Shook, Hardy & Bacon L.L.P.

APRIL 11, 2013

PRODUCT LIABILITY LITIGATION REPORT

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LAW FIRM NEWS

Public Policy Group Spearheads Victory in Texas Supreme Court on Pet Injury Damages

Shook, Hardy & Bacon's Public Policy Group recently contributed to a favorable outcome for animal-medicine manufacturers in the Texas Supreme Court, which ruled in ***Strickland v. Medlen*, No. 12-0047 (Tex., decided April 5, 2013)**, that emotion-based damages, including loss of companionship and sentimental damages, due to the death or injury of a pet may not be recovered in the state.

Presenting on behalf of amici during oral argument, SHB Partner **Victor Schwartz** highlighted the public policy issues at stake after a lower appellate court in Texas broke with the majority of courts nationally by allowing new, broad, emotion-based damages for pet deaths in a November 2011 ruling. SHB Partner **Phil Goldberg** authored the amici brief on behalf of the Animal Health Institute and several animal-health organizations, developed other amici and helped prepare defense counsel on key issues, while Partner **Manuel Lopez** served as local counsel on the SHB amici brief and provided expertise on the appellate process.

In its ruling, the court ultimately recognized that imposing additional liability for the loss of a pet could have significant downsides for pets themselves. "For example, the American Kennel Club, joined by the Cat Fanciers' Association and other pro-animal nonprofits, worry that 'pet litigation will become a cottage industry,' exposing veterinarians, shelter and kennel workers, animal-rescue workers, even dog sitters, to increased liability: 'Litigation would arise when pets are injured in car accidents, police actions, veterinary visits, shelter incidents, protection of livestock and pet-on-pet aggression, to name a few,'" states the court, citing the amici brief authored by Goldberg. "As risks and costs rise, there would be fewer free clinics for spaying and neutering, fewer shelters taking in animals, fewer services like walking and boarding, and fewer people adopting pets, leaving more animals abandoned and ultimately put down."

CASE NOTES

Sixth Circuit Dismisses Trade Association's Challenge to NHTSA Safety Standard

The Sixth Circuit Court of Appeals has rejected a challenge filed by the National Truck Equipment Association (NTEA) seeking to invalidate a motor vehicle safety

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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standard adopted by the National Highway Traffic Safety Administration (NHTSA) in 2005. ***NTEA v. NHTSA*, No. 09-3812 (6th Cir., decided March 28, 2013)**. Standard FMVSS No. 216a extended passenger compartment roof strength requirements to commercial vehicles with a gross vehicle weight of 6,000 to 10,000 pounds. Representing companies that customize or alter commercial vehicles, the petitioner claimed that requiring its members to demonstrate compliance with the roof crush resistance standard by, for example, conducting crash tests, was impracticable and that the rule was arbitrary and capricious.

According to the court, "NHTSA promulgated the final rule at issue only after engaging in an exhaustive and well-considered decisionmaking process" that included repeated and ongoing challenges by the petitioner and thus fulfilled its obligations under the Administrative Procedure Act. The court also rejected the petitioner's claim that NHTSA failed "to test multi-stage or altered vehicles" during rulemaking. In this regard, the court stated, "NTEA fails to identify statutory authority for the so-called testing requirement and similarly fails to explain adequately how testing might undermine the overwhelming record evidence supporting NHTSA's decision to regulate heavier vehicles."

The court further rejected NTEA's substantive practicability objections, finding that allowing those who customize commercial vehicles to rely on the certification provided by the vehicle manufacturers is not, as NTEA argued, unworkable. Similarly, those companies that alter already complete vehicles "do their work on vehicles already certified under the Safety Act" and "need not certify independently so long as they do not make the kind of changes that affect roof strength, and most alterers work on the rear of a vehicle, away from the cab. … [T]he current regime reflects a status quo in which alterers have been successfully complying with existing FMVSS No. 216 for years. Thus, we have no reason to doubt that the upgraded standard offers alterers a similarly fair shot at demonstrating compliance."

Federal Court Dismisses Whistleblower's Claims About Product Defects

A federal court in Louisiana has dismissed claims filed under the federal False Claims Act (FCA) and Consumer Protection Safety Act by the former employee of a company that makes the lining material used in products such as diapers, tampons, adult incontinence products, and food packages. *Ricalde v. Evonik Degussa Corp.*, No. 11-1400 (U.S. Dist. Ct., E.D. La., decided April 5, 2013).

Claiming that he was fired after complaining for many years about the product's quality and alleged labeling deficiencies, Thomas Ricalde brought his suit under laws prohibiting fraud on the government and requiring companies that make consumer products to comply with applicable product safety standards. He also alleged violation of the laws of some 20 states.

Ricalde apparently claimed that "the end-products are defective when sold, whether to the government or the public, because Evonik's substandard raw material has been incorporated into them. The FCA is triggered, according to Ricalde, because

various government programs like Medicare and Medicaid for example, reimburse consumers who purchase the end-product for personal use. Moreover, government facilities such as veterans' hospitals purchase products like diapers and incontinence products for their patients." Because the complaint failed to allege that any specific claim was presented to the government for payment, any false or fraudulent claim was made to the government or that the purported whistleblower was fired because the company knew he was about to expose a fraud on the government, the court dismissed all of his FCA claims.

According to the court, the FCA is not intended to "redress breaches of contract or general allegations of fraud or to punish a manufacturer's decision to ignore governmental safety regulations." The court also determined that Ricalde could not prevail under the Consumer Product Safety Act, which defines injury as physical harm or illness, because the only injury he alleged was economic, that is, he was fired for taking steps to force the defendant to comply with the law. Nor could Ricalde prevail under the part of the law allowing interested parties to enforce a consumer product safety rule, because he failed to "identify a single consumer product safety rule that addresses the products at issue in this case."

According to the court, the FCA is not intended to "redress breaches of contract or general allegations of fraud or to punish a manufacturer's decision to ignore governmental safety regulations."

The court declined to dismiss the state law-based claims, but ordered the plaintiff to demonstrate by April 19, 2013, that he had notified officials in each of the states whose laws he wished to enforce or explain why such service is not necessary under a particular state's laws.

Arkansas Supreme Court Nixes Dismissal of Class Allegations at Pleading Stage

The Arkansas Supreme Court has determined that a trial court erred in denying class certification at the pleading stage in a case involving allegations that an insurance company violated state deceptive and unlawful business practices statutes by engaging in activity intended to collect unadjudicated, potential subrogation claims as debts. ***Kersten v. State Farm Mut. Auto. Ins. Co.*, No. 12-725 (Ark., decided March 28, 2013)**. While acknowledging that class-action cases may be dismissed at the pleading stage, the court noted that this "should be done rarely and … the better course is to allow an appropriate period of discovery."

The insurance company sued Brandi Kersten, claiming that she was negligent in an auto accident involving its insured. She filed a counterclaim alleging that the insurance company was unjustly enriched because it caused "collection-styled letters to be mailed" to her and others similarly situated without mentioning that the purported debt was a subrogation claim or an unadjudicated tort claim. Without answering the counterclaim, the insurance company filed a motion to dismiss the counterclaim with prejudice and strike the class allegations. The trial court titled its disposition an "order of dismissal," but the only dismissal was of the non-party law firm that had sent the letter. The court further denied the request for class certification "for the reasons stated in State Farm's motion." It allowed her personal claim to remain.

According to the supreme court, "the ruling allowing her personal claim to proceed is tantamount to a denial of State Farm's motion to dismiss." Finding the lower court's denial of class certification an abuse of discretion, the court opined that the counter-claim's allegations, "at this early stage of the pleading phase, (i) sufficiently plead a course of State Farm's conduct that is typical of both Kersten and the class"; and (ii) as to the predominance inquiry under Rule 23, raise at least two alleged common questions, i.e., "some conduct afflicting a group that gives rise to a cause of action," regardless of the existence of individual issues and defenses and "even in light of the multistate class." The mere possibility that individualized issues could develop and require the creation of subclasses or decertification at a later time "does not defeat class certification at this stage," said the court. The court remanded the case for further proceedings.

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Children's Clothing Maker Settles Claims of Skin Irritants from Phthalates

A federal court in California has preliminarily approved a settlement of putative class claims alleging that Gerber Childrenswear violated state consumer protection laws by failing to disclose that its tagless clothing labels contained elevated levels of phthalates, which can purportedly cause skin irritation and rashes in infants and children. *Montanez v. Gerber Childrenswear, LLC*, No. 09-7420 (U.S. Dist. Ct., C.D. Cal., order entered April 5, 2013). The court order includes a timetable for class notification and schedules an October 7, 2013, fairness hearing.

According to a news source, Gerber has agreed to reimburse purchasers from a $200,000 "replenishing fund" that the company will refill when it is exhausted and will remove the clothing from the marketplace. Class members whose children wore the garments and experienced skin irritation will be able to recover the purchase price as well as expenses incurred from the alleged injury. Those whose claims do not include physical injury will receive discounts for purchases of the company's clothing. *See Law360*, April 8, 2013.

Dietary Supplement Class Stayed Pending Settlement in Related Litigation

Because a virtually identical class action pending before a state court is near settlement, a federal court in California has agreed, in the interest of judicial economy, to stay a putative class action against a company that makes an allegedly ineffective weight-loss dietary supplement. *Branca v. Iovate Health Sciences USA, Inc.*, No. 12-1686 (U.S. Dist. Ct., S.D. Cal., order entered March 29, 2013). The plaintiff claimed that the preliminary settlement in the state court case is collusive, "or at least looks really bad," according to the court. Concluding that "the real fight here is for control of a class action between two warring plaintiffs' firms," the federal court said it would be up to the state court judge to determine "if there's something procedurally or substantively unsavory" about the settlement in the matter before it. The federal suit is stayed until July 1, 2013, when the court has ordered the parties to file a joint status report to inform it of the proposed settlement's outcome.

Pennsylvania Supreme Court to Decide Which Product Liability Restatement to Apply

The Pennsylvania Supreme Court has agreed to review an appeal in a house-fire case to determine "[w]hether this Court should replace the strict liability analysis of Section 402A of the Second Restatement with the analysis of the Third Restatement." ***Tincher v. Omega Flex Inc.*, No. 842 MAL 2012 (Pa., appeal granted March 26, 2013)**. The court has also requested that the parties brief whether "if the Court were to adopt the Third Restatement, that holding should be applied prospectively or retroactively."

The company that manufactured a gas pipe which allegedly caused the fire has appealed a $1-million jury verdict, reportedly arguing that the Restatement (Third) of Torts should have been applied because it requires a design-defect plaintiff to show that a safer alternative design exists. The plaintiffs apparently alleged that the pipe, made from corrugated stainless steel tubing, was defective; they claimed that it became "energized" by a lighting strike that traveled through the ground. While plaintiffs' counsel apparently contends that it makes no difference which Restatement applies, the defendant will be seeking to end a difference of opinion on the issue between Pennsylvania state and federal courts. The Third Circuit Court of Appeals predicted in 2009 that the Pennsylvania Supreme Court would adopt the Third Restatement, and most federal courts since then have applied it, even as state courts have consistently applied the Second Restatement, which "takes a hard line against allowing negligence concepts into strict liability claims." *See Bloomberg BNA Product Safety & Liability Reporter*, April 1, 2013.

ALL THINGS LEGISLATIVE AND REGULATORY

U.S. House Reps. Introduce the Safe Cosmetics and Personal Care Products Act

U.S. Reps. Edward Markey (D-Mass.) and Jan Schakowsky (D-Ill.) recently introduced the Safe Cosmetics and Personal Care Products Act of 2013 **(H.R. 1385)**, which aims to close "major loopholes in the federal law that allow companies to use ingredients in cosmetics and personal care products known to damage human health and the environment."

According to a statement on Markey's Website, "The Food and Drug Administration [FDA] does not regulate cosmetics and other personal care products the same way it does food and drugs to ensure safety… and in reality, cosmetics are one of the least regulated consumer products on the market today." National coalition The Campaign for Safe Cosmetics agrees, stating, "the $50 billion cosmetics industry uses roughly 12,500 unique chemical ingredients in personal care products—the vast majority of which have never been assessed for safety by any publicly accountable body."

"The simple truth is that everyday products that women, men, and children use contain ingredients that can cause cancer as well as reproductive and developmental harm," said Schakowsky. "Consumers think the Food and Drug Administration is a

watchdog preventing harmful ingredients from being in their shampoos, cologne, makeup, deodorants, lotions, and other products, but the truth is, the FDA has little power under current law. This bill will remedy that by giving FDA the authority to create and enforce a safety standard to get harmful toxins out of our products."

Among other things, key provisions in the proposed Safe Cosmetics and Personal Care Products Act of 2013, include (i) cosmetic and ingredient testing and safety, including the establishment of a list of ingredients prohibited from use in cosmetics, such as carcinogens and reproductive and developmental toxins; (ii) "post market testing requir[ing] the Secretary of Health and Human Services to conduct annual random sample tests for pathogens or contaminants in cosmetic products;" (iii) market restrictions that would provide FDA with recall authority for products that are misbranded, adulterated, or otherwise fail to meet safety standards; and (iv) mandatory reporting of adverse health effects requiring cosmetic manufacturers, packagers and distributors to provide FDA with reports of adverse health effects associated with the use of a cosmetic. *See Rep. Markey News Release,* March 21, 2013; *The Campaign for Safe Cosmetics News Release,* March 21, 2013.

FDA Announces Public Meeting to Discuss Cosmetics Regulation

The Food and Drug Administration (FDA) has scheduled a May 8, 2013, **public meeting** in College Park, Maryland, "to invite public input on various topics pertaining to the regulation of cosmetics." The agency said that information from the meeting, titled "International Cooperation on Cosmetics Regulation (ICCR)—Preparation for ICCR–7 Meeting," may be used "to help us prepare for the ICCR–7 meeting" that will take place July 8 in Japan. The ICCR, a "voluntary international group of cosmetics regulatory authorities from the United States, Japan, the European Union, and Canada," is working toward a "convergence of regulatory policies and practices" that will remove "regulatory obstacles to international trade while maintaining global consumer protection." *See Federal Register,* April 5, 2013.

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CPSC to Propose Safety Standards for Soft Child Carriers

The Consumer Product Safety Commission (CPSC) has issued a notice of **proposed rulemaking** to create "a safety standard for soft infant and toddler carriers in response to the direction under Section 104(b) of the Consumer Product Safety Improvement Act [of 2008 (CPSIA)]" that requires CPSC to promulgate consumer product safety standards for durable infant or toddler products.

CPSC indicated that the agency is aware of "93 incidents related to soft infant and toddler carriers—reported over a period of nearly 13 years, 1999 through early September 2012." Evidently two of those incidents involved a fatality, and 91 incidents

did not. CPSC said that the primary hazard associated with use of the products is falling, that is, either caregivers falling while wearing the carrier and injuring the child in the carrier, or children falling or facing the risk of falling from the carrier due to fastener problems, large leg openings, stitching or seam problems, or straps that slip. The agency will accept comments until June 19, 2013. *See Federal Register,* April 5, 2013.

BPA, PFOA and PFOS Case Studies to Illustrate NTP's Review Approach

The National Toxicology Program (NTP) will host an April 23, 2013, Webinar to discuss case studies on the alleged health effects of **bisphenol A** (BPA), perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). These studies are intended to illustrate how the NTP Office of Health Assessment and Translation will implement its draft systematic literature-based review methodology in carrying out potential human health hazard assessments. Comments on the draft approach and case studies are requested by June 11, 2013.

The BPA case study provides a draft protocol to evaluate the evidence for an association between obesity and exposure to the chemical, used in food contact materials, including plastic and metal cans; cash register receipts; sports equipment; and CDs and DVDs. It does not reach any final risk conclusions, but shows how relevant literature will be identified and rated in developing hazard identification conclusions.

CHAP Phthalate Report to Undergo Private, Scientific Peer Review

According to Consumer Product Safety Commission Chair Inez Tenenbaum, the Chronic Hazard Advisory Panel on Phthalates and Phthalate Substitutes (CHAP), which is examining the effects on children's health of "all phthalates and phthalate alternatives used in children's toys and child care articles," has decided to submit its draft final report to scientific peer reviewers nominated by the National Academy of Sciences. Tenenbaum's disclosure came in March 22, 2013, letters to the American Chemistry Council and Breast Cancer Fund, among others, apparently in response to repeated requests by industry interests that the draft report undergo a public scientific peer review process. Tenenbaum assures stakeholders that the report will be released for public comment. *See Bloomberg BNA Product Safety & Liability Reporter*, April 1, 2013.

OEHHA Proposes Adding Clomiphene Citrate to Prop. 65 List

California EPA's Office of Environmental Health Hazard Assessment (OEHHA) has issued a **notice** of intent to list clomiphene citrate as a chemical known to the state to cause cancer under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop. 65). According to the agency, the chemical, a prescription drug used to treat infertility in women, has a Food and Drug Administration (FDA)-approved label which cautions users that prolonged use "may increase the risk of borderline or invasive ovarian tumor" and that "Ovarian cancer has been infrequently reported in patients who have received fertility drugs."

Noting that this is a "ministerial" listing, OEHHA says that it cannot "consider scientific arguments concerning the weight or quality of the evidence considered by FDA when it established the labeling requirement." Comments are requested by May 6, 2013, "limited to whether FDA requires that clomiphene citrate be labeled to communicate a risk of cancer or tumors." If the chemical is added to the Prop. 65 list, California consumers must be informed that it is a substance known to the state to cause cancer. *See OEHHA News Release*, April 5, 2013.

Maryland Legislators Approve Bill Limiting Flame Retardants in Children's Products

The Maryland General Assembly has passed a bill (**H.B. 99**) that would prohibit the import or sale of any child-care product with more than one-tenth of 1 percent by mass of certain flame-retardant chemicals, identified as TCEP (tris (2-chloroethyl phosphate)). The state House passed the bill in February 2013 by a 135-0 vote, and the Senate unanimously approved the measure on March 28. "Child care product" is defined as a consumer product intended for use by a child younger than 3 and includes "a baby product, toy, car seat, nursing pillow, crib mattress, and stroller. First violations would be punishable by a $1,000 civil penalty; subsequent violations would be sanctioned with no more than a $2,500 fine. The secretary of Health and Mental Hygiene would be given until January 1, 2014, to adopt implementing regulations. The governor has until May 28 to sign or veto the proposal.

The state House passed the bill in February 2013 by a 135-0 vote, and the Senate unanimously approved the measure on March 28.

Vermont Lawmakers Vote to Ban Flame-Retardant Chemicals

Vermont state senators have voted unanimously in support of legislation (**S. 81**) that would ban the use of certain purportedly toxic flame-retardant chemicals, including the one commonly known as chlorinated Tris, in household and children's products. The bill was read for the first time in the House on April 3, 2013, and referred to the Committee on Human Services.

According to the Vermont Public Interest Research Group (VPIRG), chlorinated Tris was banned from use in children's pajamas in the 1970s after reports that it causes cancer, neurotoxicity and reproductive harm, but it is now evidently found often in other children's products, such as car seats and high chairs. VPIRG maintains that the chemicals, which apparently "migrate out of these products and into air and dust in our homes and into our bodies," are ineffective against slowing the spread of fire and "actually make fires more dangerous for firefighters by releasing toxic gases when ignited."

The bill outlines a phased-in approach that would (i) as of July 1, 2013, prohibit manufacturers from making, selling or distributing children's products or residential upholstered furniture that contains chlorinated Tris "in any product component in an amount greater than 1,000 parts per million, and (ii) as of July 1, 2014, prohibit retailers from selling children's products or residential upholstered furniture containing chlorinated Tris in any product component in an amount greater than 1,000 parts per million. *See PIRG News Release,* March 29, 2013.

LEGAL LITERATURE REVIEW

Howard Erichson, "The Problem of Settlement Class Actions," April 1, 2013

Fordham University School of Law Professor Howard Erichson argues in this paper that "class actions should never be certified solely for purposes of settlement." According to Erichson, such certification rulings are "ill-advised as a matter of litigation policy and illegitimate as a matter of judicial authority." This is so, says Erichson, because all of the negotiation takes place before a class has been certified and before the negotiating lawyer has been appointed class counsel. A settlement class action, in the author's view, "is not a contract, at least not in the sense of an agreement to which the class members are parties. It is not an adjudication on the merits. Rather, it is an act of judicial power premised on a negotiated resolution. But the underlying negotiation has the odd characteristic that the negotiator for the claimants is a prospective agent who has neither been authorized to act on behalf of the claimants nor been granted the power to take their claims to trial." He does not blame the problem on "collusion or bad faith, but rather [on] a structural problem built into the very definition of a settlement class action."

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Victor Schwartz, Phil Goldberg & Cary Silverman, "Warning: Shifting Liability to Manufacturers of Brand-Name Medicines When the Harm Was Allegedly Caused by Generic Drugs Has Severe Side Effects," *Fordham Law Review*, 2013

Shook, Hardy & Bacon Public Policy Attorneys Victor Schwartz, Phil Goldberg and Cary Silverman explain in this article why the few courts allowing brand-name prescription drug manufacturers to be held liable for injury allegedly caused by the ingestion of generic versions of their products, what they refer to as "competitor liability," have improperly stretched traditional, rational boundaries on tort law duties. They state, "It is a bedrock principle of product liability and tort law that a product manufacturer is subject to liability only for harms caused by its products…. Courts may be frustrated by the disparate treatment for users of brand-name and generic drugs, but they should not be tempted to radically alter tort law in search of defendants that users of generic drugs can sue."

LAW BLOG ROUNDUP

Further *Comcast v. Behrend* Musings

"Why do I wonder about these two questions? I am worried that the majority may be interpreted to have held that (1) plaintiffs are now required to *prove* damages on a common basis to show 'predominance' and, (2) plaintiffs cannot fall back on

bifurcation if they cannot. … Am I overreading *Comcast*?" University of Miami School of Law Associate Professor Sergio Campos, calling for input on the U.S. Supreme Court's *Comcast v. Behrends* ruling, summarized in the March 28, 2013, **issue** of this *Report*, and expressing concerns about the reach of a decision requiring courts to "probe behind the pleadings" when considering, as part of a class-certification analysis, whether damages can be measured on a class-wide basis.

Mass Tort Litigation Blog, April 8, 2013.

Alien Tort Statute Litigation Concerns Federal Jurist

"A federal appeals court judge is warning that the [U.S.] Supreme Court would deliver a 'devastating blow' to human rights by stripping U.S. courts of jurisdiction over international crimes." *Wall Street Journal* Law Blog Lead Writer Jacob Gershman, discussing a *Foreign Affairs* commentary authored by a Second Circuit Court of Appeals judge about a case before the U.S. Supreme Court asking "whether corporations accused of collaborating with human rights abusers in foreign lands are subject to liability under the Alien Tort Statute." Judge Pierre Laval opines that if the Court bars such suits from federal courts, they could be moved to state courts thus providing the U.S. Supreme Court with even less control over this type of litigation. Laval also contends that such a ruling would "deal a devastating blow to hope of expanding global recognition of human rights."

WSJ Law Blog, April 9, 2013.

THE FINAL WORD

Advisory Committee on Civil Rules to Consider Proposed Rule Changes

The Administrative Office of the U.S. Courts has made available online the **agenda book** for the April 11-12, 2013, meeting in Norman, Oklahoma, of the Advisory Committee on Civil Rules. The committee will consider the Duke Conference Subcommittee's proposal to recommend publication of amendments to Rules 1, 4, 16, 26, 30, 31, 33, 34, 36, and 37, as well as Rule 37(e) revisions as approved for publication, reporter's memoranda on pleading and Rule 23, and emerging topics, including Rule 17(c)(2) and Rule 41(a)(1)(A)(ii).

UPCOMING CONFERENCES AND SEMINARS

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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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."

ACI, Chicago, Illinois – June 26-27, 2013 – "Consumer Products Regulation & Litigation." Shook, Hardy & Bacon Pharmaceutical & Medical Device Litigation Partner Harley Ratliff will join a panel of speakers discussing "Total Recalls: Counsel Perspective on Processes for Streamlining the Response to Product Issues and Effectively Working with the CPSC." Designed to provide consumer product manufacturers with a "safety net" in balancing regulatory compliance and litigation risks, this conference brings together a distinguished faculty of judges, regulators and in-house and outside counsel "to give consumer products professionals the most up-to-date, expert tested advice possible on navigating this terse terrain."

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).