

Food & Beverage

LITIGATION UPDATE

Issue 138 • August 17, 2005

Table of Contents

Legislation, Regulations and Standards

- [1] Two Senate Bills Focus on Protecting the U.S. Food Supply1
- [2] New York City Asks Restaurants to Use Products Without *Trans* Fats1
- [3] California Panel Rejects Prop. 65 Listing for Perchlorate2

Other Developments

- [4] Beverage Industry Announces Voluntary Restrictions for Soft Drinks in Schools2

Media Coverage

- [5] “Junk Food Nation: Who’s to Blame for Childhood Obesity?” Gary Ruskin and Juliet Schor, *The Nation*, August 29, 20052
- [6] “Safer Beef,” *The New York Times*, August 13, 2005 . . .3

Scientific/Technical Issues

- [7] Swedish Researchers Enliven Debate over Alleged Link between Dairy Consumption and Ovarian Cancer3
- [8] Alcohol Consumption May Have Protective Effect Against Non-Hodgkin’s Lymphoma; Folate Intake May Alter Effect of Alcohol on Breast Cancer Risk4

Shook,
Hardy &
Bacon LLP

www.shb.com

Food & Beverage

LITIGATION UPDATE

Legislation, Regulations and Standards

U.S. Congress

[1] Two Senate Bills Focus on Protecting the U.S. Food Supply

Separate proposals recently introduced by Senators Arlen Specter (R-Pa.) and Richard Durbin (D-Ill.) target ways of safeguarding the nation's agricultural sector from terrorist attacks and other emergencies. Specter's legislation, the Agroterrorism Prevention Act of 2005 ([S. 1532](#)), outlines proposed criminal penalties for individuals convicted of committing acts of agroterrorism and mandates beefed-up federal efforts to prevent, detect and respond to agricultural crises. More specifically, the measure calls for various federal agencies to (i) develop coordinated surveillance mechanisms for animal disease, plant disease and food safety; (ii) develop systems that confidentially track specific animals, commodities and food; and (iii) develop nationwide laboratory networks. The proposal also directs the agriculture department to develop guidelines for bolstering security at agricultural facilities and work with other federal agencies in developing a stockpile of animal vaccines.

Durbin's legislation, the Safe and Secure Food Act of 2005 ([S. 1534](#)), addresses ways to reduce the risk of intentional contamination. Among other things,

the proposal calls for regulations that require meat and poultry producers to implement comprehensive security procedures at their facilities and enhanced recall authority for USDA and the Food and Drug Administration. Both bills have been referred to the Committee on Agriculture, Nutrition and Forestry.

State/Local Initiatives

[2] New York City Asks Restaurants to Use Products Without *Trans* Fats

Comparing the danger of *trans* fat consumption to that posed by exposure to lead and asbestos, New York City Health Commissioner Thomas Frieden last week urged restaurant owners to stop using partially hydrogenated vegetable oils, margarines and vegetable shortenings in food preparation. "*Trans* fat is artificially added to the foods we eat and is easily removed," Frieden said. "To help combat heart disease, the No. 1 killer in New York City, we are asking restaurants to voluntarily make an oil change and remove artificial *trans* fats from their kitchens. We are also urging food suppliers to provide products that are *trans* fat free."

Information about cardiovascular disease prevention on the NYC Department of Health and Mental Hygiene's Web site claims the recommendation to eliminate *trans* fat is based on "scientific consensus that there is no safe level of *trans* fat consumption." According to a press report, however, many government and independent scientists believe



consumption of *trans* fats is no more harmful than consumption of saturated fats and that everyone would benefit by eating fewer foods that contain them. “What’s Public Enemy No. 1 with respect to cholesterol raising?” asked the coordinator of the National Cholesterol Education Program of the National Heart, Lung and Blood Institute. “From a dietary standpoint, it’s saturated fat,” James Cleeman, M.D., was quoted as saying. See *DOHMH Press Release*, August 10, 2005; *The New York Times*, August 11 and 14, 2005.

[3] California Panel Rejects Prop. 65 Listing for Perchlorate

California/EPA’s Developmental and Reproductive Toxicant Committee has unanimously decided against adding the rocket fuel constituent perchlorate to the list of chemicals “known to the state to cause cancer or reproductive toxicity” under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop. 65). The chemical has been detected at various levels in California’s drinking-water sources, lettuce and other leafy vegetables, and samples of cows’ and human breast milk. Ingestion of perchlorate at significant levels has been linked to thyroid disorders, cancer in adults and developmental impairment in fetuses and infants. Sources of perchlorate contamination in drinking and irrigation water reportedly include military sites and other government and industrial facilities. According to news sources, the panel’s vote will have no effect on the state’s ongoing effort to develop a drinking-water standard for the chemical. See *Cal/EPA Press Release*, August 11, 2005; *The [Riverside] Press-Enterprise*, August 12, 2005.

Other Developments

[4] Beverage Industry Announces Voluntary Restrictions for Soft Drinks in Schools

The American Beverage Association (ABA) yesterday announced a new policy aimed at limiting kids’ access to soft drinks in schools. “Childhood obesity is a serious problem in the U.S., and the responsibility for finding common-sense solutions is shared by everyone, including our industry,” ABA President Susan Neely was quoted as saying. “We intend to be part of the solution by increasing the availability of lower calorie and/or nutritious beverages in schools,” she said. Under ABA’s recommendations for beverage producers and school districts, (i) vending machines in elementary schools would be stocked with water and 100 percent juice only; (ii) middle school offerings would be limited to water, 100 percent juice, sports drinks, no-calorie soft drinks, and low-calorie juice drinks, but full-calorie soft drinks and juice drinks would be available after school; and (iii) no more than one-half of high school beverage selections could include soft drinks. See *ABA News Release*, August 16, 2005; *The Wall Street Journal* and *Associated Press*, August 17, 2005.

Media Coverage

[5] “Junk Food Nation: Who’s to Blame for Childhood Obesity?” Gary Ruskin and Juliet Schor, *The Nation*, August 29, 2005

This *Nation* cover story accuses food and beverage manufacturers of using “large infusions of cash” to buy influence over federal nutrition policies and those of groups such as the American Dietetic Association and American Diabetes



Association. According to Ruskin and Schor, “the industry has been able to buy into a strategy on obesity and food marketing that mirrors the approach taken by Big Tobacco. That’s hardly a surprise, given that some of the same companies and personnel are involved: Junk food giants Kraft and Nabisco are both majority-owned by tobacco producer Philip Morris, now renamed Altria. Similarity number one is the denial that the problem (obesity) is caused by the product (junk food). Instead, lack of exercise is fingered as the culprit, which is why McDonald’s, Pepsi, Coke and others have been handing out pedometers, funding fitness centers and prodding kids to move around.” The article is available [here](#).

Ruskin is the executive director of the organization Commercial Alert, and Schor is a professor of sociology at Boston College and the author of *Born to Buy: The Commercialized Child & The New Commercial Culture*. Both will reportedly participate as panelists in the Public Health Advocacy Institute’s Third Annual Conference on Legal Approaches to the Obesity Epidemic on September 23-25, 2005.

[6] **“Safer Beef,” *The New York Times*, August 13, 2005**

This unsigned editorial contends that the USDA is ineffectual at protecting U.S. consumers from the threat of bovine spongiform encephalopathy because of the agency’s “dual and conflicting mission” of promoting the meat industry and protecting consumers. According to the author, consumers have “no reason to feel confident about the American beef supply. American cows still eat food that can potentially infect them with mad cow disease. American meatpackers use dangerous methods that other countries ban. And the United

States Department of Agriculture does not require enough testing to ensure that American beef is completely safe.”

Scientific/Technical Issues

Ovarian Cancer

[7] **Swedish Researchers Enliven Debate over Alleged Link between Dairy Consumption and Ovarian Cancer**

A meta-analysis of 21 epidemiological studies conducted by researchers at Sweden’s Karolinska Institute has concluded that women who consume 10 grams of lactose daily (“the approximate amount in 1 glass of milk”) increase their risk of developing ovarian cancer by 13 percent. (S. Larsson, et al., “Milk, Milk Products and Lactose Intake and Ovarian Cancer Risk: A Meta-Analysis of Epidemiological Studies,” *International Journal of Cancer*, published online, July 28, 2005). The researchers’ review reportedly involved three prospective cohort studies whose results indicated positive associations between dairy intake and ovarian cancer risk and 18 case-control studies whose results indicated no such associations. The Physicians Committee for Responsible Medicine (PCRM), the public health group that recently sued dairy manufacturers over the companies’ weight-loss advertising, has hailed the study as further evidence that women should forgo dairy products “to avoid this potentially lethal cancer.” See *Food Production Daily.com*, August 8, 2005; *PCRM Press Release*, August 9, 2005.



Alcohol

[8] Alcohol Consumption May Have Protective Effect Against Non-Hodgkin's Lymphoma; Folate Intake May Alter Effect of Alcohol on Breast Cancer Risk

A study published last month in *The Lancet Oncology* combined data from nine population studies from the United States, Great Britain, Sweden, and Italy, and reported that people who drank alcoholic beverages had a significantly lower risk of non-Hodgkin's lymphoma than nondrinkers. (L. Morton, et al., "Alcohol Consumption and Risk of Non-Hodgkin Lymphoma: A Pooled Analysis," *The Lancet Oncology* 6: 469-476, July 2005 (on-line publication). The reported protective effect of alcohol did not vary by beverage type or with increased alcohol consumption. The lowest risk estimate was for Burkitt's lymphoma.

Meanwhile, a study in last week's issue of the *British Medical Journal* reported that dietary folate intake modified the effect of alcohol consumption on breast cancer risk. (L. Baglietto, et al., "Does Dietary Folate Intake Modify Effect of Alcohol Consumption on Breast Cancer Risk? Prospective Cohort Study," *British Medical Journal*, August 8, 2005, on-line publication.) The study reported no direct association between either dietary folate intake or alcohol consumption and risk for breast cancer. The authors did, however, identify a significant interaction between alcohol and folate intake. Women with high alcohol consumption and low intake of folate had an increased risk of breast cancer, while women with high alcohol consumption and moderate to high levels of folate intake exhibited no increased risk.



Food & Beverage

LITIGATION UPDATE

Food & Beverage Litigation Update is distributed by
Mark Cowing and Mary Boyd in the Kansas City office of SHB.
If you have questions about the Update or would like to receive back-up materials,
please contact us by e-mail at mcowing@shb.com or mboyd@shb.com.
You can also reach us at 816-474-6550.
We welcome any leads on new developments in this emerging area of litigation.

Shook,
Hardy &
Bacon^{LLP}

Geneva, Switzerland

Houston, Texas

Kansas City, Missouri

London, United Kingdom

Miami, Florida

Orange County, California

Overland Park, Kansas

San Francisco, California

Tampa, Florida

Washington, D.C.

