

Food & Beverage

LITIGATION UPDATE

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Legislation, Regulations and Standards

Centers for Disease Control and Prevention (CDC)

[1] CDC Director Says Avian Flu Poses a “Very Ominous Threat”

The current strain of avian flu that has killed 42 people in eight Asian countries could likely mutate into a more virulent form of the virus and lead to a devastating human pandemic, CDC Director Julie Gerberding, M.D., cautioned this week in an address to the American Association for the Advancement of Science (AAAS). “Most people who are looking at this recognize it is a very ominous situation,” Gerberding said, in comparing current circumstances to the period before the worldwide outbreak of Spanish flu in 1918. “The concern in Asia is that we have this highly pathogenic strain of influenza [H5N1] circulating widely, and there are really wonderful opportunities for this virus to either reassort [its genes] with human strains of influenza, or with other avian species, and evolve into a strain that has whatever the secret ingredient is that allows it to be effectively transmitted from person to person,” she said.

At present, researchers reportedly believe that humans contract avian flu through prolonged

contact with infected birds or consumption of raw, infected chicken meat. The virus has also infected domesticated cats. Gerberding told the AAAS audience that a special team at CDC is monitoring the spread of avian flu and that the government has ordered some 2 million doses of vaccine to protect against the known strains of the virus. *See AAAS News Release, Associated Press and The Financial Times, February 21, 2005.*

Surgeon General

[2] Surgeon General Advises Pregnant Women to Abstain from Drinking Alcohol

U.S. Surgeon General Richard Carmona, M.D., this week advised pregnant women and women who may become pregnant to refrain from drinking alcohol to eliminate the chance of having a child with any of the Fetal Alcohol Spectrum Disorders (FASD). “We must prevent all injury and illness that is preventable in society, and alcohol-related birth defects are completely preventable,” he said. “We do not know what, if any, amount of alcohol is safe. But we do know that the risk of a baby being born with any of the FASD increases with the amount of alcohol a pregnant woman drinks, as does the likely severity of the condition.” Carmona’s recommendation updates a 1981 Surgeon General’s Advisory that cautioned pregnant women to limit their alcohol consumption. According to the new advisory, alcohol “can damage a fetus at any stage of preg-



nancy” and “no amount of alcohol consumption can be considered safe during pregnancy.” See *HHS Press Release*, February 21, 2005.

U.S. Congress

[3] Underage Drinking Target of Bipartisan Legislation

Senators Mike DeWine (R-Ohio) and Christopher Dodd (D-Ct.) have reintroduced legislation (S. 408) aimed at reducing underage drinking through prevention, intervention, treatment, and research. “We talk about drugs and the dangers of drug use as we should, but the reality is that we as a society have become complacent about the problem of underage drinking,” DeWine was quoted as saying.

The Sober Truth on Preventing (STOP) Underage Drinking Act would fund (i) establishment of an Interagency Coordinating Committee charged with producing an annual report to Congress on the success of its efforts and an annual HHS “report card” on state-level activities to combat underage drinking; (ii) a national media campaign aimed at adults; (iii) enhancement grants for the Drug-Free Communities program; (iv) competitive grants to statewide coalitions targeting drinking on college campuses; and (v) increased federal research and data collection. Representative Lucille Roybal-Allard (D-Calif.) reintroduced companion legislation (H.R. 864) in the House of Representatives. See *Press Release of Senator Mike DeWine*, February 16, 2005.

[4] House Panel Report Claims Risks from Mercury Exposure Are Overstated

The House Committee on Resources has issued a [report](#) that says no link between mercury pollution from coal-burning power plants and levels of mercury in fish has been scientifically established. “After an exhaustive review of the science surrounding the mercury debate, it is clear that some special interest groups are crying wolf in their claims about the Bush Administration and public health,” Committee Chair Richard Pombo (R-Calif.) was quoted as saying. “We must make sure that these scare-tactics are not steering the public away from a healthy food source entirely and unnecessarily,” he said. Among other things, the report recommends continued research into the benefits of fish consumption and support for a national cap and trade program for regulating mercury emissions. In March 2004, the Food and Drug Administration and the U.S. Environmental Protection Agency issued a joint consumer advisory on methylmercury in fish and shellfish that advised pregnant women, nursing mothers and young children to avoid or limit consumption of certain types of fish. See *House Committee on Resources Press Release* and *Associated Press*, February 16, 2005.

Environmental Protection Agency (EPA)

[5] EPA Sets Exposure Limit for Perchlorate

EPA late last week announced an official reference dose (RfD) for the amount of perchlorate – a naturally occurring chemical and constituent of rocket fuel — that people can safely ingest from water and food. The agency’s RfD of 0.0007 mg/kg/day translates to 24.5 parts per billion in drinking water and is consistent with the level



that the National Academy of Sciences recommended as a reference dose in a January 2005 report about the chemical. According to EPA, perchlorate exposure at high levels has been linked to thyroid dysfunction and neurological problems in children. The Food and Drug Administration is involved in an ongoing survey of perchlorate contamination in samples of milk, drinking water and lettuce. *See EPA Press Release*, February 18, 2005.

White House

[6] President Bush Signs Law Curbing Class Action Lawsuits

Asserting that the measure will restore “common sense and balance to America’s legal system,” President George W. Bush signed into law last Friday legislation that will direct more class action lawsuits to federal courts. The U.S. House of Representatives passed the Class Action Fairness Act (S. 5) without amendment by a vote of 279-149 on February 17, 2005. The legislation provides federal courts with jurisdiction over class action lawsuits with more than \$5 million at stake involving plaintiffs and defendants that reside in different states. State courts can continue to decide claims where a substantial number of class members are state residents and a primary defendant is a resident of that state. The law also provides a Consumer Class Action Bill of Rights that protects class members from abusive settlements. Industry groups reportedly hailed the class action reform, while opponents such as the Consumer Federation of America said the new law “essentially denies consumers access to a uniquely important legal tool against corporate wrongdoing” and House Minority Leader Nancy

Pelosi (D) dismissed it as a “belated Valentine” to industry. *See The Wall Street Journal and Reuters*, February 18, 2005.

Government Accountability Office (GAO)

[7] GAO Report Evaluates Potential Benefits of Single Food Safety Agency

A GAO [evaluation](#) of seven countries’ consolidated food safety systems has concluded that establishment of a single agency charged with food safety management resulted in “less overlap in inspections, greater clarity in responsibilities, and more consistent or timely enforcement of food safety laws and regulations.” Food safety regulation in the United States is currently administered by 15 agencies. GAO describes the experiences of Canada, Denmark, Germany, Ireland, the Netherlands, New Zealand, and the United Kingdom in merging food safety functions to a single agency, including the costs and benefits of such consolidation. GAO makes no explicit recommendation for centralized food safety authority in the United States.

In commenting on a draft of the GAO report, the agriculture department and HHS said the U.S. food supply continues to be among the safest in the world and that the other countries’ experiences have limited applicability because they are much smaller than the United States. Senator Richard Durbin (D-Ill.), however, was quoted as saying the report further proves that a “single food safety agency is the single best way to protect families from food-related illness or attack. One agency with clear and independent authority will ensure that food safety is driven by science not politics.” In October 2004, Durbin sponsored legislation (S. 2910) that would consolidate food safety



functions under an agency called the Food Safety Administration. *See Associated Press*, February 21, 2005.

Other Developments

[8] Harvard Symposium to Offer Differing Perspectives on Childhood Obesity Issue

Strategies to reduce the nation's escalating rate of childhood obesity will be the focus of Harvard Medical School's upcoming [seventh annual post-graduate nutrition symposium](#). Speakers at the March 16-17, 2005, event will include David Ludwig, M.D., an outspoken critic of the soft drinks industry whose research has allegedly linked the prevalence of obesity in children to consumption of sugar-sweetened drinks, and George Bray, M.D., a Louisiana State University nutrition professor whose research has blamed Americans' burgeoning waistlines on products sweetened with high-fructose corn syrup. A panel addressing industry approaches to the issue will include Cathy Kapica, Ph.D., McDonald's director of nutrition; Donald Short, president and CEO of the Minute-Maid Co.; and Pat Verduin, Ph.D., senior vice president for product quality and development at ConAgra Foods. The symposium's proceedings will be published in a future issue of *The American Journal of Clinical Nutrition*.

[9] New NBA Policy Bans Alcohol Sales During Final Quarter

National Basketball Association (NBA) guidelines that took effect this past Sunday prohibit the sale of alcohol in the fourth quarter, restrict the size of drinks to 24 ounces and limit each purchase to two drinks. The policy was reportedly prompted by a brawl during a November 2004 game between the Indiana Pacers and the Detroit Pistons. A new code

of conduct for spectators also prohibits abusive language, obscene gestures or inappropriate messages on signs directed at players. Fans who violate the new code will reportedly be ejected from games and have their season tickets revoked. *See Reuters*, February 18, 2005.

Scientific/Technical Items

Cancer

[10] Carrots May Protect Against Development of Cancer

New research from Europe indicates that falcarinol, a natural chemical found in carrots, delays the development of tumors in rat colons. (M. Kobaek-Larsen, et al., "Inhibitory Effects of Feeding with Carrots or Falcarinol on Development of Azoxymethane-Induced Preneoplastic Lesions in the Rat Colon," *J Agric Food Chem*: doi10.1021, February 5, 2005). Falcarinol is a natural pesticide found in carrots that protects the plant from the development of fungal diseases. The researchers conducted tests on 24 rats with induced pre-cancerous lesions of the colon. After 18 weeks, rats that were given feed supplemented with falcarinol were found to be one-third less likely to develop tumors than rats that were given ordinary feed. A scientist at Cancer Research UK was reported as saying that while evidence indicates that eating fruits and vegetables can reduce the risk of carcinogenesis, the reasons why are still unclear, and "people shouldn't think that eating a carrot a day will negate the effects of a diet of burgers and chocolate." *See BBC News*, February 9, 2005.



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Mark Cowing and Mary Boyd in the Kansas City office of SHB.
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