Shook, Hardy & Bacon L.L.P.

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PRODUCT LIABILITY LITIGATION REPORT

CONTENTS

FEDERAL COURT ALLOWS CLAIMS AGAINST HONG KONG MANUFACTURER TO PROCEED

A federal court in Ohio has determined that Simatelex, a Hong Kong-based manufacturer defending a product liability lawsuit involving a fire allegedly caused by a defective coffee maker, waived its challenge to the court's personal jurisdiction by failing to plead the defense in its motion to dismiss, which constituted the company's first defensive move. *Erie Indem. Co. v. Keurig, Inc.*, No. 10-02899 (U.S. Dist. Ct., N.D. Ohio, decided October 31, 2011).

According to the court, once added to the litigation, Simatelex filed a corporate disclosure statement, joined a joint motion for protective order and filed a motion to dismiss before filing its response to the plaintiffs' first amended complaint. "In none of its pre-answer pleadings did Simatelex contest personal jurisdiction." The company thereafter referred to the court's personal jurisdiction in its answer to the first amended complaint and then based its motion for summary judgment on that ground.

Noting that the Federal Rules of Civil Procedure require that a defendant wishing to raise a defense to the court's personal jurisdiction do so when making her "first defensive move," the court stated, "A party's responsibility for pre-answer consolidation of certain Rule 12(b) defenses, including challenges to a court's personal jurisdiction, is absolute.… By filing a pre-answer Motion to Dismiss under Rule 12(b)(6) without disputing therein the Court's personal jurisdiction, Simatelex waived the issue and can neither revive it nor prevail." So ruling, the court denied the company's motion for summary judgment.

COLORADO SUPREME COURT ADOPTS CLASS CERTIFICATION GUIDELINES FOR TRIAL COURTS

Declining to adopt a specific class-certification burden of proof and rejecting an intermediate appellate court's preponderance-of-the-evidence standard, the Colorado Supreme Court has ruled that a trial court must "rigorously analyze the evidence presented and determine to its satisfaction that each [state class-certification rule] requirement is met" when deciding whether to certify a class. ***Jackson v. Unocal Corp.*, No. 09SC668 (Colo., decided October 31, 2011)**.

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 court also held that "a trial court may consider factual or legal disputes [including those that incidentally overlap case merits] to the extent necessary to satisfy itself that the requirements of C.R.C.P. [Colorado Rule of Civil Procedure] 23 have been met, but may not resolve factual or legal disputes to screen out or prejudge the merits of the case." Regarding expert witness disputes relating to class-certification issues, the court extended the rigorous-analysis obligation to expert testimony but noted that the analysis includes neither a determination as to which party will prevail nor an admissibility assessment.

The issues arose in a case involving the removal of a 69-mile oil pipeline containing a layer of asbestos wrap that was left in small pieces on easement properties. The land owners brought claims of negligence, nuisance, trespass, and diminution of property values, among other allegations. The trial court certified two classes of plaintiffs (easement and contiguous property classes) following a two-day hearing and consideration of lengthy briefs, exhibits, affidavits, deposition transcripts, and numerous other documents. The court of appeals reversed, announcing that under the state's class-certification rule, trial courts must apply a preponderance-of-the-evidence standard to the proof supporting each requirement.

Acknowledging that "the preponderance of the evidence standard appears to be gaining momentum among the federal courts," the state supreme court refused to follow the trend, due to "the important differences" between the federal and state rules and its view of the state rule "as a case management tool." The state did not amend its Rule 23 to remove the "as soon as practicable" certification-ruling requirement, as the federal courts did in 2003. According to the court, if trial courts were required to apply the preponderance standard, "they would have to permit discovery at an earlier stage in the litigation and might even have to hold protracted and expensive mini-trials on the factual issues underlying the certification decision." The court further opined, "It would also compromise the judicial efficiency of the class action mechanism by requiring plaintiffs to effectively prove the merits of their case at the class certification hearing."

The court noted as well that the state did not change the Rule 23 language allowing class certification to "be conditional." In this regard, the court stated, "The conditional nature of class certification in Colorado thus counsels against a specific burden of proof and in favor of the trial court's discretion to determine to its satisfaction that C.R.C.P. 23's requirements are met as the litigation proceeds." The court reversed the court of appeals' judgment with two justices dissenting. They contended that without an evidentiary standard, class-certification rulings will be "essentially unreviewable by appellate courts," and the matter "raises serious procedural due process concerns."

This case was the lead in a series of four class actions, and the court applied its principles to the remaining three, including one involving consumer protection act claims. In that case, the court also held that causation and injury elements may be inferred from circumstantial evidence common to the class and that the defendant

has the opportunity to rebut the class-wide inferences with individual evidence. *Garcia v. Medved Chevrolet, Inc.*, No. 09SC1080 (Colo., decided October 31, 2011).

FEDERAL COURT ORDERS SAN FRANCISCO TO REVISE CELLPHONE FACT-SHEET ORDINANCE

A federal court in California has determined that the City and County of San Francisco may require cellphone providers to make available to consumers informational fact sheets about the radiofrequency (RF) energy emitted by such devices, but has ordered that the fact sheets be revised. *CTIA—The Wireless Ass'n v. San Francisco*, No. 10-03224 (U.S. Dist. Ct., N.D. Cal., decided October 27, 2011). Thus, the court upheld a cellphone right-to-know ordinance in part and enjoined the remainder for First Amendment violations. The ordinance required in-store posters, information fact sheets and an informational sticker on all display literature for cellphones. The court struck down the poster and informational sticker provisions.

According to the court, the few mandated fact-sheet disclosures, while "largely accurate as far as they go," are misleading by omission. "The overall impression left is that cell phones are dangerous and that they have somehow escaped the regulatory process. That is untrue and misleading, for all of the cell phones sold in the United States must comply with safety limits set by the FCC [Federal Communications Commission]." The court also noted, "A second misleading omission is the failure to explain the limited significance of the WHO [World Health Organization] 'possible carcinogen' classification." Further, the court stated, "As for the large silhouettes with RF beaming into the head and hips, they are not facts but images subject to interpretation. One plausible interpretation is that cell phones are dangerous. . . . So viewed, the image conveys a message that is neither factual nor uncontroversial, for cell phones have not been proven dangerous. The silhouettes are too much opinion and too little fact."

As for the stickers, which would have stated "Your head and body absorb RF Energy from cell phones. If you wish to reduce your exposure, ask for San Francisco's free factsheet," the court ruled that it would be "unconstitutional to force retailers to paste the stickers over their own promotional literature. This would unduly interfere with the retailers' own right to speak to customers. Under the First Amendment, the retailers can communicate their message and San Francisco, within reason, can force the retailers to communicate its message too, but San Francisco cannot paste its municipal message over the message of the retailers."

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The court has stayed the ordinance until November 30, 2011, pending applications to the court of appeals, and "[a]fter that date, the fact-sheet requirement, once corrected and vetted by the Court, may be enforced by San Francisco unless stayed by the court of appeals."

ENVIRONMENTAL WATCHDOG BRINGS PROP. 65 LAWSUIT AGAINST CLOTHING RETAILERS

The Center for Environmental Health has filed a lawsuit under California's Proposition 65 (Prop. 65) against a number of clothing retailers whose products allegedly contain lead, claiming that the companies have failed to provide warnings to consumers about lead's carcinogenicity and reproductive toxicity. *Ctr. for Envtl. Health v. Aquarius Ltd.*, No. 11602745 (Cal. Super. Ct., Alameda County, filed November 2, 2011). According to the complaint, lead is present in some of the fabrics, such as vinyl or imitation leather, and in the metallic components, such as zippers and zipper pulls. The Center alleges that the products contain sufficient quantities of lead "such that consumers, including pregnant women and children, who touch and/or handle the Products are exposed to Lead through the average use of the Products," either from direct ingestion due to hand-to-mouth contact and storage of food in the products or from dermal absorption.

Prop. 65 requires products containing chemicals known to the state to cause cancer or reproductive toxicity to carry warnings and allows private parties to bring lawsuits to enforce its requirements. The Center seeks civil penalties against each of seven named and 500 "Doe" defendants "in the amount of $2,500 per day for each violation of Proposition 65," an injunction to stop the companies from selling the products in California without appropriate warnings, an order that the defendants "take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by Defendants," attorney's fees, and costs.

CONSUMER INTERESTS ASK COURT TO UNSEAL ANONYMOUS COMPLAINT IN CPSC DATABASE SUIT

According to a news source, Public Citizen, Consumer Federation of America and Consumers Union have filed an objection to an anonymous company's motion to seal a lawsuit filed against the Consumer Product Safety Commission (CPSC) seeking to prevent the agency from placing an incident report involving a company product on a publicly accessible safety reporting database. Additional details about the lawsuit appear in the **October 27, 2011**, issue of this *Report*.

The consumer interest organizations apparently contend that keeping the lawsuit secret violates the public's right of access to court records under the First Amendment and common law. They also claim that the underlying lawsuit is of significant public interest "because if the company is successful in keeping the consumer's report from the public, the existence of the CPSC database and other federal agency databases used to provide consumers with information about potentially hazardous products could be jeopardized." The attorney representing the organizations said, "The public has a strong interest in the outcome of this lawsuit and a correspondingly strong right to learn who is involved, what arguments the company makes and the basis for the court's decision."

The consumer interest organizations apparently contend that keeping the lawsuit secret violates the public's right of access to court records under the First Amendment and common law.

A Consumers Union spokesperson was quoted as saying, "This database is a critical tool for consumers to read and report safety complaints about the products we buy. We're opposed to any effort that could jeopardize this database and lead to unsafe products being kept secret from the public." *See Public Citizen Press Release*, October 31, 2011.

FORMER KENTUCKY JUDGE DISBARRED IN ONGOING FEN-PHEN DIET DRUG LITIGATION FALLOUT

The Kentucky Supreme Court has permanently disbarred a former judge after he was found guilty of charges stemming from actions he took while presiding over a class-action lawsuit involving the diet drug Fen-Phen. ***Kentucky Bar Ass'n v. Bamberger*, No. 2011-SC-000378 (Ky., decided October 27, 2011)**. Former Judge Joseph Bamberger signed an order for attorney's fees and expenses following an *ex parte* meeting with plaintiffs' attorneys, which order apparently found the fees "reasonable and necessary" and contained numerous false statements.

According to the court, the fee agreement gave the attorneys more than 63 percent of the settlement funds and allowed them to retain an additional $20 million in "excess funds." The plaintiffs were never informed of the total settlement amount or the fees retained by their attorneys. And these details were not provided in the document the judge signed. Instead, the order indicated that he "was aware of the terms of the settlement agreement, had reviewed an accounting of the funds allocated to the plaintiffs and their attorneys, and had determined that the funds have been handled properly and in accordance with the agreement." When he signed the order, however, Bamberger had not read the settlement agreement or reviewed any accounting. He signed three additional orders approving the fees as reasonable and "falsely indicating that he had reviewed an accounting of the settlement funds."

After the order was entered into the court record, the judge instructed the court clerk to provide copies of all future orders to the plaintiffs' attorneys only and further ordered the clerk to seal all future orders in the case. Thereafter, the judge authorized the establishment of a charitable entity with the $20 million in retained excess funds, without the consent of the plaintiff class. The judge then appointed several of the plaintiffs' lawyers as the charity's directors and authorized them to receive director's fees from the charity. When the judge retired, he entered an order relinquishing court control over the charity implying that it had fulfilled its charitable purpose, although the charity "had never made any distributions for charitable purposes." The judge also accepted the plaintiffs' attorneys' invitation to become a paid director of the charity.

The Kentucky Board of Governors found that the judge had violated rules of professional conduct pertaining to "knowingly assisting the plaintiffs' attorneys in defrauding their clients" and "entering numerous orders containing false statements of fact." The court agreed with the board's findings and adopted its recommendation to permanently disbar the former judge "in light of the highly egregious nature of his ethical violations." He will also be required to pay the costs of the disciplinary proceedings.

ALL THINGS LEGISLATIVE AND REGULATORY

NTP to Consider Procedural Changes to Carcinogens Report

The National Toxicology Program (NTP) seeks **public comments** on proposed procedural changes designed to increase the speed and transparency of its substance reviews for the 13th Report on Carcinogens (RoC). Congress mandates biennial publication of the RoC; it lists chemicals, biological agents and other substances either known or reasonability anticipated to be human carcinogens. The report describes the substances, their uses, potential sources of exposure, rationale for the listing, and applicable federal regulations. While the RoC is not itself a regulatory document, a substance's inclusion can have certain regulatory effects, such as hazard warnings for workers.

Under the proposed changes, NTP reportedly plans to streamline its review of substances by tailoring the review for each chemical, medicinal, biological, or radiological agent under consideration by various factors, such as the amount of scientific data available. The plan also calls for staff to synthesize available scientific information to better explain the reasoning behind an agent's proposed classification or removal from the list. Calling for shorter substance profiles that are more "user friendly," NTP Associate Director John Bucher said a rolling list of substances would be available between updated, final RoC publications.

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NTP invites written comments by November 30, 2011, and plans to hold an online listening session November 29 for oral comments. The listening session will be cancelled, however, if no one registers by November 21. NTP plans to post the finalized RoC review process on its Website and present it at the NTP Board of Scientific Counselors meeting on December 15. *See Federal Register,* October 31, 2011; *BNA Product Safety & Liability Reporter,* November 7, 2011.

Digital-Data and Scholarly-Publications Stewardship and Access Recommendations Sought

The White House Office of Science and Technology Policy has issued two notices requesting information relating to the long-term stewardship of and broad public access to peer-reviewed **scholarly publications** and unclassified **digital data** resulting from federally funded scientific research. The response deadline for recommendations regarding scholarly publications is January 2, 2012; and recommendations on digital data are requested by January 12. Specifically solicited are the views of non-federal stakeholders, including "the public, universities, nonprofit and for-profit publishers, libraries, federally funded and non-federally funded research scientists, and other organizations with an interest" in these types of issues and materials. *See Federal Register*, November 4, 2011.

Report Claims Majority of Crib Mattresses Contain Chemicals of Concern, Calls for Stronger Regulation

Two environmental public policy groups have released a **report** claiming that nearly three-quarters of crib mattresses made in the United States contain "suspect or dangerous" chemicals. Titled "The Mattress Matters: Protecting Babies from Toxic Chemicals While They Sleep," the report by Clean and Healthy New York and the American Sustainable Business Council calls for manufacturers to ensure the inherent safety of crib mattresses and fully disclose the materials used to make them.

According to the report, researchers surveyed 28 companies that produce 190 models of standard U.S. crib mattresses. They found that (i) 72 percent use one or more chemicals of concern, including antimony, vinyl and polyurethane; (ii) 40 percent use vinyl coverings; (iii) 22 percent "use proprietary formulas for water-proofers, flame-retardants or antibacterials, keeping potential health impacts secret"; and (iv) 20 percent offer some "green" components but "do not take meaningful steps to ensure products are free of toxic chemicals." For example, 39 models made "small changes with big claims" by adding either thin layers of organic cotton or plant oils while still using chemicals of concern.

The report recommends a stronger Toxic Substances Control Act "to make sure toxic chemicals are moved out of our marketplace." Earlier this year, Senator Frank Lautenberg (D-N.J.) introduced the Safe Chemicals Act of 2011 (**S. 847**) requiring, in part, that "chemicals in commerce meet a risk-based safety standard that protects vulnerable and affected populations and the environment" and that companies disclose health and environmental information about the chemicals they use.

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"It's the Wild West in your home when it comes to chemicals," said Andy Igrejas, director of Safer Chemicals, Healthy Families, after reviewing the mattress report. "There are both known hazardous chemicals and chemicals whose health effects are still unknown that wind up in the products that come into our houses." *See The Washington Post,* November 2, 2011; *Clean and Healthy New York Press Release,* November 3, 2011.

Federal Judicial Center Publishes Report on Scheduling Orders and Discovery

At the request of the Advisory Committee on Civil Rules, the Federal Judicial Center has published a **report** titled "The Timing of Scheduling Orders and Discovery Cut-Off Dates." The report summarizes information on 11,000 civil cases filed in 11 federal district courts in 2009 and 2010. According to the report, the median time from the filing of the case to the issuance of the first scheduling order was 3.5 months, while the median time from entry of the first scheduling order to the first imposed discovery cut-off was 6.2 months. Complex litigation had the longest observed medians in both first scheduling order and discovery cut-offs.

California Toxics Agency to Consider Process for Analyzing Chemicals in Consumer Products

California's Department of Toxic Substances Control has **issued** informal draft regulations for safer consumer products and will host a public workshop to discuss them on December 5, 2011. The proposed regulations will also be considered by a scientific advisory panel on November 14-15. Applicable, with some exceptions, to all consumer products that contain a chemical of concern and are sold in California, the regulations will provide a process to identify toxic chemicals in these products and develop a means for reducing exposures to them by, for example, removing the substance, posting product information for consumers or finding alternatives to the purported toxins.

Under the proposed process, an immediate list of some 3,000 chemicals of concern would be established, and the department would "evaluate and prioritize products that contain Chemicals of Concern to develop a list of 'Priority Products' for which an alternative assessment must be conducted." Manufacturers, importers and retailers would be required to notify the department when their products are listed as priority products, and this information would be posted on the department's Website. Manufacturers would also be required to "perform an alternatives assessment for the product and the Chemicals of Concern in the product to determine how best to limit potential exposures or the level of potential adverse public health and environmental impacts posed by the Chemical of Concern in the product." The department would have to take action to limit potential adverse public health or environmental impacts. The proposed process would also allow any individual or organization to petition the department "to add a chemical to the Chemicals of Concern list or a product to the Priority Products list."

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Among the exempted products are "dangerous prescription drugs and devices; dental restorative materials; medical devices; packaging associated with dangerous prescription drugs and devices, dental restorative materials and medical devices; food; and pesticides." According to a news source, the department previously indicated that it would evaluate hundreds of consumer products under the rules, but has since narrowed its focus to no more than five products during the first few years, with particular emphasis on baby products and goods marketed to the elderly. *See The Sacramento Bee*, November 1, 2011.

Wisconsin Bill Would Limit Attorney's Fees and Establish Reasonableness Factors for Fee Shifting

The Wisconsin Legislature is currently considering a bill (**S.B. 12**) that would (i) establish factors courts must consider in deciding whether the attorney's fees sought by a prevailing party in certain civil actions are reasonable, and (ii) establish a presumption, "[i]n any action in which compensatory damages are awarded and injunctive or declaratory relief, rescission or modification, or specific performance is ordered," that reasonable attorney's fees do not exceed three times the amount of compensatory

damages awarded. Introduced at the request of Governor Scott Walker (R) in early October 2011, the bill has been approved, with amendments, by both the House and Senate. Among the factors courts would be required to consider in determining the reasonableness of a fee request by a prevailing plaintiff are the attorney's time and labor, the novelty and difficulty of the questions involved, the skill needed to perform the legal service properly, fees customarily charged in the locality for similar legal services, the amount of damages, and the results obtained.

LEGAL LITERATURE REVIEW

Holly Pauling Smith & Madeleine McDonough, "USA," *The International Comparative Legal Guide to: Class & Group Actions 2012*, October 2011

Shook, Hardy & Bacon Class Actions & Complex Litigation Partner **Holly Pauling Smith** and Pharmaceutical & Medical Device Practice Vice Chair **Madeleine McDonough** have co-authored the "USA" chapter in this Global Legal Group publication, which provides country-by-country legal system analyses. The authors outline how class and group actions are litigated in the United States, describing court procedures, time limitations, potential remedies, costs, and funding issues. While the article focuses on class actions in the federal courts, the authors note that states have their own class action rules, which are similar to Federal Rule of Civil Procedure 23, but are generally interpreted more liberally.

Jennifer Brown & Ina Chang, "Has the U.S. Class Action Well Run Dry? Evaluating the Impact of Recent Supreme Court Opinions on Toxic Tort Litigation," *The International Comparative Legal Guide to: Class & Group Actions 2012*, October 2011

Shook, Hardy & Bacon Class Actions & Complex Litigation Partner **Jennifer Brown** and Tort Associate **Ina Chang** discuss the impact recent U.S. Supreme Court rulings on class certification are likely to have on toxic tort actions, which are generally pursued as class actions in the United States. They raise a hypothetical action and analyze the plaintiffs' claims in light of rulings that have fundamentally changed "the class certification landscape." Concluding that *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), for example, presents major hurdles for plaintiffs by "raising the bar on commonality and narrowing the opportunity for class certification pursuant to Rule 23(b)(2)," the authors acknowledge that "dire predictions of the end of the class action in the United States are premature at best. Creative lawyers inevitably will navigate their way around the pitfalls and discover the well is far from dry."

Alexandra Lahav, "The Case for 'Trial by Formula,'" *Texas Law Review* (forthcoming 2012)

University of Connecticut School of Law Professor Alexandra Lahav considers in this article how the civil justice system's tolerance for "inconsistent outcomes in cases brought by similarly situated litigants" is giving way in the federal district courts

to efforts to achieve equality among mass tort litigants "by adopting statistical methods." Lahav approves this "outcome equality" approach, which is achieved through innovative procedures such as sampling, and urges the courts to adopt "greater rigor in the use of these methods." According to Lahav, the procedural "revolution" ongoing in the district courts is curious given the emphasis appellate courts, including the U.S. Supreme Court, have placed on liberty and individualism in litigation. She speculates, "Perhaps the district courts seeing a larger set of cases and being closer to outcomes, are better able to appreciate the negative consequences of inequality and inconsistency in adjudication."

LAW BLOG ROUNDUP

Class Counsel Get Creative When Seeking Fees

"What's the class action attorney to do when they [sic] want to recover $4 million fees, but the defendant is only willing to put up a settlement worth $6 million? Well, it's time to get creative: if you've brought a lawsuit alleging overcharges, construct an entirely imaginary $10 million fund to cover 'future overcharges' and call that a $10-million class benefit—though it obviously costs the defendant nothing, since they only have to pay the money if they continue the allegedly wrongful overcharges in the first place, creating a new cause of action. Then shield the fee request by putting it in a separate fund that reverts to the defendant. Then ensure that you don't get any objections by making it inordinately expensive for any member of the national class who isn't local to the courthouse to participate in the fairness hearing." Manhattan Institute Center for Legal Policy Adjunct Fellow Ted Frank, blogging about a proposed class action settlement that has drawn an objection filed by the Center for Class Action Fairness, which Frank serves as president.

PointofLaw.com, November 8, 2011.

And another thing…

"*Corporate Counsel* runs a thumb-sucker on the Stanley Chesley disbarring; his appeal is pending in the Kentucky Supreme Court. Meanwhile the Kentucky Supreme Court has got around to permanently disbarring ex-Judge Joseph Bamberger and David Helmers, a junior attorney on the case, for their roles in the scandal." The Manhattan Institute's Ted Frank, expressing his view of a sympathetic Chesley profile, recounting what led to this plaintiff's lawyer's legal troubles over the settlement of Fen-Phen diet drug injury claims.

PointofLaw.com, November 3, 2011.

Attorney Fee-Shifting Commentary

"American legislatures since the 1970s have widely employed 'one-way' fee provisions—under which courts award fees to prevailing plaintiffs, but not to prevailing defendants—as a way of encouraging plaintiffs and their lawyers to bring a maximum of legal action; especially when the fee shifts are generously calculated, such provisions also put strong pressure on defendants to settle potentially defensible cases rather than take the risk of a big fee award that may exceed the sums in controversy." Cato Institute Senior Fellow Walter Olson, noting that Wisconsin lawmakers have taken up proposed legislation to limit those one-way awards.

Overlawyered, November 7, 2011.

THE FINAL WORD

Social Media Changing Disclosure Obligations in Litigation

Forbes staffer Kashmir Hill reports in the magazine's The Not-So-Private Parts blog that a Connecticut family law judge has ordered a battling couple to reveal their social networking passwords. As Hill notes, "[i]n 'normal' discovery, a litigant is usually asked to turn over 'responsive material' not the keys to access all that material and more, but it seems that judges are applying different standards to social networking accounts." According to Hill, such disclosures have been required in personal injury litigation, including a Pennsylvania case in which the defendant sought evidence relating to the plaintiff's purported physical condition and recreational activities. The court in that case found no "social network site privilege" and ordered the plaintiff to provide the login names and passwords for all of his social networking sites. Hill concludes, "Being forced to hand over social networking passwords seems highly privacy-invasive given the ability to then root around for whatever one wants in an account, but the [divorcing couple] are certainly not the first to be subjected to this (and likely won't be the last)." *See The Not-So-Private Parts*, November 7, 2011.

The court in that case found no "social network site privilege" and ordered the plaintiff to provide the login names and passwords for all of his social networking sites.

UPCOMING CONFERENCE AND SEMINARS

Georgetown Law CLE, Arlington, Virginia – November 17-18, 2011 – "Advanced eDiscovery Institute." Shook, Hardy & Bacon eDiscovery Partner Amor Esteban joins a distinguished faculty to serve on a panel addressing "Corporate Approaches to Electronic Information Management: How to Manage Data and Prepare for Litigation in an Increasingly Mobile World."

Practicing Law Institute, San Francisco, California – December 2, 2011 – "Electronic Discovery Guidance 2011: What Corporate and Outside Counsel Need to Know." Shook, Hardy & Bacon eDiscovery Partner Amor Esteban will participate in this CLE

event as moderator and speaker on a panel discussing "Litigation Begins: Early Case Assessment and the Rule 26(f) Conference."

ACI, New York City – December 5-7, 2011 – "16th Annual Drug and Medical Device Litigation Conference." Co-sponsored by Shook, Hardy & Bacon, this event brings together leading litigators and in-house counsel to share their insights about current products liability defense strategies. A number of judges will provide the view from the bench. Shook, Hardy & Bacon Pharmaceutical & Medical Device Partner Michael Koon will join a distinguished panel to discuss "Personal Liability Concerns for Life Sciences Counsel and Other Industry Professionals." Shook, Hardy & Bacon Partner Madeleine McDonough, vice chair of the firm's Pharmaceutical & Medical Device Practice, will participate on a panel addressing the topic, "Creating Exit Strategies for Mass Torts and Selecting the Most Advantageous Settlement Model." ■

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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 our more than 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).