

**FOOD & BEVERAGE
LITIGATION UPDATE**



CONTENTS

Legislation, Regulations and Standards

- Collaboration Needed to Reduce Risk of Animal-Related Diseases1
- International Panel Deems Food Main Source of BPA Exposure.....1
- EU Legal Services Opinion Could Deal Blow to Proposed GM Laws2
- Washington State Issues Temporary Ban on Alcoholic Energy Drinks2

Litigation

- MDL Court Refuses to Upset Verdict in GM Rice Suit3
- EPA's Authority to Allow More Ethanol in Gasoline Challenged.....4

Legal Literature

- Holly Pauling Smith and Madeleine McDonough, "A New Frontier: Health-Claims Class Actions," *The International Comparative Legal Guide to: Class & Group Actions 2011* 5

Other Developments

- Rudd Center Publishes Report on Food Marketing to Children5
- ICIJ Report: Something Smells Fishy About Bluefin Tuna Market7
- Global Water Survey Finds Water Supply Challenges Affecting Food Industry.....7
- New Egg Recall Involves Man Involved in Prior Recall8

Media Coverage

- Michael Moss, "While Warning About Fat, U.S. Pushes Cheese Sales," *The New York Times*, November 6, 20109
- Academe* Special Issue Highlights Conflicts of Interest at Universities 10

Scientific/Technical Items

- Sugar-Sweetened Beverages Allegedly Tied to Risk of Gout in Women 10
- Researchers Identify Food Wrapping as Potential Source of PFCAs. 11
- Studies Link Red Meat to Esophageal and Stomach Cancer 11

LEGISLATION, REGULATIONS AND STANDARDS

Collaboration Needed to Reduce Risk of Animal-Related Diseases

The Government Accountability Office (GAO) has released an 88-page [report](#) that claims better collaboration is needed among the four federal agencies overseeing live animal imports to reduce the risk of animal-related diseases coming into the United States. According to GAO, more than 1 billion live animals were imported into America from 2005 through 2008, but "gaps" in the statutory and regulatory framework could allow animal and zoonotic diseases to "emerge anywhere and spread rapidly."

GAO reviewed statutes, visited ports of entry and surveyed the Department of Health and Human Services' Centers for Disease Control and Prevention, Department of the Interior's Fish and Wildlife Service, Department of Agriculture's Animal and Plant Health Inspection Service, and Department of Homeland Security's Customs and Border Protection. The experts cited by the report identified several barriers to agency collaboration, "such as different program priorities and unclear roles and responsibilities." GAO also found that "because each of the agencies is focused on a different aspect of live animal imports, no single entity has comprehensive responsibility for the zoonotic and animal disease risks posed by live animal imports."

GAO recommended that the agencies "develop a strategy to address barriers to agency collaboration that may allow potentially risky imported animals into the United States and jointly determine data needs to effectively oversee imported animals."

International Panel Deems Food Main Source of BPA Exposure

An international panel of experts has identified food as "by far the main source of bisphenol A (BPA) exposure," although levels of chemical in the human body are "very low" and quickly eliminated through urine. The World Health Organization (WHO) and U.N. Food and Agricultural Organization (FAO) announced the findings after more than 30 experts convened in Ottawa, Canada, to review the latest scientific data on BPA.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

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.

The panel apparently concluded that BPA migrates into food from food packaging, such as plastic containers, baby bottles and coated food cans. Other BPA sources—including house dust, soil, toys, dental treatments, and thermal cash register receipts—are “of minor relevance,” according to a November 9, 2010, joint WHO/FAO press release.

The panel reportedly noted, however, that “it is difficult to interpret the relevance” of recent scientific studies that have associated BPA exposure with adverse health effects, warning that “[u]ntil these associations can be confirmed, initiation of public health measures would be premature.” WHO toxicologist Angelika Tritscher was quoted as saying that the panel’s conclusions would be significant in directing further review of BPA. “Several important studies are already in progress that will help to clarify the extent of human health impact of this chemical,” she said. See *WHO/FAO Press Release*, November 9, 2010.

EU Legal Services Opinion Could Deal Blow to Proposed GM Laws

According to media sources, the EU Council of Ministers’ Legal Service has expressed “strong doubts” about the feasibility of a proposal that would allow individual member states to set their own policies for regulating genetically modified (GM) crops. The opinion has reportedly raised questions about whether the legislation would violate World Trade Organization rules, especially since a GM crop ban based on ethical rather than environmental or health concerns would be difficult to uphold in European courts. An EU official has quoted the opinion, which was due to be officially presented on November 11, as saying that, “Economic arguments cannot be relied upon... so the obvious remaining candidate would therefore be ethical reasons.”

Also referring to this “leaked” legal opinion, the Institute for Environmental Studies at the VU University Amsterdam has hailed the report as validating the views of its own biotechnology law specialist, Thijs Etty. “This is a sensitive and embarrassing blow for the EU Commission’s proposal. As guardian of the Treaty, its primary task is to safeguard the functioning of the EU internal market and to uphold European law. Instead, today’s Council’s legal service report reveals that the Commission’s proposal was grounded on a fundamentally flawed legal basis and impairs the internal market,” stated Etty in a November 11, 2010, press release. Additional details about the proposed regulations appear in [Issue 356](#) of this *Update*. See *Reuters*, November 8, 2010.

Washington State Issues Temporary Ban on Alcoholic Energy Drinks

The Washington State Liquor Control Board (WSLCB) has passed a [resolution](#) to temporarily “prevent the further sale and distribution of malt beverage products containing caffeine and other stimulants.” Washington Governor Christine Gregoire (D) joined WSLCB in announcing the measure, citing

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

reports that nine Central Washington University students “became dangerously ill” after consuming alcoholic energy drinks (AEDs).

“Quite simply, these drinks are trouble. They contain up to 12 percent alcohol – more than twice the amount found in most beer,” Gregoire was quoted as saying. “Added to that are large amounts of caffeine, which can mask the effects of alcohol. By taking these drinks off the shelves we are saying ‘no’ to irresponsible drinking and taking steps to prevent incidents like the one that made these college students so ill.”

The emergency ban apparently covers all AEDs “that combine beer, strong beer, or malt liquor with caffeine, guarana, taurine, or other similar substances.” According to WSLCB, these products “may not be imported into the state, produced, manufactured, distributed, sold or offered for sale by a licensed retailer in Washington after November 17, 2010.”

The temporary measure expires in 120 days, “during which time the WSLCB will seek to make the rules permanent” through regular channels that permit public and stakeholder comment. The board will seek to adopt the permanent rules on March 2, 2011, with the ban taking effect 31 days later. Additional details about similar measures taken in Michigan and Pennsylvania appear in [Issue 371](#) of this *Update*. See WSLCB “Q and A” and WSLCB Press Release, November 10, 2010.

Meanwhile, U.S. Senator Charles Schumer (D-N.Y.) has called on the New York State Liquor Authority (NYSLA) to take similar actions, noting that the Food and Drug Administration’s (FDA’s) failure to approve AEDs or determine their “generally recognized as safe” status has given NYSLA leeway “to implement a state ban on their sale.” In a November 10, 2010, [letter](#) to NYSLA, Schumer claims that AEDs “raise unique and disturbing safety concerns, especially for younger drinkers.” While he expresses hope that “the FDA will soon issue a decision banning these harmful and destructive drinks,” Schumer nevertheless urges an “immediate” statewide ban. See *Schumer Press Release*, November 10, 2010.

LITIGATION

MDL Court Refuses to Upset Verdict in GM Rice Suit

A multidistrict litigation (MDL) court in Missouri has denied the defendants’ post-trial motions in the fourth bellwether trial involving claims that conventional rice farmers were adversely affected when contamination by genetically modified (GM) rice closed international markets to U.S. rice exports. *In re Genetically Modified Rice Litig.*, MDL No. 1811 (U.S. Dist. Ct., E.D. Mo., E. Div., decided November 9, 2010). The court rejected arguments that the Plant Protection Act preempts the claims, the plaintiff could not recover market loss

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

damages and future damages because they are too uncertain and speculative, the evidence supporting plaintiff's alternative crop yield and crop variety damages was insufficient, and the plaintiff could not demonstrate legal cause and could not recover "landlord" damages.

According to the court, "Plaintiff demonstrated that Bayer unreasonably failed to contain the LL Rice and that the resulting contamination was the foreseeable cause of the loss of the European rice market and depressed rice prices." The court also determined that the plaintiff introduced sufficient evidence to prove the company's negligence and vicarious liability for the actions of those who field tested the GM rice. Holding that the defendant was not unfairly prejudiced by the introduction of evidence relating to the company's experience with Star Link corn contamination, the court noted, "The fact that Bayer lost track of a large amount of seed in 2001 was relevant to show Bayer's carelessness in handling LL Rice in 2001, which was approximately the same time that the evidence indicated that LL Rice escaped."

EPA's Authority to Allow More Ethanol in Gasoline Challenged

A coalition of major farm, food and fuel industry trade groups has reportedly filed a lawsuit in the D.C. Circuit Court of Appeals to challenge the Environmental Protection Agency's (EPA's) decision to allow gasoline with up to 15 percent ethanol (E15) to be sold for vehicles made in the 2007 model year or later. The coalition, which includes the American Petroleum Institute, apparently contends that tests to determine whether the blend will damage these cars, light-duty trucks and SUVs have not been completed. Under the Clean Air Act, EPA may not approve a new fuel additive unless it "will not cause or contribute to a failure of any emission control device or system."

The industry interests also claim that EPA lacks the authority to grant a "partial waiver" to allow the fuel to be used in only some vehicles, saying the agency should not approve the fuel unless it is safe for all vehicles, not just the newer models.

EPA reportedly defended its decision as "sound, and the agency is confident that it will withstand legal challenge." Auto makers object to the use of E15 and could, according to a news source, also challenge the agency's decision in coming weeks. They, along with manufacturers of gasoline-fueled power equipment, such as lawnmowers and chain saws, are apparently concerned that they will be held liable if increased ethanol levels damage their equipment.

The coalition that filed the lawsuit on November 9, 2010, includes GMA, the American Meat Institute (AMI), National Council of Chain Restaurants, National Pork Producers, American Frozen Food Institute, and National Chicken Council. They are reportedly concerned that increasing the use of ethanol will make food more expensive by raising prices for corn. AMI's president said

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

in a press release, “For those consumers worried about climbing food prices, this decision will increase the amount of corn being diverted to our gas tanks and away from meat and poultry production. It’s unfortunate that EPA acted hastily and approved the use of E15, and now the American consumer will pay for it at the grocery store.”

A National Chicken Council spokesperson reportedly said, “With corn supplies very tight and ending inventories projected to be precariously low, corn costs continue to head toward historical highs. Any unnecessary and arbitrary action by the government that would exacerbate the situation for traditional corn users is very questionable and an unwise move at this time.” See *The Wall Street Journal*, *Meatingplace.com*, *MeatPoultry.com*, and *Greenwire*, November 9, 2010.

LEGAL LITERATURE

Holly Pauling Smith and Madeleine McDonough, “A New Frontier: Health-Claims Class Actions,” *The International Comparative Legal Guide to: Class & Group Actions 2011*”

Shook, Hardy & Bacon Global Product Liability Partner [Holly Pauling Smith](#) and Agribusiness & Food Safety Co-Chair [Madeleine McDonough](#) have co-authored [this chapter](#) on the consumer-fraud class actions to which plaintiffs’ lawyers have resorted given their inability to persuade courts to certify personal-injury mass torts. The chapter, which focuses on recent cases involving health-related claims or omissions for food and beverage products, appears in an international reference on class and group actions. Smith and McDonough have also contributed a [chapter](#) discussing how the class-action procedure functions in the United States.

OTHER DEVELOPMENTS

Rudd Center Publishes Report on Food Marketing to Children

Yale University’s Rudd Center for Food Policy & Obesity has issued a November 2010 [report](#) claiming that “children as young as age 2 are seeing more fast food ads than ever before.” Titled *Fast Food F.A.C.T.S.: Food Advertising to Children and Teens Score*, the report purportedly evaluated “the marketing efforts of 12 of the nation’s largest fast food chains, and examined the calories, fat, sugar and sodium in more than 3,000 kids’ meal combinations and 2,781 menu items.” According to a concurrent press release, researchers relied on syndicated data from The Nielsen Company, comScore, Inc., and Arbitron Inc. to determine “that the fast food industry spent more than \$4.2 billion on marketing and advertising in 2009, focusing extensively on television, the Internet, social media sites and mobile applications.”

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

Among its key findings, the study claims that (i) “Unhealthy foods and beverages still dominate restaurant menus”; (ii) “The restaurant environment does not help steer people toward the healthier selections”; (iii) “Marketing to youth is effective”; (iv) “Youth exposure to fast food ads is dramatic [and] increasing”; and (v) “Companies target African American and Hispanic youth.” In particular, the report notes that not only does the average preschooler see “almost three ads per day for fast food,” but that this number increases for subsequent age groups and that “children’s food choices are affected by secondhand exposure” to ads intended for adult audiences.

The Rudd Center, which also provides a ranking of children’s meals based on their nutritional content, thus urges young people to “consume less of the calorie-dense, nutrient-poor foods served at fast food restaurants.” It also calls on fast food restaurants to “drastically change their current marketing practices,” as well as adopt “meaningful standards for child-targeted marketing” that go beyond the voluntary Children’s Food and Beverage Advertising Initiative. These standards would include (i) nutrition criteria that apply “to all kids’ meals served, not just items pictured in the marketing,” and (ii) an expansion of “child-targeted” marketing to include “TV ads and other forms of marketing viewed by large numbers of children but not exclusively targeted to them.” In addition, the report apparently singles out McDonald’s, directing the company to “stop marketing directly to preschoolers.”

Meanwhile, a November 8, 2010, *Advertising Age* article has covered the industry response to the report, which the headline describes as a “canned defense.” The National Restaurant Association, however, has pointed to the “growing array of nutritious offerings for children.” As one association spokesperson was quoted as saying, “The industry has also led the way in advocating that nutrition information be made available to consumers in chain restaurants.”

In a related development, the World Health Organization (WHO) has [released](#) its own recommendations for limiting the marketing of food and non-alcoholic beverages to children. Adopted in May 2010 by the 63rd World Health Assembly, the resolution intends “to guide efforts by Member States in designing and/or strengthening existing policies on food marketing communications to children.” The recommendations state that such policies should aim, via incremental or comprehensive approaches, “to reduce the impact on children of marketing of foods high in saturated fats, *trans*-fatty acids, free sugars, or salt.” Specific measures would aim to eliminate all such food advertisements in “settings where children gather,” such as schools and playgrounds, and reduce “the impact of cross-border marketing.” Designed by governments acting as the key stakeholders, a comprehensive policy would also feature “clear definitions of sanctions and could include a system for reporting complaints.”

**FOOD & BEVERAGE
LITIGATION UPDATE**

ISSUE 372 | NOVEMBER 12, 2010

ICIJ Report: Something Smells Fishy About Bluefin Tuna Market

The International Consortium of Investigative Journalists (ICIJ) recently published the results of a seven-month foray into the Atlantic bluefin tuna trade, claiming that widespread corruption at all levels has decimated the species. Titled *Looting the Seas*, the exposé reflects the efforts of 12 journalists who followed the bluefin supply chain “from major fishing fleets and tuna ranches in the Mediterranean and North Africa, through ministry offices, to some of the world’s largest buyers.”

Released before a November meeting of the International Commission for the Conservation of Atlantic Tunas (ICCAT), the report relies on interviews, court documents, regulatory reports, corporate records, and “an internal database used by regulators to track the trade.” According to its findings, the supply chain “at every step was riddled with fraud, negligence, and criminal misconduct.” The report specifically alleges that (i) “Fishermen blatantly violated official quotas and engaged in an array of illegal practices”; (ii) “National fisheries officials have colluded with the bluefin tuna industry to doctor catch numbers and avoid international criticism”; (iii) “Sea ranches, where bluefin are fattened to increase their value, became the epicenter for ‘laundering’ tuna”; and (iv) “The paper-based reporting system implemented by regulators in 2008 to bring transparency to the trade... is full of holes.” The report also implicates Japan and other countries, including France, Spain and Italy, in “a massive black market” conducted behind “a wall of secrecy.”

The ICIJ report has since garnered media attention as well as remarks from the Pew Environment Group, which has warned of the bluefin tuna fishery’s imminent collapse. “ICCAT member countries must suspend the Atlantic bluefin tuna fishery until effective management measures are in place, illegal fishing is under control and the species has begun to recover,” stated the group’s managing director, Joshua Reichert, in a November 8, 2010, press release. “In addition, steps must be taken to protect the only known spawning grounds for Atlantic bluefin tuna in the Gulf of Mexico and the Mediterranean Sea.” See *The New York Times*, November 8, 2010.

Global Water Survey Finds Water Supply Challenges Affecting Food Industry

According to a new [report](#) from the U.K.-based Carbon Disclosure Project (CDP), a majority of the world’s largest companies, including those in the food and beverage sectors, have developed specific water policies, strategies and plans, with 39 percent reporting experience with disruption to operations from drought or flooding, declining water quality or increases in water prices. Titled “CDP Water Disclosure 2010 Global Report,” the study is based on responses from 175 large corporations that conduct water-intensive operations around the world. CDP contends that those most at risk are food and beverage companies, which, among those responding to the survey, had

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

all set specific water-related targets for their businesses and were all able to identify whether their operations were located in water-stressed regions.

According to CDP, "Demand for water is projected to outstrip supply by a staggering 40 percent by 2030, and an estimated half the world's population are likely to live in areas of high water stress by the same year." The goal of CDP's water disclosure initiative "is to make meaningful, systematic and comparable reporting on water a standard corporate practice globally, enabling investors, companies themselves, governments and other stakeholders to put this data at the heart of their decisionmaking. More immediately, we seek to raise awareness and enhance understanding of water-related issues." One investment manager involved with the project was quoted as saying that companies ignoring water dangers "pose a risk to investments." See *The Guardian*, November 12, 2010.

New Egg Recall Involves Man Involved in Prior Recall

An Ohio poultry facility linked to the latest egg recall over *Salmonella*-contamination concerns was reportedly the recipient of a \$125-million investment by Austin "Jack" DeCoster, the man who owned the two Iowa farms linked to the August 2010 recall of 550 million potentially contaminated eggs. The Ohio Agriculture Department apparently indicated earlier this year that DeCoster was still an investor in Ohio Fresh Eggs. The latest recall involves nearly 300,000 eggs distributed in eight states. While no confirmed illnesses have been linked to the eggs, egg seller Cal-Maine, Inc. reportedly said "consumers who believe they may have purchased potentially affected shell eggs should not eat them."

According to a news source, the Centers for Disease Control and Prevention linked the August outbreak to at least 1,600 illnesses. DeCoster was called before a House oversight subcommittee in September and apologized for the incident, saying "We were horrified to learn that our eggs may have made people sick." He received a warning letter from the Food and Drug Administration, which found significant unsanitary conditions and health-code violations at DeCoster's Iowa facilities. He is also reportedly facing nearly a dozen lawsuits already filed by individuals allegedly sickened by eating the tainted eggs. Plaintiffs' lawyer William Marler has reportedly found more than 100 potential clients and is coordinating their lawsuits. He apparently asked on his blog, "Why is this 'habitual violator' not closed?"

Meanwhile, some lawyers say it will be difficult for these plaintiffs to prove they became sick because they ate contaminated eggs. Many apparently lack the proof they need to bring a successful lawsuit; without a positive culture matching the bacterial strain responsible for the outbreak, a plaintiff will be hard-pressed to link egg consumption to the illness. Most food-borne complaints are reportedly settled out of court. See *The Washington Post*,

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

November 8, 2010; *The Christian Science Monitor* and *The Los Angeles Times*,
November 9, 2010.

MEDIA COVERAGE

Michael Moss, "While Warning About Fat, U.S. Pushes Cheese Sales," *The New York Times*, November 6, 2010

"Americans now eat an average of 33 pounds of cheese a year, nearly triple the 1970 rate," writes *New York Times* investigative reporter Michael Moss in this article about Dairy Management Inc., a U.S. Department of Agriculture (USDA) "marketing creation" with a \$140 million annual budget "largely financed by a government-mandated fee on the dairy industry." According to Moss, "The organization's activities, revealed through interviews and records, provide a stark example of inherent conflicts in the Agriculture Department's historical roles as both marketer of agriculture products and America's nutrition police."

Moss claims that despite federal efforts to curb the consumption of saturated fats, Dairy Management has "worked with restaurants to expand their menus with cheese-laden products," in addition to spending "millions of dollars on research to support a national advertising campaign promoting the notion that people could lose weight by consuming more dairy products." His exposé opines that the group's "relentless" marketing for years centered on these weight-loss claims until they caught the Federal Trade Commission's attention.

"The [USDA] should not be involved in these programs that are promoting foods that we are consuming too much of already," a former member of the government's nutrition advisory committee told Moss. "A small amount of good-flavored cheese can be compatible with a healthy diet, but consumption in the U.S. is enormous and way beyond what is optimally healthy."

Meanwhile, New York University Professor Marion Nestle has commented on the article in a November 7, 2010, interview posted to her *Food Politics* blog. Drawing attention to USDA's complicated relationship with "dairy lobbying groups" like Dairy Management, Nestle notes that since its inception in the 1860s, "USDA's role was to promote U.S. agricultural production and sales... Only in the 1970s, did USDA pick up all those pesky food assistance programs and capture the 'lead federal agency' role in providing dietary advice to the public."

Nestle proposes moving "dietary guidance to a more independent federal agency," such as the National Institutes of Health, and urges others to "recognize the ways in which corporate lobbyists corrupt our food system and do something about election campaign laws." She also lauds *The New York Times*

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

for considering “an article about USDA checkoff programs to be front-page news, and in the right-hand column yet, marking it as the most important news story of the day.”

Academe Special Issue Highlights Conflicts of Interest at Universities

The American Association of University Professors has published the November-December 2010 issue of its flagship journal, *Academe*, which features an [interview](#) with New York University Professor Marion Nestle about “conflicts of interest between food companies and academics, the difference between food products and food, and the problem with pomegranates.” According to Nestle, conflicts of interest in the food sciences “are rampant but rarely recognized as such,” with many universities “actively” seeking support from food and beverage companies.

“Most food advocates have no idea what kind of teaching or sponsorship occurs in colleges of agriculture, nutrition departments, or science departments focused on biotechnology,” notes Nestle, who warns that industry ties could have “classic chilling effects on critical thinking about conflicts of interest.” She also claims that “[s]ponsorship almost invariably predicts the results of research,” citing industry-sponsored studies that “almost never” find a link between “habitual consumption of soft drinks and obesity.”

“In food research, as in research on drugs or cigarettes, results are highly likely to favor the sponsor’s interest,” concludes Nestle. “The companies are not buying the results, although it sometimes seems that way. Instead, it seems to me that researchers who are willing to accept grants from food companies tend to be less critical about the way they design their studies. I often notice that sponsored studies lack appropriately rigorous controls. One way to understand this is to suggest that scientists who accept corporate sponsorship have internalized the values of the sponsor so thoroughly that they think themselves independent.”

SCIENTIFIC/TECHNICAL ITEMS

Sugar-Sweetened Beverages Allegedly Tied to Risk of Gout in Women

A new [study](#) has suggested that sugar-sweetened beverages may raise the risk of gout in women. Hyon Choi, et al., “Fructose-Rich Beverages and Risk of Gout in Women,” *The Journal of the American Medical Association*, November 10, 2010. Boston University and Harvard researchers examined data on nearly 79,000 U.S. women with no history of gout who participated in the 22-year Nurses’ Health Study.

Compared to women who drank less than one serving of sugary beverages or orange juice per month, the study found that women who drank (i) one

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

serving of sweetened soft drink per day had a 74 percent increased risk of gout, (ii) at least two servings of sweetened soft drinks per day had more than double the risk of gout; (iii) one serving of orange juice per day were 41 percent more likely to develop gout; and (iv) two or more glasses of orange juice per day had more than twice the risk of developing gout. Researchers concluded, however, that although consumption of fructose-rich beverages was associated with an increased risk of gout in women, the risk “is likely modest given the low incidence rate among women.”

Researchers Identify Food Wrapping as Potential Source of PFCAs

University of Toronto scientists have published a [study](#) suggesting that a significant source of perfluorinated carboxylic acids (PFCAs) in human sera are the polyfluoroalkyl phosphate esters (PAPs) used in food-contact paper packaging, particularly popcorn bags and fast food wrappers. Jessica D’eon & Scott Mabury, “Exploring Indirect Sources of Human Exposure to Perfluoroalkyl Carboxylates (PFCAs): Evaluating Uptake, Elimination and Biotransformation of Polyfluoroalkyl Phosphate Esters (PAPs) in the Rat,” *Environmental Health Perspectives*, November 8, 2010. PAPs are used to prevent water and fat from escaping the packaging. According to lead researcher Scott Mabury, “Those chemicals called PAPs move into food, make it into humans upon ingestion and metabolically are transformed into the PFCAs.”

While it is apparently unknown whether these chemicals have an adverse effect on human health, Mabury said PFCAs are “highly reactive” and, hence, of concern. The authors note that PFCAs have been found in human sera worldwide, but major sources are not well understood. Some scientists speculated that environmental contamination from past chemical use was to blame for its persistence, and this study was designed to determine whether continuing PFCA exposure was the source. The researchers synthesized PAP, exposed lab rats to various concentrations of the chemical and report that “PFCA biotransformation products were observed in the blood of the diPAP-dosed animals.” See *Brandon Sun*, November 10, 2010.

Studies Link Red Meat to Esophageal and Stomach Cancer

A recent study has reportedly identified “positive associations between red meat intake and esophageal squamous cell carcinoma.” Amanda Cross, et al., “Meat Consumption and Risk of Esophageal and Gastric Cancer in a Large Prospective Study,” *American Journal of Gastroenterology*, October 2010. Using a large cohort study of approximately 500,000 adults, researchers evidently concluded during a 10-year follow-up period that those in the top quintile for red meat consumption were 79 percent more likely to develop esophageal squamous cell carcinoma than those who consumed the least red meat.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 372 | NOVEMBER 12, 2010

The study authors also found a “a positive association” between gastric cardia cancer and DiMeIQx, a form of heterocyclic acid created by high-temperature cooking. They cautioned, however, that neither finding supports a causal link between red meat and the two cancers. In addition, as the study abstract notes, “benzo[a]pyrene, nitrate, and nitrite were not associated with esophageal or gastric cancer.”

In a related development, a meta-analysis of 26 separate [studies](#) did not support “an independent positive association between red or processed meat and prostate cancer.” Dominik Alexander, et al., “A review and meta-analysis of prospective studies of red and processed meat intake and prostate cancer,” *Nutrition Journal*, November 2010. According to the results, “No association between high vs. low red meat consumption... or each 100g increment of red meat... and total prostate cancer was observed. Similarly, no association with red meat was observed for advanced prostate cancer.”

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.

