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Product Liability Litigation Report

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TENNESSEE SUPREME COURT UPHOLDS 5:1 PUNITIVE DAMAGES RATIO IN AUTO DEFECT CASE

The Tennessee Supreme Court has affirmed a $13.3 million punitive damages award in a case involving allegedly defective van seats that yielded in a rear-end collision and fatally injured an 8-month-old infant riding in a child safety seat behind the front passenger. ***Flax v. DaimlerChrysler Corp.*, No. M2005-01768-SC-R11-CV (Tenn., decided July 24, 2008)**.

Finding the seats defective and unreasonably dangerous, the jury awarded the child's parents $5 million in compensatory damages for his wrongful death; the trial court remitted the jury's $65.5 million punitive damages award to $13.3 million.

On appeal, the court discussed the punitive damages issues at length after determining that awards for the mother's negligent infliction of emotional distress claim were properly overturned because plaintiffs failed to introduce any evidence to prove her emotional injury. In this regard, the court ruled that her negligent infliction of emotional distress claim was a "stand-alone" claim that required heightened proof of injury. As for the punitive damages award, according to the court, the evidence supported a finding that the vehicle's seats posed a substantial and unjustifiable risk to consumers and that the manufacturer "consciously disregarded a known, substantial, and unjustifiable risk to plaintiffs." Because its conduct was reprehensible, the harm at issue involved a child's death, and the alleged wrongdoing was not an isolated incident, the court found that the remitted awards, in a 5 to 1 ratio, did not violate the defendant's due process rights under the U.S. Constitution.

Another issue the court considered involved the validity of a post-sale failure to warn claim and its effect on the outcome of the case. Agreeing that the trial court erred in recognizing the claim in light of plaintiffs' essential trial theory that the manufacturer had knowledge of the defect for more than 20 years, the court cited a 1983 law review article authored by Shook, Hardy & Bacon Public Policy Partner **Victor Schwartz**. Still, the court found the error harmless, noting that "the three valid claims were sufficient to support a wrongful death award of $5,000,000."

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According to a news source, the company plans to appeal the decision to the U.S. Supreme Court and will argue that the van's seat exceeded federal safety standards and was comparable to industrywide standards. Because it was following safety guidelines, the company will apparently assert that it never received "fair notice" that its conduct would be punished. The company will also reportedly argue that the size of the punitive damages award was unfairly large.

The Tennessee high court discussed the company's arguments "that compliance with federal regulations and custom within an industry should bar the recovery of punitive damages." Noting that compliance creates a rebuttable presumption that the product at issue is not unreasonably dangerous, the court stated that "the evidence in this case thoroughly rebutted that presumption," and that the presumption statute "was not designed to provide immunity from punitive damages to a manufacturer who is aware that compliance with a regulation is insufficient to protect users of the product." *See Product Liability Law 360*, July 29, 2008.

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CONTINGENCY FEES UNDER REVIEW BY CALIFORNIA SUPREME COURT IN LEAD PAINT SUIT

The California Supreme Court has reportedly agreed to review a lower court decision allowing private counsel hired by public entities to be compensated through contingency fees while pursuing public nuisance claims on their behalf against lead paint manufacturers. *County of Santa Clara v. Super. Ct.*, No. S163681 (Cal., review granted July 23, 2008). As framed by the court, the issue to be decided is "May a public entity retain private counsel to prosecute a public nuisance action under a contingent fee agreement?" Originally filed in 2000 on an array of legal theories, the lead paint-related claims were narrowed to public nuisance in 2006. Thereafter, the defendants apparently filed a motion to bar payment of contingency fees to private attorneys. The trial court granted the motion, a decision that was reversed by an intermediate appellate court.

According to a news source, that court acknowledged, "Where private counsel are 'performing tasks on behalf of and in the name of the government' in a public nuisance abatement action in which there must be a 'balancing of interests,' private counsel must be absolutely neutral and cannot be compensated by a contingent fee arrangement." Yet, because the private attorneys in the lead paint litigation were "merely assisting government attorneys … and are explicitly serving in a subordinate role … private counsel are not themselves acting 'in the name of the government' and have no role in the 'balancing of interests' that triggers the absolute neutrality requirement." A county attorney involved in the litigation was quoted as saying that she did not take the grant of review "as evidence that they're going to reverse the unanimous decision of the court of appeal." *See Product Liability Law 360*, July 28, 2008.

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SEVENTH CIRCUIT ADDRESSES NOVEL QUESTION UNDER CAFA IN CHEMICAL CONTAMINATION SUIT

The Seventh Circuit Court of Appeals has determined that a complaint involving 100 or more plaintiffs can be removed to federal court under the Class Action Fairness Act of 2005 (CAFA) as a "mass action." ***Bullard v. Burlington N. Santa Fe Ry. Co.*, No. 08-8011 (7th Cir., decided August 1, 2008)**. The plaintiffs filed their complaint in state court alleging negligence in the handling of chemicals used in a wood-processing plant and seeking damages for 144 identified plaintiffs. The defendants removed the suit to federal court under CAFA, which allows the removal of "mass actions" in which plaintiffs propose a trial involving the claims of 100 or more litigants, at least one plaintiff demands $75,000 in damages and minimal diversity of citizenship exists.

Plaintiffs challenged removal, denying that the suit was a "mass action." According to plaintiffs, the complaint does not propose a trial and, thus, defendants can remove a "mass action" only on the eve of trial, "once a final pretrial order or equivalent document identifies the number of parties to the trial." The trial court denied plaintiffs' motion to remand, and the appeals court granted their petition to review "because the legal issue is novel." Under CAFA, a "mass action" is defined as a suit "in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that plaintiffs' claims involve common questions of law or fact."

Plaintiffs claimed that they were entitled to litigate in state court, arguing that CAFA has a loophole. Because complaints do not propose trials, plaintiffs would "be happy to win by summary judgment or settlement," and a proposal to hold a large trial comes after the complaint, plaintiffs contended that the requirements of CAFA's "mass action" provision cannot be satisfied. They also claimed that they might stipulate to a trial covering fewer than all 144 of their number. While the court doubted that "anything filed after a notice of removal can affect federal jurisdiction," it declined to adopt this view of the law, noting that it would make the right to remove a mass action defunct. Stating, "[c]ourts do not read statutes to make entire subsections vanish into the night," the court interpreted the law to apply to the *claims* of 100 or more persons in a single suit.

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11TH CIRCUIT ADOPTS LAST-SERVED RULE FOR REMOVAL STATUTE IN DRUG CASE

The Eleventh Circuit Court of Appeals has decided that, in multi-defendant cases, each defendant has 30 days from the date served with process to seek removal of an action filed in state court to federal court under 28 U.S.C. § 1446(b). ***Bailey v. Janssen Pharmaceutica, Inc.*, No. 07-12258 (11th Cir., decided July 29, 2008)**. The issue arose in a wrongful death case involving a prescription drug with three named defendants that were served on separate dates between February and June 2006. The last defendant served filed a notice of removal based on complete diversity within 30 days of receipt of service. The plaintiff sought to remand, arguing that the removal notice was untimely because it should have been filed within 30 days of service on the first defendant. The district court adopted the "last-served" defendant rule and denied the motion to remand.

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According to the appeals court, the circuit courts have split over the issue, with the Fourth and Fifth Circuits adopting the "first-served" defendant rule and the Sixth and Eighth Circuits adopting the "last-served" defendant rule. The Eleventh Circuit was persuaded that "common sense and considerations of equity favor the last-served defendant rule." The courts have criticized the first-served rule "as being inequitable to later-served defendants who, through no fault of their own, might, by virtue of the first-served rule, lose their statutory right to seek removal." Also, "the first-served defendant rule would obligate a defendant to seek removal prior to his receipt of formal process bringing him under the court's jurisdiction." Thus, the court affirmed the district court's denial of the plaintiff's motion to remand.

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COURT FINDS PLAINTIFF LACKS STANDING TO SUE OVER LEAD IN LIPSTICKS

Calling plaintiff's allegations of injury "conjectural and hypothetical," a federal court in New Jersey has dismissed a putative class action seeking damages from a lipstick manufacturer whose product allegedly contains high levels of lead. *Koronthaly v. L'Oreal USA, Inc.*, No. 07-CV-5588 (U.S. Dist. Ct., D. N.J., decided July 29, 2008) (unpublished). The plaintiff alleged that she had been injured by mere exposure to lead-containing lipstick and her increased risk of being poisoned by lead. She also alleged violation of consumer protection laws, characterizing the defendants' conduct as "misleading, inaccurate, and deceptive." According to the court, a plaintiff who alleges potential future injury or the mere possibility of a future injury lacks standing to bring a claim and, thus, the court lacks subject matter jurisdiction over these claims. The court also dismissed plaintiff's claims for failure to state a claim on which relief could be granted due to her lack of standing.

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ROOF-FAILURE PLAINTIFFS CANNOT SUE IN FEDERAL COURT UNDER DIVERSITY JURISDICTION

The Fourth Circuit Court of Appeals has dismissed claims filed by several South Carolina plaintiffs seeking damages for defective roof trusses and sheathing incorporated into public buildings in the 1970s, finding that, as alter egos of the state, the plaintiffs were not "citizens" for purposes of invoking diversity jurisdiction in federal court. ***S. Car. Dept. of Disabilities & Special Needs v. Hoover Universal, Inc.*, Nos. 07-1190 & 1202 (4th Cir., decided July 30, 2008)**. The plaintiffs were the state Department of Public Health, Department of Disabilities and Special Needs, and the state Budget and Control Board-Insurance Reserve Fund; they sued the defendant in federal district court, which dismissed their claims under the state's statute of repose and limitations.

While an appeal of the dismissal was pending before the Fourth Circuit Court of Appeals, the plaintiffs filed a motion in the district court to vacate the judgments. They asserted that they were not "citizens" for diversity purposes and therefore that the district court lacked subject matter jurisdiction over the

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dispute. The district court agreed and granted the plaintiffs' motion. Affirming the district court "reluctantly," the appeals court applied the requisite factors for determining if a party is a citizen for diversity purposes and concluded that each plaintiff was, indeed, an alter ego of the state.

The court acknowledged the compelling nature of defendant's argument that the plaintiffs created a "procedural morass" in the federal courts by waiting until judgment was rendered to assert that the court lacked jurisdiction. But, because "subject matter jurisdiction goes to the very power of the court to act, and regardless of the waste resulting from having completed proceedings later vacated by a late-discovered jurisdictional defect, an order or judgment entered by a court without subject matter jurisdiction is a nullity." The defendant had complained that the plaintiffs will be "rewarded at this late stage of the proceedings with a 'do over' in state court."

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COURT FINDS AIRLINES HAVE NO DUTY TO WARN ABOUT DVT

The Ninth Circuit Court of Appeals has affirmed the dismissal of claims by airline passengers or their survivors that airlines have a duty under the Warsaw Convention to warn about the risk of deep vein thrombosis (DVT) on international flights. ***Twardowski v. Am. Airlines, Inc.*, No. 06-16726 (9th Cir., decided July 30, 2008)**. The decision affects 35 cases against 40 airlines that were transferred to a multidistrict litigation court in 2004 and consolidated before the Ninth Circuit. Because the Warsaw Convention is applied only to cases involving an "accident," the plaintiffs argued that the air carriers' failure to issue effective DVT warnings, despite requests by the airlines' trade association, the English House of Lords and airline medical officers, was unexpected and unusual and thus constituted an accident.

The court disagreed, distinguishing cases where individual passengers had requested or needed some type of assistance that was not rendered. For example, in *Olympic Airways v. Husain*, 540 U.S. 644 (2004), a passenger and his wife were seated near a smoking section, and the passenger, who allegedly had a history of anaphylactic reactions to smoke, asked a flight attendant for a different seat. "The crew refused the request, and the passenger died in an apparent reaction to the smoke in flight. Even though the conduct amounted to an inaction, the Court concluded that it could nevertheless be an 'event' because '[t]he rejection of a specific request for assistance would be an 'event' or 'happening' under the ordinary and usual definitions of these terms." According to the court, "Generalized requests by public agencies to warn are quite different from the particularized requests by individual passengers for assistance, and the airline's response to them, at issue in these cases."

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NINTH CIRCUIT REVERSES CLASS CERTIFICATION IN AUTO DEFECT CLASS ACTIONS

In an unpublished decision, the Ninth Circuit Court of Appeals has vacated a district court order that certified a nationwide class in a number of

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statewide product liability cases consolidated before a federal court in California by the Judicial Panel on Multidistrict Litigation. *Bonlender v. Am. Honda Motor Co.*, No. 07-55258 (9th Cir., decided July 22, 2008). The Ninth Circuit also ordered that the litigation be reassigned to a different district court judge on remand, citing a case that states, "[A]damancy in erroneous rulings may justify remand to different judge." According to the appeals court, the district court *sua sponte* certified a nationwide class "without making any findings regarding Rule 23's requirements for class certification," thus failing to analyze "whether variations in applicable state law defeated Rule 23(b)(3)'s predominance requirement."

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ALL THINGS LEGISLATIVE AND REGULATORY

U.S. House and Senate Approve Sweeping Changes to Product Safety Law

Congress has approved the Consumer Product Safety Improvement Act of 2008 (**H.R. 4040**), which now goes to President George W. Bush (R) for his signature; it was approved by a veto-proof vote of 424-1 in the House and 89-3 in the Senate. News sources are referring to it as "the broadest-sweeping product safety legislation since the inception of the Consumer Product Safety Commission (CPSC) in the late 1970s." Analysts note that it will shift the federal government's approach to protecting consumers from a reactive stance to a preventive one, applicable not only to domestic products but those manufactured abroad.

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The legislation bans lead above a certain level in children's toys, requires the CPSC to issue a final rule mandating general safety standards for cigarette lighters, bans children's toys or child care articles containing any combination of specified phthalates, and requires CPSC to conduct a study on the use of formaldehyde in the manufacture of textile and apparel articles to identify risks to consumers. The bill authorizes appropriations for research into safety issues related to the use of nanotechnology in consumer products and gives state attorneys general the authority to enforce federal product safety laws. The agency's budget is expected to nearly double when the law goes into effect.

Among other matters, the bill also requires increases in CPSC staffing, a publicly available database of injury reports, new procedures for promulgating consumer product safety rules, third-party testing of products for use by children ages 7 or younger, the establishment of standards for third-party laboratories, prohibitions on the sale of products not conforming to product safety standards, increased penalties, and protections for whistleblowers.

Consumer groups were reportedly pleased with the bill that finally emerged from complex House and Senate negotiations. A spokesperson for the Consumers Union, which co-authored a **report** citing the need for CPSC reform, was quoted as saying, "We fully expect that [CPSC] will use the tools given to them by this legislation to prevent unsafe products from finding their way to our store shelves and into our homes." According to a Consumer Federation of America spokesperson, the legislation's effect on consumers "is vast and can't

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be underestimated." The president of the Toy Industry Association echoed their sentiments, stating "We are going to be working hard to assure people of the safety of toys this season. This is a historic change for the industry. It adds a remarkable level of additional toy safety assurance …. We feel it is the right thing to do." *See ConsumerReports.org,* July 29, 2008; *Product Liability Law 360*, July 31, 2008; *The Washington Post*, August 1, 2008.

Financial Disclosure Proposal Generates Concerns Among In-House and Big-Firm Lawyers

The Financial Accounting Standards Board (FASB), a private standard-setting organization whose rules are recognized as authoritative by the Securities and Exchange Commission, has issued a **proposal** that would require public companies to disclose more information in their financial statements about the risks of litigation. Comments on the proposal must be submitted to FASB on or before August 8, 2008.

The proposal calls for public companies to report every potential loss from lawsuits, unless remote, and estimates of how much the legal threats might cost as well as their likely outcome.

The proposal calls for public companies to report every potential loss from lawsuits, unless remote, and estimates of how much the legal threats might cost as well as their likely outcome. Companies would also have to report more details about the litigation and the reasoning for their predictions. The Association of Corporate Counsel and the American Bar Association are reportedly preparing written comments critical of the proposal. According to some critics, attorney-client privilege could be waived if litigation analysis is disclosed in public filings and, if the value assigned to some litigation ultimately proves inaccurate, the door could be opened to potential securities fraud claims. *See The Recorder*, July 24, 2008.

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LEGAL LITERATURE REVIEW

David Landin, Victor Schwartz & Phil Goldberg, "Lessons Learned from the Front Lines: A Trial Court Checklist for Promoting Order and Sound Policy in Asbestos Litigation," *Brooklyn Journal of Law and Policy* (2008)

They provide a checklist that includes questions about improper forum shopping, the legitimacy of plaintiffs' claims and the application of traditional tort litigation procedures and principles.

Shook, Hardy & Bacon Public Policy Attorneys **Victor Schwartz** and **Phil Goldberg** have co-authored an article about the nuances of asbestos litigation to ensure that judges in jurisdictions where plaintiffs' lawyers have recently begun filing asbestos-related claims will be aware of the issues that their more experienced colleagues in sister jurisdictions have addressed in rooting out abusive practices and claims. They provide a checklist that includes questions about improper forum shopping, the legitimacy of plaintiffs' claims and the application of traditional tort litigation procedures and principles. According to the article, use of the checklist will allow courts to "focus scarce litigation resources on the claims of those truly impaired from asbestos exposure, allow defendants to exculpate themselves when they or their products could not have caused the harm alleged, cut down on the gaming of the legal system, and preserve assets for future claimants."

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Catherine Sharkey, "What *Riegel* Portends for FDA Preemption of State Law Products Liability Claims," *Northwestern University Law Review Colloquy* (2008)

New York University School of Law Professor Catherine Sharkey uses the U.S. Supreme Court's medical device preemption decision in *Riegel v. Medtronic, Inc.*, 128 S. Ct. 999 (2008), to reiterate her suggestion that the courts adopt an administrative deference model when trying to decide whether Congress intends to preempt state law claims when it passes laws addressing product safety. She points out how Justice Antonin Scalia, who complained during a public meeting about the media's failure to focus on the text of the laws the Court interprets, also did not confine himself to a textual analysis in *Riegel,* noting that he referred in his majority opinion to a jury's lack of competence "to engage in cost-benefit analysis, relative to that of the FDA," and speculated "upon congressional motives," finding a "'suggest[ion] that the solicitude for those injured by FDA-approved devices … was overcome in Congress's estimation by solicitude for those who would suffer without new medical devices if juries were allowed to apply the tort law of 50 states to all innovations.'"

Sharkey has previously suggested that federal agencies have a role in assisting courts with their preemption decisionmaking, particularly when implied preemption is at issue. Sharkey concludes, "Questions of implied conflict preemption—whether or not state common law actions are irreconcilable with, or would stand as an obstacle to, frustrate or impede, the command of federal regulatory directives and goals—should turn, first and foremost, upon a particularized understanding of the regulatory review and action taken by the relevant agency. Input from the relevant agency constitutes one pillar of the framework; the second is searching judicial review of the record evidence amassed by the agency in support of any preemptive position."

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Jon Strongman, "Litigating the Learned Intermediary Doctrine," *For the Defense*, July 2008

In this article, Shook, Hardy & Bacon Pharmaceutical and Medical Device Litigation Associate **Jon Strongman** reviews the development of the learned intermediary doctrine in prescription drug cases and explains why the West Virginia Supreme Court erred when it declined in 2007 to adopt the doctrine, calling its justification "outdated" and "unpersuasive." *State ex rel. Johnson & Johnson Corp. v. Karl*, 647 S.E.2d 899 (W. Va. 2007). According to Strongman, the court was wrong to suppose that the emergence of direct-to-consumer advertising should impose a duty on drug manufacturers because (i) "the law requires the sign off from a licensed physician before a patient can receive a prescription medication," and (ii) consumers may not understand the significance of prescription drug warnings "in a useful fashion." The author also argues that requiring manufacturers to directly warn all consumers could result in overwhelming them with information that they would either ignore or make them unwilling to take a medication they need. Strongman concludes by providing tips to those defending prescription drug products liability cases and notes, "To date, it appears that the *Karl* decision will continue to be an outlier, not a trend. That being said, knowing about the *Karl* decision and its rationale will help practitioners defend against any further erosion of the learned intermediary doctrine in other jurisdictions."

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LAW BLOG ROUNDUP

Law Professor Issues Query About Unusual Court Order

"This is the first time I've heard of a *sua sponte* class certification and would be interested to know of other instances and their outcomes." Florida State University Assistant Professor of Law Elizabeth Chamblee Burch seeking information about the Ninth Circuit's decision in an auto defect case to overturn a district court's *sua sponte* certification of a nationwide class and ordering that the case be reassigned to a different judge on remand.

Mass Tort Litigation Blog, July 29, 2008.

Product Safety Legislation Generates Comment …

"Good week in Congress for those who welcome an increase in lawsuits over product liability and employment discrimination…" The National Association of Manufacturers' Carter Wood, blogging about the U.S. Senate's overwhelming vote to adopt the conference report for the Consumer Product Safety Commission Improvement Act.

PointofLaw.com, August 1, 2008.

"Good week in Congress for those who welcome an increase in lawsuits over product liability and employment discrimination…"

… And Parry

"Sour grapes at Point of Law: Carter Wood seems very upset that a new consumer protection bill is likely to become law. Not sure why he's so upset about [it] since he already noted that manufacturers had a hand in drafting the bill." Consumer advocate Justinian Lane, responding to the dour blog posted at PointofLaw.com concerning product safety reforms approved by Congress.

TortDeform, August 1, 2008.

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THE FINAL WORD

Woodrow Wilson's Project on Emerging Nanotechnologies Issues Agenda for Incoming Administration

The Woodrow Wilson International Center for Scholars Project on Emerging Nanotechnologies has issued a **report**, "Nanotechnology Oversight: An Agenda for the New Administration." The report, which includes both short-term and long-term agenda items, calls for increased funding for nanotechnology risk research, the naming of a commission to consider oversight options and quick implementation of new oversight mechanisms by the next president's administration. Among the oversight measures called for are (i) "collecting safety information on uses of nanomaterials in food product and packaging";

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(ii) "updating federal occupational safety laws"; and (iii) "defining nanomaterials as 'new' substances under federal laws, thereby allowing agencies such as the Environmental Protection Agency and the Food and Drug Administration to obtain more information on nanomaterials." The report also suggests using the DuPont-Environmental Defense framework as a basis for analyzing nanotechnology risks. Author J. Clarence Davies is a former Environmental Protection Agency official.

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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 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.

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."

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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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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