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FOOD & BEVERAGE LITIGATION UPDATE

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LEGISLATION, REGULATIONS AND STANDARDS

GAO Report Criticizes USDA School Lunch Standards

The U.S. Government Accountability Office (GAO) recently issued a report criticizing the U.S. Department of Agriculture (USDA) for its "limited" response to school districts that had trouble implementing the new school lunch nutrition standards for the 2012-2013 school year. According to GAO, which gathered feedback from eight districts, schools reported that restrictions on the amount of meats and grains served each week during lunch required them to eliminate popular menu items and made it difficult "to meet minimum calorie requirements for lunches without adding items, such as gelatin, that generally do not improve the nutritional quality of lunches." In addition, some school food authorities (SFAs) observed that calorie range requirements posed a particular challenge in schools with both middle and high school students "[b]ecause the required lunch calorie ranges for these two grade groups do not overlap."

To address these issues, GAO has recommended that USDA "remove the meat and grain maximum requirements and allow flexibility to help districts comply with the lack of overlap in the calorie ranges for grades 6-8 and 9-12 lunches." The report also noted concerns about student resistance to whole grain, vegetable and fruit requirements; increased cost and food waste; the inability of some lunches to meet the calorie needs of especially active students; and the new competitive food standards taking effect in 2014.

"Acknowledging that the meat and grain maximums created challenges for SFAs, USDA lifted them through school year 2013-2014 and indicated that the maximums may not be needed to accomplish the nutrition goals of the new requirements," concludes the GAO report. "However, although USDA has acknowledged the need for a permanent decision on the maximums, they have yet to provide one, hindering the ability of school districts to plan menus, food purchases, budgets, staff training, and student education because they do not know whether the meat and grain restrictions will be reinstated in the future or not."

Shook, Hardy & Bacon L.L.P.

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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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USDA Establishes Stringent New Rules for Food and Beverages Sold in Schools

The U.S. Department of Agriculture (USDA) has **issued** an interim final rule amending the National School Lunch Program and School Breakfast Program regulations "to establish nutrition standards for all foods sold in schools, other than food sold under the lunch and breakfast programs." Acting under Section 208 of the Healthy, Hunger-Free Kids Act of 2010, the agency considered scientific recommendations and voluntary standards for beverages and snack foods, as well as more than 250,000 public comments, in developing the "Smart Snacks in School" standards, which must also adhere to the most recent *Dietary Guidelines for Americans*.

Effective July 1, 2014, the final rule requires all competitive foods sold in schools to meet the following guidelines: (i) "be a grain product that contains 50 percent or more whole grains by weight or have as the first ingredient a whole grain"; or (ii) "have as the first ingredient one of the non-grain major food groups: fruits, vegetables, dairy or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.)"; or (iii) "be a combination food that contains 1/4 cup of fruit and/or vegetable"; or (iv)"for the period through June 30, 2016, contain 10 percent of the Daily Value of a nutrient of public health concern based on the most recent *Dietary Guidelines for Americans* (i.e., calcium, potassium, vitamin D or dietary fiber)"; and (v) "if water is the first ingredient, the second ingredient must be one of the food items above." In addition, the rule restricts the percentage of calories in each item that can be derived from fat (35 percent) and saturated fat (10 percent), with exemptions for reduced fat cheeses, nuts, seeds, seafood, or dried fruit mixes with no added nutritive sweeteners, and limits the amount of sodium (230 mg), sugar (35 percent by weight), and calories (200 calories) per item as packaged or served.

Beverages must also meet strict requirements for elementary and middle schools—which can now sell only low-fat or non-fat milk or nutritionally equivalent milk alternatives; full-strength fruit or vegetable juice; diluted fruit or vegetable juice; or water—while high schools will no longer be able to sell sugar-sweetened beverages or sports drinks that exceed 60 calories per 12-ounce serving.

"Nothing is more important than the health and well-being of our children," said USDA Secretary Tom Vilsack in a June 27, 2013, press release. "Parents and schools work hard to give our youngsters the opportunity to grow up healthy and strong, and providing healthy options throughout schools cafeterias, vending machines, and snack bars will support their great efforts."

Meanwhile, Yale University's Rudd Center for Food Policy and Obesity and the Center for Science in the Public Interest (CSPI) have already hailed the new standards as "historic," citing in particular the move to exclude sports drinks and other "mid-calorie" beverages from school vending machines. "Thanks

to the hard work of the USDA, we are witnessing a dramatic transformation of the school food environment in this country," said Rudd Center Acting Director Marlene Schwartz. "Students and parents have been frustrated by the hypocrisy of teaching nutrition in the classroom and then undermining those lessons in the cafeteria and vending machines. Thanks to last year's changes to school meals and today's announcement, our nation's schools will practice what they preach and teach nutrition through action, not just words." *See Rudd Center* and *CSPI Press Releases,* June 27, 2013.

USDA Issues Notice About Codex Activities

The U.S. Department of Agriculture (USDA) has issued a **notice** informing the public about upcoming sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex) and seeking comments on standards under consideration and recommendations for new standards. The notice, which also lists other standard-setting activities, including "commodity standards, guidelines, codes of practice, and revised texts," covers the time periods from June 1, 2012, to May 31, 2013, and June 1, 2013, to May 31, 2014. *See Federal Register,* June 21, 2013.

EC Seeks Input on REACH Nanomaterial Annexes

The European Commission (EC) has **announced** a public consultation on the Nanomaterial Annexes to the regulations governing the Registration, Evaluation, Authorization and Restriction of Chemical (REACH) substances. As recommended in the General Review of REACH published in February 2013, the consultation will contribute to the Commission's "impact assessment of relevant regulatory options, in particular possible amendments of REACH Annexes, to ensure further clarity on how nanomaterials are addressed and safety regulations demonstrated in registration dossiers."

To this end, the EC has asked "informed experts user[s]" to complete a questionnaire about the technical provisions of the REACH Annexes, including whether the current definition of nanomaterials has changed the way companies account for nanomaterials in their portfolio or conduct safety assessments. The survey also seeks input on five proposals being considered by the Commission as it looks to update REACH's registration requirements by the end of 2013. These proposals include (i) altering the current provisions to clarify existing obligations; (ii) introducing "soft law" measures that are not legally-binding, such as updated guidance, FAQS and other expert documents; (iii) specifying options for demonstrating safe use "in cases where the existing information requirements in REACH are not tailored for nanomaterials or where specific considerations are required for nanomaterials"; (iv) enhancing innovation and competitiveness by tailoring information requirements for nanomaterials placed on the market and reducing certain information requirements; and (v) emphasizing the "generation of targeted

information with the objective of reduction of uncertainty considering that knowledge is still under development regarding the influence of particle and nanomaterial specific properties on risk." EC will accept responses to the consultation until September 13, 2013.

EFSA Recommends Improvements to Meat Inspection Procedures

The European Food Safety Authority (EFSA) recently **published** its recommendations for improving meat inspection procedures in the European Union (EU) after a previous assessment found that "traditional practices... are not always suitable for detecting the main meat-borne hazards such as *Campylobacter* and *Salmonella* or contamination by chemical substances." Billed as "a major piece of work that will provide the scientific basis for the modernization of meat inspection across the EU," the four new opinions address the potential public health risks of meat derived from solipeds, farmed game, sheep, goats, and cows, in addition to setting "harmonized epidemiological indicators" for identifying biological hazards.

Looking at data on the incidence and severity of foodborne diseases in humans as well as the outcomes of various residue testing programs, EFSA's experts ranked the biological and chemical hazards of particular concern for each species, singling out verocytotoxin-producing *E. coli*, dioxins and dioxin-like polychlorinated biphenyls as the main biological and chemical risks for cattle, sheep and goats, and *Trichinella* and phenylbutazone as the main risks for horses. To help identify and control these risks, the agency has also issued universal inspection recommendations that address biological contaminants, animal health and welfare, and environmental contaminants according to level of concern. *See EFSA Press Release*, June 27, 2013.

EFSA Announces Public Consultation on Feed Additive Guidance

The European Food Safety Authority (EFSA) has **launched** two public consultations on draft guidance for feed additives. Issued by EFSA's Panel on Additives and Products or Substances Used in Animal Feed (FEEDAP), the first draft document offers guidance "for the preparation of dossiers for the renewal of the authorization for feed additives." Under Article 14 of Regulation (EC) No. 1831/2003, FEEDAP currently requires applicants to renew feed additive permits every 10 years by providing enough technical information to "enable an assessment to be made of additives based on the current state of knowledge."

The panel has also requested feedback on draft guidance stemming from its updated assessment "of the toxigenic potential of *Bacillus* species used in animal nutrition." According to EFSA, "*Bacillus* species are used in animal production directly as microbial feed additives or as the source of other feed additives, notably enzymes," although certain strains—such as those in the

Bacillus cereus group—exhibit more capacity for toxin production than others and can thus pose a health risk to both consumers and livestock. To this end, the guidance discusses the preferred methods for assessing the toxicity of these strains using genome sequencing and other methods. FEEDAP will accept comments on both sets of draft guidance by August 16, 2013.

UK Advertising Standards Authority Takes Action Against PETA Ad

The U.K. Advertising Standards Authority (ASA) has **upheld** a complaint against a print advertisement by the People for the Ethical Treatment of Animals (PETA) Foundation alleging that meat consumption raises heart disease and cancer risk. According to ASA's report, the poster under review featured a child smoking a cigar and the following text: "You Wouldn't Let Your Child Smoke. Like smoking, eating meat increases the risk of heart disease and cancer. Go vegan!"

After considering two complaints questioning whether the link between meat consumption and disease risk could be substantiated, ASA concluded that the studies provided by PETA to support its claims failed to show any strong association between general meat consumption and increased risk of heart disease and various cancers. "We considered that because the ad likened the risks associated with eating any kind of meat to the risks of smoking, consumers would understand from the ad that the connection between eating any kind of meat and the risk of heart disease and cancer had been proven beyond doubt, which was clearly not the case, and we therefore concluded that the ad was misleading," stated ASA.

FSA Seeks Comments on Omega-3 Rich Oil

The U.K. Food Standards Agency (FSA) has requested public comments about a novel foods **application** submitted by a U.S. company seeking permission to use refined oil from Bugglossoides arvensis seeds in its food products. The company suggests in the application that the oil is a rich source of omega-3 and omega-6 fatty acids and could be consumed by people who want to increase their intake of omega-3 fatty acids, but are unwilling or unable to consume fish oils—vegetarians, for example. The applicant also indicated that oil made from Bugglossoides arvensis seeds is similar in composition to Echium oil, which is already approved for use in foods in the European Union. FSA will accept comments until July 15, 2013. *See FSA News Release,* June 25, 2013.

LITIGATION

Court Gives Preliminary Nod to Barbara's Bakery GM-Ingredient Settlement

A federal court in California has issued an order preliminarily certifying a nationwide class for settlement purposes and approved the class settlement in a case alleging that Barbara's Bakery misled consumers by labeling its products as "all natural" with "no artificial additives," "no artificial preservatives," or "no artificial flavors," when they contained genetically modified (GM), artificial or synthetic ingredients. *Trammell v. Barbara's Bakery, Inc.*, No. 12-2664 (U.S. Dist. Ct., N.D. Cal., order filed June 26, 2013). Under the proposed terms, the company would create a $4-million non-revertible fund to pay class member claims, an incentive award for the named plaintiff, attorney's fees, and costs of notice and administration.

Class members would able to recover up to $100 for the purchase of products including cereals, cereal bars, cheese puffs, fig bars, granola bars, Snackanimal® animal cookies, organic mini-cookies, snack mixes, and crackers. The settlement would also require the company to modify the labeling and advertising of its products and prohibit it from using similar proscribed labeling on any of its products with GM, artificial or synthetic ingredients. The company, which has apparently removed GM ingredients from 31 of its products, will be able to include a Non-GMO Project Seal on product labels when it complies with the project's product verification program. According to the plaintiffs, these "non-monetary components" of the settlement will cost the company some $1.1 million to implement and cost it an additional $1.2 million annually. None of these costs will be paid from the settlement fund.

Attorney's fees would be capped at 25 percent of the fund and any residual funds would be distributed to the Consumers Union of the United States and Action for Healthy Kids. The plaintiffs contend that the work of these organizations is related to the claims and benefits the class. The court has scheduled a fairness hearing for November 8, 2013. According to a news source, the court declined to issue an injunction to stay a similar action pending in a New York federal court, questioning whether this would be an appropriate use of its power. The court also apparently declined to stay similar state-court proceedings in California, citing a lack of authority. *See Law360*, June 21, 2013.

Court Imposes Food Safety Rulemaking Deadline on FDA

Finding the Food and Drug Administration's (FDA's) proposed "target timeframes" "an inadequate response to the request that the parties submit a proposal regarding deadlines that can form the basis of an injunction," a federal court in California will require the agency to publish all proposed regulations required under the Food Safety Modernization Act by November 30, 2013. *Ctr. for Food Safety v. Hamburg*, No. 12-4529 (U.S. Dist. Ct., N.D. Cal., decided June 21, 2013). The court further ordered FDA to close each comment period no later than March 31, 2014, and to finalize the rules no later than

June 30, 2015. The order follows the court's determination that FDA violated the FSMA and Administrative Procedure Act by failing to comply with the food safety rulemaking deadlines established by Congress. Additional details about the litigation appear in issues 481 and 487 of this *Update*.

Starbucks' Tip-Distribution Policy Upheld in New York

Answering two of the questions certified to it by the Second Circuit Court of Appeals, New York's high court has determined that Starbucks Corp. can, under the state's Labor Law, distinguish among its employees for purposes of sharing the tips customers leave in a jar on the counter. ***Barenboim v. Starbucks Corp., Winans v. Starbucks Corp.*, No. 122 (N.Y., decided June 26, 2013)**.

Starbucks' policy requires the distribution of pooled tips to baristas and shift supervisors. Both classes of employees spend most of their time performing customer-oriented services, such as taking orders, making and serving beverages and food, operating the cash register, cleaning tables, and stocking products. Both also work part-time and are paid hourly. Shift supervisors have minor supervisory responsibilities.

Starbucks does not allow assistant store managers or store managers to receive any of the pooled tips. Both classes work full-time and are eligible for bonuses and benefits, such as holiday and sick pay. While assistant store managers spend the majority of their time performing customer-oriented services, "they also possess greater managerial and supervisory authority than shift supervisors." Store managers are responsible for overall store operations.

One lawsuit before the Second Circuit was filed by baristas who claimed that shift supervisors, as "agents," should not be allowed to share tips. The other lawsuit was filed by assistant store managers who claimed that they should be entitled to participate in the tip pools because they are not ineligible as "agents" under the Labor Law. The federal district courts in both cases granted Starbucks' motion for summary judgment.

The New York court decided to address the question "What factors determine whether an employee is eligible or ineligible to receive distributions from an employer-mandated tip-splitting arrangement?" Relying on state Department of Labor pronouncements on the issue, the court agreed that an employee's ability to participate in a tip pool must be based on duties and not titles. Thus "employees who regularly provide direct services to patrons remain tip-pool eligible even if they exercise a limited degree of supervisory responsibility."

Still, in response to the claims of assistant store managers that they remained eligible to share tips because they do not have full or final authority to terminate subordinates, the court said, "there comes a point at which the degree of managerial responsibility becomes so substantial that the individual can no longer fairly be characterized as an employee similar to general wait staff." The court concluded

that "the line should be drawn at meaningful or significant authority or control over subordinates." The court left it to the federal courts to apply these principles to the cases.

As to a second certified question, that is, "whether an employer may deny tip pool distributions to an employee who is nevertheless eligible to split tips under Labor Law § 196-d," the court agreed with the federal district court that the law "excludes certain people from an employer-mandated tip pool but does not require the inclusion of all employees not statutorily barred from participation" while leaving "open the possibility that there may be an outer limit to an employer's ability to excise certain classifications of employees from a tip pool." According to the court, Starbucks' decision to exclude assistant store managers from the tip pool is not contrary to the Labor Law.

5-Hour Energy Drink Makers Seek Trade Secret Protection in Tennessee

The companies that make 5-Hour Energy have reportedly expanded a quest to keep their recipe from disclosure by seeking the application of a Tennessee law protecting trade secrets to requests made by the Tennessee Department of Commerce and Insurance and state attorney general for all of the product's ingredients and their amounts. Information about the suit that Living Essentials and Innovation Ventures filed in Oregon seeking the same relief appears in Issue 488 of this *Update*. Thirty-three states have launched an investigation into 5-Hour Energy, which purportedly contains more caffeine and other stimulant ingredients than other similar products. *See The Tennessean*, June 24, 2013.

Plaintiffs' Law Firm Files 17 Lawsuits in Hepatitis A Outbreak Linked to Frozen Berries

According to Marler Clark's Website, the firm has filed 17 lawsuits against Townsend Farms, the Oregon-based company whose frozen berry and pomegranate seed blend products have purportedly been associated with a hepatitis A outbreak that has, to date, sickened more than 100 people in seven states. The firm has filed eight individual suits in the state courts of Arizona, California, Colorado, and Washington, and nine class action suits in those states and in Hawaii, Idaho, Nevada, New Mexico, and Oregon. William Marler and his firm focus on representing "victims of foodborne illness." *See Food Poison Journal*, June 21, 2013.

LEGAL LITERATURE

Parens Patriae Deemed a Flawed Strategy to Address Obesity

A recent law review note outlines the history of *parens patriae* actions that allow states to sue to protect the health and welfare of their citizens, explores its use by state attorneys general to advance public health policy—particularly regarding the use of tobacco—and argues that it cannot be successfully wielded against food companies to address rising levels of obesity in the United States. John Hoke,

"*Parens Patriae*: A Flawed Strategy for State-Initiated Obesity Litigation," *William and Mary Law Review*, April 2013.

The author opines that the "many different environmental, lifestyle, and uncontrollable genetic causes of obesity" pose a "formidable obstacle to establishing causation." He also contends that "the sheer number of food companies and food producers further weakens the causal connection between the conduct of the food industry and obesity" and that "there is scant evidence that the food industry has deliberately tried to deceive consumers about the adverse health effects of various food products."

Other deficiencies mentioned include alleged harm that is not unique to an individual state, that is, "a person's residency in one state likely does not increase or decrease that person's chances of becoming obese," and a recent trend in the courts to rein in public nuisance, often used as the basis for *parens patriae* actions, limiting the theory to its traditional moorings in harm against real property. The author briefly explores alternatives that attorneys general could consider, including consumer protection laws giving them broad authority to obtain restraining orders, subpoena documents and impose injunctions and fines. He also posits that they could engage in rulemaking and consumer education or pursue subrogation claims, but argues that regulation is best left to legislatures and that subrogation claims are subject to traditional defenses, such as assumption of the risk and contributory negligence and would thus be unlikely to prevail.

OTHER DEVELOPMENTS

Advertising Standards Board Upholds Children's Marketing Complaint Against Cereal Maker

The Obesity Policy Coalition (OPC) recently announced that the Australian Advertising Standards Board (ASB) has upheld its complaint alleging that a TV commercial for Kellogg Co.'s Coco Pops® cereal violated the Responsible Children's Marketing Initiative (RCMI). According to ASB's **case report**, the advertisement under review featured a bowl of Coco Pops® playing "Marco Polo" in a cereal bowl, followed by an image of a child consuming the product and a voiceover stating, "Just like a chocolate milkshake only crunchy."

OPC claimed that this commercial violated RCMI by (i) communicating directly with children, (ii) advertising a product that does not "represent a healthy dietary choice consistent with established scientific or Australian government standards," and (iii) failing to promote "healthy dietary habits or physical activity." In particular, the coalition argued that the commercial not only imitated children's voices and behavior in a bid to appeal "overwhelmingly to children," but was broadcast during programs watched "by large numbers of children." The complaint also sought to anticipate any assertions "that Coco Pops are a 'treat' food," insisting instead that "Coco Pops are widely understood to be a breakfast cereal; a meal which is consumed daily."

In issuing its decision, ASB agreed with OPC that the commercial seemed directed "primarily to children under 12," but found that the product advertised met the requirements for a healthier dietary choice as determined by an independent arbiter and was therefore "permitted to be advertised to children under 12." Still, even though the advertisement did not reportedly violate any of food and children's marketing codes issued by the Australian Association of National Advertisers, the board ruled the commercial in breach of RCMI because it purportedly failed to actively promote physical activity and good dietary habits.

"I hope that we are beginning to see the ASB findings its teeth on the issue of marketing to children, for a long time it has been a toothless tiger," said OPC Executive Manager Jane Martin, "but this is an issue that is too important to continually ignore. We know that advertising to children influences what they pester their parents for." *See OPC Press Release,* June 24, 2013.

FBI Seeks Responsible Party in GM Crop Destruction

According to a news source, the Federal Bureau of Investigation (FBI) has become involved in the search for the person or persons responsible for the destruction of genetically modified (GM) sugar beet crops in southern Oregon. The purported "economic sabotage" occurred in different fields during two nights in June 2013 and resulted in the loss of some 6,500 plants. Oregonians for Food and Shelter has reportedly offered $10,000 for information leading to the identification, arrest and conviction of the perpetrators. The state Department of Agriculture secretary said that to her knowledge "this is the first time someone has deliberately taken the cowardly step of uprooting high value plants growing in our state. Regardless of how one feels about biotechnology, there is no justification for committing these crimes." *See Ag Professional*, June 24, 2013.

MEDIA COVERAGE

Atlantic Article Advocates Role of Food Industry in Obesity Prevention

"An enormous amount of media space has been dedicated to promoting the notion that all processed food, and only processed food, is making us sickly and overweight," writes David Freedman in a July/August 2013 *Atlantic* **article** arguing against the widely-held belief that "the food-industrial complex—particularly the fast-food industry—has turned all the powers of food-processing science loose on engineering its offerings to addict us to fat, sugar, and salt, causing or at least heavily contributing to the obesity crisis."

According to the article, "the wholesome food movement" has consistently derided all processed foods as innately fattening, even though many offerings sold by organic and natural food purveyors contain more sugar, fat and salt than their fast-food equivalents. For Freedman, however, these efforts to demonize the food industry have overlooked not only its considerable market influence, but also the role of technology in making healthier foods as palatable as the

original products. Instead, he urges consumer advocates, policymakers and other stakeholders to add processed foods to their obesity prevention arsenals and to engage with corporations that have ready access to an obese and overweight public not already served by the wholesome food movement.

"Continuing to call out Big Food on its unhealthy offerings, and loudly, is one of the best levers we have for pushing it toward healthier products—but let's call it out intelligently, not reflexively," cautions Freedman. "Significant regulation of junk food may not go far, but we have other tools at our disposal to prod Big Food to intensify and speed up its efforts to cut fat and problem carbs in its offerings, particularly if we're smart about it… And we can ask the wholesome-food advocates, and those who give them voice, to make it clearer that the advice they sling is relevant mostly to the privileged healthy—and to start getting behind realistic solutions to the obesity crisis."

NYT Article Targets Counterfeit Food and Beverage Products

A recent *New York Times* article reported that the distribution of counterfeit food and beverage products is widespread. In "Counterfeit Food More Widespread Than Suspected," authors Stephen Castle and Doreen Carvajal note that although the scandal in Europe surrounding the substitution of horse meat for beef products has garnered the most attention from consumers, in fact, that is just a hint of what has been happening as the economic crisis persists.

Castle and Carvajal report that investigators have uncovered thousands of frauds, raising questions about regulatory oversight as criminals offer shoppers cheaper versions of everyday food products, including chocolate, olive oil, wine, juice, honey, and coffee. One recent food fraud case reportedly involved an international organized crime gang that produced and distributed a "dangerous brew" of fake vodka that appeared legitimate and bore a "near-perfect counterfeit label," but contained bleach and high levels of methanol. *See The New York Times,* June 26, 2013.

SCIENTIFIC/TECHNICAL ITEMS

Research Examines Effect of Glycemic Index on Brain

A recent study examining the effects of low- and high-carbohydrate foods on brain activity has purportedly concluded that meals with a high glycemic index (GI) "decreased plasma glucose, increased hunger, and selectively stimulated brain regions associated with reward and craving in the last postprandial period, which is a time with special significance to eating behavior at the next meal." Belinda Lennerz, et al., "Effects of dietary glycemic index on brain regions related to reward and craving in men," *American Journal of Clinical Nutrition,* June 2013. Led by New Balance Foundation Obesity Prevention Center Director David Ludwig, researchers used functional magnetic resonance imaging to analyze the brain activity of 12

overweight or obese men during the four-hour period following consumption of either a low-GI or high-GI milkshake.

The results evidently showed that "cerebral blood flow was greater [four hours] after the high- than low-GI meal in the right nucleus accumbens," a region of the brain implicated in food intake, reward and craving as well as patterns of substance abuse and dependence. The study's authors note, however, that determining whether this outcome supports a theory of food addiction would require additional research. "These neurophysiologic findings, together with longer feeding studies of weight-loss maintenance [], suggest that a reduced consumption of high-GI carbohydrates (specifically, highly processed grain products, potatoes, and concentrated sugar) may ameliorate overeating and facilitate maintenance of a healthy weight in overweight and obese individuals," they ultimately conclude.

"This research suggests that based on their effects on brain metabolism, all calories are not alike," Ludwig further explained in a June 17, 2013, *New York Times* blog post. "Not everybody who eats processed carbohydrates develops uncontrollable food cravings. But for the person who has been struggling with weight in our modern food environment and unable to control their cravings, limiting refined carbohydrate may be a first logical step." *See Science Daily,* June 26, 2013.

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