Shook, Hardy & Bacon L.L.P.

AUGUST 9, 2012

PRODUCT LIABILITY LITIGATION REPORT

CONTENTS

LAW FIRM NEWS

Wajert Addresses Component-Parts Manufacturer Liability in *Law360* Article

Shook, Hardy & Bacon Global Product Liability Partner **Sean Wajert** has authored an **article** titled "The Role of Manufacturers' Duties in Asbestos Litigation," appearing in the July 23, 2012, issue of *Law360*. Focusing on a Florida appeals court ruling reversing a $6.6-million jury verdict for the plaintiff, Wajert explains how the trial court erred by applying the Restatement (Second) of Torts to design-defect claims brought against a component-parts manufacturer and by failing to provide an accurate jury instruction on its duty to warn.

According to the court of appeals, under the "risk-utility/risk-benefit" test of the Restatement Third, the defendant was entitled to a directed verdict on the design-defect claim, and both the Third and Second Restatements required the trial court to inform the jury that, while an asbestos manufacturer must warn end users of a product's dangers, this duty may be discharged by an adequate warning to intermediary manufacturers and reasonably relying on them to warn end users. Whether that reliance by the component-parts manufacturer was reasonable is a matter for the fact finder, thus the court concluded that the trial court's instruction, which omitted reference to reasonable reliance on an intermediary, misled the jury and required that the case be remanded for a new trial.

Muehlberger & Wu Author *National Law Journal* Feature on Class Actions

Shook, Hardy & Bacon Class Actions & Complex Litigation Co-Chair **Jim Muehlberger** and Global Product Liability Partner **Gregory Wu** have co-authored an **online feature** for *The National Law Journal* to explore how the U.S. Supreme Court is likely to approach class certification issues presented by the interplay of Rules 23(a)(2), 23(b)(3) and 23(c)(4). Titled "Does 'Wal-Mart' doom expansive reading of rule authorizing class actions for 'particular issues'?," the July 11, 2012, article suggests that the Court's cautious approach to Rule 23 interpretations, "with careful fidelity to its current structure, text and its framers' intentions," could portend that the Court will not allow plaintiffs to "make an end-run around the Rule 23(a)(2) commonality and (b)(3) predominance requirements by ignoring them and certifying a class" under (c)(4).

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SHB offers expert, efficient and innovative representation to clients targeted by class action and complex litigation. We know that the successful resolution of products liability claims requires a comprehensive strategy developed in partnership with our clients.

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SHB Attorneys Co-Author *BNA Insights* Article on Rule 23(c)(4) Issue Certification

Shook, Hardy & Bacon Global Product Liability Partners **Tim Congrove** and **Greg Wu** and Associate **Chris Warren** have co-authored a *BNA Insights* **article** titled "*Uncertain Principles?* Evaluating the Tension Between Rule 23(b)(3) and (c)(4) Post-*Dukes*, and the ALI's Effort to Integrate the Provisions." Published on July 13, 2012, the article details how the federal courts have split over the interpretation of Rule 23(c)(4), which allows an action to be maintained as a class action as to particular issues, and Rule 23(b)(3), which requires that issues common to a class predominate over individual issues for the action to be maintained as a class action.

Contending that the issue is ripe for U.S. Supreme Court review, the authors suggest that the Court would likely take a more restrictive approach to Rule 23(c)(4) to avoid rendering the predominance requirement a nullity. They also explore the American Law Institute's (ALI's) attempt to integrate the rules in the 2010 version of its *Principles of the Law: Aggregate Litigation*, arguing that the approach is flawed and does not serve public policy interests.

CASE NOTES

Oregon Supreme Court Allows Battery-Charger Defect Suit to Proceed Against Taiwanese Company

On remand from the U.S. Supreme Court for reconsideration in light of *J. McIntyre Machinery, Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011), the Oregon Supreme Court has determined that, consistent with due process, the court could exercise jurisdiction over Taiwanese company CTE Tech Corp. in a wrongful death suit alleging that its defective battery charger was responsible for a house fire. ***Willemsen v. Invacare Corp.*, No. S059201 (Ore., decided July 19, 2012)**.

CTE contended that Oregon could not exercise personal jurisdiction over it "when it has not purposefully availed itself of the privilege of conducting business in Oregon." According to the complaint, more than 1,000 wheelchairs sold in Oregon by an Ohio-based defendant were equipped with CTE's battery chargers; thus, CTE sold its battery chargers in Ohio with the expectation that they would then be distributed nationwide. According to CTE, under *Nicastro*, "the mere fact that it may have expected that its battery chargers might end up in Oregon is not sufficient to give Oregon courts specific jurisdiction over it."

The court applied Justice Stephen Breyer's concurring opinion, which relied on a standard articulated as a "regular … flow" or "regular course" of sales in the forum state, because its "rationale was narrower than the plurality's and, as a result, controls our resolution of this case on remand." While the court recognized that "nationwide

distribution of a foreign manufacturer's products is not sufficient to establish jurisdiction over the manufacturer when that effort results in only a single sale in the forum state," because more than 1,100 CTE battery chargers had been sold within Oregon over a two-year period, a "regular … flow" or "regular course" of sales in Oregon can be shown. The court further distinguished *Nicastro* by noting that CTE was not a small manufacturer that had distributed only a few products in the state as a result of a national distribution system.

According to a news source, CTE intends to file a second petition for review before the U.S. Supreme Court. *See Bloomberg BNA Product Safety & Liability Reporter*, August 2, 2012.

CPSC Brings Rare Administrative Complaint over Magnets in Toys

For the first time in 11 years, the Consumer Product Safety Commission (CPSC) has filed an administrative enforcement proceeding against a company that makes desk toys with hundreds of small magnets for adults, seeking to have Buckyballs® and Buckycubes™ deemed a "substantial product hazard" and to prohibit their importation and distribution. *In re Maxfield & Oberton Holdings, LLC*, No. 12-1 (C.P.S.C., filed July 25, 2012). Information about the agency's findings of risks to children and teens from these and similar products appears in the **December 8, 2011, issue** of this *Report*.

The complaint alleges that the products, sold by the millions in the United States, "pose a risk of magnet ingestion by children below the age of 14, who may, consistent with developmentally appropriate behavior, place single or numerous magnets in their mouth. The risk of ingestion also exists when adolescents and teens use the product to mimic piercings of the mouth, tongue, and cheek and accidentally swallow the magnets." If more than two of the powerful magnets are ingested, they "can pinch or trap the intestinal walls or other digestive tissue between them, resulting in acute and long-term health consequences." The complaint details several of the injuries that have occurred despite changes the company made to its warning labels. CPSC claims that the product cannot be effectively labeled or safely packaged and does not remain on adults' desks out of the reach of children.

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Maxfield and Oberton has reportedly launched an online and social media campaign to try to stop CPSC from shutting down the company by means of the administrative complaint as well as by moving forward with a new rule to address the dangers of such products. Company CEO Craig Zucker apparently attended an August 2, 2012, congressional subcommittee hearing at which Republican House members grilled CPSC commissioners about the "hard-line stance" taken against the company. Representative Marsha Blackburn (R-Tenn.) reportedly compared the Buckyballs magnets to marbles used in children's games such as Hungry Hungry Hippos®. CPSC Chair Inez Tenenbaum apparently noted that marbles do not connect in the intestines the way rare earth magnets do. *See Bloomberg BNA Product Safety & Liability Reporter*, August 6, 2012.

Generic Drug Maker Seeks U.S. Supreme Court Review of First Circuit's Design-Defect Ruling

Claiming that the First Circuit erred by ruling "that federal law does not preempt state law design-defect claims targeting generic pharmaceutical products," a generic drug maker has filed a petition for review before the U.S. Supreme Court, seeking to overturn an adverse $21.06-million judgment. *Mut. Pharm. Co., Inc. v. Bartlett*, No. 12-142 (U.S., petition for *certiorari* filed July 31, 2012). Additional details about the case appear in the **May 10, 2012, issue** of this *Report*.

According to the company, the First Circuit's decision, which rejected the application of the Supreme Court's *PLIVA , Inc. v. Mensing* ruling to a design-defect case, creates a split with the Fifth, Sixth, Eighth, and Ninth Circuits and "blasts a gaping hole in *Mensing*." The petition challenges the First Circuit's rationale, i.e., that "the conceded conflict between such claims and the federal laws governing generic pharmaceutical design allegedly can be avoided if the makers of generic pharmaceuticals simply stop making their products."

Seventh Circuit Deems Expert Opinion Reliable in Industrial Accident Case

The Seventh Circuit Court of Appeals has determined that the testimony of a plaintiffs' expert, who opined that an equipment defect was responsible for an industrial accident and an alternative design would have prevented the disabling injury, was properly ruled admissible under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). ***Lapsley v. Xtek, Inc.*, No. 11-3313 (7th Cir., decided July 27, 2012)**. Accordingly, the court upheld a $2.97-million jury verdict for the plaintiffs.

The defendant challenged the plaintiffs' expert on the ground that his opinions on "causation, alternate design and reasonable care or foreseeability lacked scientific basis and should have been excluded by the district court." The injury at issue resulted from a jet of grease propelled from the defendant's machine with such force that it made a hole in the plaintiff employee's chest, broke several ribs, filled his chest cavity, and created an exit wound through his back. After 11 surgeries, his physicians were apparently unable to remove all the grease, some of which has fused with the plaintiff's internal tissues.

Noting that the scientific physics principles on which expert Gary Hutter supported his opinions "were published centuries ago by some of the most famous names in science, and those principles have been used and tested (*i.e.,* peer reviewed) by physicists and engineers for centuries," the court found that his mathematical models "appear to be well-grounded in the facts and data available." The opinion reproduces some of the expert's mathematical notations and observes that they represent "basic equations of classical mechanics … first published in 1687 by Sir Isaac Newton" and further developed by others relying on Newtonian principles since then.

The opinion reproduces some of the expert's mathematical notations and observes that they represent "basic equations of classical mechanics … first published in 1687 by Sir Isaac Newton" and further developed by others relying on Newtonian principles since then.

Airplane Manufacturer Has No Duty in Minnesota to Provide Flight Safety Training

The Minnesota Supreme Court has determined that an airplane manufacturer's duty to warn "does not include a duty to provide training to pilots who purchase an airplane from the manufacturer" and that a pilot may not recover in tort when the manufacturer's duty was imposed by contract only. ***Glorvigen v. Cirrus Design Corp.*, Nos. A10-1242, -1243, -1246, -1247 (Minn., decided July 18, 2012)**. While the small plane purchase included a flight training program, the pilot who was killed with a passenger in a plane crash did not allegedly receive, as part of the program, training on the specific emergency situation that arose and purportedly caused the crash. The matter was, however, covered in written materials and PowerPoint slides, which the pilot viewed.

According to the court majority, the company adequately discharged its duty to warn without providing training, and, even if it assumed a duty to provide the flight lesson at issue, it was part of the purchase price and arose from contract. Under Minnesota law, a party cannot recover in negligence based on the breach of a duty that does not arise independent of a contract. The two dissenting justices were loath to usurp the jury's role and would not have held that "as a matter of law no consumer product exists for which a supplier is required to give any warning to consumers beyond written instructions, no matter how dangerous the product, and regardless of any jury findings to the contrary."

According to the court majority, the company adequately discharged its duty to warn without providing training, and, even if it assumed a duty to provide the flight lesson at issue, it was part of the purchase price and arose from contract.

California Sues Children's Jewelry Suppliers and Retailers over Excessive Lead Levels

California Attorney General Kamala Harris has reportedly filed a lawsuit against 16 jewelry suppliers and retailers alleging that they sell children's jewelry as lead-free even though the products contain "more than 1,000 times the allowable level." *California v. Joia Trading, Inc.*, No. n/a (Cal. Super. Ct., filed July 2012). According to a news source, the state seeks fines of up to $2,500 for each violation of state health and safety laws and the Business and Professions Code. Claiming that the defendants have continued to offer non-compliant products for sale despite widespread publicity about the dangers of lead exposure and warnings from the Department of Toxic Substances Control, Harris also apparently seeks injunctive relief. *See Courthouse News Service*, July 19, 2012.

ALL THINGS LEGISLATIVE AND REGULATORY

House Hearing Highlights CPSC Rift

The U.S. House Subcommittee on Commerce, Manufacturing and Trade recently held a **hearing**, "Oversight of the Consumer Product Safety Commission [CPSC],"

that highlighted a rift between the four commissioners' approaches to product safety issues, including the new consumer complaint database at saferproducts.gov. According to media sources, Democratic Commissioners Robert Adler and Inez Tenebaum primarily praised efforts to improve the safety of window covering cords, recreational off-road vehicles and other consumer products, while the two Republican commissioners, Anne Northrup and Nancy Nord, focused on CPSC's failure to conduct cost-benefit analyses and criticized the consumer products database as a rush job that left the agency susceptible to lawsuits.

"Consumer is defined so broadly as to mean any living person. You don't even have to interact with a product in order to file complaints," opined Nord in suggesting that many of the database's complaints originated with law firms instead of individual citizens. Her concerns were echoed by Representative Mike Pompeo (R-Kan.), who described saferproducts.gov as a "happy hunting ground for the plaintiffs' part," as well as other House Republicans who took issue with CPSC's new lead limits for children's toys and its decision to sue the manufacturer of Buckyballs® magnetic toys.

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"By and large, the CPSC does an admirable job of protecting Americans, and I remain very supportive of its work," Representative Mary Bono Mack (R-Calif.) was quoted as saying during the August 2 hearing. "But on occasion, the agency makes some puzzling, head-scratching decisions, which create economic hardships for U.S. businesses, without appreciably improving the safety of certain products." *See Law360,* August 2, 2012; *Bloomberg BNA,* August 6, 2012.

CPSC Settlements: Retailer Fined $1.5 Million over Drawstrings; Magnetic Toy Maker Agrees to $400,000 Deal

The Consumer Product Safety Commission (CPSC) has reached a provisional **settlement agreement** with Burlington Coat Factory Corp. over allegations that the retailer knowingly sold children's garments with hood and neck drawstrings after they had been recalled. According to CPSC, its staff notified Burlington that the garments in question did not comply with a May 19, 2006, directive declaring all children's upper outwear with hood and neck drawstrings "defective" and "a substantial risk" to young children under Federal Hazardous Substances Act section 15(c), 15 U.S.C. § 1274(c). The commission also claimed that Burlington not only "had presumed and actual knowledge that the Garments distributed in commerce posed a strangulation hazard," but continued to offer these items for sale "on repeated occasions" between September 2008 and January 2012 while failing to inform CPSC as required by the Consumer Product Safety Act (CPSA) sections 15(b)(3) and (4), 15 U.S.C. § 2064(b)(3) and (4).

Burlington, however, apparently denied these allegations, pointing to procedures that it "reasonably believed prevented the purchase of children's upper outwear products with drawstrings" as well as "an extensive manual audit of all its stores to

determine whether it had unknowingly purchased other products subject to the Guidelines." Although the company has agreed to pay a civil penalty of $1.5 million to settle the matter "without the expense of litigation," it stressed that the agreement is not "an admission of liability of any kind, whether legal or factual" or a determination by CPSC that Burlington knowingly violated the CPSA. *See Law360,* July 26, 2012; *Federal Register,* July 30, 2012.

CPSC has provisionally accepted a $400,000 **settlement** with the company that makes Rose Art Magnetix Building Block Sets®. According to CPSC's complaint against Battat Inc., the company distributed 132,000 sets over a four-year period in the United States and issued a recall for certain model numbers in March 2008. CPSC claims that the products, labeled for children ages three and older, "are defective because small, powerful magnets can loosen and fall out of the components with normal use." Young children can swallow or aspirate these magnets, and, if more than one is swallowed, "the magnets can attract each other and cause intestinal perforations or blockages, which can be fatal."

CPSC apparently announced a recall of the sets in 2006, after finding that they had been involved in one death, four serious injuries and 34 other incidents. The agency then re-announced the recall a year later when recalling additional toys containing small magnets. The company apparently failed to notify CPSC or customers about the defect and potential hazard until late 2007. The company denies that it knowingly or otherwise violated federal reporting requirements, contending that it complied with all existing CPSC standards in manufacturing the toys and that they were labeled with a choking hazard warning for children younger than 3. It also purportedly believed that "its magnets were better retained in its toys and much less likely to come out even under foreseeable misuse and abuse." The company also claims that it had not received consumer complaints about its products.

The company denies that it knowingly or otherwise violated federal reporting requirements, contending that it complied with all existing CPSC standards in manufacturing the toys and that they were labeled with a choking hazard warning for children younger than 3.

Thus, the company agreed to settle CPSC's allegations only because it wished "to avoid the negative publicity associated with CPSC pursuit of a penalty through litigation with its business activities that would likely result from such litigation even if pursued to a successful conclusion." Battat will have one year in which to pay CPSC the $400,000 civil penalty agreed to and waives any rights to judicial or administrative review. The public had until August 6, 2012, to object to the agreement. *See Federal Register*, July 20, 2012.

CPSC Regulatory Activity: Infant Bath Seats, Baby Cribs, Toys and Child Care Products with Phthalates

The Consumer Product Safety Commission (CPSC) has issued a **direct final rule** indicating its intent to adopt a revised ASTM standard for infant bath seats, ASTM F1967-11a, as the new CPSC standard, because it is "essentially identical to the current mandatory standard" at 16 CFR part 1215. The agency also intends as part

of this rule to adopt ASTM F1169-11, relating to full-size baby cribs, because it too is "essentially identical to the full-size crib standard that the Commission mandated at 16 CFR part 1219." The rule will take effect November 12, 2012, unless "significant adverse comments" are received by August 30. *See Federal Register*, July 31, 2012.

CPSC **seeks comments** on the estimated burdens of complying with a collection of information relating to the "form that will be used to measure child care centers' compliance with the recent CPSC safety standards for full-size and non-full-size cribs." Comments are requested by August 27, 2012. *See Federal Register*, July 26, 2012.

The agency has also prepared **proposed guidance** on "inaccessible component parts in children's toys or child care articles," which parts are exempt from the prohibition on the use of phthalates in specified products under the Consumer Product Safety Improvement Act of 2008. Comments are requested by October 1, 2012, and the final guidance, which was due August 12, will take effect when published in the *Federal Register*. *See Federal Register*, July 31, 2012.

FTC Revises Proposed Definitions to Further Protect Children's Online Privacy

The Federal Trade Commission (FTC) has **issued** a supplemental notice of proposed rulemaking (NPRM) that modifies several definitions previously put forward under its rule implementing the Children's Online Privacy Protection Act (COPPA Rule). In particular, FTC seeks to further revise the COPPA Rule's definitions for (i) "*personal information*," (ii) "*support for internal operations*," (iii) "*Website or online service directed to children*," and (iv) "*operator*," so as to "clarify the scope of the Rule and strengthen its protections for children's personal information."

According to the commission, a September 2011 NPRM originally suggested changing the COPPA Rule's definitions of *personal information* to include "persistent identifiers and screen or user names other than where they are used to support internal operations," and *Website or online service directed at children* to include "additional indicia that a site or service may be targeted to children." After reviewing the comments submitted in response to these draft amendments, FTC has now proposed modifying the definitions of both *operator* and *Website or online services directed at children* to treat both child-directed sites and third-party information collectors—"e.g., advertising networks or downloadable software kits ('plug-ins')"—as co-operators responsible under COPPA for notifying parents and obtaining verifiable parental consent before collecting children's personal information.

"Sites and services whose content is directed to children, and who permit others to collect personal information from their child visitors, benefit from that collection and thus should be responsible under COPPA for providing notice to and obtaining consent from parents," states the commission's August 6, 2012, *Federal Register* notice. "Conversely, online services whose business models entail the collection of

personal information and that know or have reason to know that such information is collected through child-directed properties should provide COPPA's protections."

FTC has also recommended allowing Websites or online services "that are designed for both children and a broader audience to comply with COPPA without treating all users as children." It has further proposed amending the definition of *screen or user name* "to cover only those situations where a screen name or user name functions in the same manner as *online contact information*." FTC will accept written comments on the definition changes until September 10, 2012, but is not adopting any final amendments to the COPPA Rule while it continues to review responses to its initial NPRM. *See Federal Register*, August 6, 2012.

FDA Report on International Cosmetics Regulation Meeting Now Available

The Food and Drug Administration (FDA) recently released its **report** from the sixth annual International Cooperation on Cosmetics Regulation (ICCR) meeting, held in July 2012. Additional details about the meeting appear in the **April 26, 2012, issue** of this *Report*. According to FDA, meeting participants focused, among other matters, on alternatives to animal testing, nanomaterials, endocrine disruptors, and allergens. While several papers presented during the meeting are linked in the report, others will be posted when they become available.

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California Publishes Draft Rules on Safer Chemicals in Consumer Products

California's Department of Toxic Substances Control (DTSC) has issued the text of a **proposed regulation** that would require manufacturers of consumer products "to seek alternative ingredients" if the products contain "chemicals of concern." If an alternative is not feasible, DTSC "will identify steps the manufacturer must take to ensure the product is safely used, disposed of, or phased out." A public hearing on the proposal will be held September 10, 2012, and comments must be submitted by September 11. *See DTSC News Release*, July 27, 2012.

LEGAL LITERATURE REVIEW

A. Benjamin Spencer, "Class Actions, Heightened Commonality, and Declining Access to Justice," July 2012

Washington & Lee University School of Law Professor A. Benjamin Spencer takes issue in this article with the U.S. Supreme Court's "heightened commonality standard" under Rule 23 of the Federal Rules of Civil Procedure, articulated in its *Wal-Mart Stores, Inc. v. Dukes* decision. According to Spencer, the commonality requirement had previously "been regarded as something that was easily satisfied," but the new approach, which he attributes in part to the Court's "apparent penchant for favoring restrictive interpretations of procedural rules that otherwise promote

access" to the courts, will lead to "the enlivening of challenges to class certifications that otherwise would never have been imagined." He urges the Court to reconsider the decision "and restore commonality to the meaning embodied in the language and history behind Rule 23."

Keith Hylton, "The Law and Economics of Products Liability," *Boston Univ. School of Law, Public Law Research Paper*, July 2012

Boston University School of Law Professor Keith Hylton provides an economic assessment of product liability law in this paper and concludes that it "probably improves social welfare, though it is in need of reform in several areas." Among the reforms he proposes are "(1) the feasible safe alternative requirement, (2) legal doctrine governing ambiguous risk-utility tradeoffs (or what I refer to below as 'risk-risk' tradeoffs), (3) insurance market inefficiencies (adverse selection and moral hazard), (4) preemption, (5) bright line rules versus vague standards, and (6) controlling incentives for fraud in mass torts." He contends that these and other reforms would address the uncertainty and excessive cost currently in the system.

LAW BLOG ROUNDUP

Requiem for Product Liability Law?

"Is there any point in teaching that as a separate class anymore? Product liability law barely has a pulse these days." Indiana University Robert H. McKinney School of Law Professor Gerard Magliocca, contending that the field is dead because "[f]ederal statutes preempt state product liability law with increasing frequency," not much remains distinctive about product liability law, and "[l]itigation to regulate particular goods through product liability (guns, fast food, etc.) ha[s] basically foundered." Product liability professor and practitioner Kenneth Ross responded to the post, in part, "While it is true that product liability is not expanding as it did in the 60s, 70s and 80s, there are still thousands of cases being brought each year and these cases have a profound effect on manufacturers and consumers.… I will assure you that for manufacturers and practitioners, this is not a dead area of law."

"Is there any point in teaching that as a separate class anymore? Product liability law barely has a pulse these days."

Concurring Opinions, August 3, 2012.

CPSC Seeking to Ban Product for Adults that Injures Children

"I'm surprised that this hasn't picked up more headlines and controversy. One can imagine lots of products that are not marketed to children, yet result in death and injury because of a combination of inattentive parenting and childish misuse.… If government can withhold products adults want and most use safely because

of the foolishness of less than 0.01% of the end users, the resulting nanny-statism can make most of us much worse off." The Manhattan Institute's Center for Legal Policy Adjunct Fellow Ted Frank, blogging about the Consumer Product Safety Commission's (CPSC's) effort to prohibit the sale of Buckyballs®, magnetic toys that can require surgery to remove because they cling together in the intestine if accidentally swallowed. Additional details about the Buckyballs® controversy and CPSC's administrative lawsuit appear elsewhere in this *Report*.

PointofLaw.com, August 6, 2012.

THE FINAL WORD

Federal Judiciary Marks First Year of Cameras in Courtroom Pilot Program

The 14 federal trial courts that agreed to participate in a program allowing cameras in the courtroom have, after the first year of the three-year pilot, made 39 court proceedings available **online** for public viewing. According to U.S. District Court Judge Julie Robinson (Kan.), who chairs the Judicial Conference Committee on Court Administration and Case Management which is studying the pilot, "It is encouraging that so many civil proceedings are now available online for the public to see, as if they were in the courtroom themselves." Participating courts follow conference guidelines; they record the proceedings themselves with the approval of the presiding judge and the parties. *See Third Branch News,* July 31, 2012.

"It is encouraging that so many civil proceedings are now available online for the public to see, as if they were in the courtroom themselves."

UPCOMING CONFERENCES AND SEMINARS

Legal Hold Pro, Portland, Oregon – September 27-28, 2012 – "2012 Conference on Preservation Excellence" (PREX12). Shook, Hardy & Bacon eDiscovery, Data & Document Management Practice Co-Chair **Denise Talbert** will address data preservation requirements at what has been billed as "the first legal conference focused exclusively on improving [the] legal preservation process." PREX12 will offer participants "real-world techniques for navigating the challenges of preservation and meet the standards of care demanded by the courts—while minimizing the burden in terms of both costs and labor." Talbert will serve on two panels, "Determining the Scope of Preservation and Documentation" and "When Preservation is a Real Challenge."

ACI, New York, New York – October 2-3, 2012 – "National Forum on Pharmaceutical Pricing Litigation." Shook, Hardy & Bacon Pharmaceutical & Medical Device Partner **Michael Koon** will join a distinguished continuing legal education faculty to present during a panel discussion on "Preparing Defenses to Allegations of False Claims Act Violations."

Shook, Hardy & Bacon L.L.P.

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ACI, Chicago, Illinois – October 3-4, 2012 – "FDA & USDA Compliance Boot Camp: An In-Depth and Comprehensive Course on Regulatory Requirements for the Food and Beverage Industry." Shook, Hardy & Bacon Agribusiness & Food Safety Practice Co-Chair **Madeleine McDonough** will address "Preemption Fundamentals: Overview of Recent Case Decisions and How to Successfully Assert Federal Preemption."

ACI, Philadelphia, Pennsylvania – October 22-24, 2012 – "Drug Safety, Pharmacovigilance and Risk Management Forum." Shook, Hardy & Bacon Pharmaceutical & Medical Device Litigation Partner **Hildy Sastre** will serve on a panel with Food and Drug Administration Associate Chief Counsel Carla Cartwright to discuss "Assuaging Agency Concerns About Safety: Developing a REMS Strategy and Successfully Negotiating with the FDA." ■

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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).