Shook, Hardy & Bacon L.L.P.

MARCH 28, 2013

PRODUCT LIABILITY LITIGATION REPORT

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LAW FIRM NEWS

Behrens and Silverman Call for Baltimore Court to Reject Consolidation of Asbestos Cases

In their commentary for the March 20, 2013, issue of *Mealey's Litigation Report: Asbestos,* Shook, Hardy & Bacon Public Policy Attorneys Mark Behrens and Cary Silverman call for the Baltimore City Circuit Court to reject a mass consolidation proposal filed by counsel for asbestos plaintiffs. Noting that the "practice has not been used in Baltimore for almost two decades and has been abandoned by every other jurisdiction in the country," the co-authors suggest that the court first determine how many viable cases are pending before applying a questionable remedy. According to the article, "evidence suggests that many of the claimants have no asbestos-related impairment, passed away due to causes unrelated to asbestos exposure, have received significant compensation from trust funds established by bankrupt former defendants, or may have no interest in proceeding on their claims."

Shelley Publishes on OECD's Global Online Product Recall Portal

In a recent article published in *The In-House Lawyer*, Global Product Liability Partner Marc Shelley discusses the new global online consumer product recall portal launched by the Organisation for Economic Co-operation and Development (OECD). Populated with product recall information from safety agencies around the world, the portal also "includes information on product testing results, reports on incidents of injuries, market surveillance, reports on emerging product hazards, product bans and consumer product standards." While acknowledging its laudable goals of communicating product risks that will eventually be translated into more than 100 languages, Shelley expresses some concerns about effects on company reputation and consumer purchasing decisions based on different levels of safety protection across borders. He concludes by reporting on a manufacturer lawsuit that successfully challenged the posting of an inaccurate incident report on an equivalent U.S. product safety database, an outcome that "essentially validated many of the concerns regarding the CPSC's [Consumer Product Safety Commission's] database voiced by industry."

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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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Newstead Discusses Notification Responsibilities for Potentially Unsafe Products

Shook, Hardy & Bacon Global Product Liability Partner **Alison Newstead** has authored an **article** titled "Unsafe products: responsibilities for notification" appearing in the March 2013 issue of *The In-House Lawyer*. Focusing on consumer products sold within the European market, Newstead outlines corporate obligations to actively monitor product safety and notify appropriate national bodies about potential safety issues, and includes details about the notification process and timing. She also sets forth the penalties currently imposed in the United Kingdom on those failing to provide the notification required to consumers and authorities. She concludes, "The in-house lawyer may need to remind the board of these potential penalties in order to keep the notification process on track."

CASE NOTES

U.S. Supreme Court Finds Class Plaintiff Is Not Master of Complaint Before Certification

In a unanimous ruling, the U.S. Supreme Court has determined that the named plaintiff in a putative class-action lawsuit cannot keep his complaint in state court by purporting to limit the class damages to an amount lower than the federal-court jurisdictional threshold set forth in the Class Action Fairness Act of 2005 (CAFA). ***Standard Fire Ins. Co. v. Knowles*, No. 11-1450 (U.S., decided March 19, 2013)**. The issue arose in a suit involving claims by an insured against an insurance company filed in an Arkansas state court and removed before certification to federal court under CAFA. The federal court remanded the matter after determining that the plaintiff's stipulation to limit damages for the class to less than $5 million fell beneath CAFA's threshold and that the court therefore lacked jurisdiction to consider the claims. Additional case details appear in the **September 13, 2012**, **November 8, 2012**, and **January 17, 2013**, issues of this *Report*.

Granting the appeal to resolve a circuit court split on the issue, the U.S. Supreme Court said, "Stipulations must be binding … and [b]ecause his precertification stipulation does not bind anyone but himself, Knowles has not reduced the value of the putative class members' claims. For jurisdictional purposes, our inquiry is limited to examining the case 'as of the time it was filed in state court.'" Stating that "Knowles cannot yet bind the absent class," the court determined that the district court erred by failing to ignore the stipulation when considering if the jurisdictional threshold had been met. The Court remanded the case for further proceedings. Given that the lower court has already found that, in the absence of the stipulation, the value of the amount in controversy was slightly higher than the $5 million threshold, it is likely the matter will remain in federal court.

While commentators have highlighted the significance of the case to class-action defendants facing plaintiffs intent on sidestepping CAFA and keeping their cases in state court, an open question under the Court's ruling is whether certain agreements

that a named plaintiff enters into with a defendant before a class is certified will later bind the class claimants. Among these agreements could be limitations on discovery or a narrowing of disputed issues.

SCOTUS Issues Class-Certification Ruling in *Comcast*

In a 5-4 decision, the U.S. Supreme Court has determined that courts may have to "probe behind the pleadings" when deciding whether Rule 23's prerequisites have been satisfied, because the class-certification analysis will frequently "overlap with the merits of the plaintiff's underlying claim." ***Comcast Corp. v. Behrend*, No. 11-864 (U.S., decided March 27, 2013)**. Writing for the majority, Justice Antonin Scalia found that the Third Circuit Court of Appeals erred in failing to consider arguments challenging the class proponent's damages model on the ground that they were relevant to both the propriety of class certification and a merits determination. Finding that the model fell far short of establishing that damages could be measured class wide, the majority reversed the Third Circuit certification ruling.

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Dissenting Justices Ruth Bader Ginsburg, Stephen Breyer, Sonia Sotomayor, and Elena Kagan criticized the Court's rephrasing of the issue on appeal and would have dismissed the writ of certiorari as improvidently granted. According to the dissent, the rephrasing "shifted the focus of the dispute from the District Court's Rule 23(b)(3) analysis to its attention (or lack thereof) to the admissibility of expert testimony. The parties, responsively, devoted much of their briefing to the question whether the standards for admissibility of expert evidence set out in Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), apply in class certification proceedings. … As it turns out, our reformulated question was inapt," the dissenters contended, because the class challenger never objected to the admissibility of the damages model expert's testimony.

Federal Court Allows FTC to Serve Foreign Defendants via Email and Facebook®

A federal court in New York has determined that the Federal Trade Commission (FTC), which has alleged that defendants based in India "operated a scheme that tricked American consumers into spending money to fix non-existent problems with their computers," may serve motions and other post-complaint documents on specific defendants by email and by message to their Facebook® accounts. *FTC v. PCCare247 Inc.*, No. 12-7189 (U.S. Dist. Ct., S.D.N.Y., order entered March 7, 2013).

As to the Facebook® service, the court acknowledged that this "is a relatively novel concept, and that it is conceivable that defendants will not in fact receive notice by this means. But, as noted, the proposed service by Facebook is intended not as the sole method of service, but instead to backstop the service upon each defendant at his, or its, known email address. And history teaches that, as technology advances and modes of communication progress, courts must be open to considering

requests to authorize service via technological means of then-recent vintage, rather than dismissing them out of hand as novel." Because FTC had made good faith efforts to serve motions and post-complaint documents on the defendants by other means and because the defendants had notice of the proceedings, "as evidenced by their appearance through counsel," the court agreed that the matter could no longer await the already delayed service through the Indian Central Authority.

Where a litigant sets forth "facts that supply ample reason for confidence that the Facebook accounts identified are actually operated by defendants" thus demonstrating "a likelihood that service by Facebook message would reach defendants," the court ruled that service by Facebook® account comports with due process.

Second Circuit Allows Suit Against FDA over Antibacterial Chemical in Some Soaps

The Second Circuit Court of Appeals has determined that the Natural Resources Defense Council (NRDC) has standing to bring an action against the Food and Drug Administration (FDA) seeking to compel the agency to finalize its regulation of triclosan, a chemical used in over-the-counter antiseptic antimicrobial soap. ***NRDC v. Sebelius*, No. 11-422 (2d Cir., decided March 15, 2013)**. Additional information about the case appears in the **May 24, 2012**, issue of this *Report*. So ruling, the court also found that NRDC lacked standing to compel action on a different but related chemical—triclocarban—because it lacked evidence of members' direct exposure to the chemical. The Second Circuit reversed the district court's grant of summary judgment to FDA and remanded the matter for further proceedings.

According to the court, FDA has not yet finalized monographs on either chemical, a step in the process of determining the generally recognized as safe and effective (GRAS/E) status for over-the-counter drugs. FDA has allowed these chemicals to remain on the market despite issuing tentative monographs that would have excluded triclosan because the agency had not determined that the chemical was GRAS/E for any use when the monographs were issued in 1978 and 1994.

Among other matters, the court determined that NRDC had standing because one of its members, a veterinary technician, washes her hands more than 50 times each day using an antibacterial soap supplied by her employer. She also washes animal food and water dishes with a dish soap that also contains triclosan. She is concerned about the hormone-disrupting effects of the chemical and about its potential to increase antibiotic resistance. Her employer and co-workers failed to acknowledge her concerns so "nothing is done to limit our exposure." She also indicated that she did not take further action to change soaps at the clinic because she was uncomfortable imposing time and expense burdens on her employer to find and purchase soaps without the chemical. While the government argued that her exposure was

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The court also agreed that NRDC had shown sufficient evidence of risk from triclosan exposure, including an expert declaration, an FDA letter responding to Rep. Edward Markey's (D-Mass.) concerns about the chemicals and an FDA consumer notice about triclosan. According to the court, these documents established a credible threat from exposure "notwithstanding the uncertainty as to triclosan's harmfulness to humans. … Here, FDA has stated that triclosan presents 'valid concerns,' and FDA has nominated triclosan for a toxicology study, including a study of its carcinogenicity. Further, the record evidence shows that FDA admits that it has insufficient data on triclosan's long-term health effects and that FDA itself is concerned about the long-term effects of triclosan exposure."

MDL Court Rejects Primary Jurisdiction Defense in Hand Soap Antibacterial Lawsuits

A federal multidistrict litigation (MDL) court in New Hampshire has denied the motion to dismiss filed by the defendant in consolidated class actions alleging that the company misled consumers by claiming that its antibacterial soaps with triclosan are more effective than regular soap and water and eliminate "99% of germs"; the court rejected the defendant's argument that the Food and Drug Administration (FDA) has primary jurisdiction over certain factual questions that must be answered to resolve the plaintiffs' claims. *In re Colgate-Palmolive Softsoap Antibacterial Hand Soap Mktg. & Sales Practices Litig.*, MDL No. 2320 (U.S. Dist. Ct., D.N.H., decided March 18, 2013).

According to the court, the litigation is "backward-looking; it seeks to determine whether past conduct was misleading. The FDA's monograph process, in contrast, is forward-looking. It will determine the permissible content of future product labels. It will establish the permissible concentrations of triclosan in consumer hand soaps, if it permits use of the ingredient at all. The monograph will articulate the FDA's findings, based on the current state of scientific knowledge, about the safety and effectiveness of triclosan as used in consumer hand soaps."

Thus, the court ruled, "it is unlikely that any determination by the FDA concerning the future marketing and sale of triclosan hand soap will have any substantial effect on plaintiffs' retrospective claims for damages. Nor is this court likely to benefit materially from the FDA's technical expertise. Given the limited benefit to be derived by waiting [evidenced by the decades' long agency investigation into the chemical], and the substantial harm that plaintiffs will suffer if the action is delayed to await FDA action, I determine that this is not an appropriate case in which to apply the primary jurisdiction doctrine."

Court Denies Dial Corp.'s Motion to Dismiss MDL Challenging Soap Germ-Killing Claims

An MDL court in New Hampshire has denied the motion to dismiss filed by Dial Corp. in consolidated putative class actions brought by consumers in 10 states alleging that the company falsely advertised the antibacterial properties of its "Dial Complete" soaps. *In re Dial Complete Mktg. & Sales Practices Litig.*, MDL No. 2263 (U.S. Dist. Ct., D.N.H., decided March 26, 2013). The allegations in this complaint are similar to claims made against Colgate-Palmolive in litigation discussed elsewhere in this *Report*.

Among other matters, the defendant here unsuccessfully (i) challenged the sufficiency of the pleadings; (ii) raised the primary jurisdiction doctrine, claiming that proposed Food and Drug Administration regulations on antibacterial ingredient triclosan are "imminent"; and (iii) argued that various state-specific claims fail as a matter of law. Addressing the latter, the court states, "As to the remaining bases for defendant's motion to dismiss, none has been shown to warrant dismissal of plaintiffs' claims—at least not at this stage. It would, however, appear that several of defendant's arguments (e.g., privity as a requirement for implied warranty claims in some states, the requirement of prior notice under Ohio's Consumer Sales Practices Act, etc.) lend themselves more properly to resolution at the summary judgment stage, based upon a more complete record and more thorough briefing by the parties."

The court granted the plaintiffs' "assented-to motion to dismiss, without prejudice, their request for injunctive relief."

Judgment Affirmed in Jet Ski® Defect Suit

The Eleventh Circuit Court of Appeals has upheld a $1.5-million judgment in a personal injury action arising from a Jet Ski® accident. *Sands v. Kawasaki Motors Corp. U.S.A.*, No. 8-00009 (11th Cir., decided March 20, 2013) (unpublished). The court determined that the trial court did not err in denying the defendant's motion to exclude as unreliable the testimony of plaintiff's expert witness. The court noted that the plaintiff's engineering expert sufficiently showed an alternative design even though he did not test his invention, a rotatable back seat, to determine whether it "would add new safety hazards." According to the court, the expert was not required to rule out that possibility through exhaustive testing, and the defendant had the opportunity to and did cross-examined him at trial about whether his "proposed design created new hazards of a greater magnitude than those prevented."

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Advocacy Group Challenges Use of Flame Retardant in Furniture, Children's Products

The Center for Environmental Health (CEH) has reportedly notified state and local prosecutors in California that is has sent notices to manufacturers and retailers during the past three months threatening to sue them for failing to comply with Proposition

65, the Safe Drinking Water and Toxic Enforcement Act, by warning consumers about the presence of chlorinated Tris, a flame retardant chemical, in their products. The notice to prosecutors triggers a 60-day window for them to bring lawsuits against the companies; if they fail to do so, CEH will then apparently take action. The advocacy group took similar action in 2012 against manufacturers and retailers of baby products such as changing pads, foam-cushioned mattress toppers and foam-cushioned upholstered furniture. The most recent CEH action apparently involves foam cushions in baby walkers, changing cushions and car seats. *See Bloomberg BNA Product Safety & Liability Reporter*, March 25, 2013.

ALL THINGS LEGISLATIVE AND REGULATORY

House Representatives Call on White House to Finalize Rear Vehicle Visibility Rule

The House sponsors of legislation (P.L. 110-189) requiring the Department of Transportation (DOT) to develop a safety standard that improves rear visibility on vehicles have urged the president to direct the DOT secretary to release and implement the standard. In their March 21, 2013, **letter**, Reps. Jan Schakowsky (D.-Ill.) and Peter King (D-N.Y.) observe that the statutory deadline for doing so was February 28, 2011. Apparently, the National Highway Traffic Safety Administration issued a proposed rule in December 2010, concluding that the only technologically available rear visibility system is a rear-mounted video camera and in-vehicle visual display, but the agency has not finalized the rule. The letter notes that such technology is becoming available on higher-end models, but without the rule "families purchasing economy models may be denied the option of having a lifesaving camera at all."

NHTSA Proposes Rule to Amend Tire and Rim Standards for Light Trailers

The National Highway Traffic Safety Administration (NHTSA) has **issued** a notice of proposed rulemaking to amend Federal Motor Vehicle Safety Standard No. 110 to clarify that special trailer tires are permitted to be installed on light trailers and to "exclude these trailers from a vehicle testing requirement that a tire must be retained on its rim when subjected to a sudden loss of tire pressure when brought to a controlled stop from 97 km/h (60 mph)." Comments are requested by May 13, 2013. *See Federal Register*, March 13, 2013.

GAO Issues Report on FDA Oversight of Dietary Supplements

The U.S. Government Accountability Office (GAO) has issued a **report** titled "Dietary Supplements: FDA May Have Opportunities to Expand Its Use of Reported Health Problems to Oversee Products." GAO states that the Food and Drug Administration (FDA) received more than 6,000 reports of adverse events involving dietary supplements between 2008 and 2011—"71 percent came from industry as serious adverse events as required by law." FDA, however, "may not be receiving information on all

adverse events because consumers and others may not be voluntarily reporting these events." GAO also notes that FDA does not systematically collect information on how it uses adverse event reports (AERs) for consumer protection action, nor is the agency "required to provide information to the public about potential safety concerns from supplement AERs as it does for drugs."

Among other matters, GAO recommends that FDA "explore options to obtain poison center data, if determined to be useful; collect information on how it uses AERs; provide more information to the public about AERs; and establish a time frame to finalize guidance related to GAO's 2009 recommendations." The latter recommendation involves unfinished guidance documents, including those pertaining to new dietary ingredient notification and when products should be marketed as dietary supplements or as conventional foods with added dietary ingredients. GAO mentions energy drinks as an area of concern.

Green Group Says Agency Data on Synthetic Turf Weak

Environmental advocacy organization Public Employees for Environmental Responsibility (PEER) has issued retraction demands about the safety of synthetic turf to two federal agencies under the Data Quality Act, which requires the information they distribute to be complete, objective and reliable. A **complaint** filed with the Consumer Product Safety Commission (CPSC) contends that the agency tested for lead only, considered ingestion and not inhalation or dermal absorption, examined newer fields "despite the fact that the fields release more lead as they age," and conducted too small a study in concluding that "young children are not at risk from exposure to lead in these fields." PEER filed a similar **complaint** with the Environmental Protection Agency.

The organization claims that the agencies' "blanket safety assurances" to parents, athletes and schools were made on the basis of unreliable data sources. According to PEER, synthetic turf is manufactured with tire crumb, which purportedly contains 1,3-butadiene, benzene, phthalates, polycyclic aromatic hydrocarbons, manganese, carbon black, carbon black nanoparticles, latex, and zinc. PEER calls for the agencies to remove materials from their Websites stating that the turf is "OK to install, OK to play on"; disseminate warnings; and commission independent research on a large sample of older and newer fields, indoor and outdoor fields, different exposure pathways, and different contaminants. *See PEER News Release*, March 21, 2013.

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California Proposes Adding Shampoo and Dishwashing Contaminants to Prop. 65 List

California EPA's Office of Environmental Health Hazard Assessment (OEHHA) has selected several **chemicals** for review by its Carcinogen Identification Committee for possible addition to the state's Proposition 65 (Prop. 65) list of chemicals

known to the state to cause cancer. According to OEHHA, these chemicals—N-Methyl-N-nitroso-1-alkylamines, -octanamine, -decanamine, -dodecanamine, and –tetradecanamine—are "found in some hair care products, household dishwashing liquids and surface cleaners." They are not apparently intentionally added to the products, "but may form as a result of the reaction of nitrite with amine compounds." OEHHA is requesting information "relevant to the assessment of the evidence of carcinogenicity" by May 21, 2013.

LEGAL LITERATURE REVIEW

Patricia Hatamyar Moore, "Confronting the Myth of 'State Court Class Action Abuses' Through an Understanding of Heuristics and a Plea for More Statistics," *University of Missouri-Kansas City Law Review*, (forthcoming 2013)

St. Thomas University School of Law Professor Patricia Hatamyar Moore contends in this article that the ongoing debate over "state court class action abuse" is based on "no current data and very little past data about class actions … for federal or state courts." Answers to such questions as "the number of cases filed as class actions, the percentage of cases designated as class actions that are eventually certified as such, or the ultimate disposition of such cases" are, according to the author, simply unknown. While the Federal Judicial Center, some state court research entities and academics have undertaken "herculean efforts" to compile databases that provide partial answers to the questions, she states that even "these limited efforts are well beyond the resources and skill available to the public, the press, and even to most policy makers and the Court."

This apparent lack of baseline data, Hatamyar Moore suggests, allows "class action mythology," including purported "abuses" in state courts, to sway judgments about class actions on the basis of "negative stereotypical anecdotes." Among the "myths" the article explores are unsupported claims about a flood of state-court class actions; settlements despite no legal liability ("judicial blackmail"); state court costs and delays; huge, unmerited attorney fees in state court; and frivolous lawsuits. Noting that the U.S. Supreme Court has five class-action lawsuits on its docket this term, the author concludes by cautioning, "The Court should be exceedingly wary of the 'state court class action abuse' label in considering the cases before it this term."

LAW BLOG ROUNDUP

SCOTUS Losing in Popular Vote

"Slightly more than half of Americans have a favorable opinion of the U.S. Supreme Court. … But the Court's popularity has been sagging, with its favorability rating hovering between 51% to 53% over the past year. Between 1987 and 2010, its

rating never slipped below 57% and frequently hit 70 percent or higher." *Wall Street Journal* lead writer Jacob Gershman, discussing a new Pew Research Center survey of American views about the U.S. Supreme Court.

WSJ Law Blog, March 25, 2013.

Knowles Was a Pro-Consumer Ruling

"[Commentators complain] that [*Standard Fire v. Knowles*] is a 'pro-defendant' decision and it will certainly be spun that way. But it's important to recognize that it's also a *pro-consumer* decision. The same hellhole judges that ignore due process concerns of defendants when refusing to rule on personal jurisdiction issues or countenancing abusive expensive discovery or improperly certifying classes go on to ignore due process concerns of absent class members when the defendants facing this barrage of litigation pay [plaintiffs' lawyers] to go away." Manhattan Institute Center for Legal Policy Adjunct Fellow Ted Frank, blogging about the U.S. Supreme Court's ruling, discussed elsewhere in this *Report*, curtailing a plaintiff's ability to stipulate to damages in a putative class action to remain in state court.

PointofLaw.com, March 20, 2013.

THE FINAL WORD

Noted Plaintiff's Counsel Disbarred in Kentucky

The Kentucky Supreme Court has **disbarred** Cincinnati trial attorney Stanley Chesley, after finding that he violated the state's rules of professional conduct when he was involved in the settlement of litigation involving the diet drug fen-phen. According to the court, he did not charge a reasonable fee, failed to provide clients with a written statement stating the outcome of the matter, divided fees among lawyers of different firms without client consent, knowingly ratified specific misconduct of other lawyers, had a conflict of interest, made a false statement of material fact or law to a tribunal, and "engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation following the initial distribution of client funds and concealed unethical handling of client funds by others."

The court did not order Chesley to pay more than $7 million in restitution as recommended by the trial commissioner and board of governors, because court rules do not allow restitution orders "when a disciplinary action leads to a permanent disbarment." According to the court, because he is now no longer a member of the Kentucky Bar Association, he is not subject to the court's direct supervision, but his clients have instituted a civil action to recover any damages they sustained. Chesley likely faces disbarment in his home state of Ohio; it has reciprocity with Kentucky. One of several attorneys who lost their licenses to practice law after participation in the fen-phen settlement, Chesley also became known for handling high-profile class-action lawsuits, including serving as an attorney for victims of the 1977

Beverly Hills Supper Club fire, the 1984 Bhopal, India, gas-leak and the 1988 terrorist bombing of a Pan Am flight over Lockerbie, Scotland. *See Kentucky Herald-Leader*, March 21, 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 Global Product Liability Partner **Alicia Donahue** will co-moderate a panel discussion on "Managing the Corporate Counsel Relationship: The Inside View on Diversity, Retention and Client Expectations." Global Product Liability Partner **Patrick Gregory** will serve on a panel discussing "The Science Behind the Sentiment: Understanding Punitive Damages in an Era of Anti-Corporate Bias." 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.

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.

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."

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MARCH 28, 2013

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."

DRI, Washington, D.C. – July 25-26, 2013 – "2013 DRI Class Actions Conference." Shook, Hardy & Bacon Class Actions & Complex Litigation Partners Tim Congrove and Jim Muehlberger will participate in this event. Congrove, who is also serving as program vice-chair, will moderate a panel of distinguished in-house counsel discussing "Inside and Out: A Wide-Ranging Discussion of Class Actions from the Client's Perspective." Muehlberger "will discuss the current state of issue classes, techniques for addressing them, and his experience in trying a case involving a Rule 23(c)(4) class" during a presentation titled "Making an Issue Out of It: The Trial of a 23(c)(4) Class." SHB is a conference co-sponsor. ■

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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).