Shook, Hardy & Bacon L.L.P.

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FOOD & BEVERAGE LITIGATION UPDATE

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LEGISLATION, REGULATIONS AND STANDARDS

Proposed Legislation to Require Labeling on Food Packaging Containing BPA

Sen. Dianne Feinstein (D-Calif.) has introduced legislation (S. 1124) that would require warning labels on all food packaging made with bisphenol A (BPA). Titled the "BPA in Food Packaging Right to Know Act," the bill would require such packaging to bear labels stating, "This food packaging contains BPA, an endocrine-disrupting chemical," in addition to directing the Department of Health and Human Services to conduct a safety assessment of food containers with BPA.

Citing more than 200 scientific studies that have purportedly linked BPA exposure to cancer, reproductive disorders, cardiac disease, diabetes, early puberty, and other problems, Feinstein said, "evidence continues to mount that BPA exposure is a risk to human health, especially for children . . . [and] it is essential that consumers know what chemicals are in the products they purchase. Our children should not be used as guinea pigs by chemical companies when their parents are left in the dark about these harmful products."

Feinstein has actively campaigned to curb BPA use and proposed a federal ban on BPA in children's products in 2011. Her current bill is co-sponsored by Sens. Richard Blumenthal (D-Conn.) and Angus King (I-Maine). *See Sen. Dianne Feinstein News Release,* June 10, 2013.

Senators Urge Nickelodeon to Stop Showing Junk Food Ads

In a letter sent to Nickelodeon and its parent company Viacom, Sens. Richard Blumenthal (D-Conn.), Jay Rockefeller (D-W.V.), Tom Harkin (D-Iowa), and Dick Durbin (D-Ill.) have called on the children's entertainment network to stop showing advertisements for purportedly unhealthy foods and beverages that are "powerfully promoting childhood obesity." Citing another company's announcement last year that it would no longer accept advertisements for unhealthy foods on television, radio and Websites directed at children, the senators asked Nickelodeon to "promptly take similar action to implement strong nutrition standards for all of its marketing to children."

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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"As a leading multi-media entertainment destination for children and adolescents, Nickelodeon has a special opportunity—and responsibility—to help address our nation's childhood obesity epidemic," the senators stated. "We ask that you implement a clear policy to guide the marketing of food to children on Nickelodeon's various media platforms, including the advertisements on your channels, Internet sites, and mobile platforms."

They also referenced a Yale University Rudd Center for Food Policy and Obesity study suggesting that Nickelodeon aired one-quarter of the food advertisements viewed by children younger than age 12, as well as a Center for Science in the Public Interest report that 69 percent of foods advertised on Nickelodeon were of poor nutritional quality, including fast foods, sugary cereals and sweet snacks.

"We applaud the initiatives that Nickelodeon has taken to promote healthy lifestyles for children, including through health and wellness messaging, but remain concerned that Nickelodeon continues to run advertisements for food and beverage products of poor nutritional quality," said the senators. *See Sen. Richard Blumenthal News Release,* June 10, 2013.

TTB Modifies Mandatory Labeling for Wine

The U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau (TTB) has **issued** a final rule amending the mandatory labeling requirements for wine to permit alcohol content "to appear on other labels affixed to the container rather than requiring it to appear on the brand label." Effective August 9, 2013, the final rule seeks to provide greater flexibility in wine labeling "and will conform the TTB wine labeling regulations to the agreement reached by the members of the World Wine Trade Group [WWTG] regarding the presentation of certain information on wine labels."

According to TTB, the WWTG Agreement on Requirements for Wine Labeling specifies that all wine labels must display the following common mandatory information (CMI): (i) country of origin, (ii) alcohol content (percentage by volume), (iii) net contents, and (iv) product name. Under the agreement, all four of the CMI elements must appear in a "single field of vision," that is, "any part of the surface of the container, excluding its base and cap, that can be seen without having to turn the container." The final rule resolves the last conflict between the WWTG agreement and federal regulations by removing the TTB requirement that alcohol content appear only on the brand label. *See Federal Register,* June 10, 2013.

FDA Issues Final Rule on Color Additives in Distilled Spirits

The Food and Drug Administration (FDA) has issued a final **rule** that amends color additive regulations to provide for "the safe use of mica-based pearlescent pigments prepared from titanium dioxide and mica as color additives

in distilled spirits containing not less than 18 percent and not more than 23 percent alcohol by volume but not including distilled spirits mixtures containing more than 5 percent wine on a proof gallon basis." The action follows a petition filed by E. & J. Gallo Winery and takes effect July 15, 2013. *See Federal Register,* June 12, 2013.

LITIGATION

SCOTUS Rules Raisin Growers' Takings Defense Justiciable in Ninth Circuit

A unanimous U.S. Supreme Court has determined that the Ninth Circuit erred by failing to consider the unconstitutional takings defense raised by raisin growers who were subject to penalties and assessments for failure to pay assessments and set aside reserve-tonnage raisins under a Depression-era program intended to stabilize prices for agricultural commodities by limiting their quantity in the domestic competitive market. ***Horne v. USDA*, No. 12-123 (U.S., decided June 10, 2013)**.

Pursuant to the Tucker Act, claims "for just compensation under the Takings Clause must be brought to the Court of Federal Claims in the first instance, unless Congress has withdrawn the Tucker Act grant of jurisdiction in the relevant statute." The Court found that the Agricultural Marketing Agreement Act (AMAA) of 1937 displaces Tucker Act jurisdiction and, because the raisin growers had no alternative remedy, "their takings claim was not 'premature' when presented to the Ninth Circuit." The Court also found nothing in the AMAA to bar "handlers" from raising constitutional defenses to an enforcement action and remanded the case for the Ninth Circuit to consider the takings defense.

Federal Circuit Rules Organic Farmers Lack Standing to Challenge Monsanto Patents

The Federal Circuit Court of Appeals has affirmed a district court's dismissal of the declaratory judgment action brought by a number of organizations representing the interests of organic farmers. ***Organic Seed Growers & Trade Ass'n v. Monsanto Co.*, No. 2012-1298 (Fed. Cir., decided June 10, 2013)**. The farmers sought a declaration of non-infringement and invalidity with respect to 23 patents on various crops, including soybeans and corn. Details about the lower court's ruling appear in Issue **429** of this *Update*.

According to the Federal Circuit, "Monsanto has made binding assurances that it will not 'take legal action against growers whose crops might inadvertently contain traces of Monsanto biotech genes (because, for example, some transgenic seed or pollen blew onto the grower's land), and [the organic farmers] have not alleged any circumstances placing them beyond the scope of those assurances." The court agreed with the district court that there was

no justiciable case or controversy and thus the courts lacked jurisdiction to consider the claims.

Certification Denied, Plaintiff's False-Labeling Claims Not Typical of the Class

A federal court in California has denied the class certification motion filed by a woman who sought to represent anyone in the state who had purchased products in entire beverage lines produced by the defendant, because she had purchased just five specific products and thus her labeling and misbranding claims were not typical of those of the putative class. *Major v. Ocean Spray Cranberries, Inc.*, No. 12-3067 (U.S. Dist. Ct., N.D. Cal., San Jose Div., decided June 10, 2013).

The amended complaint alleged that the company's juice and drink products were unlawfully labeled "No Sugar Added" or had improper nutrient claims or false representations that the products were "free from artificial colors, flavors or preservatives." While the plaintiff had purchased five beverages, including a Diet Sparkling Pomegranate Blueberry drink, she sought to certify a class of purchasers of entire product lines, such as 100% juice and Sparkling. According to the court, the plaintiff "has not met her burden of showing that her claims are typical of those of the proposed class members pursuant to Rule 23(a)(3)." Her proposed classes, in the court's view, "are so broad and indefinite that they encompass products that she herself did not purchase."

For example, as to her mislabeling causes of action pertaining to the Diet Sparkling Pomegranate Blueberry drink, the court notes that the claims are based on "the specific label of this specific drink product. . . . The evidence needed to prove Plaintiff's claim that the Diet Sparkling Pomegranate Blueberry drink contained false or misleading labeling is not probative of the claims of unnamed class members who purchased products within the 'Sparkling' line that did not contain blueberries."

Court Considers Stay of GM Labeling Lawsuit Under Primary Jurisdiction Doctrine

A federal judge in California has notified the parties to a consumer-fraud action against the company that makes Mission® tortilla chips of her inclination to stay the litigation for six months and refer to the Food and Drug Administration (FDA) the question "whether products containing GMO [genetically modified organisms] or bioengineered ingredients may properly be labeled 'Natural' or 'All Natural.'" *Cox v. Gruma Corp.*, No. 12-6502 (U.S. Dist. Ct., N.D. Cal., notice filed June 7, 2013).

The plaintiffs have opposed the tentative stay order, arguing that a prompt regulatory determination is unlikely given FDA's past inaction on the matter. They reportedly cited a recent Florida decision denying a soup company's motion to dismiss similar litigation on preemption grounds because FDA does not regulate "Natural" or "All Natural" food labeling claims.

The court, however, cited a Ninth Circuit ruling deferring to FDA's regulatory authority so that the agency's "considered judgments" would not be undermined "through private litigation." Gruma Corp. has called for the court to dismiss the action altogether under the primary jurisdiction doctrine, arguing that FDA regulates food labeling. During a June 11, 2013, hearing, the court did not apparently issue a ruling, but called for additional briefing. *See Thomson Reuters News & Insight*, June 12, 2013.

Advocates Spar with FDA over FSMA Rulemaking Deadlines

The Center for Food Safety and the Food and Drug Administration (FDA) have filed separate proposals to implement a court order requiring the agency to complete its rulemaking under the Food Safety Modernization Act (FSMA) after finding that FDA had violated the law by failing to meet its rulemaking deadlines. *Ctr. for Food Safety v. Hamburg*, No. 12-4529 (U.S. Dist. Ct., N.D. Cal., Oakland Div., proposals filed June 10, 2013). Additional information about the court's order appears in Issue **481** of this *Update*.

According to plaintiff's proposal for injunctive relief, FDA "utterly fails to comply with the Court's Order and FSMA," because the agency has insisted on establishing "a schedule of target timeframes" that the agency "will endeavor to meet" with caveats that could require new timeframes. The Center proposes May 1, 2014, as the date on which seven final implementing rules must be submitted to the *Federal Register*. It would add an additional year to the produce safety standards if "FDA alters its view and undertakes further NEPA [National Environmental Policy Act] analysis." The plaintiff argues that a "deadline is a deadline, a firm parameter with meaningful consequences, not a 'target timeframe.'" It claims to have consulted with experts and stakeholders in establishing its proposed deadlines.

Meanwhile, claiming "it is not feasible to predict with anything approaching certainty when the final FSMA regulations will be ready to be published," FDA proposes "a schedule of target timeframes" that could be delayed if the administrative records require supplementation or one or more regulations need to be re-opened. The agency notes that its rulemakings generate "a significant number of substantive comments," it must revise its economic analyses each time rules in the development stage are changed, and its financial and human resources are limited. Accordingly, its "target timeframes" would roll out the seven proposed rules through the second quarter of 2014 and finalize them anywhere from 15 to 21 months after each comment period closes.

Federal Court Approves Starbucks' Settlement of Wage-and-Hour Class Action

A federal court in California has preliminarily approved a $3-million settlement of claims by state Starbucks Corp. employees that the company denied them off-duty breaks because its busy stores were understaffed and

the company required employees to take their breaks on-duty if only two employees were present. *York v. Starbucks Corp.*, No. 08-7919 (U.S. Dist. Ct., C.D. Cal., W. Div., order entered June 10, 2013). According to a news source, the court expressed some reservations about the incentive awards to the named plaintiffs, noting that the Ninth Circuit "seems to be taking an ever-more-aggressive look at incentive awards and expecting the trial court to look closely at those things." Additional information about the settlement appears in Issue 484 of this *Update*. *See Law360*, June 10, 2013.

State Appeals Court May Revive Wrongful Death Suit Against Dole

According to a news source, a California appeals court indicated during oral argument that it would likely reverse the dismissal order of a lower court in a wrongful death action alleging that Dole Food Co. paid Colombian paramilitaries to kill 170 people near South American banana plantations. *Gomez v. Dole Food Co., Inc.*, No. B242400 (Cal. Ct. App., 2d App. Div.). During the June 12, 2013, hearing, the court reportedly said "legal problems" with the trial court's dismissal were sufficient to warrant reversal. In 2012, the lower court dismissed the suit after the plaintiffs' lawyers failed to file a new complaint within 30 days after an appeals court ruling allowing them to do so became final. Plaintiffs' counsel apparently claimed that they were unaware of the deadline imposed under California procedural rules and that the court erred by dismissing the case on the basis of Dole's purported *ex parte* application. *See Law360*, June 12, 2013.

More Lawsuits Filed After GM Wheat Found in Oregon Field

Two additional putative class actions have been filed against Monsanto Co., alleging that the recent discovery of genetically modified (GM) wheat on a farm in Oregon has harmed wheat farmers throughout the United States due to diminished prices "resulting from loss of export and domestic markets" and "increased grower costs resulting from the need to, inter alia, maintain the integrity of the soft white wheat supply and/or to keep genetically engineered wheat from further entering the general wheat supply and export channels." *Dreger Enters. v. Monsanto Co.*, No. 12-211 (U.S. Dist. Ct., E.D. Wash., Spokane, filed June 5, 2013); *Ctr. for Food Safety v. Monsanto Co.*, No. 13-213 (U.S. Dist. Ct., E.D. Wash., filed June 6, 2013). Like the suit filed by a Kansas farmer, the plaintiffs allege nuisance, negligence and strict liability as to Monsanto's conduct of field tests of GM wheat throughout the country from 1998 to 2005. Information about the other lawsuit appears in Issue 486 of this *Update*.

Meanwhile, a recent *New York Times* article reports that few were surprised about the discovery. Scientists do not yet know how the strain re-emerged in Oregon, but "[e]ven with extensive precautions, gene-altered plants turn up in unwanted places regularly enough that farmers have come to consider a

few of them weeds, and even a threat to their livelihood." Monsanto officials have characterized the appearance of the GM wheat as "a random isolated occurrence," and most experts apparently agree that the wheat is not likely to spread elsewhere. Still, concerns about the transfer of GM traits to wild plants merit caution in approving GM crops, according to at least one environmental scholar. "There has always been a worry with wheat," said Portland State University Professor David Ervin. "There's going to be difficulty in controlling those grasses, and you might have to resort to stronger herbicide treatments, some of which have more environmental consequences." *See The New York Times*, June 5, 2013.

Class Claims Goldfish® Crackers Contain GM Ingredients, Cannot Be Labeled "Natural"

A California resident has filed a putative statewide class action alleging that Pepperidge Farm falsely advertised and labeled its Goldfish® crackers as "Natural" despite using genetically modified (GM), synthetic or artificial ingredients to make them. *Koehler v. Pepperidge Farm, Inc.*, No. 13-2644 (U.S. Dist. Ct., N.D. Cal., filed June 10, 2013). Among other matters, the plaintiff alleges that the company changed the product's packaging and labeling to remove the "Natural" statement and characterizes this as "an implied admission that the Products were not natural at all material times hereto when the Plaintiff and putative Class Members purchased the Products that claimed to be 'Natural' and no longer make said claim."

According to the complaint, the company's cheddar-flavored products "contain genetically modified soy in the form of soybean oil, as well as the following ingredients, which, upon information and belief, were each synthetically produced: thiamine mononitrate ('vitamin B1'), riboflavin ('vitamin B2'), folic acid and leavening (monocalcium phosphate and ammonium bicarbonate baking soda)." In addition to actual, statutory and punitive damages, the plaintiff requests that the company be required to either remove "Natural" from its product labels or reformulate its products to remove any GM, artificial or synthetic substances. He also seeks attorney's fees, costs and interest. The plaintiff alleges violation of the Consumers Legal Remedies Act; unfair, fraudulent and unlawful business practices; and false and misleading advertising.

Hepatitis Outbreak Spawns Class Actions Seeking Compensation for Vaccination

An outbreak of hepatitis A linked to frozen berry and pomegranate mixes sold in eight states has reportedly sickened 87 consumers to date and spawned at least three putative class actions seeking compensation for hepatitis A testing and vaccination. According to media reports, residents in Arizona, California and Nevada filed lawsuits after the Colorado Department of Public Health and Environment advised all consumers exposed to the allegedly contaminated

berries to request hepatitis A vaccination or immune globulin injections to reduce their risk of contracting the disease. In addition to the costs of vaccination, the complaints against Townsend Farms Corp. are seeking compensation for time missed from work as well as other expenses related to the outbreak. *See Law360,* June 3, 2013; *NBC News,* June 11, 2013; *KTAR,* June 12, 2013; *KRNV & MyNews4.com,* June 13, 2013.

Court Hears Arguments in NYC Appeal for Soda Size Limits

The New York Supreme Court Appellate Division recently heard arguments in the New York City Department of Health and Mental Hygiene's (DOHMH's) **appeal** of an order striking down its initiative to limit the size of sodas sold in restaurants and other venues. According to media reports, city lawyer Fay Ng argued that, contrary to the lower court's decision, the "Portion Cap Rule" did not exceed DOHMH's authority and has a rational basis in the need to curb rising obesity rates without entirely precluding consumer choice.

In overturning the regulation, which would have taken effect March 12, 2013, New York Supreme Court Judge Milton Tingling not only ruled that DOHMH lacked "the authority to limit or ban a legal item under the guise of 'controlling chronic disease,'" but that the measure would have "arbitrary and capricious consequences" arising from "uneven enforcement" and "loopholes," such as application to some but not all food establishments, exclusion of beverages with "significantly higher concentrations of sugar sweeteners and/or calories on suspect grounds" and no limitations on refills. In its appeal, however, the health department apparently pointed to previous measures targeting lead paint and *trans* fat as evidence of its "unique, extensive power" to regulate health issues other than communicable disease. It also reiterated that the limitations would not prevent consumers from obtaining sugar-sweetened beverages if desired. "People are free to have and drink as many ounces of sugary drinks as they want," Ng was quoted as saying.

But the attorney representing the American Beverage Association (ABA) reportedly countered that DOHMH created the regulation without legislative input and thus overstepped its narrow mandate. "It's a breathtaking example of agency overreach," he said, suggesting that the rule was grounded in political reasoning rather than scientific evidence. "For the first time, this agency is telling the public how much of a safe and lawful beverage it can drink. This is the government coercing lifestyle decisions."

After attending the hearing, New York University Professor of Nutrition Marion Nestle further noted that the appellate judges "were much tougher on the [DOHMH] attorney than on the one from the ABA," challenging Ng "on jurisdiction, judicial precedents, scientific basis, efficacy, rationality, and triviality" and repeatedly referring to the Portion Cap Rule as a ban. "One said, 'Do you need a PhD in public health to know that sugary drinks aren't good for you?'" Nestle

reported. Additional details about the lower court's ruling appear in Issue 475 of this *Update*. *See Law360, The Los Angeles Times* and *Reuters,* June 11, 2013; *Food Politics Blog,* June 12, 2013.

JPML Centralizes Actions Alleging Beer Maker Diluted Product

The Judicial Panel on Multidistrict Litigation (JPML) has ordered the centralization of six actions claiming that Anheuser-Busch Companies, LLC, systematically overstated the alcohol content of its malt beverage products by diluting them with water. ***In Re: Anheuser-Busch Beer Labeling Mktg. & Sales Practices Litig.*, MDL No. 2448 (JPML, decided June 10, 2013)**. The putative class actions being centralized have all alleged that the beer manufacturer added extra water to 11 different products despite its claims that any deviation from the alcohol content stated on the product label "is within the range permitted by federal regulation."

In transferring the actions to the U.S. District Court for the Northern District of Ohio, the panel agreed with plaintiffs that "notwithstanding defendants' apparent acknowledgement of some variance for unspecified products, the alleged conduct at issue—systematic overstatement of alcohol content—will remain in dispute and will involve complex discovery concerning the calibration of the involved equipment and corporate policy with respect to labeling." The order thus finds that all six actions "involve common questions of fact" and that centralization under Section 1407 "will eliminate duplicative discovery; prevent inconsistent pretrial rulings, especially with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary." Additional details about the putative class actions appear in Issue 473 of this *Update*.

Subway Footlong Sandwich Litigation Centralized in Eastern District of Wisconsin

The Judicial Panel on Multidistrict Litigation (JPML) has granted the defendants' motion for centralization in litigation involving allegations that Subway Sandwich Shops, Inc., and Doctor's Associates, Inc., "engaged in a false or misleading advertising campaign regarding the size of the Subway Footlong sandwich." ***In Re: Subway Footlong Sandwich Mktg. & Sales Practices Litig.*, MDL No. 2439 (JPML, decided June 10, 2013)**. According to the order, the seven actions addressed by JPML involve common factual questions, with plaintiffs alleging "that defendants have uniform standards and practices with respect to the manufacturing process and franchisee training which result in the actual length of the sandwich being materially shorter than advertised in violation of state consumer protection laws."

JPML has therefore chosen to centralize the actions in the U.S. District Court for the Eastern District of Wisconsin, which provides "a geographically central forum for this nationwide litigation, and will be convenient and accessible for the parties and witnesses." The defendants had originally moved to transfer the litigation to the Northern District of Illinois. Additional details about the Subway Footlong sandwich complaints appear in Issue 463 of this *Update*.

OTHER DEVELOPMENTS

Cantaloupe Producers Launch Food Safety Program

The California Cantaloupe Advisory Board (CCAB) has launched a new food-safety program that requires government audits of all cantaloupe production activities. Described by CCAB as "the only mandatory food-safety program that requires government audits of all cantaloupe production activities," the program invites government auditors to inspect all aspects of operations including growing, harvesting, packing, and cooling to ensure that a set of "science-based standards is being followed." Under the program, handlers must be 100 percent compliant with food-safety audits that cover 156 checkpoints. According to California melon producer and CCAB Chair Steve Patricio, CCAB will use inspectors from the California Department of Food and Agriculture instead of private inspection companies to ensure accountability, uniformity and consistency of audits throughout the California cantaloupe industry.

Patricio also noted that the new audit program will allow producers to meet or exceed requirements of the Food Safety Modernization Act when it is implemented and that cantaloupes that have been approved through the program will bear a certification seal.

The program is reportedly part of an effort to restore consumer confidence in the cantaloupe market, which is still recovering from the 2011 *Listeria* outbreak linked to cantaloupes grown in Colorado. *See CCAB News Release* and *The Denver Post,* June 12, 2013.

Scientists Recommend Inclusion of Glycemic Index on Food Labels

An international group of nutrition scientists has recommended that the quality of carbohydrates in foods as measured by their glycemic index (GI) should be included in national dietary guidelines and on food labels. Drafted during the International Scientific Consensus Summit on Glycemic Index, Glycemic Load and Glycemic Response held June 6-7, 2013, in Stresa, Italy, the group's scientific consensus statement concludes that carbohydrate quality is significant and that carbohydrates present in different foods affect post-meal blood sugar differently, with important health implications. The scientists also cited "convincing" evidence that low GI/glycemic load (GL) diets reduce the risk of type 2 diabetes and coronary heart disease, help control blood glucose in people with diabetes and may help with weight management.

"Given essentially conclusive evidence that high GI/GL diets contribute to risk of type 2 diabetes and cardiovascular disease, reduction in GI and GL should be a public health priority," said participating scientist and Harvard School of Public Health Department of Nutrition Chair Walter Willett. *See OldWayspt.org,* June 11, 2013.

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FOOD & BEVERAGE LITIGATION UPDATE

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SCIENTIFIC/TECHNICAL ITEMS

Study Finds Cocoa Ameliorates Obesity-Related Inflammation and Insulin Resistance

A recent study has purportedly found that mice fed a high-fat diet supplemented with cocoa powder exhibited fewer indicators of obesity-related inflammation and insulin resistance than mice raised on the high-fat diet alone. Yeyi Gu, et al., "Dietary cocoa ameliorates obesity-related inflammation in high fat-fed mice," *European Journal of Nutrition,* June 2013. According to a June 13, 2013, Penn State press release, the results evidently showed that for mice eating "the human equivalent of 10 tablespoons of cocoa powder—about four or five cups of hot cocoa—during a 10-week period," cocoa supplementation (i) "significantly reduced the rate of body weight gain," (ii) "attenuated insulin resistance," (iii) "reduced the severity of obesity-related fatty liver disease," (iv) "significantly decreased plasma levels of the pro-inflammatory mediators interleukin-6 [and] monocyte chemoattractant protein-1," and (vi) reduced the expression of pro-inflammatory genes "in the stromal vascular fraction (SVF) of the epididymal white adipose tissue."

"What surprised me was the magnitude of the effect," the lead author said of the findings. "There wasn't as big of an effect on the body weight as we expected, but I was surprised at the dramatic reduction of inflammation and fatty liver disease… Most obesity researchers tend to steer clear of chocolate because it is high in fat, high in sugar and is usually considered an indulgence. However, cocoa powder is low in fat and low in sugar. We looked at cocoa because it contains a lot of polyphenolic compounds, so it is analogous to things like green tea and wine, which researchers have been studying for some of their health benefits."

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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.