Shook, Hardy & Bacon L.L.P.

ISSUE 330 | DECEMBER 11, 2009

FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

Labor Secretary Initiates Peer Review of Diacetyl Health Risks

The U.S. Department of Labor (DOL) recently announced the availability of its semiannual regulatory agenda, which includes plans to conduct a peer review of the health effects and risks associated with diacetyl in the workplace. According to DOL, "emerging hazards such as food flavorings containing diacetyl and airborne infectious diseases place American workers at risk of serious disease and death." Although DOL opted not to grant an emergency temporary standard petition filed by two workers' unions in 2006, the department's Occupational Safety and Health Administration (OSHA) has noted that "evidence from NIOSH [the National Institute for Occupational Safety and Health] and other sources indicated that employee exposure to diacetyl and food flavorings containing diacetyl is associated with bronchilitis obliterans, a debilitating and potentially fatal disease of the small airways in the lung." As part of its intent to develop diacetyl regulations, OSHA in July 2009 completed a panel report on a draft standard in accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA) and has proposed to review the scientific data for diacetyl in October 2010. "Experimental evidence has shown that inhalation exposure to artificial butter flavoring vapors and diacetyl damaged tissue lining, the nose, and airways of rats and mice," stated DOL in its December 7, 2009, *Federal Register* notice.

Members of Congress, public health activists and physicians are among those who have requested government action on diacetyl. In a November 25, 2009, letter to Solis, U.S. Senator Sherrod Brown (D-Ohio) urged that final rulemaking on diacetyl "proceed with the sense of urgency that this issue deserves" because "it has been ten years since the danger of diacetyl was first documented."

In a related development, NIOSH has issued a November 2009 report claiming that some diacetyl substitutes, such as 2,3-pentanedione, 2,3-hexanedione and 2,3-heptanedione, "may also share diacetyl's mechanism of toxicity." In response to a confidential Health Hazard Evaluation request, NIOSH staff apparently conducted a medical survey of workers at a General Mills, Inc. bakery mix facility in Los Angeles, California. Although the facility had phased out a buttermilk flavoring that contained up to 20 percent diacetyl, it had reformulated its products using 2,3-pentanendione. After conducting spirometry on 24 (59 percent) of the current workers, NIOSH found that while study participants did not exhibit the "fixed

airways obstruction as seen in flavoring-related bronchiolitis obliterans," they nevertheless "had higher than expected rates of shortness of breath, physician-diagnosed asthma, and a restrictive pattern on spirometry, compared to U.S. adults." In addition, researchers noted that the increasing carbon chain length of 2,3-pentanedione and other alpha-diketone compounds "would be predicted to reduce water solubility and result in deeper lung penetration and perhaps greater toxicity." NIOSH has thus recommended that management "continue to limit exposures to flavorings through a combination of engineering controls, work practices, and respiratory protection."

Public Health Activists Urge SEC to Increase Corporate Disclosures of Emerging Risks

The Investor Environmental Health Network (IEHN) has requested that the Securities & Exchange Commission (SEC) include in its 2010-2015 strategic plan the development of guidance for public companies requiring narrative disclosures in their annual financial reports about emerging risks such as nanotechnology. Attached to the IEHN November 15, 2009, letter is a **report** titled *Bridging the Credibility Gap: Eight Corporate Liability Accounting Loopholes that Regulators Must Close* that focuses on asbestos and nanomaterials "to assess the effectiveness of the existing financial disclosure regulations, and to develop recommendations for improvements."

According to IEHN, the report "found some companies heavily investing in nanomaterials today that appear to be engaging in inadequate or misleading disclosures related to potential hazards and the resultant financial implications. In particular, some of the materials being developed by nanomaterials companies have already been found to bear significant hazard similarities to asbestos, but this information is not contained in any registrants' disclosure statements."

IEHN contends that the SEC's planned deference to principals proposed by the Financial Accounting Standards Board (FASB) would not adequately protect the public given the FASB's apparent "back-pedaling on corporate disclosure of contingent liabilities." The November 15 letter states, "under fire from the registrant community and their attorneys, the board recently stated that it would reevaluate its proposal and consider ways of moving forward while avoiding requirements for disclosure of 'predictive' information, because of concern that it could be potentially prejudicial in litigation."

IEHN calls for the SEC to "instead encourage FASB to shape its guidance to ensure that the categories of information required to be disclosed are those for which disclosure would be, as a general matter, 'more probative than prejudicial.'" IEHN, a "collaborative partnership of investment managers, advised by nongovernmental organizations, concerned about the financial and public health risks associated with corporate toxic chemicals policies," also calls for the SEC to improve the shareholder resolution process by "empowering investors to use the process to address germane issues, including emerging risks."

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.

For additional information on SHB's Agribusiness & Food Safety capabilities, please contact

Mark Anstoetter
816-474-6550
manstoetter@shb.com

or

Madeleine McDonough
816-474-6550
202-783-8400
mmcdonough@shb.com

If you have questions about this issue of the Update, or would like to receive supporting documentation, please contact Mary Boyd (mboyd@shb.com) or Dale Walker (dwalker@shb.com); 816-474-6550.

Consumer Organization Urges FDA to "Crack Down" on Misleading Tomato Product Labels

The National Consumers League has sent a letter to the Food and Drug Administration (FDA) urging the agency to issue industry guidance in a renewed effort "to prevent consumers from being misled by the deceptive labeling of tomato products remanufactured from concentrate."

According to the league, it initiated efforts in 1990 that led the government to define the term "fresh" and require manufacturers to differentiate products prepared directly from fresh ingredients and those made from concentrate. The organization contends that "the marketplace once again is littered with false and misleading labels for tomato products claiming to be packed or made directly from fresh tomatoes."

The letter claims that food companies are misleading consumers by using phrases such as "packed full of premium vine-ripened tomatoes," "packed from 100 percent California tomatoes" and "picks the freshest tomatoes," to describe products "made from industrial tomato concentrate." Citing FDA regulations requiring "from concentrate" or "reconstituted" to be used on fruit and vegetable juices and juices made from concentrate, the league asks FDA to extend these requirements to specifically include remanufactured tomato products. The agency is also asked "to take swift and decisive enforcement action against false or misleading label claims for tomato products made from concentrate."

The National Consumers League provided copies of the letter to the attorneys general of 20 states and the District of Columbia. See *NCL Press Release*, December 11, 2009.

EU Adds Acrylamide as a Candidate to Hazardous Chemicals List

The European Chemicals Agency (EHCA) has announced that in January 2010 its Member State Committee will add acrylamide to the European Union's Candidate List of substances of very high concern (SVHC). The chemical by-product of high-temperature cooking processes has been linked to cancer in laboratory rats.

According to ECHA, the Candidate List represents the first step in the authorization procedure to include SVCHs in Annex XIV of the REACH Regulation, after which time "they cannot be placed on the market or used after a date to be set (the so-called 'sunset date') unless the company is granted an authorization." In addition to 14 other substances, the agency has proposed listing acrylamide as a category two carcinogen and a category two mutagen, but "decisions on the need to subject these substances to authorization will be taken later."

EU Grants Pizza Napoletana Status of "Traditional Speciality Guaranteed"

The European Union has reportedly granted Neapolitan pizza a status of "traditional speciality [sic] guaranteed" (TSG), a premium labeling designation that "does not refer to an origin, but highlights the traditional composition or means of production." According to media sources, the Italian government has successfully

persuaded EU member states to approve their application stipulating that pizza napoletana—also known as pizza margherita—must be hand-kneaded and cooked in a wood-fired oven, use mozzarella from the southern Apennine Mountains, and contain specific kinds of flour, yeast, salt, and tomatoes. In addition, the pie must apparently feature an elevated crust rim of 1-2 centimeters (cm), a base that does not exceed 1/3 cm in thickness and a diameter less than 35 cm.

While EU restaurants will still be able to proffer their versions of pizza napoletana, only products meeting these exact requirements can boast the coveted TSG logo. The Italian agriculture ministry has since noted that the petition attempts to redress the counterfeiting of pizza napoletana, which has "for too long been the subject of imitations," including those made from Chinese tomatoes and other imported ingredients. *See The Guardian*, December 9, 2009; *The Sydney Morning Herald*, December 11, 2009.

Last Phase of EU Food Chain Rules Strives to Ensure "Farm-to-Fork" Safety

The last phase of the European Union's (EU) food origin **legislation** takes effect January 1, 2010, requiring slaughterhouse operators and livestock keepers to provide Food Chain Information (FCI) for all cattle, sheep and goats sent to slaughter for human consumption. According to UK's Food Standards Agency (FSA), FCI includes data about the "health of the animals being sent for slaughter, and other information relevant to the safety of meat derived from them, including medicines the animals have been given." The rules already apply to other species such as pigs and calves.

FSA urged slaughterhouse operators, markets and livestock keepers to prepare for the changes now because once the new rules are enforced, meat from cattle, sheep or goats without FCI information will not be passed for human consumption. "The new rules are an important part of 'farm-to-fork' food safety controls and highlight the food safety responsibilities of livestock keepers in the meat production chain," stated FSA in a December 9, 2009, press release.

WHO and FAO Request Bisphenol A Data for October 2010 Meeting

In collaboration with Health Canada and the U.S. Food and Drug Administration, the United Nations' World Health Organization (WHO) and Food and Agriculture Organization (FAO) have **announced** an October 2010 expert meeting in Ottawa, Ontario, to discuss the safety of bisphenol A (BPA), **calling** for data from the scientific community on any "adverse human health effects at low doses of BPA, especially on reproduction, the nervous system and on behavioral development."

Meeting participants will apparently consider the current literature on BPA toxicology and exposure, weigh available risk assessments and address any knowledge gaps in an effort to develop international guidance. The agencies are specifically requesting both published and unpublished technical information on (i) "current levels of BPA in relevant food groups"; (ii) the analytical methodologies used to detect BPA "in food and other matrices"; (iii) "BPA migration from food contact materials into food"; (iv) "dietary exposure assessments of BPA from foods and

other sources"; (v) the "health effects of BPA in relevant animal or in-vitro models"; (vi) epidemiological studies; (vii) "risk assessments carried out on BPA relative to oral exposure"; and (viii) "reviews, surveys or other information concerning public perceptions of BPA." WHO's Food Safety Program will accept data submissions until February 26, 2010. *See Health Canada News Release*, December 8, 2009.

In a related development, a recent study has reportedly suggested that "exposure of placental cells to low doses of BPA may cause detrimental effects, leading *in vivo* to adverse pregnancy outcomes such as preeclampsia, intrauterine growth restriction, prematurity and pregnancy loss." Nora Benachour and Aziz Arism, "Toxic effects of low doses of Bisphenol-A on human placental cells," *Toxicology and Applied Pharmacology*, December 2009. Canadian researchers apparently exposed five placentas collected after birth to low concentrations of BPA for 24 hours, finding that the chemical killed some cells and thus would increase risk to the fetus. According to the study results, "doses of BPA from 0.0002 to 0.2 micrograms per milliliter, which are close to levels of BPA found in circulation of pregnant women, are cytotoxic." *See Montreal Gazette*, December 9, 2009.

LITIGATION

First Bellwether GM Rice Trial Ends in Verdict for Plaintiffs; Court Allows Punitive Claims to Proceed

According to a news source, a federal jury has awarded conventional rice farmers about $2 million in compensatory damages for the economic losses they allegedly experienced when European markets closed to U.S. rice imports that were found to be contaminated with genetically modified (GM) rice. *In re: Genetically Modified Rice Litig.*, MDL No. 1811 (U.S. Dist. Ct., E.D. Mo., E. Div., verdict reached December 4, 2009). The verdict was reached in the first bellwether cases to be tried. The next bellwether trial is apparently scheduled to begin in January and involves farmers from Arkansas and Mississippi. Defendant Bayer AG apparently indicated that it was pleased the jury did not award punitive damages and was preparing for the upcoming trials, which "will be different from these initial cases." *See Product Liability Law 360*, December 4, 2009.

In a related development, the MDL court has entered an order disposing of pre-trial motions related to the second bellwether trial. Among other matters, the court on December 9 dismissed claims for public nuisance, negligence *per se*, and violations of the North Carolina Unfair and Deceptive Trade Practices Act. The court granted plaintiffs' summary judgment motions on the affirmative defenses of compliance with regulations and intervening cause. The claims that will be tried are for private nuisance and negligence. The court has also determined that "Bayer is not entitled to summary judgment on the claims for punitive damages," finding that plaintiffs "presented evidence from which a factfinder could conclude that, even given its knowledge of these risks and the potential for severe impact on the market, Bayer did not take reasonable steps to attempt to prevent the contamination."

Fifth Circuit Rejects Claim That Negligent *Listeria* Testing Caused False Positive Report

In an unpublished opinion, the Fifth Circuit Court of Appeals has upheld the dismissal of a biscuit maker's claim that the Food and Drug Administration's (FDA's) negligent testing of its product for *Listeria monocytogenes* resulted in a false positive report that caused it to lose its contract with a company that supplied 7-Eleven convenience stores with biscuit sandwiches. ***Lone Star Bakery, Inc. v. U.S.*, No. 09-50374 (5th Cir., decided November 17, 2009)**. The litigation arose under the Federal Tort Claims Act following a 2002 *Listeria* contamination incident for which the biscuit maker was initially blamed, but later cleared of any responsibility. The company sought $2.9 million in damages from the FDA.

According to the court, which affirmed a grant of the FDA's summary judgment motion, while the company submitted evidence showing "several instances where the FDA inspectors failed to follow agency collection and testing protocol," its evidence was "devoid of any claim that these failures caused the biscuit samples to test falsely positive for *Listeria monocytogenes*." The court acknowledged that the evidence might raise an inference that FDA breached its legal duty, but determined it was insufficient to raise a fact issue as to proximate causation, an "essential element of [the company's] cause of action."

Court Orders $1.9 Million in Restitution for False Advertising of Diet Product

A federal court in Connecticut has ordered the payment of $1.9 million in equitable restitution to consumers who purchased Chinese Diet Tea and Bio-Slim Patch in 2003-2004. *FTC v. Bronson Partners, LLC*, No. 3:04cv1866 (U.S. Dist. Ct., D. Conn., decided December 4, 2009). The court determined in 2008 that the Federal Trade Commission's (FTC's) claims of false advertising against the defendants had merit and issued this ruling to explain the basis for its damages award and why it was not allowing any offsets to the defendants from the gross amounts they received for all of the products sold.

Essentially, the court found that the defendants' poor recordkeeping and legal precedent did not allow offsets for credit card refunds, bounced checks, operating expenses, or revenue generated by reorders, which defendants claimed represented satisfied customers. According to the court, reorders could also have represented customers who "had not yet achieved the results promised in the deceptive advertising." The court also held three of the defendants jointly and severally liable for the restitution amount, after finding they had collaborated in the deceptive advertising scheme. A fourth defendant, who was an employee of the enterprise and had not been accused of any wrongdoing, was found not liable for any portion of the award.

Livestock Operation Loses Organic Certification Amid Allegations of Poor Recordkeeping

An administrative law judge recently issued an order suspending a Nebraska-based livestock operation's organic certification for four years, agreeing with the U.S. Department of Agriculture's (USDA) 2008 complaint that the company failed to keep and produce adequate records. ***In Re Promiseland Livestock, LLC*, No, 08-0134 (USDA,**

Nov. 25, 2009). A supplier for Aurora Dairy and other organic farms, Promiseland Livestock, LLC, apparently operates five ranches in Missouri and Nebraska with more than 22,000 head of beef and dairy cattle. The judge concluded that Promiseland "willfully… failed to make requested records available" to USDA and denied agency representatives "access to review and copy organic operation records required to determine compliance" with the Organic Foods Production Act of 1990 and National Organic Program regulations.

Promiseland first came under scrutiny when The Cornucopia Institute, an organic watchdog, targeted Aurora Dairy for allegedly "illegal" operations, according to a recent press release issued by the organization. "It appears that it was the investigation into improprieties by Aurora that finally led to the hammer coming down on Promiseland," stated a spokesperson for Cornucopia, which has vowed to continue pursuing legal action against both Aurora and Quality Assurance International (QAI), the organic certifier for Promiseland.

In addition, Cornucopia has publicly faulted former USDA officials for purportedly blocking its investigation requests "for political reasons." "From formal legal complaints that we filed, Bush administration officials at the USDA were alerted, starting in January 2005, to the alleged improprieties by massive factory farms masquerading as organic," the group's research director was quoted as saying. "This is not the first time QAI has been suspected of incompetence or improperly accommodating corporate agribusiness." *See Cornucopia Institute Press Release*, December 2, 2009.

E. Coli Plaintiff Seeks $100 Million from Meatpacker

Plaintiffs' lawyer William Marler has reportedly filed suit against Cargill on behalf of the guardian of a woman allegedly paralyzed by consuming hamburger contaminated with *E. coli*. Stephanie Smith was profiled in a recent *New York Times* article; she is a former dance instructor who reportedly became ill in 2007, began having seizures and was comatose for three months. According to Marler, she has spent two years in rehabilitation at a cost of some $2 million and remains in a wheelchair. He contends that his client has attempted mediation with the company but has been unable to reach a fair agreement.

A Cargill spokesperson was quoted as saying, "Cargill deeply regrets Ms. Smith's continuing suffering due to her illness. Each time Ms. Smith's family has asked for financial assistance to cover out-of-pocket and rehabilitation costs, Cargill has advanced funds to help her and her family. We will continue to provide assistance to maximize her recovery and will continue to work with her counsel to reach a fair resolution."

Meanwhile, Connecticut Democratic Congresswoman Rosa DeLauro has reportedly called for the U.S. Department of Agriculture (USDA) to close a Cargill-owned meatpacking plant, which has apparently issued its second ground beef recall this year. Beef Packers, Inc. products have reportedly been linked to *Salmonella* outbreaks that occurred in August and December. According to USDA, the agency "has acted aggressively in the wake of both . . . Beef Packers recalls." A Food Safety

and Inspection Service spokesperson reportedly indicated that significant improvements, including a new anti-microbial intervention, were implemented in response to the August outbreak, but they occurred after the production date of the products included in the December recall. *See Meatingplace.com*, December 7, 8 and 9, 2009.

Welch Foods Seeks Insurance Coverage for Pomegranate Juice Litigation Defense

Welch Foods Inc. has filed suit against its insurers claiming that they have a duty to defend and indemnify the beverage maker in litigation alleging that the company deceptively marketed its "100% Juice White Grape Pomegranate Flavored 3 Juice Blend"®. *Welch Foods Inc. v. Zurich Am. Ins. Co.*, No. 09-12087 (U.S. Dist. Ct., D. Mass., filed December 8, 2009).

According to Welch, the insurers were timely notified about two lawsuits, one by a competitor, *POM Wonderful LLC v. Welch Foods Inc.*, and one by a consumer on behalf of a class, *Burcham v. Welch Foods Inc.*, and denied they had a duty to defend or indemnify the beverage maker. Additional information about those lawsuits appears in issues 290, 313 and 316 of this Update.

Alleging that its defense costs have exceeded $75,000 to date in both cases, Welch seeks a declaration that the insurers have a duty to defend and indemnify it under the commercial general liability and not-for-profit individual and organizational insurance policies they issued. Welch also seeks compensatory damages, attorney's fees and costs.

Winery Seeks Damages from Bottle Maker

Francis Ford Coppola Presents, LLC has filed a complaint in a California court against a company that makes corks, screw caps, bottles, and other packaging, alleging that defects in the bottles and screw caps purchased for the winery's *Encyclopedia*® collection of wines caused the degradation or destruction of 55,000 cases of wine. *Francis Ford Coppola Presents, LLC v. Vinocor USA, Inc.*, No. 26-50585 (Cal. Super. Ct., Napa County, filed November 23, 2009). The winery alleges breach of contract, the implied covenant of good faith and fair dealing and the implied warranty of fitness; fraud in the inducement; negligent misrepresentation; negligence; and "for money had and received."

According to the complaint, the affected wine collection "was crafted and designed to be a collection of wines aimed at educating consumers on understanding how geography, history, food and religion, to name a few, all contribute to the making and enjoyment of wine. In order to produce the *Encyclopedia* collection, Plaintiff's winemaking team traveled the world in search of varietals that best represented the culture and traditions of different winegrowing regions." The plaintiff seeks to recover the $685,000 it paid under the contract, as well as lost profits, consequential and incidental damages, punitive damages, attorney's fees and costs.

Shook, Hardy & Bacon L.L.P.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 330 | DECEMBER 11, 2009

LEGAL LITERATURE

Judith Monroe, et al., "Legal Preparedness for Obesity Prevention and Control: A Framework for Action," *Journal of Law, Medicine and Ethics* (Summer 2009 Supplement)

This symposium article, co-authored by public health officials and a lawmaker, an attorney and a physician, presents the legal perspective on obesity prevention and control and focuses, for the most part, on public health laws and initiatives that have begun to address issues that affect obesity. The examples cited include laws regulating the nutritional value of food available to students and children in child care programs, mandating physical activity for schoolchildren, imposing zoning or land-use restrictions to increase access to affordable healthy foods and limit access to high-calorie foods and beverages, and creating incentives to offer and enroll in wellness programs.

The article outlines how partnering with diverse stakeholders is essential "to design and apply law-based strategies" and provides examples of how this was done in several communities and resulted in nutrition labeling of food on restaurant menus and incorporating physical activity projects in municipal development plans. The authors contend that policymakers do not yet have ready access "to the many types of information they need to make effective use of law and legal tools" to prevent and control obesity. They refer to tobacco control as "a benchmark" for this element of obesity control, noting the many ways that information and technical assistance have been developed and disseminated for use by government officials and public health advocates in this arena.

This paper emerged from a 2008 National Summit on Legal Preparedness for Obesity Prevention and Control, and it refers to the summit's proceedings as one resource for policymakers. It also provides citations to other resources and toolkits that can help establish laws and ordinances in the nature of "structural public health interventions," such as "statutes on smoke-free air and ordinances instituting fluoridation of drinking water" that work "by making healthy living a default option."

OTHER DEVELOPMENTS

CSPI Advocates Nutrition Label Revisions

The Center for Science in the Public Interest (CSPI) has issued a **proposal** to improve packaged food nutrition labels. Among other matters, the proposal calls for more emphasis to be placed on calories, added sugars, saturated and *trans* fats, and sodium. If any of the latter ingredients exceed 20 percent of the recommended daily amount, CSPI calls for it to be listed in red and flagged as "high." CSPI's proposed nutrition label would also list ingredients in regular type separated by bullets, instead of in all capital letters, which the organization contends is hard to read.

According to CSPI, the proposal, which compares an existing label with its recommended label, "exposes some of the tricks that occur on the front of the label, and unveils makeovers of the Nutrition Facts panel and ingredient lists to last for the

next 15 years." CSPI Executive Director Michael Jacobson was quoted as saying, "Foot marketers bring their graphic design firepower to bear on the front of food packages, but then go to great lengths to make their ingredient lists almost indecipherable. The fine print shouldn't taketh what the big print giveth." *See CSPI Press Release*, December 7, 2009.

SCIENTIFIC/TECHNICAL ITEMS

British Researchers Find Genetic Clue to Severe Obesity in Children

British researchers studying 300 Caucasian children with "severe early-onset obesity" (that is, 220 pounds by age 10) discovered that rare chromosome 16 DNA deletions, which remove a gene the brain needs to respond to leptin, an appetite-controlling hormone, gave the children a "very strong drive to eat." Elena Bochukova, et al., "Large, rare chromosomal deletions associated with severe early-onset obesity," *Nature*, December 6, 2009. According to one of the researchers, these children are "very, very hungry, they always want to eat."

Several children in the study had apparently been placed on the social services "at risk" register because authorities assumed their parents were deliberately overfeeding them. According to news sources, these children have now been removed from the register. While some medical experts cautioned that most overweight children do not have the gene deletion, they urged authorities to provide support to families with obese children. One was quoted as saying, "The fact that several of the study children have been taken out of social care and returned to their parents as a result is disturbing in itself and must surely put an end to the claims by some that childhood obesity is a simple case of parental abuse." *See BBC News, The Associated Press, USA Today,* December 6, 2009.

Researchers Develop Nanoparticle to Slow Oxidation, Extend Shelf Life

Purdue University scientists have reportedly altered a nanoparticle found in sweet corn to prevent oxidation and spoilage, thus offering a way to extend the shelf life of foods, cosmetics and other products containing emulsified lipids. Siqi L Scheffler, et al., "Phytoglycogen Octenyl Succinate, an Amphiphilic Carbohydrate Nanoparticle, and ε-Polylysine To Improve Lipid Oxidative Stability of Emulsions," *Journal of Agriculture and Food Chemistry*, December 2009. According to a December 8, 2009, press release, researchers with Purdue's Whistler Center for Carbohydrate Research "successfully modified the phytoglycogen nanoparticle, a starchlike substance that makes up nearly 30 percent of the dry mass of some sweet corn. The modification allows the nanoparticle to attach to oils and emulsify them while also acting as a barrier to oxidation, which causes food to become rancid." Known as phytoglycogen octenyl succinate (PG-OS), the nanoparticle when combined with food-grade e-polylysine "significantly increased the amount of time it took for oxidation to ruin the oil droplets [in food], in some cases doubling the shelf life of the model product."

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 330 | DECEMBER 11, 2009

"This can be widely used in the food industry, cosmetics and nutritional supplements, any system in which the oxidation of lipids is a concern," the lead author was quoted as saying. "The shelf life of a product can be low and the quality of the food can become bad because of the oxidation of the lipids."

OFFICE LOCATIONS

Geneva, Switzerland
+41-22-787-2000
Houston, Texas
+1-713-227-8008
Irvine, California
+1-949-475-1500
Kansas City, Missouri
+1-816-474-6550
London, England
+44-207-332-4500
Miami, Florida
+1-305-358-5171
San Francisco, California
+1-415-544-1900
Tampa, Florida
+1-813-202-7100
Washington, D.C.
+1-202-783-8400

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.