

Food & Beverage

LITIGATION UPDATE

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Table of Contents

Legislation, Regulations and Standards

- [1] GAO Takes Aim at Recall Programs1
- [2] Beef Exports to Japan to Resume Under New Agreement1

State/Local Initiatives

- [3] Massachusetts Bill to Target School Foods2

Litigation

- [4] Ohio Residents Blame McDonald's for Illnesses in Purported Class Action2

Other Developments

- [5] CDC Should Combat Obesity Epidemic, Says Nonprofit Health Group3
- [6] Obesity-Related Illnesses Blamed for Jump in Health Care Costs3

Media Coverage

- [7] Betsy McKay, "Defensive Coke Backs Research That Asks: Is Sugar All Bad?" *The Wall Street Journal*, October 22, 20043
- [8] Scott Fields, "The Fat of the Land: Do Agricultural Subsidies Foster Poor Health?" *Environmental Health Perspectives*, October 20044

Scientific/Technical Items

- [9] Childhood Body Mass Index Linked to Increased Risk of Cancer in Adulthood4
- [10] Coffee Consumption Might Increase Cardiovascular Inflammation4

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Legislation, Regulations and Standards

U.S. Government Accountability Office (GAO)

[1] GAO Report Takes Aim at Recall Programs

“Weaknesses in USDA’s and FDA’s food recall programs heighten the risk that unsafe food will remain in the food supply and ultimately be consumed. Specifically, USDA and FDA do not know how promptly and completely the recalling companies and their distributors and other customers are carrying out recalls, and neither agency is using its data systems to effectively track and manage its recall programs. For these and other reasons, most recalled food is not recovered and therefore may be consumed,” charges a [new GAO report](#) requested by Senator Tom Harkin (D-Iowa) and Representative Marcy Kaptur (D-Ohio). The Department of Agriculture (USDA) has voluntary recall programs for meat, poultry and egg products while the Food and Drug Administration (FDA) has voluntary recall programs for other foods. To better ensure timely and complete recalls of potentially unsafe food, GAO urges Congress to give the agencies the authority to order mandatory food recalls and recommends that the agencies take various actions to improve the outcomes of voluntary recalls.

The GAO report (i) reviews the recall procedures

that USDA and FDA employ to protect consumers from unsafe foods, (ii) compares the agencies’ limited recall authority to that of other agencies with broader authority to recall consumer products, (iii) describes the agencies’ efforts to identify and recall food from a BSE-infected Holstein cow slaughtered in Washington State in December 2003, and (iv) provides general information about USDA’s oversight of the 2002 recall of 18 million pounds of contaminated ground beef and beef products by a ConAgra facility in Greeley, Colorado.

U.S. Department of Agriculture (USDA)

[2] Beef Exports to Japan to Resume Under New Agreement

USDA and Japanese government officials reached an agreement last week under which beef exports will resume to the Asian nation after a 10-month ban following the discovery of a BSE-infected cow in Washington state. Beef products derived from cattle no older than 21 months will now be exported under a special program of USDA’s Agricultural Marketing Service; animal age will be determined by production records indicating the animals’ age at slaughter and USDA’s physiological grading system. Both governments will review the new program in July 2005 and make any necessary modifications with input from the World Organization for Animal Health and the World Health Organization. The agreement also allows resumed imports of Japan’s Wagyu and Kobe beef products. *See USDA News*



Release, October 24, 2004; *The Wall Street Journal*, October 25, 2004.

State/Local Initiatives

[3] Massachusetts Bill to Target School Foods

Massachusetts Representative Peter Koutoujian (D-Newton) is reportedly poised to introduce a bill aimed at reducing childhood obesity by mandating physical education programs in schools and restricting students' access to certain foods. Under the proposal, (i) all cafeteria or vending machine foods would be required meet nutritional standards determined by the state Department of Education; (ii) vending machine offerings could contain no more than 35 percent of calories from fat, 10 percent of calories from saturated fat, and 35 percent of calories from sugar; (iii) only low- or non-fat milk or beverages containing 50 percent or more natural fruit juice would be available – soft drinks would be prohibited; (iv) students would be required to participate in 120 hours of physical activity and 50 hours of nutrition or wellness education each school year.

Koutoujian plans to introduce the bill when the legislature reconvenes in January 2005. The Department of Education reportedly plans to support the legislation, but the Massachusetts Association of School Communities and the American Beverage Association intend to oppose it, claiming that local school officials should determine their own nutrition policies. See *The Boston Globe*, October 25, 2004.

Litigation

Food Safety

[4] Ohio Residents Blame McDonald's for Illnesses in Purported Class Action

Five patrons of a McDonald's restaurant in Piqua, Ohio, have filed a purported class action in the Common Pleas Court of Miami County claiming that food poisoning caused by products purchased at the fast-food eatery on October 2, 2004, caused more than 100 people to become ill. [*Orput, et al., v. McDonald's Corp., et al., No. 04 CV 00632, \(Ohio Comm. Pls., Miami County, Ohio\) \(filed October 6, 2004\)*](#). Plaintiffs purport to represent a class of all customers on October 2 who allegedly became sick as a result of food poisoning. The complaint alleges that McDonald's employees "failed to exercise reasonable care in the handling, processing, supplying, and/or preparation of food products." Plaintiffs seek (i) individual compensatory damages of \$25,000, (ii) interest on all damage awards and (iii) any monetary relief to which they are entitled under claims of strict liability, breach of warranty and negligence.

Other Developments

[5] CDC Should Combat Obesity Epidemic, Says Nonprofit Health Group

Trust for America's Health, a Washington, D.C.-based health advocacy organization, has issued a scathing [report](#) that faults federal efforts to address obesity for "a lack of designated leadership and a bureaucratic tangle of involved agencies and departments" and deems states' efforts to address the issue "insufficient and fragmented." Titled *F as in*



Fat: How Obesity Policies Are Failing in America, the report emphasizes that the federal government should better balance the competing interests of industry and the public health. “While personal behavior is at the center of maintaining healthy levels of diet and exercise, there is so much more the government can and should be doing to address the obesity crisis,” the trust’s executive director was quoted as saying.

The health group advocates increased funding for and designation of the Centers for Disease Control and Prevention (CDC) to coordinate all federal obesity programs. Among other things, Trust for America’s Health wants CDC to (i) take charge of the Food Guide Pyramid and other nutrition guidelines so that the agriculture department can concentrate on “its core mission of promoting the well-being of agriculture,” (ii) analyze the effects of marketing and advertising on children’s health, and (iii) establish an Obesity Investigative Service to help communities design obesity prevention programs. See *USA Today*, October 20, 2004.

[6] **Obesity-Related Illnesses Blamed for Jump in Health Care Costs**

Health care spending incurred by obese individuals (those with a body mass index of 30 or higher) was responsible for 27 percent of the hike in inflation-adjusted per capita health care spending between 1987 and 2001, according to an Emory University analysis published last week in the journal *Health Affairs*. Kenneth Thorpe and colleagues at the Rollins School of Public Health used federal data to conclude that the spending

increases were largely attributable to the costs of treating obesity-related diabetes, hyperlipidemia and heart disease.

Media Coverage

[7] **Betsy McKay, “Defensive Coke Backs Research That Asks: Is Sugar All Bad?” *The Wall Street Journal*, October 22, 2004**

This article discusses a three-day conference held late last week in Mexico City that was initiated by the food issues think tank [Oldways Preservation & Exchange Trust](#) and sponsored by Coca-Cola’s Beverage Institute for Health and Wellness. Other industry participants in the event reportedly included Cargill, Inc., Celanese AG’s Nutrinova, Tate & Lyle PLC, and Ajinomoto Co. Oldways President Dun Gifford is quoted as saying that the purpose of the conference was to arrive at a “scientific consensus” about the health effects of sugar because conflicting information has confused consumers. The real challenge, Gifford said, is teaching consumers ways to control intake and “manage sweetness.” A conference handout reportedly disclosed: “We did not invite scientists who had the appearance of being too closely tied to industry, or critics of industry whose claims appear extreme.”

[8] **Scott Fields, “The Fat of the Land: Do Agricultural Subsidies Foster Poor Health?” *Environmental Health Perspectives*, October 2004**

High-fructose corn syrup (HFCS) is a primary target in this [discussion](#) of the purported link between obesity and government subsidies for corn, wheat and soybeans. New York University’s Marion Nestle is quoted as saying the relationship between



them is clear because government support for the commodities lowers the cost of resulting products like HFCS and the hydrogenated fats used in many energy-dense processed foods. Louisiana State University's George Bray claims that the use of HFCS instead of cane or beet sugar is training people, especially children, to expect increasing levels of sweetness in foods. According to Bray, children's consumption of HFCS "may be damaging the neuronal circuitry in the brain during this highly plastic period of development."

Scientific/Technical Items

Obesity

[9] Childhood Body Mass Index Linked to Increased Risk of Cancer in Adulthood

"If the cancer risk among today's young people mimics that of previous generations, our observations suggest that the impact of current childhood obesity on the cancer burden in the second half of this century may be substantial," conclude New Zealand researchers in a study involving an analysis of health records for some 2,300 British subjects followed over a 50-year period. (M. Jeffreys, et al., "Childhood Body Mass Index and Later Cancer Risk: A 50-Year Follow-Up of the Boyd Orr Study," *International Journal of Cancer* 112(2): 348-351, November 1, 2004). A total of 188 men and 192 women developed cancer over the course of the 50-year follow-up, and the risk of adult cancer increased by nearly 9 percent for each standard increment in childhood body mass index. No other factors, including socioeconomic status, body composition, energy intake during childhood, or birth order appeared to have an effect.

Cardiovascular Disease

[10] Coffee Consumption Might Increase Cardiovascular Inflammation

A University of Athens research team reported last week that drinking more than one cup of coffee per day increases the chances of cardiovascular inflammation. (A. Zampelas, et al., "Associations Between Coffee Consumption and Inflammatory Markers in Healthy Persons: The ATTICA Study," *The American Journal of Clinical Nutrition* 80(4): 862-867, October 2004). The Greek researchers found that blood levels of markers for cardiovascular inflammation, including C-reactive protein (CRP) and white blood cell counts, were significantly greater in both men and women who consumed more than 200 ml (a little more than one cup) of coffee daily. Other markers for inflammation were significantly increased as well after controlling for age, sex, smoking status, body mass index, physical activity status, and other variables. The study does not identify the specific coffee constituents responsible for inflammation, but lead author Antonis Zampelas was quoted in a British press report as saying that cafestol and kahweol, diterpenes previously linked to high cholesterol and found in unfiltered coffee, are the likely culprits. A British Coffee Association spokesperson reportedly reacted to publication of the study by calling it "interesting," but emphasized that "the overwhelming scientific evidence shows that coffee drinking in moderation, four to five cups per day, is perfectly safe for the general population and may confer health benefits." See *BBC News*, October 20, 2004.



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