

## FOOD & BEVERAGE LITIGATION UPDATE

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### LEGISLATION, REGULATIONS AND STANDARDS

#### USDA Approves First Non-GMO Label for Meat, Poultry, Liquid Egg Products

The U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service has reportedly approved a Non-GMO Project certification seal and "Non-GMO" statement on labels for products from animals that did not consume feed containing genetically modified (GM) ingredients, such as corn, soy and alfalfa. The certification will attest that the meat, poultry and liquid egg products meet the third-party certifying organization's standards, which USDA vetted before approving the label. The agency action followed a petition filed by the owner of Mindful Meats, which makes and sells organic grass-fed beef to Northern California restaurants and retailers, and two other companies, Hidden Villa Ranch and Pitman Farms. According to Mindful Meats' [statement](#), "this is the first time that a U.S. government agency has approved a non-GMO label for beef." See *The New York Times*, June 20, 2013; *Mindful Meats Blog*, June 21, 2013.

#### Upcoming Codex Meeting to Discuss Veterinary Drug Residues

The U.S. Department of Agriculture's Food Safety and Inspection Service and the Food and Drug Administration have [announced](#) an August 5, 2013, public meeting in Washington, D.C., to provide information and receive public comments on agenda items and draft U.S. positions for discussion during the 21<sup>st</sup> Session of the Codex Committee on Residues of Veterinary Drugs of the Codex Alimentarius Commission in Minneapolis, Minnesota, on August 26-30, 2013.

Agenda items include a report on World Organization for Animal Health activities; proposed draft maximum residue limits (MRLs) for veterinary drugs; proposed draft guidelines on performance characteristics for multi-residue methods; and a discussion paper on MRLs and other limits in honey. See *Federal Register*, June 20, 2103.

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SHB offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

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### WHO Report Champions Stricter Regulations for Food Marketing to Children

The World Health Organization (WHO) has published a new [report](#), "Marketing of foods high in fat, salt and sugar to children," that calls the marketing of "unhealthy" foods to children "disastrously effective," alleging the food industry is driving rising obesity rates in children by using "cheap new marketing channels, such as social media and smart phone apps" to promote fat-, salt- and sugar-laden foods.

"Millions of children across the European Region are subjected to unacceptable marketing practices," said Zsuzsanna Jakab, WHO regional director for Europe. "Policy simply must catch up and address the reality of an obese childhood in the 21st century. Children are surrounded by adverts urging them to consume foods high in fat, sugar and salt, even when they are in places where they should be protected, such as schools and sports facilities."

According to a WHO news release, although all 53 member states in the European Region have signed on to restrictions on the marketing of unhealthy foods to children, most rely on general advertising regulations that fail to specifically address high-fat, -salt or -sugar products, and only six countries (Denmark, France, Norway, Slovenia, Spain, and Sweden) have fully implemented more comprehensive regulatory approaches to marketing food and drinks to children. Health ministers will reportedly address national policy adjustments during the WHO conference scheduled for July 4-5, 2013, in Vienna, Austria. *See WHO/Europe News Release*, June 18, 2013.

### EU Prohibits Photos of Babies on Baby Formula

The European Parliament has reportedly passed [legislation](#) regarding the labeling and content of baby formula and other foods for special medical purposes. Included in the new rules, which reportedly take effect in 2016, is a ban on the use of images of babies on infant formula packaging. Specifically, the new rules state that the labeling, presentation and advertising of infant formula and follow-on formula (for babies ages 6 to 12 months old) must not include "pictures of infants, or other pictures or text which may idealize the use of such formula" in order "not to discourage breast-feeding." Graphic representations intended for "easy identification of the formula and for illustrating methods of preparation" will evidently still be permitted. *See European Parliament News Release*, June 11, 2013.

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**LITIGATION****Court Refuses to Dismiss Consumer Fraud Claims Against Smart Balance® Butter Maker**

A federal court in California has denied the defendant's motion to dismiss a putative class action alleging that the company misleads consumers by claiming that its Smart Balance® butter products contain plant sterols that can block the absorption of cholesterol; according to the plaintiff, a single serving of the product contains insufficient sterols to achieve the stated benefit. *Aguilar v. Boulder Brands, Inc.*, No. 12-1862 (U.S. Dist. Ct., S.D. Cal., order entered June 10, 2013).

Among other matters, the court determined that the named plaintiff had standing to assert claims involving two products that she did not purchase, because the products "advertise the same health benefits arising from the same additional ingredients found on the label in the same position" as the product she did purchase. According to the court, her ability to represent class members allegedly injured by similar products must be analyzed under Rule 23 and not on a motion to dismiss. The court also found that the plaintiff had sufficiently pleaded fraud, misrepresentation, violations of the Unfair Competition Law and Consumers Legal Remedies Act, and breach of express warranty.

**EEOC Files Gender Discrimination Complaint Against Food Distributor**

The Equal Employment Opportunity Commission (EEOC) has filed a complaint against Performance Food Group, Inc., alleging that it had a "standard operating procedure of denying employment to female applicants for operative positions in its [warehouse] facilities on the basis of their gender"; EEOC also alleges that the defendant failed to promote a woman at its Maryland facility on the basis of her gender. *EEOC v. Performance Food Group, Inc.*, No. 13-1712 (U.S. Dist. Ct., D. Md., filed June 13, 2013). The defendant apparently distributes food-related products to more than 130,000 independent and national chain restaurants, theaters, schools, hotels, health care facilities, and other institutions across the United States.

According to the complaint, the defendant unlawfully discriminated against hiring women at multiple facilities since at least January 1, 2004, for warehouse positions that required the operation of machinery and factory-related processing equipment or were supervisory occupations. A corporate senior vice president allegedly stated on several occasions that women could not do warehouse work and asked "why would we waste our time bringing in females." He also allegedly expressed his displeasure when he saw women working at the warehouses, saying it would be a good idea to get the females "out of here." EEOC claims that court-ordered data on the company's hiring

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practices “revealed a statistically significant shortfall of female operatives. These shortfalls of females appeared in the overwhelming majority of individual Broadline facilities for all Regions as well as the pooled results analyzed throughout the relevant time period.” EEOC also claims, “A review and analysis of static workforce data reveals [sic] that employment of female operative workers at Defendant has been and continues to be less than that of Defendant’s competitors in the relevant labor market.”

EEOC seeks permanent injunctive relief; an order requiring the defendant to “institute and carry out policies, practices, and programs which provide equal employment opportunities for females, and which eradicate the effects of their past and present unlawful employment practices”; an order making whole a woman denied a promotion to supervisor and a class of female applicants and deterred applicants; back pay with interest; front pay; “compensation for pecuniary and nonpecuniary losses, including emotional pain, suffering, anxiety, depression, embarrassment, degradation, and humiliation”; and punitive damages.

### HFCS Makers Sued for Causing Teen’s Type 2 Diabetes

The parent of a 14-year-old with type 2 diabetes has sued several companies that make high-fructose corn syrup (HFCS), alleging that the substance is “toxic” and its consumption caused the teen’s disease. *S.F. v. Archer-Daniels-Midland Co.*, No. 13-634 (U.S. Dist. Ct., W.D.N.Y., filed June 17, 2013).

The complaint details the purported effects of HFCS on the human body, asserting that it is associated with metabolic disease, liver inflammation and insulin resistance, chronic hyperinsulinemia, and type 2 diabetes. It also alleges that the fructose in HFCS “tricks’ the brain into wanting more food and stimulates excessive and continued consumption” and that it “bypasses the insulin-driven satiety system, suppressing ‘the degree of satiety’ that would normally result from a meal of glucose or sucrose, thereby causing and contributing to over consumption on a chronic basis with the adverse effects therefrom including the development of type 2 diabetes.”

Alleging that HFCS use and consumption have “become nearly omni present in American foods and beverages,” increasing by more than 1,000 percent between 1970 and 1990, the complaint also contends that the defendants “in conjunction with the Corn Refiners Association” embarked on a publicity campaign “that attempts to recast HFCS as a natural product that is ‘natural, nutritionally the same as table sugar and has the same number of calories.’” Seeking a damages award for “loss of enjoyment of life, pain and suffering, emotional distress, . . . future lifelong and permanent medical complications including the probability of surgery and shortened life expectancy,” as well as compliance “with rigorous dietary and pharmaceutical restrictions her

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entire life," the plaintiff alleges strict liability; failure to warn; negligence; gross negligence; and willful, wanton and reckless conduct. In addition to \$5 million, the plaintiff seeks exemplary and punitive damages, costs and disbursements.

Attorney J. Michael Hayes, who is representing the plaintiff, reportedly said he believed this was the first consumer product liability case to be filed against HFCS manufacturers. A Corn Refiners Association spokesperson apparently said that HFCS is safe and natural and that the allegations are false and unsubstantiated. Association President and CEO John Bode said, "The plaintiff is seeking to profit by making claims that are contradicted by solid, credible research, as well as the Food and Drug Administration and the American Medical Association. This lawsuit will confuse consumers and mislead them about how to make the right choices for a healthy diet." See *Law360*, June 20, 2013.

### Spate of Consumer-Fraud Lawsuits Filed Against Kellogg over "Real Fruit" Claims

Three putative class action lawsuits have been filed against Kellogg Co. in a California federal court alleging that the company misleads consumers by labeling its Super Mario Fruit Snacks® and Pop Tarts® as "Made with Real Fruit." *Spevak v. Kellogg Co.*, No. 13-2767, *Barnes v. Kellogg Co.*, No. 13-2768, *Ford v. Kellogg Co.*, No. 13-2770 (U.S. Dist. Ct., N.D. Cal., filed June 14, 2013). Each plaintiff is represented by Benjamin Lopatin in the Law Offices of Howard Rubinstein.

Plaintiff Alicia Spevak alleges that the "real fruit" claim is misleading because the fruit snack product "merely contains *de minimis* real fruit and unhealthy, unnatural ingredients, chemicals and preservative additives, in addition to merely containing apple puree rather than real fruit, which a reasonable consumer would not expect from a product claiming to be 'Made with Real Fruit.'" Spevak seeks to represent a class of California product purchasers and alleges unfair, fraudulent and unlawful business practices; false and misleading advertising; and violation of the Consumers Legal Remedies Act. She seeks an order enjoining the defendant from making product claims in violation of California law; restitution; actual, statutory and punitive damages; interest; costs; and attorney's fees.

Plaintiff Ryan Barnes, raising similar claims and seeking similar relief, addresses "a line of snack foods commonly known as 'Fruit Snacks that are available in various flavors.'" He challenges labels claiming that the product is "Made with Real Fruit" and "Made with Equal to 20% Fruit," alleging that it "merely contains *de minimis* real fruit and unhealthy, unnatural ingredients, chemicals and preservative additives, in addition to merely containing apple puree rather than real fruit."

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Plaintiff Juliana Ford's complaint concerns Kellogg's "line of snack foods commonly known as 'Pop Tarts,' which come in various 'fruit flavors,' including Strawberry, Cherry, Blueberry, and Raspberry." Ford alleges that the front packaging for the product is misleading because it states that the product is "'baked with real fruit,' when in fact, it merely contains *de minimis* real fruit and unhealthy, unnatural ingredients, chemicals and preservative additives."

### 5-Hour Energy Makers Seek Trade Secrets Declaration

According to news sources, the companies that make 5-Hour Energy have filed a complaint in an Oregon state court seeking a declaration that the Oregon Department of Justice (DOJ) is not entitled to what the companies contend are trade secrets, that is, the amounts of ingredients used to make the energy shots.

Oregon's DOJ is apparently part of an executive committee leading a 33-state investigation into Innovation Ventures, LLC and Living Essentials, LLC and has demanded a list of ingredients, including their amounts, to decide whether the companies were justified in claiming that use of the product does not lead to a "crash." While the companies reportedly provided the DOJ with copies of materials submitted to the National Advertising Division of the Council of Better Business Bureaus to support their ad claims in 2007, they redacted the amounts, but not the ingredients, claiming that they are "highly confidential and proprietary trade secrets."

The companies contend that a confidentiality agreement with the DOJ will not protect the formula from disclosure, because it will be made accessible to every state involved in the investigation and will be subject to public records laws. They note that the National Advertising Division, as a private entity, is not required to disclose the information. See *The Oregonian*, June 18, 2013; *StatesmanJournal.com*, June 19, 2013.

### Salesman Seeks Damages for Obesity Discrimination

A salesman has reportedly filed a discrimination lawsuit against his former employer in a New York state court alleging that the employer, who had invited the salesman to return to his job in a frame shop, asked him to leave when he saw how much weight the salesman had gained since leaving the shop in 2008. *Bogadanove v. Frame It In Brooklyn*, No. n/a (N.Y. Sup. Ct., Kings Cnty., filing date n/a). According to the complaint, former employer Jerry Greenberg took one look at Seth Bogadanove on his return and said "Oh my God, what happened to you, you got so fat!" When Bogadanove attempted to explain that medication he was taking caused the weight gain, Greenberg allegedly said, "Oh my God, I am so sorry, I can't use you, there is no way you can work here at your size. You wouldn't fit between the aisles." Bogadanove then purportedly asked to tour the shop to see if he could be accommodated,

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but Greenberg allegedly told him to leave “because of his obese size.” The plaintiff reportedly seeks back pay, benefits, compensatory and punitive damages, and attorney’s fees. See *Courthouse News Service*, June 20, 2013.

### Tips and Wage Suit Filed Against Celebrity Chef’s LA Restaurant

Women who worked at celebrity chef Gordon Ramsay’s Los Angeles restaurant, The Fat Cow, have filed a putative class action on behalf of all nonexempt employees against the restaurant and his company, alleging they were denied meal and rest breaks, were not compensated for the missed breaks, were not compensated for overtime, were not paid minimum wage, were not provided with timely and accurate wage-and-hour statements, did not promptly receive accrued wages when they left the job, and did not receive all of the gratuities contributed to a tip pool, which they claim the defendants improperly converted. *Becerra v. The Fat Cow LLC*, No. BC511953 (Cal. Super. Ct., Los Angeles Cnty., filed June 13, 2013). The named plaintiffs include two former hostesses, a server and a barista. They seek economic damages, injunctive relief, restitution, the imposition of civil penalties, punitive damages, interest, attorney’s fees, and costs.

### TGI Fridays Targeted in Wage Suit

A California resident who worked at a TGI Fridays in Los Angeles has filed a putative class action on behalf of a statewide class of current and former nonexempt employees, alleging that the restaurant failed to pay them (i) when they showed up for their shifts but were told to go home due to light customer traffic, (ii) for the time they spent in mandatory meetings, and (iii) all the wages and other compensation due upon their discharge, termination or separation “either timely or fully.” *Portillo v. FGI Fridays, Inc.*, No. BC12119 (Cal. Super. Ct., Los Angeles Cnty., filed June 14, 2013). Alleging causes of action for failure to pay reporting time, waiting time damages, and unfair, unlawful or deceptive business practices, the plaintiff seeks compensatory and liquidated damages, interest, injunctive relief, attorney’s fees, and costs.

## OTHER DEVELOPMENTS

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### AMA Votes to Define Obesity as Disease, Ban Energy Drink Marketing to Children and End SNAP Eligibility for Sugar-Sweetened Beverages

The American Medical Association (AMA) House of Delegates has formally adopted three new resolutions at its 2013 Annual Meeting in Chicago, Illinois, that aim to define obesity as a disease, prohibit the marketing of energy drinks to adolescents younger than age 18, and end the eligibility of sugar-sweetened beverages (SSBs) under the Supplemental Nutrition Assistance Program (SNAP). According to news sources, delegates reached the decision

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to recognize obesity “as a disease state with multiple aspects requiring a range of interventions to advance obesity treatment and prevention” after hours of debate raised questions about how physicians and policymakers will use the declaration to counter rising obesity rates in the United States.

“Recognizing obesity as a disease will help change the way the medical community tackles this complex issue that affects approximately one in three Americans,” said AMA board member Patrice Harris in a statement announcing the resolution. “The AMA is committed to improving health outcomes and is working to reduce the incidence of cardiovascular disease and type 2 diabetes, which are often linked to obesity.”

But not every delegate backed the policy change, as the AMA Council on Science and Public Health (CSPH) evidently made clear in its [report](#) on the resolution. In particular, CSPH cautioned that the disease label “is likely to improve health outcomes for some individuals, but may worsen outcomes for others,” arguing instead for the need to develop more accurate obesity indicators than body mass index. “We did not think the evidence rose to the level where obesity could be recognized as its own distinct medical disease state. Obesity is a very serious condition. It’s a scourge on our nation. It’s an epidemic. It’s a significant risk factor for many other diseases,” one CSPH spokesperson was quoted as saying. “But that does not alone make it a distinct medical disease state.”

Meanwhile, delegates have also called on AMA “to work to remove [SSBs] from the SNAP program and encourage state health agencies to include nutrition information in routine materials sent to SNAP recipients,” in addition to voting for a ban on energy drink marketing to youth. To this end, AMA members noted the concerns of health advocates as well as the Food and Drug Administration’s ongoing investigations into “reports of illness, injury or death of people who drank products marketed as ‘energy drinks’ or ‘energy shots.’” As AMA board member Alexander Ding explained, “Energy drinks contain massive and excessive amounts of caffeine that may lead to a host of health problems in young people, including heart problems, and banning companies from marketing these products to adolescents is a common sense action that we can take to protect the health of American kids.” See *AMA Press Releases*, June 18 and 19, 2013; *American Heart Association Press Release*, June 19, 2013.

The American Beverage Association, however, has since decried the latter measure as a mischaracterization of caffeinated products. “We are disappointed that the [AMA] would pass a resolution fraught with inaccuracies about energy drinks and their ingredients,” AMA Communications Director Maureen Beach told media sources. “Most energy drinks contain about half the caffeine of a similar size cup of coffeehouse coffee, and most of the



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caffeine consumed by 14 to 21 year olds comes from foods and beverages other than energy drinks, according to an FDA report." See *BeverageDaily.com*, June 20, 2013.

### Chipotle to List GM Ingredients on Website

Chipotle Mexican Grill has reportedly become the first fast-food chain to disclose the ingredients it uses that contain genetically modified (GM) organisms. The list of items containing GM ingredients is currently available only on the company's Website and includes barbacoa beef, chicken, fajita vegetables, brown and white rice, steak, and tortillas.

According to its Website, the company's "goal is to eliminate [genetically modified organisms] GMOs from Chipotle's ingredients, and we're working hard to meet this challenge. For example, we recently switched our fryers from soybean oil to sunflower oil. Soybean oil is almost always made from genetically modified soybeans, while there is no commercially available GMO sunflower oil. Where our food contains currently unavoidable GM ingredients, it is only in the form of corn or soy." See *BloombergBusinessWeek.com*, June 18, 2013; *Chipotle.com*.

### Nickelodeon Responds to Request to Curb Food Marketing to Children

Nickelodeon and its parent company Viacom have purportedly declined to change their advertising policies after four senators penned a June 10, 2013, letter asking the network to further limit the food and beverage commercials shown during children's TV programming. "As an entertainment company, Nickelodeon's primary mission is to make the highest quality entertainment content in the world for kids," the company reportedly said in its response to recent criticism. "That is our expertise. We believe strongly that we must leave the science of nutrition to the experts."

According to a recent article in *The New York Times*, which reported that food advertising accounts for approximately 18 percent of Nickelodeon's annual sales, the network has also highlighted its voluntary efforts to reduce advertisements for foods and beverages with high sugar or fat content, its promotion of health and wellness messaging, and its licensing restrictions designed to prevent the use of popular characters on unhealthy products. "Against that backdrop, analysts say, some critics are having a harder time painting Nickelodeon as an uncaring corporation peddling junk food to children," notes the *Times*, which adds that the rhetoric deployed by groups such as the Center for Science in the Public Interest (CSPI) could seem "excessive at times."

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"Margo Wootan, director of nutrition policy at [CSPI], conceded that the volume of food ads on Nickelodeon had gone down," concluded the article. "Things are moving in the right direction," she said. "They're just moving way too slowly." Additional details about the senators' letter to Nickelodeon appear in Issue [487](#) of this *Update*.

### UK Alcohol Charity Calls for Advertising Restrictions

Alcohol Concern, a U.K. charity "working on alcohol issues," has issued a [report](#) titled "Stick to the Facts" that claims "[a]dvertisers exploit weak rules to develop content that appeals to both adults and young people. Audience thresholds limiting the percentage of minors insufficiently shield those underage. Children and young people in the UK aged 10-15 years are today exposed to significantly more alcohol adverts than adults than would be expected, given their viewership patterns."

The report also claims that self-regulation, particularly as to digital and online content, "is failing to adequately protect children and young people." Among other matters, the charity calls on policymakers to prohibit alcohol company sponsorship of sporting, cultural and music events, including branded merchandise, restrict advertising at cinemas for all films without an 18 classification, and regulate alcohol promotion by statute, independent of the alcohol and advertising industries.

## MEDIA COVERAGE

### Bay Area Journalist Claims "Junk Food" Companies Deceive Americans

According to Bay area journalist April Short, who apparently focuses on social justice reporting, public concerns about food health in the United States have compelled "the junk food industry" to use "disturbing deceptions . . . to keep Americans hooked on its junk." In her June 18, 2013, *AlterNet* article titled "You Won't Believe What the Food Industry Is Doing to Keep Americans Hooked on Junk," Short claims that the deceptions include processing to make products look more "natural," "marketing to children under the guise of charity," and creating foods "manufactured to include just the right combination of the sugar, fat and salt our limbic brains love."

Citing Michael Moss's book *Salt Sugar Fat*, Short discusses how food companies have made a science of producing foods that consumers cannot resist, including using just the right amounts of salt, sugar and fat, otherwise known as the "bliss point"; creating the "mouthfeel" consumers "most crave"; and developing foods that melt in the mouth so quickly "that the brain is fooled into thinking it is consuming fewer calories than it actually is. The packaged-food scientists want to avoid triggering sensory-specific satiety, the brain

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mechanism that tells a person to stop eating when it is overwhelmed by flavors. The goals are either passive overeating, which is the excessive eating of foods that are high in fat because the human body is slow to recognize the caloric content of rich foods, or auto-eating: that is, eating without thinking or without even being hungry.”

### Michele Simon Targets Report on Calorie-Reduction Pledge

“In what is becoming an all too familiar sight, the major food corporations recently teamed up with the First Lady’s Partnership for a Healthier America to announce their latest PR attempt to look like they are helping Americans eat healthier,” opines food activist and attorney Michele Simon in a June 19, 2013, post on the Corporations & Health Watch blog. According to Simon, the food companies that pledged in 2010 to reduce calories “in the marketplace” by 1.5 trillion have “jumped the gun” in proclaiming their success, as the official evaluation funded by the Robert Wood Johnson Foundation has not yet been released.

In particular, Simon cites Bruce Bradley, “a former food industry executive turned blogger and author,” who questions the accuracy of a preliminary report issued by the Healthy Weight Commitment Foundation (HWCF). “First off, measuring something like this at such a high level is recipe for bias. There are just so many ways to manipulate the data to say what you want,” he writes, alleging that pre-recession data, an increase in the consumption of private label foods and the lower/no calorie beverage trend would ultimately skew the final results. “Then when you consider who is issuing the report (HWCF) and their self-interest in appearing as responsible, I am very suspicious.”

## SCIENTIFIC/TECHNICAL ITEMS

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### BPA Allegedly Linked to Obesity in Adolescents

A recent study has allegedly linked higher urinary bisphenol A (BPA) levels to a greater risk of obesity in adolescent girls, raising questions about whether BPA “could be a potential new environmental obesogen.” De-Kun Li, et al., “Urine Bisphenol-A Level in Relation to Obesity and Overweight in School-Age Children,” *PLoS One*, June 2012. Researchers with Kaiser Permanente apparently analyzed data from 1,325 students enrolled in grades four through 12 in Shanghai, China, to conclude that among girls ages 9-12, a urinary BPA level in excess of 2 µg/L “was associated with more than two-fold increased risk of having weight” greater than the 90th percentile of the underlying population. In addition, the study noted that the association “showed a dose-response relationship with increasing urine BPA level associated with further increased risk of overweight.”

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"This finding is consistent with findings in experimental animal studies where exposure to high BPA level led to weight gain in females, but not in males," reported the authors, who theorized that BPA could accelerate pubertal development and weight gain in girls. "As a potential environmental obesogen, BPA exposure warrants particularly careful examination given the widespread human exposure, especially considering that the exposure level is higher in young children."

Meanwhile, industry groups have reportedly warned against taking the results out of context. "It is important that we look at the vast body of scientific evidence, rather than a single study, to draw conclusions about safety," said a representative for the American Chemistry Council in a media statement. "BPA is among the most tested chemicals in commerce. Regulatory bodies around the world, including the [Food and Drug Administration], have reviewed the science and have concluded that BPA is safe in food contact materials." See *FoodProductionDaily.com*, June 17, 2013.

### Research Examines Effect of Diet on Alzheimer Disease Progression

A new study examining the effect of diet on Alzheimer disease (AD) development has reportedly linked diets high in saturated fat to increased levels of lipid-depleted  $\beta$ -amyloid peptides (LD A $\beta$ ) in the brain. Angela Hanson, et al., "Effect of Apolipoprotein E Genotype and Diet on Apolipoprotein E Lipidation and Amyloid Peptides," *JAMA Neurology*, June 2013. According to the study, which notes that the A $\beta$  peptides partly responsible for AD "can be bound to lipids or to lipid carrier proteins, such as apolipoprotein E (ApoE), or be free in solution," "levels of LD A $\beta$  are higher in the plasma of adults with AD, but less is known about these peptides in the cerebrospinal fluid (CSF)." The researchers thus measured the levels of LD A $\beta$ 42, LD A $\beta$ 40 and ApoE in the CSF of 20 older adults with normal cognition and 27 older adults with mild cognitive impairment (MCI), with randomized members of both groups placed on either a diet high in saturated fat content with a high glycemic index or a diet low in saturated fat content with a low glycemic index.

The results apparently suggested that compared to participants with normal cognition, those with MCI had higher CSF LD A $\beta$  levels, especially if they also had a specific *APOE* genotype linked to AD risk. At the same time, however, the study's authors reported that "the diet low in saturated fat tended to decrease LD A $\beta$  levels, whereas the diet high in saturated fat increased these fractions."

"These findings have implications not only for cognitively normal older adults but also for cognitively normal adults who have risk factors for AD," they concluded. "We also show that changes in LD A $\beta$  peptide levels induced by diet moved in the opposite direction from [central nervous system] insulin levels, which may be one of the mechanisms for how diets impart AD risk or

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protection. Overall, these results suggest that the lipidation states of apolipoproteins and amyloid peptides might play a role in AD pathological process and are influenced by *APOE* genotype and diet." See *JAMA Neurology Press Release*, June 17, 2013.

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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.

