Shook, Hardy & Bacon L.L.P.

DECEMBER 13, 2012

PRODUCT LIABILITY LITIGATION REPORT

CONTENTS

LAW FIRM NEWS

McGroder & Stevenson Caution Cosmetics Companies About FDA Scrutiny

Shook, Hardy & Bacon Pharmaceutical & Medical Device Attorneys **Lori McGroder** and **Jennifer Stevenson** have co-authored an **article** on recent Food and Drug Administration (FDA) initiatives targeting the marketing and labeling of cosmetic products. Titled "Cosmetics Under Fire: Tips to Avoid FDA Scrutiny," the article was published in the November 30, 2012, issue of *Law360.* According to the article, FDA warning letters to a number of cosmetics manufacturers focus on claims that their products had an effect on the human body or cured, treated or prevented disease thus rendering them drugs under the Food, Drug, and Cosmetic Act. The authors caution that government enforcement action may ultimately lead to costly consumer-fraud litigation, which has already been filed by some plaintiffs' lawyers. They conclude by recommending strategies to avoid FDA scrutiny and minimize litigation risk.

CASE NOTES

Eleventh Circuit Allows Scalp Burn Claims to Proceed Against Hair Dye Maker

The Eleventh Circuit Court of Appeals has determined that a lower court erred in excluding non-hearsay statements about a hair dye product in a personal injury lawsuit. ***Wright v. Farouk Sys., Inc.*, No. 12-10378 (11th Cir., decided November 29, 2012)**. So ruling, the court remanded the matter for the district court to consider other objections the defendant made to the wrongly excluded affidavit that contained the admissions of a party opponent.

The issue arose in a case involving a 13-year-old who had blond highlights added to her hair with a hair bleaching system that allegedly burned her scalp and led to a skin graft. She asserted claims for negligent design and manufacture, negligent failure to warn, strict liability, and strict liability failure to warn. After her expert witness was excluded, a ruling she did not appeal, and the party-opponent admissions were excluded as hearsay, the district court granted the defendant's motion for summary judgment.

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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The party-opponent admissions were contained in a salon owner's affidavit recounting a conversation with the company chair. He had allegedly said that the product separates during transport and that shaking it, as the hairdresser here had done according to label instructions, does not adequately re-homogenize the product thus making an untoward or accelerated chemical reaction possible. The district court will decide on remand whether the plaintiff timely disclosed the salon owner as a witness, and if she did not, whether that failure was substantially justified or harmless.

Rule 23(b)(2) Class May Be Certified Where Monetary Damages Are Incidental

The Seventh Circuit Court of Appeals has ruled that, consistent with *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), a class in which monetary as well as declaratory or injunctive relief is sought may be certified under Federal Rule of Civil Procedure 23(b)(2) as long as the monetary relief is incidental. *Johnson v. Meriter Health Servs. Employee Retirement Plan,* No. 12-2216 (7th Cir., decided December 4, 2012). The issue arose in a case involving a challenge to an employer's pension plan under the Employee Retirement Income Security Act.

According to the court, "all that the class is seeking, which is to say all that the subclasses are seeking, at least initially, is a reformation of the Meriter pension plan—a declaration of the rights that the plan confers and an injunction ordering Meriter to conform the text of the plan to the declaration. If once that is done the award of monetary relief will just be a matter of laying each class member's pension-related employment records alongside the text of the reformed plan and computing the employee's entitlement by subtracting the benefit already credited [] to him from the benefit to which the reformed plan document entitles him, the monetary relief will truly be merely 'incidental' to the declaratory and (if necessary) injunctive relief (necessary only if Meriter ignores the declaration)."

The court notes that the Ninth Circuit has expressed doubt that "*Wal-Mart* left intact the authority to provide purely incidental monetary relief in a (b)(2) class action, as we think it did."

Eighth Circuit Dismisses Action Against Insurer; No Duty to Defend Actionable Camouflage Apparel Odor-Performance Representations

The Eighth Circuit Court of Appeals has affirmed a district court's grant of summary judgment in favor of an insurance company which sought a declaration that it had no duty to defend or indemnify a camouflage clothing manufacturer that was sued for misrepresenting the odor-eliminating performance of its products. ***Westfield Ins. Co. v. Robinson Outdoors, Inc.,* No. 11-3804 (8th Cir., decided November 30, 2012)**. According to the court, the insurance policy's exclusion of claims "arising out of the failure of the goods, products or services to conform with any statement of quality or

performance made in [Robinson's] 'advertisement,'" was unambiguous and applied to the class actions filed by hunters disappointed that the clothing did not, as advertised, eliminate human scent so that prey would be unable to detect their presence.

Negligent Misrepresentation Suit Against Paint Company Tossed

A federal court in Missouri has dismissed, under the economic loss doctrine, a negligent misrepresentation claim against a paint manufacturer involving a purportedly defective product and alleging economic loss only. *Dannix Painting, LLC v. The Sherwin-Williams Co.*, No. 4:12-cv-01640 CDP (U.S. Dist. Ct., E.D. Mo., E. Div., decided December 3, 2012).

The plaintiff is a painting contractor that was hired to paint new buildings at a Florida Air Force base. Due to noxious odors from some of the defendant's products, the plaintiff sought advice for alternatives, and, using a third recommended product, the plaintiff claims to have sustained financial loss when the paint delaminated some of the surfaces to which it was applied. The plaintiff alleged that "defendant failed to exercise reasonable care in providing information about appropriate products for the required application. Plaintiff relied on this information and claims it caused the pecuniary loss for which it seeks damages."

According to the court, at issue was whether Missouri's economic loss doctrine, which prevents plaintiffs from seeking recovery in tort for purely economic losses, precludes the plaintiff's negligent misrepresentation claim. Because the state's supreme court has "yet to decide whether the economic loss doctrine bars negligent misrepresentation claims related to defective products," the court was required to predict whether it would do so. Since only rare exceptions have been allowed under the doctrine, none of which applied here, the federal court ruled that the doctrine barred the plaintiff's claim.

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Consumer Fraud Claims Filed Against Baby Crib Bumper Manufacturer

A woman who purchased baby crib bumpers has filed a putative class action in a California federal court alleging violations of consumer-fraud laws and claiming that the company falsely advertises the products as safe when properly installed, despite risks of injury and death posed by these products. *Vizcarra v. Carter's Inc.*, No. 3:2012cv02847 (U.S. Dist. Ct., S.D. Cal., filed November 28, 2012). While the plaintiff does not apparently allege that her child suffered any injury from use of the crib bumpers, she claims that they are not safe and that the warnings included with the product are inadequate. According to the complaint, "manufacturers and distributors of crib bumpers, including defendants, perpetuate the falsehood that crib bumpers eliminate risk of injury or death in the crib environment. The opposite is true: crib bumpers are themselves a hazard, totally superfluous and unneeded—and at best, worthless."

She reportedly seeks restitution, disgorgement, damages for consumer law violations and unfair competition, as well as an order requiring the defendant to issue corrective advertising. *See Courthouse News Service*, November 30, 2012. Information about a ban imposed on these types of products in Maryland appears in the November 29, 2012, **issue** of this *Report*.

Putative Class Alleges Fraud in Mascara Marketing Claims

A California resident has filed a putative class action against Coty Inc., alleging that it falsely advertises one of its cosmetic products, Rimmel London Lash Accelerator Mascara with Grow-Lash Complex®, as a product that can lengthen and thicken eyelashes in just 30 days. *Algarin v. Coty Inc.*, No. 3:2012cv02868 (U.S. Dist. Ct., S.D. Cal., filed December 3, 2012).

Seeking to certify multi-state and state-wide classes of consumers, the plaintiff challenges product representations claiming that with regular use, "lashes will be 'more numerous' and 'within 30 days' will appear '117% longer.'" She acknowledges the company's use of the word "appear" on its product label claims, but contends that by including a picture of a ruler on the product label with an eyelash that has perceptibly grown after 30 days, the lengthening representation "is deceptive in that it imparts the message that the lashes will actually grow longer and multiply." The company also allegedly claims that its representations are "clinically tested."

According to the complaint, prescription eyelash lengtheners cannot even perform within the timeframe defendant promises in its product promotions and, with nothing in the mascara product to grow lashes, the company's "grow lash claim is false, misleading, and reasonably likely to deceive the public."

According to the complaint, prescription eyelash lengtheners cannot even perform within the timeframe defendant promises in its product promotions and, with nothing in the mascara product to grow lashes, the company's "grow lash claim is false, misleading, and reasonably likely to deceive the public." The plaintiff asserts that consumers pay a premium over other lash applications in reliance on these representations. Alleging breach of express warranty and violations of California's Unfair Competition Law and Consumers Legal Remedies Act, the plaintiff seeks damages, restitution, disgorgement, and injunctive relief, including stopping the company from continuing these practices and ordering a corrective advertising campaign.

ALL THINGS LEGISLATIVE AND REGULATORY

House Democrats Introduce Legislation to Increase Oversight of Drug Compounders

U.S. Reps. Rosa DeLauro (D-Conn) and Nita Lowery (D-N.Y.) have introduced a bill (**H.R. 6638**) that would increase government oversight of compounded drugs, like those purportedly implicated in a fungal meningitis outbreak that has caused 36 deaths and 541 illnesses nationwide. The proposed legislation would amend the Food, Drug, and Cosmetic Act to require notification to patients that a compounded

drug has been prescribed, product labeling as a "non-FDA approved compounded drug product," registration for drug compounders, training, the establishment of advisory committees, and reporting obligations.

Commission Abandons Appeal in Challenge to Unsafe Product Database

According to a news source, the Consumer Product Safety Commission (CPSC) has discontinued its Fourth Circuit appeal from a Maryland federal court's ruling that a product safety complaint was too misleading to post on the commission's Saferproducts.gov database. *Company Doe v. Tenenbaum*, No. 12-2210 (4th Cir., motion to dismiss filed December 7, 2012). A related appeal filed by public advocacy organizations, however, remains pending; they apparently challenged the company's ability to remain anonymous throughout the proceedings and to shield details about the complaint from public view. *Company Doe v. Public Citizen*, No. 12-2209 (4th Cir., filed October 2, 2012). The district court's July 2012 **ruling** was heavily redacted, and many filed documents are under seal.

The case establishes precedents that remain unchallenged: (i) publishing a complaint constitutes final agency action reviewable in court and (ii) a database Website disclaimer that complaints may be inaccurate does not justify publishing all of them. Still, manufacturers are apparently concerned about the pending Public Citizen appeal, because if the court allows a company challenging a product safety complaint on the CPSC database to be named, litigation would be pointless. *See Law360*, December 10, 2012.

Infant Recliner Company Is Latest CPSC Target

The Consumer Product Safety Commission (CPSC) has filed an administrative enforcement action against Baby Matters LLC, the manufacturer of infant recliners allegedly linked to several deaths and dozens of reports of children falling out of the products. ***In re Baby Matters LLC*, No. 13-1 (CPSC Docket, filed December 5, 2012)**.

According to the complaint, an early version of the products at issue, Nap Nanny® and Nap Nanny® Chill™, has harness straps that were secured only to the fabric that covers the foam base, "so that there is no means of anchoring the harness to any fixed point." The next generation products apparently had harnesses with two straps sewn into the fabric cover that could be secured with Velcro™ tabs to rings embedded in the foam seat base. A third strap had no means of attachment to a fixed point on the foam base. "[T]his defective design," claims CPSC, "allows an infant to fall or hang over the side of a Generation Two even while the harness is in use, which can result in injury or death."

CPSC also claims that the product warnings were inadequate because they were printed in "extremely small" font on the underside of the product.

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company's generation two recliners. The products were recalled in 2010, and, while the company took some corrective actions, CPSC claims that these changes did not address products already purchased or remaining in retailers' inventory. It also alleges that current marketing for these products conflicts with the current warnings and instructions.

Claiming that the products are defective and create a substantial risk of injury to children, CPSC seeks an order requiring the company to cease any remaining distribution of the product, notify all those in the chain of distribution to cease distribution, notify state and local public health officials, provide prompt public and individual notice of the defects, refund consumers, reimburse retailers, and submit a satisfactory corrective action program. According to a news source, this is the third administrative action complaint CPSC has undertaken in the last six months. The company reportedly went out of business in November 2012. *See Bloomberg BNA Product Safety & Liability Reporter*, December 6, 2012.

CPSC Reports Fatalities Related to Portable Bed Rails

The Consumer Product Safety Commission (CPSC) recently released a **review** of adult portable bed rail-related deaths and injuries between January 2003 and September 2012. Using data from various sources, including death certificates and medical examiner/coroner reports, the review cited 155 deaths involving bed rails during that period. According to CSPC, the victims' ages ranged from 13 to 103. Most (83 percent) of the decedents were older than 60, 12 percent were between 30 and 60 years old, 4 percent were younger than 30, and one was of an unknown age. Some 61 percent of the deaths occurred at home and about 26 percent occurred at a nursing home or in an assisted living facility, the report said. It also found that nearly half of those who died in bed-rail accidents had medical problems such as dementia, heart disease and Parkinson's disease. Most of the 155 deaths allegedly occurred, for the most part, when a person's head or neck became stuck in the bed rails.

According to news sources, consumer safety advocates, who have long campaigned for federal regulators to study bed-rail deaths and injuries, called the report an important first step. But they said that it failed to address several issues, including jurisdictional matters, that is, which agency has responsibility for some types of bed rails—CPSC or the Food and Drug Administration. The advocates said that the question of oversight remained one of the biggest problems with bed rails, due to unanswered technical questions about which rails are medical devices and which are consumer products.

In August, CPSC Commissioner Robert Adler evidently indicated that safety standards for adult bed rails should be considered now that the agency has completed its work on bed rails for children, and according to news sources, CPSC recently said, "Our office is still reviewing its findings, but we look forward to exploring what internal and external steps can be taken to address hazards associated with these products." *See The New York Times,* November 29, 2012.

Hundreds of Commenters Debate Proposed High-Power Magnet Ban

In the ongoing battle to prohibit the sale of high-powered magnet sets, the Consumer Product Safety Commission (CPSC) has reportedly received more than 1,200 comments from parents, users, safety advocates, medical professionals, and others expressing opposition or support of the proposed ban.

According to news sources, some individuals called the proposed ban an example of big government, stating that "Such a ban would be yet another example of big government's encroachment on people's freedoms," and others claim that injuries connected with the products are attributable to parental neglect. Some ban supporters evidently relayed stories of witnessing or providing treatment to individuals who had swallowed the powerful magnets, which can pull together and become lodged in the body, posing a risk of harm and possible need for surgical intervention.

Among the comments submitted about the proposed rulemaking were those by the Toy Industry Association, Safe Kids Coalition, Consumer Federation of America, manufacturers of the popular magnetic products, pediatric nurses, and gastroenterologists. One commenter reportedly wrote, "As a pediatric gastroenterologist, I have seen firsthand the dangers of magnet ingestion. There is damage to the GI tract lining within HOURS of ingestion. … There has been a definite increase in the number of these ingestions since manufacturers have popularized these magnet sets."

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The companies that make the products currently have warnings stating, among other things, that they are not for use by children and that they should not be swallowed, but CPSC alleges that the warnings and labeling do not effectively communicate the hazard associated with product ingestion and that it continues to receive reports of injuries involving children's use of the product. Opponents state that CPSC has not given warning labels and educational campaigns a fair chance in mitigating injuries. *See Bloomberg BNA Product Safety & Liability Reporter,* December 4, 2012.

In a related development, the commission has apparently succeeded in **consolidating** two administrative actions against Buckyball® manufacturer Maxfield & Oberton Holdings LLC and its competitor Zen Magnets LLC. A prehearing conference has been scheduled for January 10, 2013. *See Federal Register*, December 4, 2012.

CPSC Finalizes Updates to Animal Testing Policy

A **rule** finalized by the Consumer Product Safety Commission (CPSC) "codifies its statement of policy on animal testing that provides guidance for manufacturers of products subject to the Federal Hazardous Substances Act (FHSA) regarding replacement, reduction, and refinement of animal testing methods." The rule, which takes effect January 9, 2013, includes information about comments received on the proposal and CPSC responses.

In a related **notice**, CPSC announced amendments to its regulations on animal testing methods under FHSA. The notice includes revisions to animal testing regulations and explanations of the rationale for the revisions; it will also take effect January 9.

FHSA "requires appropriate cautionary labeling on certain hazardous household products to alert consumers to the potential hazards that a product may present." These include products that are toxic, corrosive, irritant, flammable, combustible, or strong sensitizers. The CPSC rule changes clarify the criteria used for classification of substances as "highly toxic," "toxic," "corrosive," "irritant," "primary irritant," and "eye irritant," and emphasize that the use of *in vitro* and other alternative test methods, including a weight-of-evidence approach, and prior human experience are recommended over *in vivo* animal tests when possible. *See Federal Register*, December 10, 2012.

CPSC Issues Proposed Rules on Bedside Sleepers, Hand-Held Baby Carriers

The Consumer Product Safety Commission (CPSC) has proposed safety standards for **bedside sleepers** and **hand-held baby carriers**, incorporating, with some modifications, voluntary standards ASTM F2906-12 and F2050-12, respectively. Comments on both proposals are requested by February 25, 2013. The ASTM standards, which are copyrighted, will be **available** in a read-only format during the comment period. *See Federal Register*, December 10, 2012.

Rulemaking on Third-Party Testing Completed; Nancy Nord Objects

The Consumer Product Safety Commission (CPSC) has issued a **final rule** that implements a law enacted in August 2011 requiring that third-party testing of children's products for compliance with safety rules involve "representative samples," as opposed to the law's previous testing requirement on "random samples." The rule takes effect February 8, 2013, and will apply to products manufactured thereafter. CPSC Commissioner Nancy Nord issued a **statement** to explain that she voted against the rule "because it is unclear and ambiguous in its requirements, it imposes unnecessary burdens on those required to test and certify, and it creates uncertainty with respect to compliance with the requirements of the Periodic Testing Rule, 16 C.F.R. § 1107." *See Federal Register*, December 5, 2012.

NHTSA Announces Change to Windshield Standard Approach, Calls for Event Data Recorders

The National Highway Traffic Safety Administration (NHTSA) has **withdrawn** a rulemaking proposal that would have rescinded federal Motor Vehicle Safety Standard No. 219, "Windshield zone intrusion," and **issued** a notice of proposed rulemaking that would require event data recorders (EDR) in light vehicles. The agency took the windshield action because two ongoing regulatory developments "could influence vehicle designs by putting a premium on the use of lighter or less rigid materials." Those developments

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are "U.S. fuel economy requirements and a global technical regulation aimed at reducing injuries to pedestrians struck by vehicles."

Noting that 96 percent of model year 2013 passenger cars and light-duty vehicles are already equipped with EDR capability, NHTSA contends that requiring these devices would provide the agency and automakers with data that could be used to improve motor vehicle safety. Information that could be collected would include vehicle speed, whether the brakes were engaged before a crash, crash forces on impact, air bag deployment, and whether seat belts were in use. The proposal would require EDRs in most light vehicles manufactured on or after September 1, 2014. Comments are requested within 30 days of publication in the *Federal Register*.

LEGAL LITERATURE REVIEW

John Coffee & Alexandra Lahav, "The New Class Action Landscape: Trends and Developments in Class Certification and Related Topics," *Columbia Law School Working Paper Series*, November 28, 2012

Columbia University Law Professor John Coffee and University of Connecticut Law Professor Alexandra Lahav have compiled a compendium of class certification rulings from 2005 to 2012. They note that the U.S. Supreme Court's *Wal-Mart v. Dukes* ruling did not, as expected, herald the death of the class action, contending that class action filings are increasing despite barriers to class certification. Apparently, a number of high-profile class actions have met the new commonality standard. Still, they suggest that the device's usefulness has been curtailed and will likely continue to shrink.

The authors identify three emerging class action practice frontiers—settlement class actions, "partial" or "issue certification" in class actions, and duplicative or parallel class actions in state and federal courts. They conclude by expressing doubt about the long-term future of the class action and suggest that only the acceptance of partial certification may be capable of preserving it as a broad form of litigation practice.

Scott Dodson, "A New Look: Dismissal Rates in Federal Civil Cases," *Judicature* (forthcoming 2012)

University of California, Hastings College of Law Professor Scott Dodson takes a more detailed look at cases dismissed since the U.S. Supreme Court adopted a new plausibility pleading standard in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*. Observing that many commentators encountered difficulty coding the cases, i.e., how to categorize "mixed" dismissals or characterize the nature of the dispute, he contends that their choices "potentially mask important detail about the effects of the pleading changes." Dodson attempts to fill in the detail and finds that the "data reveal statistically significant increases in the dismissal rate overall and in a number of subsets of claims." He also apparently found "an

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increase in the prevalence and effectiveness of factual-insufficiency arguments for dismissal [and] a decrease in the prevalence and effectiveness of legal-insufficiency arguments for dismissal." Overall, the author suggests that the cases have affected "both the strategy employed by movants and the rationale for deciding motions to dismiss."

Linda Mullenix, "The 25th Anniversary of the Summary Judgment Trilogy: Much Ado About Very Little," *Loyola U. Chi. L. 2012 Symposium Issue*

University of Texas School of Law Professor Linda Mullenix discusses the impact of the U.S. Supreme Court's 1986 summary judgment trilogy, contending that the dire predictions of legal pundits and commentators have not come to pass. Apparently, numerous Federal Judicial Center studies have shown that the trilogy "has had a scant impact on judicial reception to enhanced utilization of summary judgment as a means to streamline litigation. Simply stated, the trilogy has not resulted in federal judges granting or denying summary judgment in statistically significant ways than before the trilogy." According to Mullenix, the greatest effect has been on first-year civil procedure courses that require law professors "to engage students in complicated explications of shifting burdens of production, persuasion, and proof (and, to run through this mind-expanding exercise largely in absence of mastery of most substantive law)."

LAW BLOG ROUNDUP

Does Tort Law Have a Purpose?

"His thoughtful article presents some surprising findings that should have those of us in the academy taking another look at the purpose of tort law." Charleston School of Law Professor Sheila Scheuerman, blogging about a new sociological study finding that, from the public's perspective, "strict liability reigns supreme," that is, for the most part, study participants are willing to assign liability when an injury occurs even in the absence of negligence or fault. "[M]ere causation created liability" in the view of participants presented with accident-producing scenarios. Scheuerman concludes, "social norms impact tort law. Tort law continues to evolve; new legal wrongs are created by judges and by legislatures. Accordingly, understanding lay opinions of strict liability can help us see where social norms place responsibility, and thus, where tort law may evolve."

Jotwell: Torts, December 3, 2012.

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THE FINAL WORD

Center for Justice & Democracy Issues Briefing Book on Tort Litigation and Juries

New York Law School's Center for Justice & Democracy has published a **briefing book** titled "Tort Litigation and Juries: By the Numbers" that appears to counter claims made by tort reformers who argue that tort lawsuits and the juries that hear them are out of control. The center claims that just 10 percent of injured people in the United States file compensation claims, and only 2 percent file lawsuits. It also claims that, based on National Center for State Courts data, tort cases represented just 6 percent of all civil caseloads in 2010 in the general jurisdiction courts of 17 states. According to the center, half of tort plaintiffs who won their trials in a 2005 sample of state courts of general jurisdiction were awarded $24,000 or less in damages, and the median damage amount awarded by juries declined from $71,000 in 1992 to $33,000 in 2005.

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 Class Actions & Complex Litigation Associate **Amir Nassihi** will serve as program chair for this annual CLE on motor vehicle litigation. 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. Registration for this event is currently open. ■

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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).