Shook, Hardy & Bacon L.L.P.

Product Liability Litigation Report

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BRIEFING CONCLUDES IN PRESCRIPTION DRUG PREEMPTION CASE

The U.S. Supreme Court will hear argument on November 3, 2008, about whether state-law failure-to-warn claims involving prescription drugs are preempted by federal drug-safety laws. *Wyeth v. Levine*, No. 06-1249 (U.S.). Among those filing *amicus* briefs before the August 14 deadline were the editors of the *New England Journal of Medicine* and former Food and Drug Administration (FDA) commissioners Donald Kennedy and David Kessler.

The *NEJM* editors reportedly decided to support Diane Levine, who was awarded $7 million by a Vermont jury after an anti-nausea medication administered intravenously allegedly caused the loss of her right arm, arguing that product liability litigation helps focus the attention of drug companies on the safety of their products. According to the journal's executive editor, the safety of the nation's drug supply is supported by the FDA and litigation; he was quoted as saying, "We're concerned that, by stripping away that second mechanism, the drug pipeline is going to be less safe."

Kennedy and Kessler raised a three-pronged argument, contending that state litigation does not conflict with the FDA's authority over drug labeling; the FDA's post-approval monitoring system cannot, alone, safeguard public health; and Congress's decision over the years not to preempt failure-to-warn cases while amending the Federal Food, Drug, and Cosmetic Act "counsels against finding implied preemption." In all, 30 *amicus* briefs have been filed in the high-profile case. Arguing in favor of preemption were the Generic Pharmaceutical Association and U.S. Chamber of Commerce, among others. The Bush administration, in a brief filed by Solicitor General Paul Clement, also urged the court to find state litigation preempted and argued that when "federal regulation is designed to strike a balance between competing considerations, state laws that strike a different balance are impliedly preempted because they interfere with the federal balancing." *See Product Liability Law 360*, August 15, 2008.

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TENTH CIRCUIT JOINS SPLIT OVER CLASS-ACTION TOLLING

The Tenth Circuit Court of Appeals has determined that a plaintiff who files an individual lawsuit raising the same issues as a pending class action can take advantage of the statute-of-limitations tolling doctrine under *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), where the individual claim is filed before class certification is decided but after a non-tolled statute of limitations would have run. ***State Farm Mut. Auto. Ins. Co. v. Boellstorff*, No. 07-1241 (10th Cir., decided September 12, 2008)**. The issue arose in a dispute over insurance coverage following a car accident. Colorado law requires insurers to make their insureds aware of the availability of enhanced coverage. The plaintiff had only minimal coverage under her policy and had not been offered the enhanced coverage. Four years after the accident, she sued the insurer seeking reformation of the insurance policy and damages for breach of the implied covenant of good faith and fair dealing. Her claims mirrored putative class claims that had been filed five years earlier; no one disputed that the original class definition would have included her. The insurer sought to dismiss the case as untimely, and the plaintiff invoked the tolling doctrine of *American Pipe*. Ultimately, the week before the defendant filed its reply brief in the appeal, the motion for class certification in the other action was denied.

Considering the issue of whether a member of a putative class may avail herself of the tolling doctrine to save an otherwise time-barred claim even though that claim is filed before class certification is decided, the court relied on federal case law to predict how the Colorado courts would decide the issue. It found persuasive the reasoning of *In re WorldCom Securities Litigation*, 496 F.3d 245 (2d Cir. 2007), allowing application of the tolling doctrine in this circumstance. *American Pipe* allows parties "to intervene in an action after the denial of class certification even though the statute of limitation has expired as to the parties seeking to intervene." The court discussed other cases that have applied the doctrine, noting that most addressed the question of intervention of an out-of-time plaintiff who files *after* class certification.

The Second and Ninth Circuits have allowed tolling for plaintiffs who file before class certification is decided; the First and Sixth Circuits disagree. According to the Tenth Circuit in this case, when the named plaintiff in the class action (Clark) filed his suit, "alleging the same claims later asserted by Boellstorff, Clark in essence pre-filed Boellstorff's suit. Thereafter, when Boellstorff filed her independent suit she simply retook the reins from Clark." The defendant was already on notice of the claims as well as the "'number and generic identities of the potential plaintiffs.' Accordingly, application of the tolling doctrine here would not undermine the policy choices embodied by Colorado's statute of limitations," the court observed.

With a split among the circuit courts on the issue, a disappointed litigant has strong grounds for a hearing before the U.S. Supreme Court in the future. The Court typically grants *certiorari* to resolve such splits.

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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.

For additional information on SHB's International Product Liability capabilities, please contact

Greg Fowler
+1-816-474-6550
gfowler@shb.com

or

Simon Castley
+44-207-332-4500
scastley@shb.com

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FEDERAL COURT DISMISSES STATE-LAW CELL PHONE EMISSIONS CLAIMS AS PREEMPTED

A federal court in Pennsylvania has determined that putative class claims based on state law against numerous participants in the supply chain for the manufacture and sale of cell phones must be dismissed on the basis of implied preemption. *Farina v. Nokia*, No. 06-724 (U.S. Dist. Ct., E.D. Pa, decided September 2, 2008). The named plaintiff alleged that cell phones emit dangerous radio frequencies (RF) and that the defendants suppressed knowledge of their purported adverse biological effects and violated consumer protection laws. According to the plaintiff, the companies' "primary method" of suppressing knowledge "was assuming control of the American National Standards Institute ('ANSI') Committee in charge of regulating devices emitting RF radiation." The plaintiff claimed that headsets are required to make cell phones safe.

The court analyzed the preemption issue raised by defendants and concluded that the claims could not be dismissed under a express preemption theory. But because the Federal Communications Commission assumed responsibility for creating safety standards for cell phone RF emissions under the National Environmental Policy Act of 1969 and adopted the ANSI standard for RF exposure, and because differing state standards, such as requiring headsets, would "conflict directly with federal regulatory mandates," the court ruled that implied preemption barred plaintiff's state-law claims.

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STATE ATTORNEY GENERAL LAWSUIT FILED AGAINST SYNTHETIC TURF MANUFACTURERS

California Attorney General Edmund (Jerry) Brown (D) has filed a lawsuit against three companies that manufacture artificial turf, claiming they failed to comply with Proposition 65, which requires manufacturers to warn people about potential exposure to substances known to the state to cause cancer or reproductive harm. *California v. Beaulieu Group, LLC*, No. 08407310 (Cal. Super. Ct., filed September 2, 2008). The complaint alleges that defendants have failed to warn about the lead present in the turf and that they knew their products contained lead, a reproductive toxicant. The AG seeks injunctive relief to prohibit the sale of turf without "clear and reasonable warnings," costs and attorney's fees.

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In a related development, Connecticut Attorney General Richard Blumenthal **criticized** a Consumer Product Safety Commission (CPSC) report that children are not at risk from exposure to chemicals in synthetic turf. Blumenthal called on the CPSC to retract its Web site statements about the product's safety, saying they were based on a "crudely cursory" **study** that focused solely on lead. According to the CPSC, a wipe sampling method showed that children would not be exposed to more than 15 µg/day, which is the agency's upper limit of safe exposure to lead. The attorney general charged, "The CPSC review of artificial turf safety focused entirely on the issue of lead contamination from artificial blades of grass. While this one issue is important, it is neither the sole nor the most significant issue. There is no indication that

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CPSC staff considered the transferability or emission—especially at high temperatures—of toxic chemicals from the crumb rubber used at the base of artificial turf." Such rubber apparently contains benthothiazole, butyplated hydroxyanisole and phthalates.

The AG also complained that the study was flawed "even as to the lead issue," because it evaluated "only 14 samples of artificial turf, even though thousands of these fields are in use. Worse, six samples were from portions of turf that was no longer in use." Connecticut's environmental department is evidently launching an artificial turf study with funds provided by a lawsuit the AG settled. *See Connecticut AG Press Release*, August 28, 2008.

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PEN REPORTS ADDRESS EMERGING CHALLENGES OF NANOTECHNOLOGY

The Pew Charitable Trusts and Woodrow Wilson International Center for Scholars have recently published two reports in the center's Project on Emerging Nanotechnology (PEN) series addressing the regulatory and scientific problems facing this new field. The August 2008 **report** considers the role of the U.S. Consumer Product Safety Commission (CPSC) in regulating nanotechnology, identifying several CPSC shortcomings and recommending that the agency take action to successfully integrate "more sophisticated nanotechnology-based products" into the consumer market.

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In particular, this report concludes that CPSC (i) is not "nano ready"; (ii) "has limited ability to tell the public about health hazards associated with nanoproducts"; (iii) "has limited ability to get recalled nanoproducts out of use"; (iv) "lacks sufficient enforcement staff to identify manufacturers that fail to report nanoproduct hazards to the agency"; and (v) "does not have sufficient authority to promulgate mandatory safety standards for nanoproducts." The author therefore urges the commission to rectify these problems by (i) cultivating its nanotechnology expertise, (ii) seeking risk assessments from nanoproduct manufacturers, (iii) coordinating with other health and safety agencies, (iv) convening a Chronic Hazard Advisory Panel (CHAP) to evaluate the potential risks of nanoproducts designed for children, (v) requesting voluntary standards from industry, (vi) asking Congress for the authority to require manufacturers to identify nanomaterials in their products, and (vii) encouraging Congress "to adopt Section 11 of the Consumer Product Safety Act bill recommended by the National Commission on Product Safety in its 1970 Final Report, which would give CPSC the authority to promulgate safety standards for 'new' consumer products based on new and emerging technologies, including nanotechnology."

The September 2008 report, titled ***Silver Nanotechnologies and the Environment: Old Problems or New Challenges?***, outlines "12 lessons for managing environmental risks from nanosilver" that combine existing knowledge of silver with new questions raised by the unique properties of nanoparticles. According to the report, previous research suggests that (i) silver is "toxic, persistent and bioaccumulative under at least some circumstances"; (ii) "nearly one-third of nanosilver products on the market in September 2007 had the potential to disperse silver nanoparticles into the environment"; (iii) "the mass

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of silver dispersed to the environment from new products could be substantial"; (iv) "risk assessment(s) will ultimately be necessary for at least some products employing silver nanomaterials"; (v) "there are no examples of adverse effects from [nanosilver] occurring in the environment at present"; (vi) "silver concentrations in natural waters … range from 0.3 to 500 nanograms/liter"; (vii) "toxicity testing should focus on realistic exposure conditions"; (viii) "it is not clear whether the toxicity of nanosilver can be mitigated by techniques used to control environmental risks from silver itself"; (ix) "the environmental fate of nanosilver will depend upon the nature of the nanoparticle"; (x) "silver is highly toxic to bacteria, and that toxicity seems to be accentuated when silver is delivered by a nanoparticle"; (xi) some forms of silver are "more toxic to aquatic organisms than any other metal except mercury"; and (xii) "silver is not known as a systemic toxic to humans except at extreme doses."

The report finds that in the case of nanosilver, "potentially great benefits are accompanied by a potential for environmental risks, posed both by the physical and chemical traits of the materials." It ultimately recommends using these 12 lessons to "identify research priorities and to begin making scientifically defensible policy decisions about nanosilver."

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EWG CLAIMS CHILDREN EXPOSED TO HIGHER LEVELS OF PBDES THAN PREVIOUSLY ESTIMATED

The Environmental Working Group (EWG) recently published a **report** alleging that "in 19 of 20 U.S. families, concentrations of the chemicals known as PBDEs were significantly higher in 1.5- to 4-year-old children than their mothers." EWG has claimed that toddlers and preschoolers not only had "three times as much of these hormone-disrupting chemicals in their blood as their mothers," but that a form of PBDEs known as Deca occurred "more often and in higher concentrations on average in children than their mothers." "In total 11 different flame retardants were found in these children, and 86 percent of the time the chemicals were present at higher levels in the children than their mothers," according to EWG, which cited animals studies linking PBDEs to "permanent changes in behavior, including hyperactivity."

Earlier EWG studies have purportedly found "high levels of PBDEs in human breast milk and house dust," but the latest investigation claims that children "in fact bear some of the heaviest burdens of flame retardant pollution in the industrialized world." The watchdog has linked this exposure to household items like furniture, computers, televisions, and other electronics, contending that youth ingest more PBDEs than adults at "concentrations exceeding the U.S. Environmental Agency's recommended safe level." The report ultimately calls on regulators to ban the use of PBDEs in all consumer products and imports while urging manufactures to "achieve fire safety through smarter product design."

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ALL THINGS LEGISLATIVE AND REGULATORY

ABA Approves Outsourcing Legal Services Under Strict Controls

When the American Bar Association met in summer 2008, its Standing Committee on Ethics and Professional Responsibility issued an opinion indicating that ethics rules do not prevent lawyers from outsourcing legal and nonlegal services. Lawyers must, however, remain responsible for rendering competent legal services and make a reasonable effort to ensure that the service providers conduct themselves according to the lawyer's professional obligations. According to a news source, the opinion also indicates that clients should usually be told about the outsourcing and should consent if confidential information will be shared with the outside service provider. The issue has come to a head in recent years as law firms and their clients have sought to cut the costs of litigation by sending document review work overseas. Client confidentiality, effective remedies for disputes, vendor competence, and the susceptibility of document seizure in foreign countries have all been implicated in the practice. *See ABA Journal* and *Product Liability Law 360,* August 25, 2008; *BNA U.S. Law Week*, September 9, 2008.

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FDA Publishes Final Rule Changing Regulations About Amending Drug and Medical Device Labeling

The Food and Drug Administration has amended its regulations "regarding changes to an approved new drug application (NDA), biologics license application (BLA), or medical device premarket approval application (PMA)." The final rule, effective September 22, 2008, "provides that a supplemental application submitted under certain FDA regulations is appropriate to amend the labeling for an approved product to reflect newly acquired information and to add or strengthen a contraindication, warning, precaution, or adverse reaction if there is sufficient evidence of a causal association with the drug, biologic, or device." "Newly acquired information" under the rule, is defined as data of a "different type or greater severity or frequency than previously included in submissions to the FDA" and applies to data "derived from new clinical studies, reports of adverse events, and new analyses of previously submitted data."

Consumer advocates apparently contended that the amendment "would make it more difficult for sponsors to warn about new risks." But the FDA disagreed, saying it simply clarifies "a longstanding practice of requiring that sponsors must have sufficient evidence that the standards are met." Other commenters stated that the rule would conflict with congressional intent and, in effect, preempt state law. According to the FDA, Congress did not intend for FDA approval to be static and its rule otherwise complies with federal law.

New E-Discovery Law Advances in Congress

The House of Representatives has approved a bill (S. 2450) that would create a new federal rule of evidence (502) to protect parties from inadvertently waiving attorney-client privilege. The Senate approved the bill in February 2008;

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it now awaits the president's signature. The Judicial Conference of the United States recommended that the rule be adopted; because it involves an evidentiary privilege it was required to undergo legislative approval processes. Under the proposal, a disclosure made in a federal proceeding or to a federal office or agency will not waive privilege if the party responsible for the disclosure took reasonable steps to prevent its release or to correct the error after it occurred. *See BNA U.S. Law Week*, September 16, 2008.

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LEGAL LITERATURE REVIEW

Lester Brickman, "The Use of Litigation Screenings in Mass Torts: A Formula for Fraud?," August 2008

Benjamin N. Cardozo Professor of Law Lester Brickman contends that mass medical screenings conducted solely for litigation purposes have produced some 900,000 questionable claims in asbestos, fen-phen, silicone breast implant, and welding fume litigations. Brickman also suggests that the civil justice system has no effective mechanism for "reliably detecting or deterring this claim generation process." Among other matters, he calls for state and federal legislation "to empower prosecutors to pierce doctor's and scientific experts' effective immunity from criminal prosecution. Drafting such legislation to distinguish between legitimately disputed diagnoses or theories of causation and manufacturing medical or scientific evidence for money however will be a daunting task and not one that I am attempting in this article." Brickman concludes, "Unless judges and legislatures change practices, rulings and statutes, the wholesale manufacture of claims in litigation screenings will continue to flourish."

Brickman concludes, "Unless judges and legislatures change practices, rulings and statutes, the wholesale manufacture of claims in litigation screenings will continue to flourish."

Richard Nagareda, "Class Certification in the Age of Aggregate Proof," *New York University Law Review* (forthcoming 2009)

According to Vanderbilt University Law School Professor Richard Nagareda, this article "offers the first account in the literature of the challenges faced today by courts in light of an important series of federal appellate decisions that direct the courts to resolve competing expert submissions on the class certification question in the pre-trial stage—even when the dispute overlaps with the merits of the litigation—in the course of determining the application of Rule 23." Nagareda discovers that, "Aggregate proof frequently offers not so much a contested account of the facts that bear on class certification but, more fundamentally, an implicit demand for a new and often controversial conception of governing law." Examining tobacco and employment discrimination class actions, he argues for (i) "greater transparency in class certification analysis," (ii) a more probing role for appellate courts exercising oversight of class certification decisions, and (iii) a recognition that class certification involves a contest "between court and legislature," that is, "the court should be concerned not with intrusion upon the jury's role in the hypothesized event of trial but, instead, with the degree of lawmaking power that the court properly may wield by comparison to the legislature in the particular area of law at issue."

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Richard Epstein, "The Case for Field Preemption of State Laws in Drug Cases," *Northwestern University Law Review Colloquy*, 2008

This article discusses the recent involvement of the U.S. Supreme Court in the drug and medical device preemption arena. University of Chicago Professor of Law Richard Epstein claims that "field preemption," which preempts state action when a federal statute has "occupied the field" leaving nothing for states to regulate, should be applied in cases involving the federal Food and Drug Administration. He concludes, "It is a mistake to think that the only ways to secure public health are through come combination of sanctions through the FDA permit system and the tort system." Instead, a voluntary system involving "intermediate organizations" that monitor product safety, by, for example, supervising the clinical use of off-label drugs, "is quick on the uptake and gets information on adverse events out to the profession faster than the dilatory FDA processes and the interminable tort litigation."

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LAW BLOG ROUNDUP

If You Find It in Our Blood, Lawsuits Surely Will Follow

"Wanna bet this will not stop suits against makers of Deca PBDE's? We have learned from the asbestos debacle that the 'state of the art defense' was no barrier to *Bleak House* style litigation. Buckle up, here we go! Thinking of using a new and potentially beneficial chemical compound? Get that crystal ball out first!" George Mason University Professor of Law Michael Krauss, blogging about the Environmental Working Group's study of fire retardant chemicals in infants and toddlers. Krauss cites a chemical trade group for the proposition that flame retardants save human lives "and no illness, ailment, or harm to any human anywhere has ever been reported as a result of exposure to [PBDE], even among those who work producing the material."

PointofLaw.com, September 8, 2008.

A Whiff of Hypocrisy?

"Lawsuits Help Guarantee Drug Safety, Doctors Say. Can we just reflect on this headline for a moment? Nothing to take away from the important views coming from the *New England Journal of Medicine*, which has filed a crucial brief in the U.S. Supreme Court arguing against immunity for the drug industry. But when was the last time doctors have been this honest about the importance of the civil justice system's critical 'deterrence' function—providing the financial incentive for companies and professions to act safely." Center for Justice & Democracy Senior Field Organizer Amanda Melpolder, suggesting that doctors, who are themselves subject to medical malpractice lawsuits, are "incredibly hypocritical" for recognizing litigation's value to drug health and safety.

ThePopTort, August 18, 2008.

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THE FINAL WORD

Zach Lowe, "Federal Court Statistics, or: How Numbers Can Drive You Mad," *Law.com,* September 2, 2008

This article parses a recent government report stating that "nearly 10,000 civil cases went to trial in U.S. District Courts–up from between 3,500 and 4,000 per year since 2004," according to Zach Lowe, who "dug a little deeper" into the statistics to find the source of the increase. Lowe found that the U.S. District for the Middle District of Louisiana alone accounted for 6,358 civil cases decided by trial, or "nearly two-thirds of the total number of trials reported nationwide." This particular venue heard two trials in which six plaintiffs represented classes of 3,000 named plaintiffs, but the federal report counted each plaintiff as a separate trial. "Take those cases away, and the number of trials stayed at about the same miserably low level it has hovered at for years–about 1.5 percent of all dispositions," writes Lowe.

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Lowe's analysis also discovered that only 5,600 cases went to verdict, while the "higher number includes cases that went to trial but were resolved before the completion of the trial." The government also calculated some civil cases as multiple completed "trials" by expanding the definition of trial to include contested motions, preliminary injunctions and any "'other contested proceedings in which evidence is introduced.'" "Thus," litigation analyst Marc Galanter told Lowe, "a single case can actually count for several 'completed trials' under this methodology."

Lowe also noted that from 2006 to 2007, plaintiffs' lawyers "started filing more asbestos cases in federal courts" rather than in previously favored state courts. The upswing reportedly surprised litigators who earlier this decade charted a downward trend in asbestos trials as "screening processes came under scrutiny and Congress considered setting up a trust system to pay victims." The lawyers cited by the article had no explanation for the increase, but Lowe cautioned attorneys relying on the government report to "Be careful when reading statistics."

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UPCOMING CONFERENCES AND SEMINARS

BNA Legal & Business Edge, Arlington, Virginia – September 18-19, 2008 – "E-Discovery for the Enterprise: Preparing Your Corporate Clients for the Realities of the Post Rules Amendment World." Shook, Hardy & Bacon Pharmaceutical & Medical Device Litigation Partner **Madeleine McDonough** will participate in a panel discussion about e-discovery/risk management and preservation issues involving electronically stored information such as e-mails, voice mail, instant messages, and text messages.

American Conference Institute, Boston, Massachusetts – September 23-24, 2008 – "Managing Legal Risks in Structuring & Conducting Clinical Trials." Shook, Hardy & Bacon Pharmaceutical & Medical Device

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Litigation Partner **Madeleine McDonough** will join a former FDA enforcement lawyer to discuss issues arising from compliance with state and federal laws requiring the registration of clinical trials and disclosure of results.

Lorman Education Services, Kansas City, Missouri – September 25, 2008 – "Document Retention and Destruction in Missouri." Shook, Hardy & Bacon eDiscovery, Data & Document Management Partner **Christopher Cotton** will present an "E-Discovery Update," focusing on evolving law, litigation issues and coordination within a company.

Juris Conferences, London, England – October 2, 2008 – "Second Annual Electronic Evidence Disclosure in International Arbitration." Shook, Hardy & Bacon Tort Partner **John Barkett** joins a faculty of arbitrators, consultants, vendors, and e-discovery experts to discuss issues ranging from the Sedona principles and IBA Rules on Taking Evidence to privilege, protocols, costs, and future e-disclosure developments.

American Conference Institute, Scottsdale, Arizona – "Positioning the Class Action Defense for Early Success." Joining a faculty that includes federal and state judges, Shook, Hardy & Bacon National Product Liability Litigation Partner **Gary Long** will participate in a panel discussion titled "Foregoing Settlement and Taking the Class Action to Trial."

Practicing Law Institute (PLI), Chicago, Illinois – October 29, 2008 – "PLI's Electronic Discovery and Retention Guidance for Corporate Counsel 2008." Shook, Hardy & Bacon Tort Partner **Amor Esteban** will join a distinguished faculty of presenters addressing "Judicial Insight into How Evidentiary Hearings Are Decided Under the Amended Federal Rules." The panel will focus on how the courts handle claims that electronically stored information is inaccessible. Seminar brochure not yet available.

American Conference Institute, Chicago, Illinois – October 29-30, 2008 – "Defending and Managing Automotive Product Liability Litigation." Shook, Hardy & Bacon Tort Partner **H. Grant Law** will serve on a panel discussing "Preemption: Examining the Current Viability of the Defense in Auto Product Liability Cases."

American Bar Association, New York, New York – November 7, 2008 – "12th Annual National Institute on Class Actions." Shook, Hardy & Bacon Tort Partner **Laurel Harbour** and Pharmaceutical & Medical Device Litigation Partner **James Muehlberger** will join panels addressing the latest developments in class action law. Harbour will discuss "Class Actions Sans Frontières," while Muehlberger will explore the "Rigorous Analysis" standard that courts apply when evaluating whether to certify a class.

Brooklyn Law School, Brooklyn, New York – November 13-14, 2008 – "The Products Liability *Restatement*: Was It a Success?" Shook, Hardy & Bacon Public Policy Partner **Victor Schwartz** will present along with a number of other distinguished speakers, including *Restatement* reporters James Henderson and Aaron Twerski. Seminar brochure not yet available.

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Insight Conferences, Calgary, Alberta – November 26-28, 2008 – "Electronic Records and Information Management." SHB Partner **Amor Esteban** will present "Lessons Learned from e-Discovery in the U.S.," focusing on issues that include amendments to the Federal Rules and instances in which data sources are "not reasonably accessible" under Rule 26(b)(2)(B).

American Conference Institute, New York, New York – December 9-11, 2008 – "13th Annual Drug and Medical Device Litigation." Shook, Hardy & Bacon Pharmaceutical & Medical Device Litigation Partner **Madeleine McDonough** will discuss "Successfully Asserting the Preemption Defense Post-*Riegel* and in Anticipation of *Levine*," and International Litigation and Dispute Resolution Partner **Simon Castley**, who is managing partner of SHB's London office, will serve on a panel to consider "Coordinating the Proliferation of Mass Tort Litigation Outside the U.S.: International Class Action and Product Liability Litigation Trends." Seminar brochure not yet available.

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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 its nearly 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).

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OFFICE LOCATIONS

Geneva, Switzerland
+41-22-787-2000

Houston, Texas
+1-713-227-8008

Irvine, California
+1-949-475-1500

Kansas City, Missouri
+1-816-474-6550

London, England
+44-207-332-4500

Miami, Florida
+1-305-358-5171

San Francisco, California
+1-415-544-1900

Tampa, Florida
+1-813-202-7100

Washington, D.C.
+1-202-783-8400