federal Judge Julia Gibbons, who chairs the U.S. Judicial Conference's Budget Committee, reportedly told the conference that the congressional budgetary impasse that resulted in across-the-board budget cuts, referred to as "sequestration," "will affect every facet of court operations." According to Gibbons, the crisis is both "unprecedented" and "not likely to end in the near-term." Overall funding levels will drop nearly $350 million which means, among other matters, (i) fewer probation officers; (ii) litigation delays, particularly in processing civil and bankruptcy cases; (iii) reduced court security; (iv) declining federal public defender staffs; and (v) deep cuts in IT programs used for case processing. While each court apparently has the authority to decide how to implement many of the funding cuts, up to 2,000 employees could be laid off during the current fiscal year or face furloughs. This would be in addition to the 1,800 court staff laid off during the last 18 months. Gibbons said, "These actions are unsustainable, difficult, and painful to implement. Indeed, the Judiciary cannot continue to operate at sequestration funding levels without seriously compromising the Constitutional mission of the federal courts." *See The Third Branch News*, March 12, 2013.

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LEGAL LITERATURE REVIEW

David Marcus, "The History of the Modern Class Action, Part I: *Sturm Und Drang*, 1953-1980," *Washington University Law Review* (2013)

Suggesting that recent U.S. Supreme Court jurisprudence on the class-action device could herald the end of an era on claim aggregation, University of Arizona Rogers College of Law Professor David Marcus has embarked on a historical inquiry into its conception and development. According to Marcus, consumer advocates and plaintiffs' lawyers argued for a "regulatory conception" of Rule 23 whereby "class actions offered an important substitute for, or addition to, public administration, and courts should deploy the device aggressively to maximize regulatory efficiency." Targeted defendants, to the contrary, "responded with an 'adjectival conception'" of the rule, subordinating it to the substantive law. Under this conception, "whatever good [the rule] might accomplish could not justify extreme distortions to procedural normalcy." The article's focus is on how Rule 23 doctrine developed in the federal courts, and in his next article, Marcus will explore what happened to the rule after the relatively "calm seas of the early 1980s."

Simona Grossi, "Federal Question Jurisdiction: The Compass, the Maze and the Trap," *Loyola-LA Legal Studies Paper* (2013)

Loyola Law School Los Angeles Professor Simona Grossi explores the development and scope of the U.S. Supreme Court's "arising under" standard of jurisdiction, which allows federal courts to consider cases arising "under the Constitution or laws of the United States." She suggests that the Court's recent articulation of the standard in the context of "a legal malpractice suit premised on alleged attorney errors committed in a prior patent litigation" did not resolve the confusion over federal jurisdictional standards that preceded the decision. Details about the Court's *Gunn v. Minton* ruling appear in Issue 51 of SHB's *Life Sciences & Biotechnology Legal Bulletin*. In Grossi's view, the foundational arising-under cases provided a solid legal compass for the courts by focusing "on the role of the federal issue in the case, asking whether the case was truly about federal law, for if the case was truly about federal law, the exercise of jurisdiction would be inherently consistent with congressional intent to provide a forum for federal question cases." She claims that the Court missed the opportunity to "recapture the compass," and instead "continued along a meandering doctrinal path."

Thomas McGarity and Sidney Shapiro, "Regulatory Science in Rulemaking and Tort: Unifying the Weight of the Evidence Approach," *Wake Forest Journal of Law and Public Policy* (2013)

Law professors from the University of Texas School of Law and Wake Forest University School of Law explore how regulatory agencies and courts decide whether scientific evidence is sufficient to meet either the "'risk trigger' that Congress has established

as a legal prerequisite for the agency to regulate" or "to establish causation" in a toxic-tort legal dispute. Acknowledging that the respective burdens of proof differ, they suggest that agencies and courts should apply a weight of the evidence approach, which "is unrelated to the burden of proof, [but does have] to do with the quality of the scientific studies, the strength of the cause-effect association, the overall consistency of the scientific studies, and the biological plausibility of statistical observations." According to the authors, nothing in the Federal Rules of Evidence or *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), "precludes courts from employing the weight of the evidence approach in toxic tort litigation."

LAW BLOG ROUNDUP

Product Liability and the Brave New World of 3D Printing

"As I've said before (to great consternation), state product liability law is basically a dead field. In large part, this is because of federal preemption. But the growth of 3D printing, like other technological changes, may bring the common law back into vogue because Congress will not get its act together quickly to regulate this field." Indiana University Robert H. McKinney School of Law Professor Gerard Magliocca, considering whether liability should be imposed, in the event of injury, on a person creating a defective product at home with a 3D printer or on a party that authored the file used to create the product.

Concurring Opinions, March 5, 2013.

Where the Plaintiffs' Bar Gets its Best Ideas

"And in other news, the Sun rose today." Cato Institute Senior Fellow Walter Olson, blogging about a Tweet referring to a federal judge's statement during a hearing to address class claims that banks manipulated the London Interbank Offered Rate (LIBOR), the subject of a 2008 *Wall Street Journal* article. The judge said, "I mean, frankly, I am totally puzzled, given that [the] plaintiffs bar in this area uses the *Wall Street Journal* as their source of clients and cases, right? You guys read it every day, looking for scandal, right? Other people read *People* magazine, but you read the *Wall Street Journal*."

Overlawyered.com, March 9, 2013.

THE FINAL WORD

Federal Court Imposes $20,000 Penalty on Attorney for Ignoring Holes in Client's Case

A federal court in Pennsylvania has reportedly sanctioned a Pittsburgh attorney and his firm with a $20,000 fine for violating Rule 11, that is, making a conscious decision

"to take to trial a mere allegation which lacked objective evidentiary support." The matter involved an alleged malfunctioning 9 mm pistol that the plaintiff claimed exploded in his hand. According to the court, the sanctioned attorney "ignored red flags surrounding the veracity and plausibility of his client's story, lodged allegations without having reasonable belief that they were well-grounded in fact and with evidentiary support, and persisted with a claim that he was unable to obtain evidentiary support for despite having more than enough time and opportunity." *See The Legal Intelligencer*, March 5, 2013.

UPCOMING CONFERENCES AND SEMINARS

ABA Tort Trial & Insurance Practice Section, Phoenix, Arizona – April 3-5, 2013 – "2013 Emerging Issues in Motor Vehicle Product Liability Litigation." Shook, Hardy & Bacon Tort Partner **H. Grant Law** is an event co-chair, and Class Actions & Complex Litigation Associate **Amir Nassihi** serves as program chair for this annual CLE on motor vehicle litigation. Nassihi will also serve as a co-moderator for a panel discussion titled "The Blockbuster Development in Class Action Litigation"; Shook, Hardy & Bacon Global Product Liability Partner **Holly Smith** is scheduled to participate as a member of the panel. Nassihi and Tort Partner **Frank Kelly** will co-moderate a panel discussion on "Managing the Corporate Counsel Relationship: The Inside View on Diversity, Retention and Client Expectations." The distinguished faculty includes senior in-house counsel for major automobile makers and experienced trial and appellate counsel. Program sessions will address class action developments, litigating brake pad asbestos cases, regulatory developments, and issues unique to component parts manufacturers. Shook, Hardy & Bacon is a conference co-sponsor.

ABA Toxic Torts and Environmental Law and Corporate Counsel Committees, Phoenix, Arizona – April 4-6, 2013 -- "Fuel, Food, Fibers and More: Blazing New Trails in the Desert Sun." During this 22nd annual spring CLE meeting, Shook, Hardy & Bacon Agribusiness & Food Safety Co-Chair **Madeleine McDonough** will participate in a panel discussion on "Food Safety: Will What We (Don't) Know About Our Food and Its Packaging Hurt Us?"

University of Florida College of Law, Gainesville, Florida – April 5-6, 2013 -- "Electronic Discovery for the Small and Medium Case." Shook Hardy & Bacon eDiscovery Partner **Denise Talbert** will join the distinguished faculty at a joint conference presented by the University of Florida College of Law and the Electronic Discovery Reference Model (EDRM). The conference will address how to "competently and cost-effectively" handle e-discovery in these matters, featuring "a new generation of right-sized e-discovery software and tools for each phase of the e-discovery process." Talbert will serve on two panels discussing (i) effective budgeting and cost-benefit assessment across the entire EDRM and (ii) traditional analysis focused on key word searching.

Shook, Hardy & Bacon L.L.P.

Widener Law Journal, Harrisburg, Pennsylvania – April 16, 2013 – "Perspectives on Mass Tort Litigation." Shook, Hardy & Bacon Public Policy Partners **Victor Schwartz** and **Mark Behrens** will join a distinguished faculty, including legal academics and federal judges, during this symposium on mass tort litigation issues. Schwartz will serve on a panel discussing "Emerging Issues in Mass Tort Practice," and Behrens will address "Keystone State Civil Justice Issues."

DRI, New York, New York – May 16-17, 2013 – "29th Annual Drug and Medical Device Seminar." Shook, Hardy & Bacon Pharmaceutical & Medical Device Litigation Partner **Scott Sayler** will deliver opening remarks in his role as current chair of DRI's Drug and Medical Device Committee. Co-sponsored by SHB, the event will feature presentations by judges, in-house and outside counsel, and other professionals on cutting-edge topics such as (i) "How to use your advocacy skills to persuade the toughest audience," (ii) "The latest on consolidated drug and device proceedings in Philadelphia," (iii) "What jurors are thinking about the FDA," (iv) "How to help a jury understand a state-of-the-art case," (v) "The latest on 'judicial hellholes,'" (vi) "How to try a multiple-plaintiff pharmaceutical case," and (vii) "How to take the 'junk' out of junk science." ■

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ABOUT SHB

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys have unparalleled experience in organizing defense strategies, developing defense themes and trying high-profile cases. The firm is enormously proud of its track record for achieving favorable results for clients under the most contentious circumstances in both federal and state courts.

The firm's clients include many large multinational companies in the tobacco, pharmaceutical, medical device, automotive, chemical, food and beverage, oil and gas, telecommunications, agricultural, and retail industries.

With 95 percent of our more than 470 lawyers focused on litigation, Shook has the highest concentration of litigation attorneys among those firms listed on the *AmLaw* ***100,*** *The American Lawyer's* list of the largest firms in the United States (by revenue).