Shook, Hardy & Bacon L.L.P.

SEPTEMBER 2, 2010

PRODUCT LIABILITY LITIGATION REPORT

CONTENTS

U.S. COURTS LACKED JURISDICTION OVER ITALIAN GUN MAKER; DEFAULT JUDGMENT VACATED

The Fifth Circuit Court of Appeals has determined that U.S. courts lacked both general and specific jurisdiction over the Italian manufacturer of a .25 caliber semi-automatic pistol, thus affirming a district court order vacating an $11-million default judgment rendered in favor of the family of a man who died from injuries allegedly caused by the gun's unexpected discharge. ***Jackson v. Tanfoglio Giuseppe S.R.L.*, No. 09-30870 (5th Cir., decided August 23, 2010)**. While the pistol was assembled in Florida in the early 1970s, its component parts were made in Italy. The plaintiffs alleged that the firing pin was too long, which made the pistol discharge too readily.

According to the court, Fratelli Tanfoglio, S.n.c., one of three Italian defendants in the case, did not have a sufficient business presence in Louisiana, where the injury occurred, to give the court general jurisdiction over the company. Without an office, bank accounts, employees, a postal address, property, or registration in Louisiana, the court found that its contacts were not substantial. Placing a significant volume of products into a forum's stream of commerce and advertising and marketing through national media are insufficient to confer general jurisdiction, and these activities constituted Fratelli's only contacts with the state.

The court also determined that specific jurisdiction was lacking under the expansive "stream-of-commerce" theory, which allows the assertion of jurisdiction over nonresident defendants that send a defective product into a forum, because Fratelli did not manufacture any of the .25 caliber pistols until after the decedent was injured, "and long after the weapon that caused the injury was produced and sold sometime in the 1970s." The company had purchased equipment to bore .25 caliber barrels in 1972 or 1973, but "there is no evidence that Fratelli was actually boring barrels at this time." Nor did the court find any evidence that Fratelli manufactured the allegedly defective part, the pistol's firing pin.

Rejecting plaintiffs' contention that specific jurisdiction existed "through a theory of imputed contacts or alter egos," the court explained that while the employees of U.S. companies involved in the pistol's manufacture may have confused the identities of the different Italian defendants and while the Tanfoglio siblings were officers and directors of each of the entities, because the corporations and their books were kept distinct and the companies observed every corporate formality under Italian law, they were not alter egos.

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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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PENNSYLVANIA SUPREME COURT SAYS DRUG MANUFACTURER LACKED STANDING TO CHALLENGE STATE'S CONTINGENCY-FEE COUNSEL

The Pennsylvania Supreme Court has determined that, in litigation pursued by state agencies against a prescription drug manufacturer for alleged improper "off-label" promotions of its product, the defendant lacks standing to challenge the agencies' use of contingency-fee counsel to prosecute the claims. ***Pennsylvania v. Janssen Pharmaceutica, Inc.*, No. J-97-2009 (Pa., decided August 17, 2010)**. The state's Office of General Counsel hired a Houston law firm on a contingency fee basis to bring the claims on behalf of two state agencies, the departments of Public Welfare and Aging. The matter was before the state supreme court on its grant of a request for extraordinary relief after the trial court denied the company's motion to disqualify the state's contingency-fee law firm.

According to the court, under a plain reading of the Commonwealth Attorneys Act, no party other than a state agency has standing to challenge the authority of the legal representation of the agency. While the defendant contended that the Act did not apply where the challenge is to the constitutional authority of private contingency-fee counsel to represent a state agency, the court found nothing in the statute's text to support a distinction between a statutory- and constitutional-based challenge. The court noted that even "aside from the legislation, and as a general matter, it is difficult to see how a party-opponent in active litigation with the [state] could be said to have a substantial, direct and immediate interest in the authority or identity of the legal representation the [state] has chosen. This is true in legal matters generally: one's opponent generally cannot dictate the choice of otherwise professionally qualified counsel."

While the defendant's request for extraordinary relief from the state high court was pending, the parties proceeded to trial, and the complaint was dismissed at the close of plaintiff's liability case for failure to establish a right to relief. The court's majority did not consider whether this rendered its decision moot, but two concurring justices, who raised the issue, would have considered the substantive issues regardless, given their public importance and because they raised a question capable of repetition yet evading review. A dissenting justice opined that the defendant had standing to raise constitutional claims, "most notably, an assertion that its due process rights have been violated."

FEDERAL CIRCUIT AFFIRMS DISMISSAL OF VACCINE-INJURY CLAIMS BY PARENTS OF AUTISTIC CHILD

The Federal Circuit Court of Appeals has affirmed a special master's ruling that denied compensation under the Vaccine Injury Act to parents of a child who allegedly became severely autistic after receiving a measles-mumps-rubella vaccine.

Cedillo v. Sec'y of Health & Human Servs., No. 2010-5004 (Fed. Cir., decided August 27, 2010). Because autism is not listed on the Vaccine Injury Table, petitioners must prove that the vaccine caused the injury, and most of the court's opinion addresses challenges to rulings made about admissible evidence and expert testimony. The court found no abuse of discretion in the special master's rulings and no error in the legal standards applied. The court concluded that the decision was "rationally supported by the evidence, well-articulated, and reasonable."

The case was one of the three lead autism claims in an omnibus proceeding involving some 5,000 petitions alleging a link between childhood vaccines and autism. Compensation has been denied in all of the proceedings.

SOUTH CAROLINA ADOPTS RISK-UTILITY STANDARD FOR DESIGN DEFECT CLAIMS

The South Carolina Supreme Court has decided to adopt a risk-utility test for plaintiffs bringing design defect claims and will require a showing of a reasonable alternative design to hold a manufacturer strictly liable for harm caused by the alleged defective design. *Branham v. Ford Motor Co.*, No. 26860 (S.C., decided August 16, 2010). The issue arose in a case involving the rollover of a sports utility vehicle (SUV) and injury to a minor passenger. A jury awarded the plaintiffs $16 million in actual damages and $15 million in punitive damages, and the automaker appealed.

The court found that the plaintiffs' allegations about the vehicle's rollover propensity, i.e., the "handling and stability" design defect claim, were properly submitted to the jury and thus the trial court did not err in denying the defendant's motion for a directed verdict. The court also found that the plaintiff produced evidence of a feasible alternative design, which was also sufficient to survive a directed verdict motion. While the case was submitted to the jury on both a consumer-expectations test and a risk-utility test, the court determined that it would adopt as "the exclusive test in a products liability design case[,] the risk-utility test with its requirement of showing a feasible alternative design." According to the court, this approach has been adopted by a majority of the states and is in accord with the *Restatement (Third) of Torts: Products Liability*.

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The court decided to reverse and remand for a new trial, "[n]otwithstanding the existence of ample evidence to withstand a directed verdict motion." According to the court, the plaintiffs had introduced post-manufacture evidence and evidence of similar accidents, which the court said violated two product liability rules: (i) "whether a product is defective must be measured against information known at the time the product was placed into the stream of commerce"; and (ii) "evidence of similar incidents is admissible where there is a substantial similarity between the other incidents and the accident in dispute tending to prove or disprove some fact in controversy." The court also found error in plaintiffs' closing argument, which "was a direct appeal to the passion and prejudice of the jury."

While the court refused to say whether the compensatory and punitive damages awards were excessive, it found that the trial court improperly allowed the jury to punish the automaker for all rollover deaths and injuries involving its SUV contrary to *Philip Morris USA v. Williams*, 549 U.S. 346 (2007). The court also found that the plaintiffs "went far beyond the pale in submitting evidence of Ford's senior management compensation," when establishing the defendant's wealth for purposes of establishing punitive damages.

Two concurring and dissenting justices agreed that risk-utility was the appropriate test to adopt, but disagreed that the "post-manufacture" evidence was improperly submitted to the jury. According to the dissenters, this evidence was admissible to show foreseeable risk: "the date on which the evidence was created is of little utility in determining the relevance of the evidence and a broad rule barring evidence created 'post manufacture' actually serves to defeat the goals of the risk-utility test."

FEDERAL COURT DENIES COMPUTER MAKER'S MOTION TO COMPEL ARBITRATION OF DESIGN DEFECT CLAIM

A federal court in New Jersey has determined that the arbitrator specified in the "Terms and Conditions of Sale" applicable to the purchase of a laptop computer was integral to the agreement and its unavailability precluded arbitration of a dispute between the parties to the agreement. *Khan v. Dell, Inc.*, No. 09-3703 (U.S. Dist. Ct., D.N.J., decided August 18, 2010). The plaintiff alleged that his laptop overheats under normal operating conditions, thereby shortening its useful lifespan, and sued the manufacturer on behalf of a class of consumers who purchased or leased the computer. The defendant sought to compel arbitration, citing the "Terms and Conditions of Sale" to which every consumer must agree before concluding an online purchase.

The plaintiff countered that the arbitration provision was unenforceable because it provides for arbitration to be administered exclusively by the National Arbitration Forum (NAF), which "is no longer administering consumer arbitrations." The plaintiff also argued that the arbitration provision is unconscionable and therefore invalid. The court agreed that the designation of an arbitrator was integral to the agreement, and, because the NAF was unavailable and because the court "cannot appoint a substitute arbitrator and compel the parties to submit to an arbitration proceeding to which they have not agreed," the court denied Dell's motion to compel.

NINTH CIRCUIT REVERSES DENIAL OF CLASS CERTIFICATION IN VEHICLE DEFECT CASES

The Ninth Circuit Court of Appeals has concluded that common issues of law predominate in two putative class actions alleging a steering alignment defect in Land Rover LR3 vehicles, which defect purportedly manifested in uneven and premature tire wear.

Wolin v. Jaguar Land Rover N. Am., LLC, Nos. 09-55104 & 09-55105 (9th Cir., decided August 17, 2010). The named plaintiffs sought to certify Michigan and Florida classes in their respective lawsuits, and the district court denied the motions because the plaintiffs "could not estimate the percent of prospective class members whose vehicles manifested the defect, let alone show credibly that even a majority of class members' vehicles experienced premature tire wear."

According to the appeals court, "proof of the manifestation of a defect is not a prerequisite to class certification." The court rejected "Land Rover's suggestion that automobile defect cases can categorically never be certified as a class." While the court acknowledged that individual factors may affect premature tire wear, "they do not affect whether the vehicles were sold with an alignment defect." Among other matters, the court noted that the claims of all prospective class members "involve the same alleged defect, covered by the same warranty, and found in vehicles of the same make and model." Common issues include whether the alignment geometry is defective, whether the manufacturer was aware of and concealed the defect, whether the company violated state consumer protection laws, and whether the company was obligated to pay for or repair the alleged defect under the terms of its warranties.

According to the appeals court, "proof of the manifestation of a defect is not a prerequisite to class certification."

The court noted that on remand, the trial court would have to consider whether the Tire Warranty claim was amenable to class treatment and whether the proposed bifurcated trial plan was appropriate. The court rejected the defendant's alternative claims that class certification was unwarranted for failing to satisfy the typicality and superiority requirements of Federal Rule of Civil Procedure 23.

ALL THINGS LEGISLATIVE AND REGULATORY

CPSC Reviewing Petition for Cadmium Regulations

The Consumer Product Safety Commission (CPSC) has **solicited** comments on a citizen's petition that aims to restrict cadmium in children's products, "especially toy metal jewelry." The Center for Environmental Health, Empire State Consumer Project, Rochesterians Against the Misuse of Pesticide, and Sierra Club have apparently asked CPSC to prohibit cadmium in all toy jewelry under the Federal Hazardous Substances Act, as well as declare toy jewelry containing trace amount of cadmium "a banned hazardous substance."

While awaiting a detectable standard, the petitioners have urged CPSC to use maximum lead levels as an interim benchmark for cadmium. They have also instructed the commission to (i) implement a test for cadmium that "simulates a child chewing the jewelry before swallowing," (ii) obtain additional information as needed through the Toxic Substances Control Act (TSCA), (iii) include metal jewelry "in the scope of reporting under section 8(d) of the TSCA," and (iv) "require importers and processers to test toy metal jewelry for cadmium." CPSC will accept written comments on the petition until October 18, 2010.

Meanwhile, the California Senate has reportedly passed legislation (**S. 929**) to limit cadmium in children's jewelry. If signed into law, the bill would impose civil and criminal penalties on suppliers who make or sell children's jewelry containing more than 0.03 percent cadmium by weight. It would also authorize California's Department of Toxic Substances Control to regulate the substance. "These manufacturers are replacing one toxic metal for another when less toxic alternatives like zinc are available. It's completely irresponsible to use cadmium in jewelry marketed to children," stated Senator Fran Pavley (D – 23rd) in an August 25 press release. *See Law360.com,* August 26, 2010.

"These manufacturers are replacing one toxic metal for another when less toxic alternatives like zinc are available. It's completely irresponsible to use cadmium in jewelry marketed to children," stated Senator Fran Pavley (D – 23rd) in an August 25 press release.

CPSC Publishes Requirements for Accreditation of Third-Party Testing Bodies for Child ATVs

The Consumer Product Safety Commission (CPSC) has issued a **notice** that sets forth "the criteria and process for Commission acceptance of accreditation of third-party conformity assessment bodies for testing of all-terrain vehicles (ATVs) designed or intended primarily for children 12 years of age or younger."

Under the Consumer Product Safety Act (CPSA) and the Consumer Product Safety Improvement Act of 2008 (CPSIA), each manufacturer, private labeler or importer subject to children's product safety rules must have their applicable ATVs tested and certified by an accredited third-party conformity assessment body within 90 days of the *Federal Register* notice, unless CPSC approves an extension request.

Such bodies will conduct testing under 16 C.F.R. part 1420, *Requirements for All Terrain Vehicles,* "which incorporates by reference the applicable provisions of the *American National Standard for Four Wheel All-Terrain Vehicles, ANSI/SVIA 1-2007.*" According to CPSC, the ANSI/SVIA standard establishes ATV youth model categories for products intended for children ages 6 or older (Category Y-6+), ages 10 or older (Category Y-10+), or ages 12 or older (Category Y-12+).

CPSC has thus established accreditation requirements for three types of assessment bodies: (i) third-party conformity assessment bodies that are not owned, managed or controlled by the manufacturer or private labeler seeking product certification; (ii) "firewalled" conformity assessment bodies that *are* owned, managed or controlled by the manufacturer or private labeler seeking product certification; and (iii) third-party conformity assessment bodies "owned or controlled, in whole or in part, by a government."

In each instance, the commission requires "baseline accreditation" to the International Organization for Standardization/International Electrotechnical Commission Standard 17025:2005, "General Requirements for the Competence of Testing and Calibration Laboratories." Each assessment body must also be certified by a signatory to the International Laboratory Accreditation Cooperation-Mutual Recognition

Agreement (ILAC-MRA), "and the scope of the accreditation must include testing" in accordance with consumer safety regulations.

When registering with CPSC, the applicant must provide electronic copies of its ILAC-MRA accreditation certificate and scope statement, "and firewalled third party conformity assessment body training documents, if applicable." The agency's Website will reflect "an up-to-date listing of the third-party conformity assessment bodies whose accreditations have been accepted and the scope of each accreditation." CPSC will accept comments on the notice until September 27, 2010.

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FDA to Conduct Public Workshop on Medical Devices and Nanotechnology

The Food and Drug Administration (FDA) has **announced** that it will hold a public workshop on September 23, 2010, "to obtain information on the safety and effectiveness of medical devices utilizing nanotechnology." The meeting, which will be Webcast, will allow FDA to "obtain information on a number of specific questions regarding manufacturing and characterization requirements and the biocompatibility evaluation for medical devices" made with nanomaterials. A list of questions and topics for discussion are available online; those wishing to participate in the workshop must register and provide their written materials by September 15. All other comments must be submitted by October 22. *See Federal Register*, August 23, 2010.

FASB Reconsiders Disclosure of Litigation Costs

The Financial Accounting Standards Board (FASB) has reportedly issued a proposal that would require companies to disclose information about potential litigation costs when they publish their financial disclosures. A private sector authority that governs the preparation of financial reports by nongovernmental entities, FASB first considered litigation cost disclosures in 2008, but withdrew its suggestion amid criticism from business interests. The board has since reinitiated the project after purportedly receiving "strong and extensive input [from] investors who want greater transparency."

The U.S. Chamber of Commerce, however, has faulted FASB for failing to reveal "which investors—or even which categories of investors—were consulted," according to an August 18, 2010, editorial in *The Wall Street Journal*, which argues that the latest proposal would benefit plaintiff's lawyers by "offering roadmaps to new litigation and bigger settlements." The editorial specifically cites provisions that would require companies to report their liability insurance coverage and average settlement amount, thereby "[setting] a prejudicial standard for all companies in similar litigation to meet." It also lambastes a standard that would compel corporations "to do the trial bar's research" by documenting "the existence of studies in reputable scientific journals … that indicate potential significant hazards related to the entity's products or operations."

"Disclosure about concrete liabilities is helpful to investors, but the new FASB rules would force companies to divulge snapshot details of ongoing litigation that put investors at greater risk of loss," the editorial concludes, adding that FASB has shown a tendency "to stubbornly insist on plowing ahead, as if it is the sole authority on virtuous disclosure."

DOD Warns EPA Chemical Toxicological Assessment Vulnerable to Challenge

In comments submitted on a final draft toxicological review, the U.S. Department of Defense (DOD) has apparently **warned** the Environmental Protection Agency (EPA) that its August 11, 2010, Integrated Risk Information System **assessment** for 1,4 dioxane is vulnerable to a Data Quality Act (DQA) challenge. The department has specifically faulted EPA for using a carcinogenicity study that was revised and republished "after completion of the interagency and external peer reviews." According to DOD, the changes included "the number of animals, the number of animals that had tumors, the doses given to the animals, and changes in both the statistical procedures and … calculations."

EPA has dismissed these alterations as "minor" and noted that it added text to the final risk assessment to clarify "which report … was the source for the data discussed." The agency concluded that 1,4 dioxane, which is used as a solvent, cleaning agent, chemical stabilizer, surface coating, adhesive agent, and an ingredient in chemical manufacture, is "likely" to cause cancer in humans, an assessment that has apparently attracted much criticism from industry. As the Alliance for Environmental Responsibility and Openness (AERO) reportedly argued, the only studies linking 1,4 dioxane to tumors "are very high dose rodent studies."

Meanwhile, one media source has noted that a recent appellate ruling could open the floodgates for more DQA challenges. "While critics say the D.C. Circuit ruling does not set any new precedent, supporters have already filed a flurry of petitions challenging data EPA relied on in chemical risk assessments of key chemicals like methanol, arsenic and phthalates, as well as climate change, coal ash and other decisions," states an August 23, 2010, *Inside EPA* article. "The dioxane petition could also be ripe for a data quality challenge given long-standing industry opposition." When the DQA was enacted in 2001, it was widely expected to give industry interests a tool for slowing down regulatory processes and has reportedly been used by corporate and consumer interests to challenge the accuracy of agency information.

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LEGAL LITERATURE REVIEW

Richard Nagareda, "Common Answers for Class Certification," *Vanderbilt Law Review En Banc* (forthcoming 2010)

Vanderbilt University Law School Professor Richard Nagareda explores how decisions about class certification have been evolving in the federal courts and calls on

the U.S. Supreme Court to clarify the framework for class certification. According to Nagareda, a case currently pending before the high court squarely raises the question "does the judicial role consist exclusively of identifying questions said by class counsel to be common across the proposed class, or does it instead entail an obligation actually to assess their common character for the limited purpose of class certification?" Nagareda appears to favor a more robust judicial role, contending that "the capacity of the proposed class action to yield common answers, not merely raising of common questions, is what matters for class certification." He concludes that the U.S. Supreme Court "can ensure that courts unduly advantage neither plaintiffs nor defendants in a world in which pre-trial battles over class certification effectively comprise the trial for national-market disputes."

Allan Erbsen, "Impersonal Jurisdiction," *Emory Law Journal* (forthcoming 2010)

Contending that the rules governing whether courts have the authority to exercise jurisdiction over a party to a legal dispute are "neither clear nor coherent," University of Minnesota Law School Associate Professor Allan Erbsen takes a fresh look at personal jurisdiction doctrine and proposes a framework for addressing the problem. Erbsen suggests, "Assessing whether the Constitution tolerates jurisdiction in a particular state … requires thinking about how the Constitution mediates between competing individual, state, and national interests that arise from the fragmentation of subnational sovereignty. These mediation mechanisms are aspects of what I call 'horizontal federalism'—as distinct from vertical federalism, which is relevant to federal-state rather than state-state relationships." This "horizontal federalism" concept provides the touchstone for the article's exploration of the issues and raises questions for additional research. Among other matters, the author recommends that "treating the burden of litigating in an inconvenient forum as a question of venue may be more sensible than treating it as a question of jurisdiction."

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LAW BLOG ROUNDUP

Frustration with Consumer Product Safety Act Amendments Continues

"Ghastly CPSIA law reaches two-year anniversary." Cato Institute Senior Fellow Walter Olson, observing the anniversary of consumer product safety law amendments that have caused consternation among product manufacturers and retailers, particularly those producing and selling children's products, which must be tested for and meet stringent lead content requirements. Olson links to blogs discussing the amendments and their purportedly negative effects.

Overlawyered.com, August 30, 2010.

TV Cameras Still Not Allowed in U.S. Supreme Court

"U.S. Supreme Court justices still talk about television cameras as if they were deeply mysterious, brain-draining devices not to be approached with anything shorter than a 40-foot pole." *Legal Times* Supreme Court Correspondent Tony Mauro, blogging about a Tenth Circuit Court of Appeals judicial conference, attended by U.S. Supreme Court Justice Ruth Bader Ginsburg, at which the subject of cameras in the courtroom "inevitably" arose. Canadian Chief Justice Beverley McLachlin apparently observed during a roundtable discussion that the courts in her country have televised their proceedings for 21 years with no perceptible effect on participants' behavior. Behavioral changes are reportedly the reason some jurists object to the cameras in the courtroom.

The BLT: The Blog of Legal Times, August 31, 2010.

Latest *Salmonella* Outbreak Could Lead to Legislative Food Safety Reforms

"Maybe this is our version of *The Jungle*, Upton Sinclair's 1906 muckraking book that got Congress to act immediately to pass the Food and Drug Act that governs our food safety system to this day. The Senate has been sitting on S.510 for more than a year. For shame!" New York University Nutrition Professor Marion Nestle, discussing the massive nationwide egg recalls involving suspected *Salmonella* contamination at two Iowa egg operations. Contending that industrial egg production has "gotten out of hand in size, waste, and lack of safety," Nestle calls for Congress to finalize the food safety bill that will authorize the Food and Drug Administration to ramp up its inspections of food production facilities.

Food Politics, August 29, 2010.

THE FINAL WORD

State Judge Helps Federal Court Mediate Vitamin Supplement Injury Claims

In an unusual cross-jurisdictional cooperative undertaking, a Georgia state court judge has reportedly participated in mediation settlements that resolved the claims of more than 200 plaintiffs who filed suit in federal district court, alleging injury from liquid vitamin supplements. The federal court apparently sought the state judge's assistance because he was presiding over 60 similar cases. According to a news source, the Total Body Formula liquid supplements, which were recalled in 2008 and are no longer on the market, allegedly caused painful fingernail and toenail loss, severe joint pain and muscle cramps, drastic hair loss, and other problems. Some consumers purportedly experienced severe kidney problems. Because the lawsuits filed in state and federal courts contained many of the same details and allegations, the courts agreed to cooperate on pretrial and dispute-resolution activities.

According to U.S. District Court Judge R. David Proctor, "there is perhaps no area in which state and federal court cooperation is more crucial—and has the potential to enjoy the most success—than that in the area of complex, multijurisdictional litigation."

Proctor praised Georgia Judge Alvin Wong for serving as "an integral part of the judicial settlement conferences we conducted in these cases" and making "real and substantial efforts that contributed to the settlements." Among other matters, the federal court created an electronic document repository for use in both federal and state court cases, and all parties were apparently allowed to participate in the depositions of key witnesses. Different rules of procedure and evidence applicable in the state and federal systems reportedly created no problems for the courts and counsel. *See Law.com*, August 23, 2010.

UPCOMING CONFERENCES AND SEMINARS

Ethisphere, Webinar, September 22, 2010 – "Internal Investigations: Best Practices for In-House Counsel." Shook, Hardy & Bacon Corporate Law Partner **Jonathan Rosen** will share the podium with general counsel for Corpedia to discuss how in-house counsel can effectively address corporate compliance investigations while keeping an eye on parallel civil proceedings.

The Missouri Bar/Missouri Judicial Conference, Columbia, Missouri – September 29-October 1, 2010 – "2010 Annual Meeting." Shook, Hardy & Bacon eDiscovery, Data & Document Management Practice Co-chair **Denise Talbert** will co-present a session titled "E-Discovery Roadmap – 2010 and Beyond," a continuing legal education track program. Talbert will discuss emerging best practices, cost efficiencies, and competencies in managing and conducting e-discovery.

ACI, New York City, December 7-9, 2010, "15th Anniversary Drug & Medical Device Litigation." Shook, Hardy & Bacon Government Enforcement & Compliance Partner **David Douglass** and Pharmaceutical & Medical Device Litigation Partner **Matthew Keenan** will join a distinguished faculty of presenters for this annual conference that draws more than 500 drug and medical device industry professionals. Douglass will discuss "Managing the New Threat that Individual Corporate Officer Liability Poses to Pharmaceutical Companies," and Keenan will address "Navigating the Fall-Out from Preemption: Preserving the Defense in Your Device Cases and Developing Strategies for FDA Testimony in Drug Litigation." The firm is a lead co-sponsor of this CLE event, which has been organized by the American Conference Institute. ■

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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 93 percent of our more than 500 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).