

## FOOD & BEVERAGE LITIGATION UPDATE



### CONTENTS

#### Legislation, Regulations and Standards

GAO Report on School-Meals Safety . . . . .	1
AMS Proposes Leafy Green Marketing Agreement . . . . .	1
Final Meat & Poultry Rule . . . . .	2
NOP Issues Guidance . . . . .	2
APHIS Schedules Bovine TB and Brucellosis Meetings . . . . .	2
USDA IDs "Food Deserts" . . . . .	3
FDA Announces First FSMA Regulations . . . . .	3
AGs File Comments on Information Collection from Alcohol Advertisers . . . . .	4
Bill to Prohibit Obesity Lawsuits . . . . .	4
Activists Focus on Massachusetts Animal Rights Bill . . . . .	5

#### Litigation

Court Awards Disabled Turkey Plant Workers \$1.7 Million in Back Pay . . . . .	5
Salmonella Claims to Proceed . . . . .	6
Insurance Policy Ambiguous; Broad Coverage Could Be Available . . . . .	6
Feds Get Tough on Seafood Producers . . . . .	7

#### Other Developments

CSPI Opposes Limitations on Drug Residue Testing in Veal Calves . . . . .	8
Cancer Council Australia Releases Statement on Alcohol . . . . .	9
Grad Student Uses Breast Milk Cheese to Study Biotechnology Ethics . . . . .	9

#### Media Coverage

New York City Defends Plan to End Soda Purchases Under SNAP . . . . .	10
NYT Explores Appetite for Tilapia . . . . .	10

#### Scientific/Technical Items

Research Questions Impact of Low Sodium Diets on Heart Health . . . . .	11
Study Links Prenatal BPA Exposure to Infant Wheezing . . . . .	12

### LEGISLATION, REGULATIONS AND STANDARDS

#### GAO Report Suggests School-Meals Safety Initiatives

The U.S. Government Accountability Office (GAO) has issued a [report](#) recommending how the U.S. Department of Agriculture (USDA) could improve the safety of school meals purchased through its commodities program. The report recommends that USDA instruct the commodity program to (i) "develop a systematic and transparent process to determine whether foods offered by the program require more-stringent specifications related to microbial contamination, including steps to: identify pathogens, strains of pathogens, or other foods that merit more stringent-specifications; document the scientific basis used to develop the specifications; and review the specifications on a periodic basis"; and (ii) "share information with school districts in a more explicit form regarding the foods covered by more-stringent purchasing specifications related to microbial contamination to enable districts to make more informed choices."

#### AMS Proposes Leafy Green Marketing Agreement

The U.S. Department of Agriculture's (USDA's) Agricultural Marketing Service (AMS) has [issued](#) a proposed rule that would establish a voluntary National Leafy Green Marketing Agreement (NLGMA) "to regulate the handling of leafy green vegetables, including but limited to lettuce, spinach, and cabbage." According to AMS, the proposed agreement would "authorize the development and implementation of production and handling regulations (audit metrics)" to reflect USDA's Good Handling Practices, as well as the Food and Drug Administration's Good Agricultural Practices and Good Manufacturing Practices. AMS has requested comments and written exceptions to the proposed rule by July 28, 2011.

The voluntary NLGMA would cover both domestic and imported leafy green vegetables, with signatories agreeing to only handle products that meet program requirements. It is evidently modeled after a similar marketing agreement pioneered by California growers, who in 2006 faced a widespread

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

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*E. coli* outbreak linked to fresh spinach, and also takes into account a February 23, 2010, request for comments detailed in [Issue 338](#) of this *Update*. "This proposed agreement and governance structure provides an opportunity for farmers, handlers and retailers of all sizes to work together and develop a practical program," said Agriculture Deputy Secretary Kathleen Merrigan in an April 26, 2011, press release. "We are striving to create a voluntary program so that all types of farmers and handlers can more effectively comply with quality and food safety requirements."

### FSIS Final Rule Establishes Cooperative Meat & Poultry Inspection Program

The U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) has [published](#) a final rule establishing a new voluntary cooperative program that will permit state-inspected establishments with fewer than 25 employees "to ship meat and poultry products in interstate commerce." Under the program, which will be administered by state inspectors, selected establishments must comply with all standards under the Federal Meat Inspection Act and Poultry Products Inspection Act to receive the official USDA mark of inspection necessary for interstate commerce.

Effective July 1, 2011, the final rule considers approximately 90 separate comments submitted in response to the September 2009 proposed version. "Allowing these state-inspected establishments to ship their products across state lines has the potential to expand rural development and jobs, increase local tax bases, strengthen rural communities, and ensure that food is safe for consumers," said FSIS Administrator Al Almanza in an April 19, 2011, press release. *See Federal Register*, May 2, 2011.

### National Organic Program Issues Four Final Guidance Documents

The National Organic Program (NOP) has [announced](#) the availability of four final guidance documents to help accredited certifying agents and certified operations comply with NOP regulations. Titled "Compost and Vermicompost in Organic Crop Production (NOP 5021)," "Wild Crop Harvesting (NOP 5022)," "Commingling and Contamination Prevention in Organic Production and Handling (NOP 5025)," and "The Use of Chlorine Materials in Organic Production and Handling (NOP 5026)," the documents are also "intended to inform the public of NOP's current thinking on these topics." *See Federal Register*, May 6, 2011.

### APHIS Schedules Bovine TB and Brucellosis Meetings

The U.S. Department of Agriculture's Animal and Plant Health Inspection Services (APHIS) will hold [meetings](#) in four states "to provide an opportunity for stakeholders to offer their input on a new framework being developed for the bovine tuberculosis and brucellosis programs in the United States." The

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

May 19, 2011, meeting will be held in Lansing, Michigan; the May 24 meeting will be held in Atlanta, Georgia; the June 1 meeting will be held in Bozeman, Montana; and the June 6 meeting will be held in Amarillo, Texas.

The agenda includes discussion of topics included in a draft [regulatory framework](#) developed by federal, state and tribal governments, involving such matters as herd management and epidemiological investigations, animal importation, indemnity, and approval of diagnostic tests and laboratories. Written comments on meeting topics are requested by June 20. See *Federal Register*, May 6, 2011.

### USDA Launches Online Mapping Tool that Locates “Food Deserts”

The U.S. Department of Agriculture (USDA) has launched an Internet [mapping tool](#) that locates “food deserts” in the country. Designed to help policy makers, community planners and researchers bring nutritious food to low-income communities that lack accessibility to grocery stores, the Food Desert Locator is part of first lady Michele Obama’s initiative addressing the childhood obesity epidemic. “With this and other Web tools, USDA is continuing to support federal government efforts to present complex sets of data in creative, accessible online formats,” Agriculture Secretary Tom Vilsack was quoted as saying. See *USDA Press Release*, May 2, 2011.

### FDA Announces First Regulations Under Food Safety Modernization Act

FDA has issued the first two new regulations under the Food Safety Modernization Act. Effective July 3, 2011, the interim final rules are designed to strengthen FDA’s ability to help prevent potentially unsafe food from reaching U.S. consumers.

The [first rule](#) amends FDA regulations concerning the detention of food for human or animal consumption. It allows the agency to detain food it believes has been produced under unsanitary or unsafe conditions or is adulterated or misbranded. Previously, the agency was able to detain food products only when it had “credible evidence that a food product presented was contaminated or mislabeled in a way that presented a threat of serious adverse health consequences or death to humans or animals,” FDA said in a May 4 press release. Now the agency can detain questionable food from the marketplace for up to 30 days while it determines if enforcement action such as seizure or federal injunction is necessary. Before the rule, “FDA would often work with state agencies to embargo a food product under the state’s legal authority until federal enforcement action could be initiated in federal court,” FDA said, adding that it will continue to work with state agencies on food safety. The agency requests comments by August 3. See *Federal Register*, May 5, 2011.

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

The [second rule](#) establishes a new reporting mechanism that “requires anyone importing food into the United States to inform the FDA if any country has refused entry of the same product, including food for animals.” With more information about imported foods, “FDA’s ability to target foods that may pose a significant risk to public health” will be improved under regulations established by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, FDA said. Comments are requested by August 3. *See Federal Register*, May 5, 2011.

### AGs File Comments on Information Collection from Alcohol Advertisers

Attorneys general (AGs) from 23 states and Guam have submitted [comments](#) to the Federal Trade Commission (FTC) in response to its proposed collection of information from alcohol advertisers. The information relates to “compliance with voluntary advertising placement provisions, sales and marketing expenditures, the status of third-party review of complaints regarding compliance with voluntary advertising codes, and alcohol industry data collection practices.”

Agreeing that the information collection is in the public interest, the AGs recommend that FTC “seek advertising and promotional expenditure data on an ongoing and regular basis, not just intermittently.” They also urge FTC “to encourage the alcohol industry to move to a standard limiting advertising to media where no more than 15% of the audience is between the ages of 12 and 20.” The April 26, 2011, comment further calls for FTC to “include a brand analysis in its coming report,” noting that these beverages are marketed by brand and not by company.

In light of the industry’s growing reliance on digital and social media in marketing, the AGs suggest that the commission seek policies and data on (i) “How bloggers or other third-party posters on internet sites may use alcohol brand trademarked or copyrighted material”; (ii) “Pre-approval of posts on corporate-sponsored social media sites”; (iii) “Personal information obtained about viewers of corporate-sponsored social media sites”; (iv) “Actions taken against posts on corporate-sponsored social media sites that violate voluntary advertising codes”; and (v) “Marketing and promotional statements made by company employees on corporate social media sites.”

### Alabama House Approves Bill Prohibiting Weight-Gain Lawsuits

The Alabama House of Representatives has passed a bill (HB193) that would prohibit people from filing lawsuits against establishments such as restaurants or grocery stores for selling them food that allegedly made them fat. The Commonsense Consumption Act, approved May 3, 2011, by a 75-20 vote, bars “civil actions against manufacturers, packers, distributors, carriers, holders, sellers, marketers, or advertisers of food products that comply with applicable

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

statutory and regulatory requirements based on claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition caused by or allegedly likely to result from long-term consumption of food." Spearheaded by Representative Mike Jones (R-Andalusia), the bill is headed for debate in the Alabama Senate.

### Activists Focus on Massachusetts Animal Rights Bill

According to a news source, animal rights activists have recently been pressing members of the Massachusetts House of Representatives to pass a [bill](#) (H00458) that would "prohibit the confinement of farm animals in a manner that does not allow them to turn around freely, lie down, stand up, and fully extend their limbs."

The Prevention of Farm Animal Cruelty Act would apply to veal calves, breeding pigs, and egg-laying hens. Those found in violation of the law would be guilty of a misdemeanor and could face up to a \$1,000 fine and/or up to 180 days in jail. See *The Associated Press*, May 2, 2011.

## LITIGATION

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### Court Awards Disabled Turkey Plant Workers \$1.7 Million in Back Pay

A federal court in Iowa has determined that 31 disabled men who worked at a turkey-processing plant were owed \$1.7 million in back wages and liquidated damages by employers who compensated them at a rate of about \$.41 per hour for years. *Solis v. Hill Country Farms, Inc.*, No. 09-00162 (U.S. Dist. Ct., S.D. Iowa, Davenport Div., decided April 21, 2011). The recovery will compensate the workers for a three-year period. The two-year statute of limitations was extended for the defendants' knowing and reckless disregard of federal minimum wage and overtime requirements because the Wage and Hour Division had previously investigated them for the same violations.

The employees lived in a bunkhouse provided by the defendants, and their room and board expenses were deducted from their Social Security (SS) or Supplemental Security Income (SSI) benefits. Those expenses, which were increased over time, were also deducted from their pay; their take home of \$65 per month never changed over the more than 20 years they were employed at the turkey plant. This was the maximum cash wage they could receive and continue to remain eligible for SS and SSI benefits. The only defense proffered was that the disabled men were not the defendants' employees, but the court concluded that, as a matter of economic reality, the defendants, acting as a labor broker, "asserted control as their employer."

According to a news source, the Equal Employment Opportunity Commission (EEOC) has also sued the employer and its owner under the Americans with

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

Disabilities Act, alleging malice or reckless indifference for major violations of the Act. The EEOC reportedly claims that the men were physically abused by their caretakers; their complaints of injury were ignored; they were subjected to “derogatory and humiliating name-calling based on their disability”; they were confined to their rooms from time to time in the bunkhouse, an old school house with boarded-up windows, warmed with space heaters; and they were denied restroom breaks and medical attention. State labor officials previously assessed \$1.1 million in penalties against the defendants for violations of state labor laws and the workers’ “depraved” exploitation. See *Courthouse News Service*, May 2, 2011.

### **Court Allows *Salmonella* Claims to Proceed Despite Negative Body Fluid Cultures**

A federal multidistrict litigation (MDL) court in Georgia has denied ConAgra Foods’ motion for summary judgment in a case involving claims that tainted peanut butter caused a man’s salmonellosis. *In re: ConAgra Peanut Butter Prods. Liab. Litig. (Kidd) v. ConAgra Foods, Inc.*, MDL No. 1845, No. 07-1415 (U.S. Dist. Ct., N.D. Ga., Atlanta Div., decided May 4, 2011). Bobby Joe Kidd claimed that after he ate Peter Pan® peanut butter he was hospitalized with abdominal pain and nausea. Blood and urine samples taken during his stay apparently tested negative for *Salmonella* and other infectious agents. ConAgra relied on the negative tests to argue that Kidd would be unable to show that it was more likely than not that contaminated peanut butter caused his illness.

The court disagreed, finding sufficient evidence “to allow a reasonable jury to infer that contaminated peanut butter caused his symptoms.” Kidd’s records “indicate that he ate recalled peanut butter and experienced Salmonella-like symptoms within the incubation period for Salmonellosis.” According to a board-certified internist, “a Salmonella infection in Kidd’s GI tract would not have appeared in his blood or urine cultures unless the infection had spread to his blood or bladder.” No stool samples were evidently taken.

### **Insurance Policy Ambiguous; Broad Coverage Could Be Available for Tainted Peanut Butter Claims**

A divided Delaware Supreme Court has determined that ConAgra’s insurance contract is ambiguous and therefore might provide broader coverage, with a lower “retained limit” or deductible, for claims arising out of an alleged *Salmonella* outbreak involving the company’s peanut butter. [\*ConAgra Foods, Inc. v. Lexington Ins. Co., No. 227, 2010 \(Del., decided April 28, 2011\)\*](#).

The court reversed a lower court ruling that granted, in part, the insurer’s motion for summary judgment and remanded for consideration of extrinsic evidence about what the parties intended when they agreed to a “lot or batch” endorsement; if that intent cannot be ascertained, the lower court was

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

instructed to interpret the contract in ConAgra's favor. The court also determined that because ConAgra exceeded the retained limit, the insurer's duty to defend was triggered on the date the food maker's liabilities exceeded that limit.

The policy at issue included two definitions for "occurrence," one of which was in the "lot or batch" endorsement. ConAgra contended that the endorsement, which imposed a higher retained limit to trigger coverage, did not supplant the policy's general liability occurrence definition. By 2008, the company had incurred liability exceeding \$3 million, the retained limit that triggered coverage under the policy's general liability provisions. It estimated that some 20,000 people were expected to bring bodily injury or illness claims and that the company had already settled or resolved more than 2,000 claims. The tainted peanut butter had been produced in a single, continuous run that the company had not segregated by lot or batch.

According to the court's majority, the endorsement could be interpreted in a way that either expanded or limited coverage. Under one interpretation, the "lot or batch" provision, defined as "a single production run at a single facility not to exceed a 7 day period," could segment claims, for insurance coverage purposes, into separate seven-day periods, and would disregard the actual number of occurrences, thus triggering the insurer's duties "only when ConAgra incurred \$5 million in liability for a given seven day period."

Under a second, equally reasonable interpretation, said the court, "the Lot or Batch provision would operate to convert multiple claims in one lot or batch into a single Occurrence for insurance coverage purposes," and the \$3 million retained limit for a general liability occurrence would apply. "[I]f only one Occurrence arose, the Lot or Batch Provision would not balkanize that one Occurrence into multiple Occurrences corresponding to seven-day intervals." Given the ambiguity, Delaware courts are permitted to consider extrinsic evidence of the parties' intent.

The two dissenting justices would have found that the endorsement was unambiguous and altered the general definition of occurrence in the policy. They would have ruled that "the policy requires ConAgra to satisfy a \$5 million per seven day production run retained limit with respect to the peanut butter claims before it can trigger Lexington's insurance coverage."

### Feds Get Tough on Seafood Producers

The Department of Justice recently took action against seafood producers in Wisconsin and Alabama for products that were either processed in plants lacking Hazard Analysis and Critical Control Point (HACCP) plans or misbranded. In Wisconsin, a U.S. attorney filed a complaint to seize a variety of breaded seafood products in the possession of Soderholm Wholesale Foods, Inc. and Fellersom, Inc. and sold under the "Seaside" label. *United States*

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

*v. "Seaside" Breaded Cod Fillets*, No. 11-277 (U.S. Dist. Ct., W.D. Wis., filed April 18, 2011). According to the complaint, these products are adulterated "in that they have been prepared, packed, or held under insanitary conditions whereby they may have been rendered injurious to health." Investigations in 2010 allegedly revealed that the companies did not have a written HACCP plan and failed to adopt one after warning.

Meanwhile, seafood wholesalers Karen Blyth and David Phelps have reportedly been sentenced in an Alabama federal court to 33 months and 24 months in prison, respectively, following convictions for 13 felony offenses involving the sale of fish from Asia and Africa. They purportedly falsely labeled the fish as domestic products or as species other than what they actually were. The investigation leading to the convictions apparently found that some of the fish seized tested positive for chemicals and antibiotics used overseas but prohibited from use in the United States. Blyth and Phelps are Arizona residents; their company sold fish and seafood to customers in Alabama, Florida and Mississippi at an inflated cost.

According to an assistant U.S. attorney, "These significant sentences are appropriate penalties for Blyth and Phelps, who committed multiple felonies in conspiring to scam consumers with falsely labeled, cheaper fish substitutes from Asia and Africa. Their fraudulent scheme artificially deflated the cost of wild-caught fish and gave them an unacceptable economic advantage over law-abiding fishermen." The prosecutions are intended to "send a clear message that instances of consumer fraud will not be tolerated." See *Department of Justice Press Release*, May 5, 2011.

## OTHER DEVELOPMENTS

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### CSPI Opposes Limitations on Drug Residue Testing in Veal Calves

The Center for Science in the Public Interest (CSPI) has sent a [letter](#) to Food and Drug Administration (FDA) Commissioner Margaret Hamburg, drawing attention to a plan that would allegedly prohibit FDA from considering drug residues in bob veal calf tissues "as an indicator of possible drug misuse on dairy farms." According to CSPI, bob veal cattle are young beef animals "harvested directly from dairy farms, and therefore, these cattle are key indicators of drug use on the specific farms and are also important indicators of potential use in dairy cattle residing on those farms." The consumer group thus feels that a policy barring test results from these animals "would make it harder for FDA to detect misuse of animal drugs in dairy cattle and, as a result, consumers may be more likely to be exposed to hazardous drugs in milk and milk products and/or resistant strains of human pathogens in the food supply."



## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

The proposal has evidently gained traction at the April 29-May 4, 2011, National Conference on Interstate Milk Shipments (NCIMS), where a committee of delegates, state regulators and dairy industry representatives reportedly recommended the prohibition. As a result, CSPI has asked Hamburg to exercise FDA's rights "to *not concur* with Proposal 209 should it pass in the NCIMS general session..., and ensure that the agency has fully preserved its ability to use all available evidence to identify dairy farms with inadequate controls on their use of animal drugs." See *CSPI Press Release*, May 4, 2011.

### Cancer Council Australia Releases Position Statement on Alcohol Consumption

The Cancer Council Australia (CCA) Alcohol Working Group has [published](#) a position statement in the May 2011 *Medical Journal of Australia*, claiming that alcohol use causes cancer and that any level of consumption "increases the risk of developing an alcohol-related cancer." According to the statement, an analysis verified by "external experts" found that "the level of risk increases in line with the level of consumption" and that an estimated 5,070 cases of cancer "are attributable to long-term chronic use of alcohol each year in Australia." It also noted that "alcohol use may contribute to weight (fat) gain, and greater body fatness is a convincing cause of cancers of the oesophagus, pancreas, bowel, endometrium, kidney and breast (in postmenopausal women)."

CCA recommends that consumers (i) reduce "the risk of alcohol-related harm over a lifetime" by drinking "no more than two standard drinks on any day," and (ii) reduce the risk of alcohol-related injury by limiting themselves to "no more than four standard drinks on a single occasion." The council has also urged children younger than age 18 and pregnant or nursing mothers to avoid alcohol altogether. "Alcoholic drinks and ethanol are carcinogenic to humans," concludes the position statement. "There is no evidence that there is a safe threshold of alcohol consumption for avoiding cancer, or that cancer risk varies between the type of alcoholic beverage consumed."

### Grad Student Uses Breast Milk Cheese to Study Biotechnology Ethics

A New York gallery has reportedly offered cheese made with the breast milk of three nursing women as part of a research project studying the ethics of modern biotechnology. The Lady Cheese Shop, a temporary art installation, recently gave out samples of West Side Funk, Midtown Smoke and Wisconsin Chew made from breast milk, screened for diseases and pasteurized.

Miriam Simun, a New York University graduate student responsible for the art installation and the cheese, told a news source that she hoped her effort prompted people to contemplate how human bodies are used as "factories" that produce blood, hair, sperm, eggs, and organs harvested for others.

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

"Cheese is a conversation starter," Simun was quoted as saying. "Some people are loving it, and some people are gagging." See *Reuters*, May 2, 2011.

### MEDIA COVERAGE

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#### **New York City Defends Plan to End Soda Purchases Under SNAP**

According to an April 29, 2011, *New York Times* article, a plan to regulate purchases under the federal Supplemental Nutrition Assistance Program (SNAP) continues to gain steam in New York City, where officials recently asked the U.S. Department of Agriculture (USDA) to approve a two-year pilot project prohibiting the use of food stamps to buy sugar-sweetened beverages with more than 10 calories per serving. Proponents of the measure have apparently estimated that city residents each year spend "\$75 million to \$135 million in food stamp benefits" on sugar-sweetened beverages, which advocates say are "the single largest contributor to the obesity epidemic." But industry groups and other opponents have warned that the pilot project will serve only to stigmatize some consumers while giving government leave to police other purchasing decisions. "Once you start going into grocery carts, deciding what people can or cannot buy, where do you stop?," asked one American Beverage Association spokesperson.

As the *Times* notes, these conflicting viewpoints have since placed President Barack Obama (D) in "an awkward situation." Although USDA rejected a similar proposal in 2004, saying "There are no bad foods, only bad diets," the Obama administration has also pledged "to solve the problem of childhood obesity within a generation." Hoping to sway the discussion, lawmakers, lobbying firms and consumer groups, such as the Rudd Center for Food Policy and Obesity at Yale, have all weighed in on the proposal. "Through the SNAP program, the government spends hundreds of millions of dollars a year buying beverages that have been linked to risks for obesity and diabetes," Rudd Center Director Kelly Brownell told the *Times*. "These conditions cost the government and taxpayers billions of dollars a year in costs paid by Medicaid and Medicare."

#### **New York Times Explores Appetite for Tilapia**

"Known in the food business as 'aquatic chicken' because it breeds easily and tastes bland, tilapia is the perfect factory fish; it happily eats pellets made largely of corn and soy and gains weight rapidly, easily converting a diet that resembles cheap chicken feed into low-cost seafood," writes *New York Times* correspondent Elizabeth Rosenthal in a May 2, 2011, article exploring the global tilapia market. "[P]romoted as good for your health and for the environment at a time when many marine stocks have been seriously depleted," tilapia is mostly imported from Latin America and Asia for consumption in the

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

United States, where its newfound fame has also drawn attention to aquaculture practices overseas. In particular, Rosenthal notes that critics have raised questions about raising tilapia in pens, a practice that purportedly pollutes lakes and damages local ecosystems, and on diets that nutritionists say can reduce the production and quality of omega-3 fatty acids, “the fish oils that are the main reasons doctors recommend eating fish frequently.”

And yet, according to Rosenthal, “Americans ate 475 million pounds of tilapia last year, four times the amount a decade ago, making this once obscure African native the most popular farmed fish in the United States.” As a result, groups like the Aquaculture Stewardship Council have apparently started exploring labeling programs to help consumers choose “responsibly farmed” products. For example, tilapia farms certified under the council’s guidelines would operate only “in lakes where tilapia already live” and be required to design cages to prevent escape, meet water quality rules for oxygen and phosphorous, and abstain from using prophylactic antibiotics. “In a nod to its growing popularity, this year tilapia’s will be the first of 10 certification programs to be initiated,” concludes Rosenthal. “Proponents say tilapia aquaculture will only grow in importance because it provides food and jobs in a world of declining fish stocks and rising population.”

## SCIENTIFIC/TECHNICAL ITEMS

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### Research Questions Impact of Low-Sodium Diets on Heart Health

A European study has reportedly raised questions about the impact of low-sodium diets on heart health, finding that people who apparently consumed the least amount of salt did not lower their risk for high blood pressure and, contrary to expectations, increased their risk of death from cardiovascular disease (CVD). Katarzyna Stolarz-Skrzypek, et al., “Fatal and Nonfatal Outcomes, Incidence of Hypertension, and Blood Pressure Changes in Relation to Urinary Sodium Excretion,” *Journal of the American Medical Association*, May 4, 2011. Researchers based their results on 24-hour sodium excretion measurements taken over a median 7.9 years from 3,700 subjects “randomly enrolled in the Flemish Study on Genes, Environment, and Health Outcomes (1985-2004) or in the European Project on Genes in Hypertension (1999-2001).” The findings from this cohort evidently indicated that while higher sodium excretion aligned with an increase in systolic blood pressure, “this association did not translate into a higher risk of hypertension or CVD complications.” Moreover, according to the study abstract, “lower sodium excretion was associated with higher CVD mortality.”

But some U.S. health experts have since criticized the study design and warned that it should not be used to guide public policy. As Peter Briss, a medical director at the Centers for Disease Control and Prevention, pointed

## FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 393 | MAY 6, 2011

out in a May 3 *New York Times* interview, the study subjects who excreted the least amount of salt also provided less urine than their counterparts and may not have collected all of their urine in a 24-hour period. "At the moment, this study might need to be taken with a grain of salt," he was quoted as saying.

### Study Links Prenatal BPA Exposure to Infant Wheezing

A study presented at the 2011 Pediatric Academic Societies meeting in Denver, Colorado, has evidently suggested an association between prenatal bisphenol A (BPA) exposure and wheezing in childhood. According to a May 1, 2011, [press release](#), researchers followed 367 pairs of mothers and infants, measuring BPA levels in the urine of pregnant woman "at 16 and 26 weeks' gestation as well as when they delivered their babies," and asking mothers "every six months for three years... whether their child wheezed." Although "99 percent of children were born to mothers who had detectable BPA in their urine at some point during pregnancy," those infants "whose mothers had high levels of BPA during pregnancy were twice as likely to wheeze as babies whose mothers had low levels of BPA."

The researchers noted, however, that the association held true in the youngest group of children only, with no differences in wheezing rates by age three. The findings also indicated that "high BPA levels detected in women at 16 weeks' gestation were associated with wheeze in their offspring, but high levels at 26 weeks' gestation and birth were not." The study authors have thus advocated further research "to determine if changes should be made in public policy to reduce exposure to this chemical." See *Scientific American*, May 3, 2011.

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### FOOD & BEVERAGE LITIGATION UPDATE

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.

SHB attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility inspections, subject to FDA, USDA and FTC regulation.

SHB lawyers have served as general counsel for feed, grain, chemical, and fertilizer associations and have testified before state and federal legislative committees on agribusiness issues.

