Shook, Hardy & Bacon L.L.P.

FEBRUARY 26, 2009

PRODUCT LIABILITY LITIGATION REPORT

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VACCINE INJURY TEST CASES END WITH RULINGS AGAINST PARENTS OF AUTISTIC CHILDREN

Special masters for the U.S. Court of Claims have **determined** that measles-mumps-rubella vaccines combined with thimerosal-containing vaccines do not cause autism in children. The rulings conclude the test cases brought by three families who pursued this theory of general causation to link vaccines to their children's neurological disorders. While more than 5,000 additional related claims are pending, hearings in test cases involving a second theory of causation, i.e., that thimerosal-containing vaccines can cause autism, concluded in July 2008, and briefing is scheduled to conclude in those cases in late spring or early summer 2009. The parents have 30 days to seek review by a U.S. Court of Federal Claims judge, and may seek further review by the Federal Circuit Court of Appeals and ultimately the U.S. Supreme Court.

According to the Office of Special Masters, the three decided cases involved the testimony of 28 experts, and the record contains more than 900 medical articles. The opinions, hundreds of pages long, rule that petitioners have not demonstrated that they are entitled to an award from the National Vaccine Injury Compensation Program, which was established "to reduce lawsuits against physicians and manufacturers, while providing those claiming vaccine injuries a reduced burden of proof." Claimants do not have to prove negligence, failure to warn or other tort causes of action under the program, but they must prove that a covered vaccine caused injury.

The special masters determined that "the evidence was overwhelmingly contrary to petitioners' contentions," the respondent's expert witnesses were "far better qualified, far more experienced, and far more persuasive than the petitioners' experts, concerning most of the key points," and "numerous medical studies concerning these issues, performed by medical scientists worldwide, have come down strongly against the petitioners' contentions." *Cedillo v. Sec'y of Health & Human Servs.*, No. 98-916V (Fed. Cl., decided February 12, 2009). One special master called the petitioners' theories of causation "speculative and unpersuasive." *Snyder v. Sec'y of Health & Human Servs.*, No. 01-162V (Fed. Cl., decided February 12,, 2009). The third special master observed, "the general causation evidence developed in the first three test cases is expected to be helpful in resolving the other autism cases awaiting decision." *Hazlehurst v. Sec'y of Health & Human Servs.*, No. 03-654V (Fed. Cl., decided February 12, 2009).

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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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FEDERAL AND STATE COURTS CONSIDER PREEMPTION ARGUMENTS IN MEDICAL DEVICE CASES

A federal district court has denied a medical device manufacturer's motion to dismiss claims that it failed to follow Food and Drug Administration (FDA) standards when it made the purportedly defective artificial hip replacement device that allegedly caused plaintiff's injuries. *Hofts v. Howmedica Osteonics Corp.*, No. 08-0855 (U.S. Dist. Ct., S.D. Ind., Indianapolis Div., decided February 11, 2009). Interpreting and applying *Riegel v. Medtronic, Inc.*, 128 S. Ct. 999 (2008), the court determined that state lawsuits premised on violations of federal law are not preempted under the Medical Device Amendments Act of 1976. According to the court, the U.S. Supreme Court "gave lower courts clear instructions for cases like this one, in which plaintiffs allege that a manufacturer has failed to manufacture a device according to the FDA-approved standards and procedures: '§ 360K does not prevent a State from providing a damages remedy for claims premised on a violation of FDA regulations; the state duties in such a case "parallel," rather than add to, federal requirements.'"

The Wisconsin Supreme Court has reached a different conclusion in a case involving a pacemaker that the manufacturer suggested patients consider removing because the batteries might fail in one out of 10,000 patients. ***Blunt v. Medtronic, Inc.*, No. 2009 WI 16 (Wis., decided February 17, 2009)**. The FDA approved design changes to address the problem in 2003 but did not withdraw its approval of the device originally given pre-market approval in 2002. The plaintiff in this case had the original model implanted during surgery that occurred in 2004 and had it removed the next year shortly after his surgeon was advised of the potential battery shorting problem. He did not, apparently, suffer any ill effects, and the Wisconsin high court ruled that his claims were preempted under *Riegel's* rationale, finding that they would impose requirements different from or in addition to federal requirements. Two concurring justices criticized *Riegel* and the FDA's process for assuring the safety of medical devices.

PUTATIVE CLASS CLAIMS IN ONSTAR® SAFETY SYSTEM LITIGATION SURVIVE MOSTLY INTACT

A multidistrict litigation (MDL) court has denied most of the defendants' motions to dismiss in putative class action lawsuits alleging that carmakers and the company that manufactured the analog-based telecommunications equipment for OnStar® safety systems violated consumer protection laws and breached express and implied warranties. *In re: OnStar Contract Litig.*, MDL No. 1867 (U.S. Dist. Ct., E.D. Mich., S. Div., decided February 19, 2009).

According to the complaints filed in various jurisdictions and consolidated for pretrial proceedings before the MDL court, the defendants sold automobiles with these safety systems knowing they would cease working by February 2008 due to changes in telecommunications rules, but failed to notify consumers who

purchased or leased these vehicles of this fact. The systems, which automatically notify emergency responders when a crash occurs, locate stolen vehicles, unlock doors remotely, and provide remote diagnostics, apparently no longer work, and the car makers are allegedly charging to upgrade the systems to work with the digital signals that are now in use.

Because the motions to dismiss were filed before the parties had had an opportunity to fully brief and argue choice-of-laws issues, the court declined to address several of the issues raised in the motions to dismiss, including which state's laws would ultimately apply in the case. The court dismissed class claims based on Michigan's consumer protection laws because none of the named plaintiffs are Michigan residents and the law protects state residents only. The court also dismissed two plaintiffs from seeking exemplary damages under New York law and eliminated the express warranty claims of plaintiffs whose warranties expired before the analog service ceased. The remainder of the claims will stand, pending further procedural developments.

TRIAL RULINGS ON WITNESS DEMONSTRATIONS AND IMPEACHMENT TESTIMONY UPHELD IN DEFECTIVE LADDER CASE

The Seventh Circuit Court of Appeals has affirmed a $677,000 jury award to a plaintiff allegedly injured in a fall from a purportedly defective ladder. ***Schmude v. Tricam Indus., Inc.*, No. 08-2370 (decided February 17, 2009)**. The ladder manufacturer complained on appeal of (i) discrepancies between the plaintiff expert's report and testimony, (ii) the expert's failure to perform a test to replicate how the accident allegedly occurred, (iii) the trial court's decision to allow the plaintiff's expert to demonstrate in court how the accident might have occurred, and (iv) limitations the court placed on defendant's efforts to undermine the plaintiff's testimony.

The Seventh Circuit opinion, authored by Judge Richard Posner in his inimitable style, dissects each issue and concludes that the trial court committed no error. When discussing whether the trial court improperly limited the information that could be provided to the jury about a felony the plaintiff committed more than 10 years before, the court noted that the rule to allow such impeachment testimony recognizes that "a person who has committed a serious crime is more likely than a law-abiding person to lie on the stand even if the case in which he is testifying has nothing to do with that crime." Judge Posner also wrote, perhaps reflecting a somewhat jaded view of witness veracity, "The rationale is underinclusive, since many people who have committed a felony have not been caught or if caught have not been convicted, because of the prosecution's heavy burden of proof. Moreover, every judge is aware that many people who do not have a criminal record will lie in a trial when it is to their advantage."

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Still, observing that the plaintiff's lawyer described his client as "a frightening-looking man—huge (for he is six foot two inches tall as well as weighing 350 pounds), with a full beard, and a not particularly pleasing manner … and of course an ex-con," Judge Posner expressed his apparent faith in the jury system, adding, "It is a tribute to the jury, and to the judge's conduct of the trial, that despite the closeness of the case, which would have made it easy for the jury to return a verdict for the defendant had it allowed emotion to influence it, the plaintiff won."

WEST VIRGINIA JUDICIAL BIAS CASE READY FOR ARGUMENT

The U.S. Supreme Court will hear an appeal from West Virginia on March 3, 2009, that asks it to consider, as a matter of due process, whether one of that state's supreme court justices should have disqualified himself from considering an appeal involving a company whose chief executive officer spent $3 million to defeat the justice's political opponent in a judicial election. *Caperton v. A.T. Massey Coal Co., Inc.*, No. 08-22 (U.S., cert. granted November 14, 2008).

The case has attracted what has been characterized as "intense interest from judges, lawyers groups and legal ethicists" concerned with the way many states select their judges and the trend toward expensive judicial campaigns funded by businesses and lawyers who appear before the judges they help elect. Some major business interests, including international retailers and manufacturers, filed *amicus*, or "friend-of-the-court," briefs calling for the U.S. Supreme Court to reverse the judgment that favored the coal company by overturning a $50 million jury verdict against it. They argue, "Confidence in the judiciary is of particular value to those engaged in commerce, who rely on evenhanded justice to make informed financial and investment decisions. There is a need to signal to businesses and the general public that judicial decisions cannot be bought and sold. Reversal of the judgment … based on Justice Benjamin's failure to recuse himself would accomplish that."

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Other briefs backing the call for reversal include those filed by the American Academy of Appellate Lawyers, Brennan Center for Justice, American Bar Association, Center for Political Accountability, American Association for Justice, Common Cause, Public Citizen, and 27 former state supreme court justices from 19 states. They each contend that the justice's failure to remove himself from the case created an appearance of bias.

The justice has reportedly defended his actions by claiming he had no financial interest in the case's outcome and that most of the money that Don Blankenship, the coal company's CEO, spent on the judicial election went to other organizations that paid for ads opposing the retention of the justice that Justice Benjamin ultimately replaced. In fact, respondent's brief states, "Apart from a $1,000 contribution

by A.T. Massey's Political Action Committee, neither respondents nor Massey Energy made any expenditures in support of Justice Benjamin's election or in opposition to his opponent; Blankenship's only direct contribution to Justice Benjamin's campaign totaled $1,000; and Justice Benjamin has voted against Massey affiliates in at least five other cases, including one in which the judgment against Massey was almost five times that here." *See Associated Press,* January 6, 2009; *The Charleston Gazette*, January 7, 2009; *The Los Angeles Times*, February 23, 2009.

FEDERAL JUDGE SLAMS ATTORNEYS FOR PATTERN OF IMPROPER AND COSTLY REMOVALS

Granting a plaintiff's request to return a lawsuit involving Louisiana parties to the state courts of Louisiana, U.S. District Judge Tucker Melançon imposed the costs of removal to federal court on counsel for one of the defendants and issued an order to show cause why the errant lawyers should not be fined at least $25,000 each and barred from practicing in the Western District of Louisiana. *Hollier v. Willstaff Worldwide, Inc.*, No. 08-1382 (U.S. Dist. Ct., W.D. La., memorandum ruling filed February 3, 2009). According to the court, no objectively reasonable basis existed for removal to federal court, and the lawyers involved "have been warned time and again that continuing down the path of filing baseless removal would have dire consequences."

As court watchers have noted, removal resembles "a cat-and-mouse game" with plaintiffs naming local parties with no stake in the litigation as defendants to avoid removal and thus remain in state court, and defendants filing for removal by claiming diversity of citizenship to stay the state proceedings and have the matter heard before more business-friendly federal courts. A 2008 law review article reportedly showed a significant increase in the numbers of defendants removing cases from state to federal court in recent years, "only for them to be dispatched back to state court for erroneous removal." The costs of the removal and remand proceedings can be onerous for individual plaintiffs. Louisiana's trial lawyers are apparently wondering why it took the courts so long to take action against the firm, given the dozens of cases in which its lawyers had previously been warned or sanctioned. *See ABA Journal*, February 10, 2009.

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RACKETEERING CHARGES FILED IN ASBESTOS SCREENING CASE

An Atlanta-based electric-light fixture manufacturer has reportedly filed a lawsuit alleging that two West Virginia radiologists and a medical screening company "schemed to generate false medical test results, false medical reports and false diagnoses to substantiate tens of thousands of personal injury cases" involving asbestos-related disease claims. National Services Industries, Inc., (NSI) apparently paid millions of dollars to settle claims arising from asbestos screenings conducted by Ray and Andrew Harron and N&M Inc. at the behest of plaintiffs' lawyers.

"The primary cause of this action is a widespread unlawful enterprise engaged in a pattern of racketeering activity across state lines and a conspiracy to engage in racketeering activity involving numerous RICO (the Racketeer Influenced and Corrupt Organizations Act) predicate acts for at least the past 10 calendar years," according to the 76-page complaint filed February 9, 2009, in Holmes County Circuit Court in Mississippi.

NSI also named several law firms and attorneys as John Doe defendants, arguing that the "assembly line enterprise" relied on false medical evidence and produced "voluminous claims" calculated to overwhelm the court system. "These firms then alleged injuries against a wholesale shopping list of multiple defendants, such list is more the result of the particular asbestos personal injury firm filing the claims than any alleged injury. This scheme often had the effect of extracting nuisance-value settlements from asbestos litigation defendants … as opposed to what would occur in a 'traditional' single case tort litigation," states the complaint, which noted that these lawyers often "become enormously wealthy" after receiving 30 to 40 percent of the settlements.

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The complaint also refers to a federal judge's reprimand that in 2005 triggered a congressional inquiry into a silicosis tort case employing similar tactics. "The screenings were all about the money for Defendants and the law firm customers who paid them and not about providing healthcare," concludes the NSI complaint. "Defendants did not consider the individuals they screened as patients but instead as 'inventory.' There was no physician-patient privilege and no rendering of medical treatment to those individuals screened by Defendants." *See Legal Newsline.com,* February 13, 2009; *The* (West Virginia) *Record,* February 20, 2009.

ALL THINGS LEGISLATIVE AND REGULATORY

CPSC Issues Interim Final Rule on Lead Requirement Exemptions for Electronic Products

The Consumer Product Safety Commission (CPSC) has issued an interim final rule that exempts certain children's electronic devices from lead requirements set forth in the Consumer Product Safety Improvement Act of 2008 (CPSIA). According to CPSIA, "products designed or intended primarily for children 12 and younger may not contain more than 600 parts per million of lead" after February 10, 2009; and "products designed and intended for children 12 and younger cannot contain more than 300 ppm of lead" after August 14, 2009. The limit may be further lowered at the commission's discretion to 100 ppm after three years. CPSIA also states that these limits "do not apply to component parts of a product that are not accessible to a child" and will not become accessible through "reasonably foreseeable use."

In the case of electronic devices that cannot technologically meet these lead requirements, CPSC has retained the authority to regulate these devices to "eliminate or minimize the potential for exposure to and accessibility of lead" and to "establish a schedule for achieving full compliance unless the Commission determines that full compliance with the lead limits is not technologically feasible within such a schedule." CPSC earlier this year issued a notice of proposed rulemaking that addressed lead in these types of electronic devices, but the agency has since withdrawn the notice in favor of an interim final rule that will allow manufacturers to sell "children's electronic devices containing component parts that exceed lead content limits due to technological infeasibility until the issuance of a final rule granting exemptions."

The interim final rule describes lead testing requirements for inaccessible components in electronic devices and provides a list of devices that are exempt due to technological limitations.

The interim final rule describes lead testing requirements for inaccessible components in electronic devices and provides a list of devices that are exempt due to technological limitations. In particular, the interim final rule handles cases where "lead is necessary for the proper functioning of certain component parts in electronic devices and substitution of the lead is not yet technologically feasible."

CPSC has thus issued exemptions for (i) lead blended into the glass of cathode ray tubes, electronic components and fluorescent tubes; (ii) lead used as an alloying element in steel, provided the amount of lead does not exceed 3500 ppm; (iii) lead used in the manufacture of aluminum, provided the amount of lead does not exceed 4000 ppm; (iv) lead used in copper-based alloys, provided the amount of lead does not exceed 40,000 ppm; (v) lead used in lead-bronze bearing shells and bushings; (vi) lead used in compliant pin connector systems; (vii) lead used in optical and filter glass; (vii) lead oxide in plasma display panels and surface conduction electronic emitter displays used in structural elements; and (ix) lead oxide in the glass envelope of Black Light Blue lamps.

The interim final rule notes that "all component parts of children's electronic devices that exceed the CPSIA's specified lead limits which cannot be made inaccessible and that are not exempted on the basis of exemptions adopted by the Commission must comply with the lead limits specified in the CPSIA." *See Federal Register,* February 12, 2009.

CPSC Seeks Comments on Implementation of Phthalate Rules for Children's Toys

The Consumer Product Safety Commission (CPSC) is **seeking** comments on draft guidance to clarify section 108 of the Consumer Product Safety Improvement Act (CPSIA), which permanently prohibits the sale of any "children's toy or child care article" containing more than 0.1 percent of three specified phthalates. Effective February 10, 2009, CPSIA section 108 also bans on an interim basis "toys that can be placed in the child's mouth" or "child care articles" containing more than 0.1 percent of three additional phthalates.

The new regulation defines (i) a "children's toy" as "a consumer product designed or intended by the manufacturer for a child 12 years of age or younger for use by the child when the child plays"; and (ii) "child care articles" as a "consumer product designed or intended by the manufacturer to facilitate the sleep or the feeding of children age 3 and younger, or to help such children with sucking or teething." CSPIA section 108 also determines that a toy can be placed in a child's mouth if any part of the toy is less than 5 centimeters in diameter or if "any part of the toy can actually be brought to the mouth and kept in the mouth * * * so that it can be sucked and chewed."

In response to manufacturer inquiries about these definitions, the commission has solicited public feedback on its draft approach to determining which products and classes of products constitute a children's toy, child care article or a toy that can be placed in a child's mouth. For example, CPSC has asked stakeholders whether the following products should be classified as toys, child care articles, or not included under CSPIA: baby swings, baby walkers, bibs, costumes and masks, crib or toddler mattresses, crib sheets, decorated swimming goggles, infant sleep positioners, mattress covers, pajamas, play sand, "shampoo bottle in animal or cartoon character," wading pools, and water wings. The agency will accept comments until March 25, 2009. *See Federal Register,* February 23, 2009.

Senator Specter Re-Introduces Legislation to Prohibit Federal Prosecutors from Requesting Attorney-Client Privilege Waiver in Corporate Investigations

Senator Arlen Specter (R-Pa.) has re-introduced a bill (S. 445) that would give the Department of Justice's revised corporate prosecution guidelines the force of law as to all federal agencies with enforcement powers. The guidelines have been changed over the years and currently no longer tie credit for cooperation to a company's agreement to waive attorney-client privilege or work-product protection. The bill would also block the government from basing adverse treatment or a charging decision on whether an organization has signed a joint defense agreement or pays its employees' attorney's fees. According to Specter, the bill has been changed from the version introduced in 2008 by defining "organization" to ensure that criminal enterprises and terrorist groups could not benefit from its protections. *See Product Liability Law 360*, February 20, 2009.

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Senate to Consider Nanotechnology Legislation Approved by the House

The U.S. Senate is currently considering legislation (H.R. 554), approved by the House, that would, among other matters, require the adoption and implementation of a plan including a description of how the National Nanotechnology Program will help ensure the development of standards. The measure contemplates standards "related to nomenclature," "reference materials for environmental, health, and safety testing," and "methods and procedures for detecting, measuring, monitoring, sampling, and testing engineered nanoscale materials for environmental, health,

and safety impacts." The bill also calls for support of nanoscale science, engineering and technology in undergraduate science and engineering education. The proposal has been referred to the Senate Committee on Commerce, Science, and Transportation.

LEGAL LITERATURE REVIEW

Roderick Hills, Jr., "A Presumption Against Preemption," and Catherine Sharkey, "A Model for Products Liability Preemption," *The Law School* (NYU Law School magazine), Fall 2008 (pp. 60-66)

New York University Law Professor Roderick Hills calls for courts to "leave state law unpreempted" "absent clear evidence that state law announces policies that contradict policy judgments contained in federal statutes." He contends that Congress "will have strong incentives to strengthen the statutes' preemptive force if this is the wish of their constituents." Law Professor Catherine Sharkey approaches the preemption issue from a different direction and calls for a new "agency reference model" that would require courts to examine whether the plaintiff's claims in a particular case involve a matter or risk already considered by a federal agency which also determined that individual tort suits would interfere with its regulatory objectives. Sharkey contends that agencies "are best equipped to determine whether a particular product is best regulated by means of a uniform federal policy."

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Gregory Fowler & Marc Shelley, "International Coordinating Counsel: The Next Evolution of Litigation Management," and Laura Fey & Harley Ratliff, "A Brave New World: The Dawn of Hyper-Complex Litigation," *Bloomberg Corporate Law Journal*, Winter 2009

Shook, Hardy & Bacon International Litigation and Dispute Resolution Partner **Gregory Fowler** and International Litigation Associate **Marc Shelley** have co-authored an article that explores the product liability risks that arise in a global marketplace and suggests that international corporations consider retaining international coordinating counsel to streamline defense efforts across multiple borders. They conclude, "With the anticipated spread of consumer and mass tort litigation beyond U.S. borders, the international coordinating counsel model can assist companies build upon prior experiences and adapt them to new challenges, thus achieving the same unified approach to the defense of litigation claims that applies to their global business strategies."

The *Bloomberg* article co-authored by Laura Fey and Shook, Hardy & Bacon Product Liability Associate **Harley Ratliff** addresses the multiple legal and regulatory challenges that face product manufacturers. With U.S. litigation models finding their way into other countries and complex litigation consuming greater resources, the authors caution mass tort defendants to bring a coordinated approach to all of their litigation to ensure that positions taken and documents produced in one arena

are consistent across all forums. With plaintiffs' lawyers coordinating their activities around the globe, the article observes, "It is essential that the company get the defense of these kinds of cases right the first time."

LAW BLOG ROUNDUP

Toy Retailers Struggle with Phthalates Ban

"A ruling made in New York federal court last Thursday has set the nation's largest retailers scrambling—scrambling both within their own stores and scrambling down to Capitol Hill." *WSJ* reporter Ashby Jones, blogging about reaction to a court ruling overturning the Consumer Product Safety Commission's effort to exempt existing inventory from the ban on phthalates in children's products that went into effect February 10, 2009. According to Jones, "The retailers didn't like the ruling, and took their complaints to Congress." Despite "extraordinary measures" to pull non-complying products from store shelves, warehouses and distribution centers, a lot of inventory apparently remains.

WSJ Law Blog, February 10, 2009.

New Trial Begins for Lawyers Accused of Stealing Fen-Phen Settlement Funds from Clients

"We can now present you with the sequel!" *WSJ* reporter Ashby Jones, discussing the second criminal trial beginning against plaintiffs' lawyers charged with failing to distribute enough of a $200 million settlement of litigation involving the diet drug fen-phen to their 440 clients and reminding readers about the 2008 trial in Kentucky that ended in a hung jury. As Jones recalls, "Last year's six-week criminal trial was chock full of odd twists and turns. There were tales of drunken lawyers, charitable funds created for the benefit of the fen-phen attorneys, a judge admitting on the stand to being embarrassed by his handling of the case, and allegations of juror stalking." And if that weren't enough, some of the proceeds bought the lawyers a share in the racehorse Curlin.

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WSJ Law Blog, February 18, 2009.

THE FINAL WORD

Former Mine Executives Appear in Court to Answer Charges of Criminal Wrongdoing in Libby, Montana, Asbestos Disaster

Trial is currently underway in Montana for the former W.R. Grace & Co. mining officials who operated the vermiculite mine in Libby that allegedly released asbestos into the environment, causing "one of American history's worst industrial disasters."

At least 200 deaths and many more hundreds of illnesses are purportedly linked to the billowing dust clouds that enveloped the town.

Justice Department lawyers prosecuting the unusual criminal case reportedly say that the officials secretly knew for decades that asbestos was deadly, but insisted that it presented no generalized health hazard. The company has reportedly been paying residents' medical bills for years and agreed in 2008 to spend $250 million to clean up the town. It declared bankruptcy in 2001, overwhelmed by hundreds of millions of dollars in asbestos-related injury claims unrelated to the Libby disaster, and has tentatively agreed to settle those civil claims for $3 billion.

The officials have apparently been charged with various counts of conspiracy and violations of the Clean Air Act; they face millions of dollars in fines and up to 15 years in prison if convicted. They have pleaded not guilty and reportedly contend that the government is overreaching by prosecuting them for pollution that occurred decades before the 1990 law made it a criminal act. Their counsel also apparently claimed during opening statements to the jury that the men had little experience with toxics, were concerned about the growing evidence that asbestos posed a health threat and sought ways to protect their employees, neighbors and families. *See The New York Times*, February 19, 2009; *The Los Angeles Times*, February 24, 2009.

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UPCOMING CONFERENCES AND SEMINARS

American Bar Association, Phoenix, Arizona – April 2-3, 2009 – "2009 Emerging Issues in Motor Vehicle Product Liability Litigation." Shook, Hardy & Bacon Tort Partner **Frank Kelly** joins a distinguished faculty to serve on a panel discussing "The Science Behind the Sentiment: Understanding Punitive Damages in an Era of Anti-Corporate Bias." CLE credit is available for this program, which is presented by the ABA's Tort Trial & Insurance Practice Section; Products, General Liability and Consumer Law Committee and Automobile Law Committee.

Wake Forest University School of Law, Winston-Salem, North Carolina – April 2-3, 2009 – "A Symposium on the Third Restatement of Torts." Shook, Hardy & Bacon Public Policy Partner **Victor Schwartz** joins preeminent scholars and jurists who will explore the American Law Institute's updated principles for negligence and strict liability claims, under development for more than 12 years and nearing completion with one chapter remaining to be approved in 2009. Schwartz will serve on a panel discussing issues related to "duty" under the Restatement.

DRI, New York, New York – May 14-15, 2009 – "Drug and Medical Device Seminar." Shook, Hardy & Bacon Pharmaceutical and Medical Device Litigation Partner **Scott Sayler** chairs this 25th annual program, which provides individual presentations, panel debates and trial skills demonstrations addressing the key litigation issues

facing the industry and its counsel. Among the distinguished speakers is Shook, Hardy & Bacon Pharmaceutical and Medical Device Litigation Partner **Gene Williams**, who will serve on a panel discussing "Preparing and Protecting the Foreign Employee Deponent in Drug and Device Cases."

American Bar Association, Chicago, Illinois – May 22, 2009 – "Third Annual National Institute on E-Discovery." Shook, Hardy & Bacon Tort Partner **John Barkett** is chairing this event. for which a brochure is not yet available. Barkett frequently speaks and writes about electronic discovery issues and has authored two books on the subject: *The Ethics of E-Discovery* and *E-Discovery: Twenty Questions and Answers."* ■

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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).