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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

Waxman Seeks Information on Kellogg Cereal Recall

U.S. Representative Henry Waxman (D-Calif.) has requested that the Kellogg Co. provide documentation to the Committee on Energy and Commerce concerning the possible contamination of millions of cereal boxes with the chemical 2-methylnaphthalene. In his August 2, 2010, letter, Waxman refers to the June recall of more than 25 million boxes of "Corn Pops, Honey Smacks, Fruit Loops, and Apple Jacks cereal" and notes that while at least one study has shown the chemical at issue "may cause lung injuries in adults[, t]here are no studies indicating whether children are more susceptible."

Waxman cites a news article indicating that Kellogg destroyed tainted packaging before issuing the recall, and he seeks documents relating to (i) the company's food safety policies and procedures; (ii) "any assessments of the health risks posed by 2-methylnaphthalene conducted by, commissioned by, or requested by your company, including a copy of the health risk assessment created by your company and any internal and external communications regarding that health risk assessment"; and (iii) the company's investigation and recall, "including any documents relating to the presence of 2-methylnaphthalene or any other chemicals in the cereals or in the cereals' packaging." The information is requested by August 16, 2010.

Federal Legislation Would Strengthen Food Safety Measures Regarding *E. Coli*

Representative Rosa DeLauro (D-Conn.) has introduced a bill (H.R. 6024) that would require stricter testing procedures designed to eradicate "the dangerous Shiga toxin-producing *E. coli* bacteria" from meat and meat-processing facilities. The *E. coli* Traceability and Eradication Act would also establish a tracking procedure to enable the Department of Agriculture (USDA) to implement faster recalls.

According to a DeLauro press statement, the proposal would require meat, slaughterhouse and grinding facilities to have ground beef and "beef trim" tested multiple times throughout the manufacturing process by an independent USDA-certified testing facility. In the event *E. coli* were detected, the bill would require the slaughter facility to immediately report contamination to USDA. The agency would then test the facility's products for 15 consecutive days following the positive test and

establish a "traceback procedure" to the original source of contamination for quicker product recalls and illness prevention.

"By the end of this year, an estimated 57,000 people will have been made ill from *E. coli*, which represents an astounding failure on the part of our food-safety system," DeLauro said. "We must do more to address the dangers American consumers face on a daily basis from these hidden killers, and ensure that the food entering the marketplace, our homes, and even our schools, is safe." *See Press Release of Representative Rosa DeLauro*, July 29, 2010.

FDA Commissioner Confident About Safety of Gulf Seafood in Oil Spill Aftermath

Food and Drug Administration (FDA) Commissioner Margaret Hamburg has released **statements** to support the reopening of Florida, Louisiana and Mississippi state waters to commercial fishing. According to Hamburg, "we are confident all appropriate steps have been taken to ensure that seafood harvested from waters being opened today is safe and that Gulf seafood lovers everywhere can be confident eating and enjoying the fish that will be coming out of this area."

Meanwhile, some are questioning whether inspector sniff tests are sufficient to ensure the safety of seafood from Gulf of Mexico waters. Experts reportedly say that the smell tests are an efficient and inexpensive way to test for fish safety and claim they are currently the only way to test fish for chemical dispersants. At least one oysterman and shrimp and crab fisherman was not convinced, saying, "If I put fish in a barrel and poured oil and Dove detergent over that, and mixed it up, would you eat that fish? I wouldn't feed it to you or my family. I'm afraid someone's going to get sick."

According to a news source, FDA, which is apparently developing a tissue test for oil spill contaminants, has repeatedly declined to provide information about toxic substances in oil. The Environmental Protection Agency, which contends that BP did not make things worse by using nearly 2 million gallons of just one dispersant on the oil spill, has reportedly **indicated** that the dispersants used in the Gulf pose a low public health risk. While President Barack Obama (D) apparently consumed Gulf seafood during a recent visit to Mississippi, some scientists are continuing to leave it out of their diets until the government releases more information on which species are being monitored and the levels of toxic chemicals detected. *See FDA and EPA Press Statements, Reuters* and *The Associated Press*, August 2, 2010.

FDA Announces Draft Guidance Regarding *Salmonella* in Animal Feed

The Food and Drug Administration (FDA) has **announced** the availability of a draft compliance policy guide for FDA staff that provides direction on *Salmonella* in animal feed or feed ingredients that come into direct contact with people, such as pet food and treats, or that are "contaminated with a *Salmonella* serotype that is pathogenic to the target animal for which the animal feed is intended." The **guide** "proposes criteria that should be considered in recommending enforcement action against animal feed or feed ingredients that are adulterated due to the presence of *Salmonella*."

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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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.

FDA will accept comments until November 1, 2010. *See Federal Register*, August 2, 2010.

EFSA Studies Carcinogenic Furan in Foods

The European Food Safety Authority (EFSA) has issued an August 2, 2010, report urging member states to increase their monitoring of furan, a compound with aromatic properties that can form in a variety of heat-treated commercial foods and which has purportedly been shown to be carcinogenic in animal experiments. EFSA intends to use the report to support a dietary risk assessment on furan. It updates data submitted by 18 member states on furan levels in 4,186 foods sampled and analyzed between 2004 and 2009, with 8 percent of the samples reported as foods consumed.

The report sorted data into 21 different food categories (five coffee and 16 non-coffee categories), with the highest levels of furan found in the five coffee categories compared to other food groups. The highest non-coffee maximum concentrations were found in the "baby food" and "soups" categories.

"Jarred baby food and infant formula are of particular interest as they may form the sole diet for many infants and furan has been found in such commercial products," EFSA said in a summary of the report, which concluded that "furan is present in a variety of heat-treated commercial foods for adults and infants. Future testing of furan by member states should preferably target food products where limited results are available and comprise, if possible, the sample analyzed as purchased followed by the same sample analyzed as consumed indicating the exact food preparation method used."

Sodium Working Group in Canada Issues Report

The Canadian Sodium Working Group (SWG) has released a report detailing a three-pronged strategy that aims to reduce the public's salt consumption. After examining the issue for two years, the federally mandated group has established an interim sodium intake goal of a population average of 2,300 mg per day by 2016, with the ultimate goal of lowering "sodium intakes to a population mean whereby as many individuals as possible (greater than 95%) have a daily intake below the Tolerable Upper Intake Level (UL) of 2,300 mg per day."

To achieve these targets, the strategy contains six overarching and 27 specific recommendations focused on reducing sodium levels in processed food products and foods sold in restaurant and food service establishments; educating consumers, industry, health professionals, and other key stakeholders; and undertaking new research. In particular, the report urges (i) "published sodium reduction targets for foods"; (ii) "defined timelines"; (iii) "a mechanism for public commitment by industry to the targets"; (iv) "a plan for monitoring progress by a body other than the food industry"; and (v) "a plan for independent evaluation of the success of the program with the option of taking stronger measures as necessary depending on progress." It also calls for setting the daily value for sodium on the Nutrition Facts panel at 1,500 mg—as opposed to 2,400 mg—to reflect the adequate intake level. *See SWG Backgrounder* and *News Release,* July 29, 2010.

Meanwhile, Minister of Health Leona Aglukkaq has praised the report and noted that Health Canada has already taken steps commensurate with the SWG's approach. According to a July 29, 2010, press release, the government has already implemented "mandatory nutrition labeling; criteria for 'low in sodium,' 'salt-free' and 'reduced in sodium' claims; a revised Canada's Food Guide that includes guidance on limiting sodium; and consumer information on Health Canada's web site." In addition, Health Canada has apparently drafted sodium reduction targets modeled on those used by the United Kingdom. "We are committed to collaborating with all levels of government, consumers, industry and other stakeholders to reduce sodium consumption in Canada," stated Aglukkaq. "Over the coming months, we will work with our governmental partners to assess the report's recommendations and determine how they can best be addressed."

New York Governor Signs Bill Banning BPA from Child Care Products

New York Governor David Paterson (D) has signed **legislation** (S. 3296-H/A. 6919-D) that prohibits the manufacture or sale of child care products such as baby bottles and sippy cups that contain bisphenol A (BPA) and are intended for children younger than age 3. The bill, which the Senate and Assembly passed in June 2010, is expected to take effect on December 1. Several other states, including Connecticut and Wisconsin, have enacted similar measures.

"This law will ensure that a potentially harmful substance is no longer allowed in products used by our smallest and most vulnerable children," Paterson said in a statement, which also claimed that "while BPA has not been conclusively proven to harm children or adults, a growing body of science indicates that infants and young children may be vulnerable to serious development problems as a result of exposure to BPA." *See Press Release of Governor David Paterson*, July 31, 2010.

LITIGATION

Court Gives Renewed Life to Suit Challenging Almond Pasteurization Rule

With one judge dissenting, the D.C. Circuit Court of Appeals has determined that federal law does not bar domestic almond producers from challenging a rule that requires them to pasteurize or chemically treat their product to prevent *Salmonella* outbreaks. ***Koretoff v. Vilsack*, No. 09-5286 (D.C. Cir., decided August 3, 2010)**. While the court allowed those who grow almonds to continue pursuing their challenge to the 2007 rule, it dismissed the claims of companies that package and sell the almonds to consumers, finding that, as "handlers," they must first exhaust their administrative remedies before turning to the courts to resolve their dispute.

The U.S. Department of Agriculture secretary promulgated the challenged rule under the authority of the Agricultural Marketing Agreement Act of 1937 (AMAA). California almond producers and retailers claim that the rule is arbitrary and capricious because it devastated the domestic raw almond market while leaving foreign producers, who are not subject to the regulation, free to continue importing and selling raw almonds. The district court dismissed the claims, finding that the AMAA

precludes producers from obtaining judicial review. Its ruling was rendered before the D.C. Circuit Court of Appeals issued an opinion holding that milk producers may challenge agricultural marketing orders promulgated under the AMAA, while consumers may not. The appeals court applied that case to the almond producers' claims and remanded for further proceedings.

According to the dissenting judge, the AMAA expressly allows "handlers" to challenge in court an agricultural marketing order after pursuing administrative review while remaining silent about any other party's right of review. Such orders must be submitted for approval by handlers and producers and can be vetoed by two-thirds of the producers only. The dissenting judge opined that this veto power represented a "delicate balance" and should be construed as congressional intent "that judicial review of market orders issued under the Act ordinarily be confined to suits brought by handlers. . . ." The dissent also pointed to significant differences between the regulation of milk and almonds under federal law to demonstrate why the court's prior ruling in a milk pricing case was inapplicable to the almond growers' claims.

Court Allows Consumer Fraud Claims to Proceed Against Margarine Maker

A federal court in California has denied in part and granted in part the motion to dismiss filed by Smart Balance, Inc., which is defending a putative class action alleging that the company misled consumers by marketing its Nucoa margarine as cholesterol free and healthy despite the artificial *trans* fat in the product. *Yumul v. Smart Balance, Inc.*, No. 10-00927 (U.S. Dist. Ct., C.D. Cal., order entered July 30, 2010). The plaintiff alleges violations of the state's unfair competition and false advertising laws and violation of the Consumer Legal Remedies Act. She seeks an injunction requiring that the misleading advertising practices cease, a corrective advertising campaign, restitution, and an injunction requiring the destruction of all misleading and deceptive materials and products.

The defendant asserted that the factual allegations lacked sufficient specificity and also contended that the complaint be dismissed because it was based on conduct outside the applicable limitations period. Declining to consider some materials submitted in support of defendant's motion, including advertising exemplar samples, the court refused to find that plaintiff could not prove that fraudulent advertising had occurred before 2009. While the court agreed with defendant that the plaintiff failed to allege "in any form the manner of her discovery" of the facts underlying her claim and that her complaint thus "does not adequately plead tolling under the delayed discovery rule," the court allowed her to file an amended complaint to cure the deficiency.

Court Dismisses Class Action Alleging Inadequate Cooking Instructions on Pot Pies

A federal court in California has reportedly dismissed claims that ConAgra Foods, Inc. provided inadequate cooking instructions on its chicken pot pie products. *Meaunrit v. ConAgra Foods, Inc.*, No. 09-02220 (U.S. Dist. Ct., N.D. Cal., decided July 20, 2010). More than 250 people purportedly got sick after eating the company's pot pies in 2007 in a *Salmonella* outbreak that led to a nationwide recall.

The named plaintiff in this putative class action apparently did not get sick, but claimed that the company put human health at risk by providing inadequate cooking instructions too difficult for the average consumer to understand. She also alleged that the company's production facilities subjected consumers to food-borne illnesses by failing to adequately prevent bacterial contamination of its products. According to the court, federal agencies pre-approved ConAgra's product labeling and, "[b]ecause the pre-approval process includes a determination of whether the labeling is false and misleading, and the gravamen of Plaintiff's attack on the label concerns whether those instructions are accurate, the plaintiff's state [law] causes of action are preempted by federal law."

This plaintiff filed similar litigation against another food producer in September 2009. More information about that case can be found in **issue 321** of this *Update*.

Bayer Loses Sixth GM Rice Contamination Lawsuit

According to a news source, Bayer CropScience has lost its sixth jury trial in litigation against rice farmers who claim the contamination of U.S. rice supplies with the company's genetically modified (GM) rice disrupted international markets and led to a precipitous decline in the prices they could receive for their crops. The $960,000 jury verdict came in an Arkansas courtroom and was rendered in favor of six farmers and their business entities. Trial in another Arkansas case is reportedly scheduled for September 2010, and a federal trial is expected to begin in October. Five hundred lawsuits against the company are currently pending; they apparently involve some 6,000 plaintiffs. *See Arkansas Times Online* and *The U.S. Agricultural & Food Law and Policy Blog*, July 30, 2010.

Former Kosher Slaughterhouse Manager Claims Trial Court Participated in Immigration Raid Planning

Lawyers for Sholom Rubashkin, who was recently sentenced to 27 years in prison for financial fraud discovered in connection with a kosher meatpacking plant in the aftermath of a 2008 raid to find illegal immigrants, have alleged trial-court improprieties in their request for a new trial. *U.S. v. Rubashkin*, No. 08-1324 (U.S. Dist. Ct., N.D. Iowa, filed August 5, 2010).

According to Rubashkin's motion, the federal district court occupied temporary space near the plant so that the 300-plus undocumented workers arrested in the raid could be processed the following day. This raised the issue of Judge Linda Reade's prior involvement with prosecutors. "Indeed, Chief District Judge Linda Reade stated in September 2008 in a written opinion that she engaged in purportedly limited 'logistical cooperation' with law-enforcement authorities in order to provide attorneys and interpreters for the arrested aliens and to conduct their trials in Waterloo."

To the contrary, Rubashkin claims, eight months after the close of his criminal trial, "his counsel first discovered that Judge Reade had in fact participated in many *ex parte* pre-raid planning meetings with ICE officials and with members of the U.S. Attorney's Office. Her meetings with law-enforcement officials began in October 2007—more than half a year before the raid—and, according to memoranda of

ICE agents, the discussions covered operational and strategic topics that went far beyond the 'logistical cooperation' that Judge Reade has heretofore disclosed."

Rubashkin calls for his motion to be referred to a disinterested judge for decision and seeks appropriate discovery and an evidentiary hearing if "the currently available evidence is deemed insufficient to warrant immediate relief." Among the documents referred to in the motion are heavily redacted materials that Rubashikin contends raise serious questions about "Judge Reade's impartiality in the criminal prosecution of the principal individual target of the raid." He reiterates that the sentence imposed exceeded by two years what prosecutors sought.

A spokesperson for the U.S. attorney's office was quoted as saying, in response to the motion, "any reference to (Rubashkin's) guilt or innocence is noticeably missing. Interesting." *See Des Moines Register*, August 5, 2010.

California Chefs Claim EVOO Fails to Meet Regulatory Standards

Seeking to represent a statewide class of all those who purchased extra virgin olive oil during a four-year period, one of Bravo TV's "Top Chefs" and individual consumers have sued companies that make and sell the product, alleging that it often does not meet international and U.S. standards. *Martin v. Carapelli USA, LLC*, No. BC442300 (Cal. Super. Ct., Los Angeles County, Cent. Dist., filed July 30, 2010). The complaint cites a June 2010 study conducted by University of California at Davis's Olive Oil Center researchers who apparently concluded that samples of imported olive oil labeled as "extra virgin" often did not meet applicable standards. They allegedly determined that the failures could be attributed to (i) oxidation from poor handling, (ii) "adulteration with cheaper refined olive oil," or (iii) oil made from inferior olives, processing flaws, and/or improper oil storage.

According to the complaint, "For years, chefs and home cooks have shared anecdotal tales of extra virgin olive oil that just did not taste right. It has now become clear that these tales were based in fact." The plaintiffs contend that the defendants' products "do not warrant the high standard of 'extra virgin' and, therefore, are not worthy of the premium price charged for extra virgin olive oil." They refer to a *Los Angeles Times* article indicating that "the so-called 'extra virgin' olive oil [is] sold for almost 80% more than it is worth." Alleging fraud, negligent misrepresentation, breach of warranty, false advertising, and unjust enrichment, the plaintiffs seek class certification, legal and equitable remedies, punitive damages, an accounting, an award of profits, statutory penalties, attorney's fees, costs, and interest.

Cranberry Dispute Erupts in Antitrust Litigation

Ocean Spray Cranberries, Inc. has filed a lawsuit against a competitor alleging that it has orchestrated "an unlawful and malicious campaign" against Ocean Spray designed to damage the company's reputation, frustrate its relationships with customers and undermine its dealings with grower-owners and other cranberry growers in the industry. *Ocean Spray Cranberries, Inc. v. Decas Cranberry Prods., Inc.*, No. 10-cv-11288 (U.S. Dist. Ct., D. Mass., filed August 2, 2010). According to the complaint, the defendants have falsely accused Ocean Spray of creating "a signifi-

cant oversupply of cranberries" in the industry and contributing to that surplus by reducing the amount of cranberries in its products. Ocean Spray details the various means the defendant has used to disseminate its "smear campaign," including letters to growers, blog posts, and a letter to the U.S. Attorney General seeking an investigation of Ocean Spray.

Ocean Spray also alleges that the defendant developed a "false and misleading social media campaign" to accuse the company of mislabeling its Choice® product, a lower-cost alternative for industrial customers, and harming the cranberry industry by selling a product that takes fewer barrels of cranberries to create. This campaign allegedly involved a Website, YouTube® video, Facebook® page, and a "fictitious Facebook account in the name of 'Michele Young.'" All of this activity was purportedly undertaken to convince the public and Ocean Spray's growers that the "Scamberry.org" site "was sponsored by an independent consumer advocacy group."

The complaint alleges violation of the Agricultural Fair Practices Act (improper offer of inducement, false statements about violating the law, false statements about harming the industry, conspiracy), violation of the Lanham Act (false statements about harming the industry, consumer/grower deception), and violation of the Massachusetts Unfair and Deceptive Trade Practices Act (false statements about harming the industry, consumer/grower deception). Ocean Spray seeks a declaration that the defendant has violated these laws, an injunction to stop the conduct, damages "in an amount to be determined and multiplied, to the extent provided by law," costs, and attorney's fees.

OTHER DEVELOPMENTS

Food Activist Focuses on Industry's Use of Experts to Win PR Wars

Food activist, author and lawyer Michele Simon writes on *AlterNet* about how PepsiCo has placed a number of respected, and previously anti-industry, scientific experts on its payroll to the dismay of activists like Marion Nestle and others concerned about the purported influence of corporate resources on the public debate over health, obesity and nutrition. She reports that former "public health hero" Derek Yach established his reputation by working on the Framework Convention for Tobacco Control while working at the World Health Organization and later found himself "at odds with Big Food." He worked for some time with "Kelly Brownell's team at the Rudd Center for Food Policy and Obesity at Yale University," but then joined PepsiCo in 2007.

Nestle reportedly described on her "Food Politics" blog a conversation she had with Yach after learning he was working for the food industry after which she "remained unconvinced that his role at PepsiCo was anything more than a well-orchestrated PR move to position the company as being on the cutting edge of health and nutrition." Simon also discusses Dr. Mehmood Kahn, Dr. George Mensah and the dozen other physicians and PhDs PepsiCo has recently hired, ostensibly "to create healthy options while making the bad stuff less bad." She quotes Yach as saying, "While we are not likely to become a fresh fruit and vegetable company, we have made public

commitments to increase the use of fruits, vegetables, nuts and whole grains in our products. A major challenge involves ensuring that we do so in ways that maximize the full nutritional equivalence of whole foods in our future products."

Simon comments in response, "Full nutritional equivalence? I don't recall seeing that in the U.S. dietary recommendations: 'Eat foods with full nutritional equivalence.' But what else can you aspire to when your food products don't fit into any actual food groups?" She further observes that PepsiCo's CEO was allowed to make a statement in this year's edition of the *F as in Fat* report on obesity in America, produced by Trust for America's Health. A trust spokesperson apparently explained that the CEO's comments were sought as "an innocent attempt to have the 'industry perspective' and not the result of any shady financial relationship."

Others reportedly did not see the incident this way. The executive director of the California Center for Public Health Advocacy reportedly said it was part of "disturbing trend," where public health organizations seem to have a growing interest in appearing "unbiased" when discussing obesity prevention by providing a forum to industry. Simon concludes, "no matter how many MDs or PhDs the company hires, PepsiCo should never be looked to as an expert on anything other than what it does best: marketing and selling highly processed food and beverage products to the world." *See AlterNet.org*, August 5, 2010.

LEGAL LITERATURE

***Import Safety: Regulatory Governance in the Global Economy*, U. Penn. Press**

One of the editors of this collection of essays about how to protect consumers when food and products freely cross international borders is Adam Finkel, a former senior enforcement official at the Occupational Safety and Health Administration. The book is "a direct outgrowth" of a 2009 Penn Law School conference that brought together leading scholars and analysts to discuss import safety. Among the authors are professors in law, economics, political science, criminology, engineering, psychology, risk assessment, and business. The overall tone of the work is to find innovative ways to ensure product safety with a combination of effective "public action and private inspections, public and private standard-setting, and a degree of dependence on consumers to take some responsibility for their own safety."

The essays are grouped under four headings: "Perspectives on the Problem," "International Trade Institutions," "Toward Smarter Regulation," and "Leveraging the Private Sectors." The authors discuss the massive scale of the import safety issue; the institutions, such as the Codex Alimentarius Commission, that can help improve import safety; ideas for smarter government initiatives; and "proposals for harnessing market power and incentives to drive improved product safety." Among the latter are (i) "augmenting liability rules to force domestic firms that benefit from foreign production and low-cost imports to internalize the domestic costs of their activity," (ii) compensating injured consumers by means of bonded safety warranties with incentives to avoid warranty breaches, and (iii) placing "some regulatory responsibility for product safety onto manufacturers and third-party certification, scientific, and auditing bodies."

The book concludes by calling for the creation of "a regime of delegated governance." According to Cary Coglianese, director of the Penn Program on Regulation, Adam Finkel, and David Zaring, Wharton School of Business law professor, "Given the complexity of global systems of production, shipment, and sale of consumer goods, domestic governments and private firms will continue to be called on to prevent, interdict, and respond to hazardous imports, whether they are contaminated foodstuffs, unsafe pharmaceuticals, or consumer products with hidden dangers. Ensuring safe imports in an era of globalization will undoubtedly strain traditional domestic regulatory entities."

MEDIA COVERAGE

AlterNet Article Questions "Nutraceuticals"

"Energy bars and energy drinks are just the tip of this antioxidant-enhanced, vitamin-enriched, high-fiber iceberg," writes Anneli Rufus in an August 3, 2010, *AlterNet* article examining health claims based on nutraceuticals such as "vitamins, minerals, amino acids, herbs, other botanicals, and that amorphous category known as dietary supplements." According to Rufus, "nutraceuticals hark back to preindustrial folk remedies," but are not yet proven to work in people. As Stephen DeFelice of the Foundation for Innovation in Medicine told her, the functional-foods industry "is all marketing, marketing, marketing without the clinical research to back it up."

Rufus goes on to trace the history and development behind "the nutraceutical boom," noting that consumers are again seeking "good for you" foods after a century of focusing "entirely on flavor, speed and ease." To meet this demand, functional-food companies must walk "a tricky linguo-legislative tightrope" in marketing their products, with restrictions placed on claims linking nutraceuticals to positive conditions or touting "specific effects on specific diseases." In addition, these claims apparently do not address what one nutritional therapist described as plant chemical "synergy," the benefits derived not from isolated ingredients but compounds "which work together and magnify each other's beneficial power."

Nevertheless, suggests Rufus, nutraceuticals may retain their place in the American diet. "Whether or not they work in the ways people want them to work, nutraceuticals offer a huge, wonderful placebo effect," DeFelice is quoted as saying. "People eat or drink these things when they're depressed or fatigued, and they feel better. This will reduce health care costs—and nutraceuticals are relatively safe."

SCIENTIFIC/TECHNICAL ITEMS

Study Claims Pancreatic Cancer Cells Thrive on Fructose

A recent study has reportedly suggested that pancreatic cancer cells "can readily metabolize fructose"—but not glucose—"to increase proliferation." Haibo Lu, et al., "Fructose Induces Transketolase Flux to Promote Pancreatic Cancer Growth," *Cancer Research,* July 20, 2010. The abstract maintains that "fructose and glucose metabo-

lism are quite different," as fructose "induces thiamine-dependent transketolase flux and is preferentially metabolized via the nonoxidative pentose phosphate pathway to synthesize nucleic acids and increase uric acid production." Thus fructose purportedly provides "an alternative substrate to induce pancreatic cancer cell proliferation." These findings could have "major significance for cancer patients given dietary refined fructose consumption, and indicate that efforts to reduce refined fructose intake or inhibit fructose-mediated actions may disrupt cancer growth," conclude the study authors.

Meanwhile, the Corn Refiners Association (CRA) and others have publicly disputed the implications of these results. In an August 3, 2010, press release, CRA noted several inaccuracies in the study, which wrongly claimed that high-fructose corn syrup (HFCS) is the most significant source of fructose in the diet. The association also cautioned consumers that the study "does not look at the way fructose is actually consumed by humans," nor does it examine how the body metabolizes fructose or glucose in combination with other sugars and nutrients. As CRA pointed out, "Fructose is a natural, simple sugar also commonly found in fruits, vegetables, table sugar, maple syrup, and honey."

In addition, New York University Nutrition, Food Studies and Public Health Professor Marion Nestle weighed in with *Salon.com,* arguing that the study does not address "HFCS specifically." According to Nestle, "HFCS is not particularly high in fructose compared to table sugar. Both are about 50% fructose and are about equal in their effects. So is honey. Agave has even more. Fructose-containing sugars are best consumed in small amounts but there's nothing new in that advice." *See Salon.com,* August 4, 2010.

Processed Meat Consumption Allegedly Linked to Bladder Cancer Risk

A recent study has purportedly linked an increased risk of bladder cancer to "meat-related compounds," including nitrate and nitrite. Leah Ferrucci, et al., "Meat and components of meat and the risk of bladder cancer in the NIH-AARP Diet and Health Study," *Cancer,* August 2010. Researchers apparently identified 854 transitional cell bladder-cancer cases among the 300,933 men and women enrolled in the 1995 National Institutes of Health-AARP Diet and Health Study.

Using validated food-frequency questionnaires completed by subjects and quantitative databases of measured values, the study authors estimated "intake of nitrate and nitrite from processed meat and HCAs [heterocyclic amines] and PAHs [polycyclic aromatic hydrocarbons] from cooked meat." Their results reportedly showed that when compared to participants who ate the least amount of processed red meat, the top one-fifth had a 30 percent greater risk of contracting bladder cancer.

As the study authors concluded, these findings provide "modest support for an increased risk of bladder cancer with total dietary nitrite and nitrate plus nitrite from processed meat. [They] also suggested a positive association between red meat and PhIP [HCA 2-amino-1 methyl-6-phenylimidazo (4,5-*b*)pyridine] and bladder carcinogenesis." *See Reuters,* August 2, 2010.

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Pharmaceuticals, Antimicrobial Chemicals Can Migrate to Crops Through Treated Sewage Used as Fertilizer

Soybeans grown in soil that contains pharmaceuticals and the chemicals found in personal care products can reportedly absorb those compounds. Chenxi Wu, et al., "Uptake of Pharmaceutical and Personal Care Products by Soybean Plants from Soils Applied with Biosolids and Irrigated with Contaminated Water," *Environ. Sci. Technol.*, July 21, 2010. The plants were apparently grown under conditions simulating fertilization with treated sewage and irrigation with recycled water. Three pharmaceuticals and two antimicrobials common in personal care products were added to the soil and water, and the plant tissues were tested just before flowering and then after they sprouted beans. The environmental scientists found that uptake "of selected compounds differed by treatment, with biosolids application resulting in higher plant concentrations, likely due to higher loading. However, compounds introduced by irrigation appeared to be more available for uptake and dislocation."

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