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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

GAO Calls for Improved Performance Information of Nanotechnology Research

The U.S. Government Accountability Office (GAO) has issued a **report** highlighting the need for improved performance information and cost analysis for environmental, health and safety (EHS) research as they relate to nanotechnology. As part of its analysis, GAO reviewed nanotechnology research conducted in 2010 by seven National Nanotechnology Initiative (NNI) member agencies, including the Food and Drug Administration.

According to the 84-page report, EHS research funding grew from $38 million in 2006 to $90 million in 2010. GAO found several problems in 2010, however, that "raise concerns about the quality of EHS funding data reported." It also discovered, among other things, that although the member agencies most frequently focused on carbon nanotubes, nanosilver and nanoscale titanium dioxide, NNI had not prioritized nanomaterials for EHS research. GAO recommends that the Office of Science and Technology Policy (i) "coordinate development of performance information for NNI EHS research needs and publicly report this information," and (ii) "estimate the costs and resources necessary to meet research needs."

LITIGATION

FTC Ordered to Address Marketers' Failure to Admit Liability in Acai-Berry Consent Decree

A federal court in New Jersey has, for a second time, requested supplemental briefing before approving a stipulated final order for permanent injunction and other equitable relief in the Federal Trade Commission's (FTC's) action against a company that allegedly marketed acai-berry weight-loss products with "fake" news reports and deceptive claims. *FTC v. Circa Direct LLC*, No. 11-2172 (U.S. Dist. Ct., D.N.J., Camden Vicinage, order filed June 13, 2012). Among other matters, the court seeks FTC's views on whether the agency has shown it was likely to succeed on the merits "without an admission of liability

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by the Defendants and with no evidentiary submissions before the Court." The court also requests additional briefing on whether it "may consider the lack of an admission by the defendants in its public interest analysis under the [FTC Act]."

When the parties submitted their first supplemental briefs, FTC Commissioner J. Thomas Rosch submitted a letter indicating that, in his view, FTC's submission "suffers from two failings." Rosch contended that FTC should have addressed whether the court is bound by section 13(b) of the FTC Act, "which he asserts requires this court to consider both the FTC's likelihood of success in litigation and the public interest before approving a settlement and both of which are implicated by a lack of an admission by the Defendants." Rosch also "questioned the level of deference the FTC's decision is owed and the notion that this Court 'should simply "rubber stamp" an agency decision.'"

In light of the letter and a recent Second Circuit decision that the parties to a Securities and Exchange Commission consent decree, which also lacked an admission of liability, are likely to succeed on their claim that a district court erred in rejecting their settlement, the court found new questions to consider. Accordingly, the court sought briefing on whether it is bound by section 13(b), the scope of its review under that section and how the stipulated order satisfies it, particularly without an admission of liability, and the scope of the public interest review and "whether the Court may consider the lack of an admission by the defendant in its public interest analysis under the statute."

Assuming that section 13(b) did not apply, the court found that the stipulated order was fair, adequate and reasonable in light of information included in the first round of supplemental briefs. According to the court, an $11.5-million suspended judgment against defendants with just $2.89 million in remaining assets, the same amount as the alleged damages in the case, was clearly a "strong recovery for the FTC." The court also found that vigorous arms-length negotiation by counsel over a matter of months ameliorated its concerns that the settlement was unfair to the defendants.

Still, the court could make no determination that the parties' agreement was in the public interest, stating "settlement without an admission of liability forecloses a determination of the truth of the FTC's allegations and leaves the public with no better appreciation of the truth of the matter than when the litigation began." In the court's view, the public has a "significant interest in knowing the truth" as to whether the products were deceptively marketed for nearly two years with ads designed to look like news and claiming the products could stimulate weight loss. While asking FTC to address the matter, the court also asked it to "address whether there are any other efforts the FTC can make, short of requiring an admission of liability, to address the Court's articulated concerns."

Objections Filed to Settlement of Nutella® Misleading Ad Claims

In advance of a July 9, 2012, hearing before a federal court in New Jersey to approve the settlement of claims that Ferrero USA, Inc. misled consumers about nutritive value in its ads for Nutella®, a hazelnut spread purportedly containing high fat and sugar levels, a number of class members have filed objections that challenge class notice, most of the settlement terms and the fee award to plaintiffs' counsel. *In re: Nutella Mktg. & Sales Practices Litig.*, No. 11-cv-1086 (FLW). Additional details about the proposed settlement appear in Issue 437 of this *Update*.

Class member Clark Hampe, for example, complains that the settlement fund "has a claims procedure that caps the total number of claims that can be made and the maximum amount of compensation for class members. Then, if these arbitrary maximums are satisfied, the settlement is vague about what happens next. Either funds will be paid to a court-approved charity, or they will go in a supplemental distribution to class members. A class notice must be sufficiently definite to inform class members of all material aspects of the settlement. Here, there are too many loose ends concerning what happens to overflow settlement funds." He also contends that the attorney's fee award "is grossly excessive."

Amy Ades notes that plaintiffs' counsel fail to disclose what percentage of damages the net settlement fund of $1.36 million represents, reporting that a California court, which is also poised to settle Nutella®-related claims, "recognized that 10.1% of American households purchased Nutella in the 52 weeks before December 2010 and that Nutella's sales from 2007-2012 totaled $213,693,000. Thus, it is likely that the amount of money going to the class in this proposed Settlement represents a mere token of potential damages."

Ades also complains that requiring Ferrero to place information about the amount of calories, saturated fat, sodium and sugar per serving size on the front of its package labels, "provides no new information to the consumer as these facts are presently listed on the back panel of the jar label." She is further concerned that some of the actions Ferrero is required to take expire in a short period of time and that the company is not obligated to "remove or replace the jars of Nutella on the store shelves with the current labels and it can continue to distribute and sell Nutella jars with the current labels for the indefinite time (at least four months) it takes them to produce new labels."

Ades objects to the $20 limit on individual recoveries regardless of the number of jars purchased during the class period and further contends that class counsel has failed to show that $3.75 million in fees, 68 percent of the total settlement, is warranted given "the modest, and largely temporary non-cash changes and . . . limited work done to benefit the class." She also challenges the class notice, stating "It does not disclose the limitations on

the word changes, nor the temporary nature thereof, nor the amount of class counsel's expenses that will reduce the amount available to the class."

Objector Gary Sibley argues that no effort has been made to give individual notice, *cy pres* should not be part of the settlement, class members are receiving limited economic benefits, and "[i]n the agreed injunction, Defendant does no more than agree to follow current law and not misrepresent its services; this is already required of the Defendant under current law. The injunctive relief touts changes to the product label, new television commercials and website changes. These changes are of little to no value." He argues that notice should have been attached to product labels and that class counsel fees are unreasonable because "the value of the settlement to the class in impermissibly overstated and the fee itself is excessive."

JPML Consolidates Deceptive OJ Marketing Claims in New Jersey

The Judicial Panel on Multidistrict Litigation (JPML) has consolidated before a multidistrict litigation (MDL) court in New Jersey six lawsuits alleging that Tropicana deceptively markets its not-from-concentrate orange juice as "100% Pure & Natural," despite extensive processing. *In re: Tropicana Orange Juice Mktg. & Sales Practices Litig.*, MDL No. 2353 (J.P.M.L., order entered June 11, 2012). New Jersey was selected as the appropriate venue because plaintiff's counsel in the case filed there "appear to have significantly investigated and developed the factual issues underpinning their complaint." Other plaintiffs apparently dismissed their complaints to join the New Jersey action, and JPML found that the court there had the resources to devote to the litigation and an experienced judge not currently overseeing an MDL.

The panel refused to include a potential tag-along case brought by a plaintiff who argued for "industry-wide centralization," that is, an MDL that would include all orange juice manufacturers that have been sued in similar actions, as well as retailers of "house brands" of not-from-concentrate orange juice. Information about the lawsuit he filed is included in **Issue 431** of this *Update*. According to JPML, such centralization would not produce litigation efficiencies because the "actions involve different products, subject to potentially different methods of pasteurizing and processing, different advertisements, and different putative classes of consumers who purchased each product." Citing the separate discovery required and "the introduction of competing defendants into the litigation, and the need to protect trade secret and confidential information from full disclosure to the parties, [which] would complicate case management," the court found that adding this case to the MDL would not be appropriate.

Kentucky Residents Sue Diageo over "Whiskey Fungus" Growth on Property

Several Louisville, Kentucky, residents and a business owner have filed a putative class action against Diageo Americas Supply, Inc., alleging that one of its distilling operations has caused an accumulation of "the fungus *Baudoinia compniacensis*, colloquially referred to as 'whiskey fungus,'" on their real and personal property. *Merrick v. Diageo Americas Supply, Inc.*, No. 12-cv-00334 (U.S. Dist. Ct., W.D. Ky., Louisville Div., filed Jun 15, 2012).

They allege that the ethanol emissions which occur during the "aging/warehousing stage of alcoholic beverage production" catalyze and promote the growth of whiskey fungus, a black, sooty substance that purportedly accumulates on metal, vinyl, concrete, and wood and requires "extreme cleaning measures such as a high-pressure washing or the application of caustic chemicals such as chlorine bleach." These measures allegedly "cause early weathering of surfaces affected by the fungus," such as gutters, siding, roofing, fencing, and vehicles.

Seeking to certify a class of all persons and entities owning or renting real property or owning motorized vehicles in the vicinity of Diageo's alcoholic beverage production facility, the plaintiffs allege negligence and gross negligence, temporary and permanent nuisance, trespass, and a right to injunctive relief. They request that the defendant be required to correct or abate the conduct, i.e., "excessive ethanol emissions," and an order for compensatory and punitive damages, costs, attorney's fees, and interest.

LEGAL LITERATURE

Becker-Posner Blog Tackles Bloomberg's Proposal to Ban Super-Sized Sugary Drinks

University of Chicago Economics Professor Gary Becker and Seventh Circuit Court of Appeals Judge Richard Posner have posted comments on their **blog** about New York Mayor Michael Bloomberg's proposed ban on sugary drinks larger than 16 ounces. Becker concludes that "even when consumer decisions are not in their self-interest, it is questionable whether that provides sufficient grounding for government efforts to regulate and tax these decisions." His most fundamental concern is that government bureaucrats may not "generally understand why consumers make defective decisions" or whether particular polices will effectively address the issue. He argues, "One should require evidence that the great majority of obese adult individuals do not make the connection with health before trying to restrict their consumption."

And he points out that if 16-ounce drinks are no longer available in New York, consumers may then substitute two 10-ounce drinks and thus increase their total consumption.

Judge Posner agrees "that one must be hesitant to recommend governmental intervention in personal choice." While agreeing that "[g]overnment lacks good information about consumer preferences in a country as vast and diverse as the United States," Posner finds "the case for some government intervention in the obesity epidemic . . . compelling." He is concerned with "the negative externalities of obesity—the costs that the obese impose on others" as well as the likelihood that obese parents will pass on their "bad habits" to their children and that obesity can be "contagious," becoming the norm in family circles or circles of friends and coworkers. Posner contends that sugared soft drinks are "the straightest path to obesity" and calls Bloomberg's proposal an "attention getter" that tells "New Yorkers that obesity is a social problem warranting government intervention, and not just a personal choice." Seeing parallels with tobacco regulation, Posner suggests that Bloomberg's container proposal may start the movement to reduce obesity, concluding "Maybe someday it will be as effective, and receive as much public approbation, as the anti-smoking movement." *See Becker-Posner Blog*, June 18, 2012.

OTHER DEVELOPMENTS

AMA Amends Policy on GE Foods

The American Medical Association's (AMA) House of Delegates has reportedly updated its policy on genetically engineered (GE) foods, voting at its 2012 Annual Meeting to adopt a statement that supports pre-market product testing but opposes special labeling. According to media sources, AMA's statement concludes that "there is no scientific justification for special labeling of bioengineered foods, as a class, and that voluntary labeling is without value unless it is accompanied by focused consumer education." At the same time, however, the association has backed "mandatory pre-market systematic safety assessments of bioengineered foods."

"The science-based labeling policies of the [Food and Drug Administration] do not support special product labeling without evidence of material differences between bioengineered foods and their traditional counterparts. The AMA adopted policy support[s] this science-based approach, recognizing that there currently is no evidence that there are material differences or safety concerns in available bioengineered foods," explained AMA board member Patrice Harris. "Recognizing the public's interest in the safety of bioengineered foods, the new policy also supports mandatory FDA pre-market systemic safety assessments of these foods as a preventive measure to ensure the health of the public. We also urge the FDA to remain alert to new data on the health consequences of bioengineered foods."

The announcement reportedly drew mixed reactions from consumer groups, many of which support more rigorous testing and labeling of products made with GE ingredients. As one Consumers Union senior scientist said, "We wholeheartedly commend AMA for coming out in support of mandatory pre-market safety assessment of (genetically engineered) foods, but are disappointed that AMA did not also support mandatory labeling. ... Studies in the scientific literature have suggested that genetic engineering could introduce new food allergens, increase the levels of known allergens, raise or lower nutrient levels and have adverse effects on the animals that eat such foods." *See The Chicago Tribune,* June 19, 2012; *Los Angeles Times,* June 21, 2012.

AMA Endorses Soda Tax to Help Fight Obesity

The American Medical Association (AMA) has reportedly championed taxes on sugar-sweetened sodas as a way to fight obesity. Although it failed to pass a policy that outright supports such a measure, the AMA recognized during its recent annual meeting that "while a number of factors contribute to the obesity epidemic, taxes on beverages with added sweeteners are one way to finance consumer education campaigns and other obesity-related programs."

To that end, the physicians group voted to adopt a policy supporting obesity-prevention education for children and teens in public schools that encourages doctors to volunteer to teach classes on causes, consequences and prevention. "I can't tell you the number of 40-pound 1-year-olds I see every day," pediatrician Melissa Garretson was quoted as saying. *See AMA Press Release*, June 20, 2012; *Associated Press*, June 21, 2012.

CSPI Calls for Dialog with Nestlé over Candy Co-Branded with Girl Scouts

The Center for Science in the Public Interest (CSPI) and Berkeley Media Studies Group have asked Nestlé CEO Brad Alford to stop marketing limited-edition Crunch® candy bars with three Girl Scout cookie flavors. Their June 18, 2012, letter contends that the co-branding initiative "violates your pledge not to target children with marketing for candy." The products apparently feature the Girl Scout logo, and the groups assert that this tie-in and logo "will attract the attention of and appeal to children" because Girl Scouts are children, with some "2.3 million girls, in Kindergarten through 12th grade," participating in scout activities nationwide. "Even if the candy bar advertising is targeted towards adults, the Girl Scout's theme is inherently appealing to children and so constitutes marketing to children," according to the letter. The groups close with, "Marketing thematically geared towards children is marketing to children. We look forward to discussing this further with you or your staff."

Nestlé has denied the allegation, stating that the products are sold in grocery and convenience stores, as well as mass-market retail outlets "which are primarily adult-oriented venues. Nestlé Crunch Girl Scout Candy Bars were

developed to appeal to an adult audience, and our advertising and marketing efforts are directed accordingly." According to the company, "In line with both the CFBAI [Children's Food and Beverage Advertising Initiative] and Nestlé policies on marketing to children, the Nestlé Crunch bars are not advertised in any programming, traditional or online, that targets audiences younger than 12 years of age." CFBAI backed the company's assertion, stating "Nestlé's arrangement with the Girl Scouts of the USA does not violate its commitment under the CFBAI pledge because it is not engaging in child-directed advertising for products with a Girl Scout logo." *See CSPI* and *Nestlé USA Press Releases*, June 18, 2012.

New York Abuzz with Bees

The New York City Police Department has reportedly noted an uptick in the number of bee swarms scouring the five boroughs in search of a new home, a phenomenon which experts have attributed to unusually warm weather as well as an increase in residential apiaries. According to a June 18, 2012, *New York Times* article, the department's "unofficial beekeeper in residence" has already handled 31 swarms since mid-March, more than twice the number reported last season. As the *Times* explained, "Officer [Anthony Planakis] said the bees he had collected were wild, but some beekeepers believe they were fleeing the poorly managed hives that have proliferated on rooftops, in backyards and on balconies since the city lifted a decade-long ban on raising *Apis mellifera*—the common, nonaggressive honeybee—in March 2010."

With 182 hives registered with the Department of Health and Mental Hygiene and perhaps as many as 400 total, expert beekeepers have warned newcomers that they must inspect hives every seven to 10 days to prevent overcrowding or poor ventilation. "It's up to beekeepers to practice swarm prevention techniques and regular hive maintenance," said New York City Beekeepers Association President Andrew Coté, who has recommended stricter regulations for hive hobbyists. "If they treated their dog or cat in the same way, they would be taken up on charges." Additional details about the city's decision to allow urban apiaries appear in **Issue 342** of this *Update*.

EWG Issues Updated Guide to Pesticide Residues in Produce

The Environmental Working Group (EWG) has issued its "**2012 Shopper's Guide to Pesticides in Produce**," updating "pesticide loads" on 45 conventional fruits and vegetables. EWG's contamination rankings were derived from the organization's review of U.S. Department of Agriculture (USDA) and Food and Drug Administration data from 2000 and 2010 that detailed the amounts and types of pesticides detected on sampled produce washed and peeled before testing.

Providing "Dirty Dozen™" and "Clean 15™" lists, the guide once again singles out apples as the "worst offender," reporting that 98 percent of the fruit tested contained pesticide residues. Although they did not make the criteria as worst offenders, green beans and leafy greens such as kale and collard greens were named in EWG's "Dirty Dozen Plus™" list because they are "commonly contaminated with highly toxic organophosphate insecticides," according to EWG. "These insecticides are toxic to the nervous system and have been largely removed from agriculture over the past decade. But they are not banned and still show up on some food crops." *See EWG Press Release,* June 19, 2012.

Pizza Chains Oppose Menu Labeling

A group of national pizza chains has reportedly formed a new coalition to combat proposed menu labeling regulations that would require companies with 20 or more food outlets to post calorie information on menus and menu boards. Mandated by the Patient Protection and Affordable Care Act of 2010, the Food and Drug Administration's April 2011 draft rules call on restaurants to display calories ranges for all customizable menu options as well as the overall calorie count for each item. The American Pizza Community (TAPC), however, has opposed the measure as unfair to those enterprises with highly variable offerings that are unlikely to be consumed by one person. "A light bulb goes on when people hear about all the combinations for pizza," said TAPC Chair Lynn Liddle. "They start to realize how difficult it would be to make a one-size-fits-all approach."

TAPC members have also argued that not only are 90 percent of pizza orders placed online, but that digital tools such as calorie calculators might be a more effective means of delivering the same information. To this end, the coalition has traveled to Washington, D.C., to meet with lawmakers to voice their concerns, a move that has apparently puzzled consumer groups like Center for Science in the Public Interest (CSPI). "We heard the same types of arguments from the whole restaurant industry when they were opposing menu labeling in the early days," CSPI Nutrition Policy Director Margo Wootan was quoted as saying. "I don't know what's up with the pizza industry." Additional details about the proposed regulations appear in **Issue 389** of this *Update*. *See TAPC Press Release,* June 19-20, 2012; *The Washington Post,* June 20, 2012.

MEDIA COVERAGE

Brownell Weighs In on NYC Proposal to Limit Beverage Sizes

The director of Yale University's Rudd Center for Food Policy and Obesity recently authored an article in *The Atlantic* arguing in favor of the New York City Department of Health and Mental Hygiene's (DOHMH) proposal to limit

the size of sugar-sweetened beverages (SSBs) sold in restaurants and other food service establishments. According to Kelly Brownell, industry opposition to the measure is rooted in concern over profits, which "increase as people buy bigger portions" since "the cost for the soda companies and restaurants to serve larger sizes may be mere cents for a larger cup and the extra liquid." As a result, he says, soda manufacturers have banded together to voice their opposition to the measure, a campaign that Brownell anticipates will include lawsuits as well as "new industry-funded studies that will show, contrary to the large number of existing studies, that portion size does not have an effect on eating or weight."

In particular, Brownell contends that previous research has shown how both adults and children "eat more when they are served more" and "do not report feeling more full even though they have eaten more." He also claims that consumers "tend to consume foods in units—typically what is in a bag, a bottle or a box," making SSBs a top priority for public health officials. "These products are the single sources of added sugar in the American diet," opines Brownell, "they represent empty calories (they have no nutrition at all), they are marketed aggressively by industry, and, most notably, they act on the body differently than calories contained in solid foods."

To this end, Brownell dismisses objections to the DOHMH proposal maintaining that people are likely to buy the same of amount of soda in multiple servings. "Certainly, for some people this will happen," he concludes. "There are speed limits and some people speed, and there are high tobacco taxes and some people smoke anyway and pay more. But the death and disability that would ensue by removing such laws would be massive." *See The Atlantic,* June 15, 2012.

SCIENTIFIC/TECHNICAL ITEMS

PLoS Medicine Kicks Off Series on "Big Food," Calls for Investigation

The journal *PLoS Medicine* has published two articles and an editorial in a "major new series" on "Big Food" in this week's issue, and will publish five additional related articles over the next two weeks. The **editorial** notes that the articles, focusing on "the role in health of Big Food, which we define as the multinational food and beverage industry with huge and concentrated market power," were selected under the guidance of guest editors Marion Nestle of New York University and David Stuckler of Cambridge University. Contending that Big Food has "an undeniably influential presence on the global health stage," the editorial introduces the other articles and observes, "We decided not to provide a forum for the industry to offer a perspective on their role in global health, since this point of view has been covered many times before and fails to acknowledge their role in subverting the

public health agenda, thus ignoring the deeper issues that this series aims to uncover."

An **article** co-authored by Mark Gottlieb with the Public Health Advocacy Institute, which was founded by anti-tobacco advocate Richard Daynard, compares the "soda and tobacco industry corporate social responsibility campaigns." The authors argue that the "elaborate, expensive, multinational corporate social responsibility (CSR) campaigns" launched by major soft drink manufacturers "echo the tobacco industry's use of CSR as a means to focus responsibility on consumers rather than on the corporation, bolster the companies' and their products' popularity, and to prevent regulation." The article discusses, among others, PepsiCo's Refresh Project and Change4Life, and claims that such "CSR initiatives are explicitly and aggressively profit-seeking." The article states, "Emerging science on the addictiveness and toxicity of sugar, especially when combined with the known addictive properties of caffeine found in many sugary beverages, should further heighten awareness of the product's public health threat similar to the understanding about the addictiveness of tobacco products." Calling for public health advocates to monitor soda company CSR campaigns, the authors conclude by suggesting that advocates may be able to vilify the Refresh Project by arguing that, with its $20-million price tag, "this is marketing, not philanthropy."

Nestle and Stuckler co-authored the second **article**, titled "Big Food, Food Systems, and Global Health." They open the piece with the following: "Global food systems are not meeting the world's dietary needs. About one billion people are hungry, while two billion people are overweight." Underlying this paradoxical coexistence of food insecurity and obesity, they write, "is a common factor: food systems are not driven to deliver optimal human diets but to maximize profits." The article discusses the concentration of market power in a relatively few companies and notes that virtually all of the industry's sales growth is occurring in developing countries, "the main reason why the 'nutrition transition' from traditional, simple diets to highly processed foods is accelerating." According to the authors, evidence shows that the industry is using tactics similar to those used by the tobacco industry to "undermine public health responses such as taxation and regulation, an unsurprising observation given the flows of people, funds, and activities between Big Tobacco and Big Food."

These authors criticize public health advocacy approaches that either favor voluntary self-regulation or partnerships with industry. They call for "public regulation as the only meaningful approach" to curb obesity, calling this "critical approach . . . a model of dynamic and dialectic engagement." They state, "Public health professionals must recognize that Big Food's influence on global food systems is a problem, and do what is needed to reach a consensus about how to engage critically," and they call for nutrition to become as high a priority as "HIV, infectious diseases, and other disease threats." The article

concludes by urging support for "restrictions on marketing to children, better nutrition standards for school meals, and taxes on SSBs [sugar-sweetened beverages]. The central aim of public health must be to bring into alignment Big Food's profit motives with public health goals."

The American Council on Science and Health responded to the *PLoS* series by dubbing it "big propaganda." The group, which was formed by scientists "to add reason and balance to debates about public health issues and to bring common sense views to the public," contends that the articles' focus on soda is misplaced because the proposed strategies and policies are not "founded on solid evidence." According to the council's Gilbert Ross, "Frankly, the focus should be on physical activity." *See PLoS Medicine,* June 19, 2012; *American Council on Science and Health News Release*, June 20, 2012.

Sodium Intake Linked to Hypertension Risk in New Study

A recent study has reportedly concluded that a diet high in sodium is associated "with increases in biomarkers of endothelial dysfunction, specifically serum uric acid (SUA) and urine albumin excretion (UAE)," leading to hypertension. John Forman, et al., "Association between Sodium Intake and Change in Uric Acid, Urine Albumin Excretion, and the Risk of Developing Hypertension," *Circulation,* June 2012. Using data from the Prevention of Renal and Vascular End Stage Disease (PREVEND) cohort, researchers apparently analyzed SUA levels in 4,062 non-hypertensive participants and UAE levels in 4,146 participants. The results evidently showed that not only are high sodium diets associated with greater increases in SUA and UAE, but that over the long term they may lead "to endothelial dysfunction and vascular damage, generating a biological state in which continuance of the high sodium diet may produce hypertension (a sodium amplification loop)."

In particular, the study's authors found that participants who consumed the most sodium each day (approximately 6,200 milligrams per day) "were 21 percent more likely to develop high blood pressure" compared with those consuming the least amount of sodium. As the American Heart Association has pointed out, however, "those who had high uric acid levels and ate the most salt were 32 percent more likely to develop high blood pressure while those with high urine albumin levels and highest salt intake were 86 percent more likely to develop high blood pressure."

"[T]his study reinforces guidelines backed by the American Heart Association and other professional organizations that recommend reducing salt consumption to minimize the risk of developing high blood pressure," the lead author was quoted as saying. *See American Heart Association Press Release,* June 18, 2012.

Scientists Engineer Cows to Produce Low Lactose, Omega-3 Milk

Two groups of scientists at Inner Mongolia University in Huhhot, China, have reportedly created two genetically modified (GM) calves capable of producing either low-lactose milk or milk high in omega-3 fatty acids. According to media sources, the group involved with low-lactose milk production hopes to create herds of GM cows that would supply a range of dairy products for lactose-intolerant consumers within five to 10 years. "Ordinary milk contains lactose, while milk produced by our modified cow will have relatively low content of lactose, or even have no lactose," one scientist told *The Telegraph*. "Most people suffer the lactose intolerance in varying degrees. We are attempting to breed a dairy cow that produce low lactose milk for supplying the market. We hope to commercialize it in the future."

The second research team apparently modified cow embryos with genes from roundworms to produce milk with four times the level of omega-3 fatty acids than that from ordinary cows. After allowing the transgenic calve to mature and bear offspring, scientists found that her milk also contained one-half the omega-6 unsaturated fatty acids allegedly linked to cancer and heart disease. "Our results indicate that transgenic domestic animals can produce meat and milk enriched in n-3 fatty acids, which can probably become an efficient and economical approach to meet the increasing demand for omega three polyunsaturated fatty acids," said one of the researchers, whose findings were published in the June 2012 edition of *Transgenic Research*.

Meanwhile, the news has already raised red flags with consumer groups opposed to such research. "There is a question of food safety with GM livestock," Genewatch Director Helen Wallace was quoted as saying. "As with all GM technology, there is a potential for unintended consequences as it is interfering with the natural biological production pathways of milk, so it could affect other nutrients or even have harmful effects." *See The Telegraph and Daily Mail,* June 17, 2012; *Digital Journal,* June 18, 2012.

British Report Claims Obesity a Burden on Environmental Sustainability

A recent report by researchers from the London School of Hygiene and Tropical Medicine (LSHTM) has claimed that rising obesity rates "could have the same implications for world food energy demands as an extra half billion people living on earth." Sarah Walpole, "The weight of nations: an estimation of adult human biomass," *BMC Public Health,* June 2012. After analyzing data from the United Nations and World Health Organization on body mass index (BMI) and height distribution to estimate the average adult body mass, the study's authors calculated total biomass per continent and country "as the product of population size and average body mass." Based on these results, the researchers concluded that "[i]f all countries had the BMI distribution of the USA, the increase in human biomass of 58 million tons would be equiva-

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 444 | JUNE 22, 2012

lent in mass to an extra 958 million people of average body mass, and have energy requirements equivalent to that of 473 million adults."

"Everyone accepts that population growth threatens global environmental sustainability—our study shows that population fatness is also a major threat," one of the study's authors said in a June 18, 2012, LSHTM press release. "Unless we tackle both population and fatness our chances are slim."

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