

Feedstuffs

THE WEEKLY NEWSPAPER FOR AGRIBUSINESS

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Special Report

Supply chain crisis: SHB attorneys 'go distance'

By ROD SMITH

THE attorneys and other professional staff at Shook, Hardy & Bacon LLP (SHB) are experienced in the business, science and technology that are at the center of many issues of today, including issues in which the SHB agribusiness and food practice specializes.

"We are a pretty strong box of tools" for agribusiness and food clients, said Mark Anstoetter, a partner and practice lead at SHB.

It's a box of tools that's becoming necessary for farmers, livestock producers, packer/processors, food manufacturers, restaurant operators and retailers — the farm-to-fork food supply chain that SHB represents — "in an increasingly complicated world" in which the chain's links are being called on to do things they never did before, added Christopher McDonald, also an SHB partner.

Avoiding those complications through risk management is what SHB puts first. The firm has clients at every part of the food supply chain, and "we attempt to help them manage risk from the time a food product is produced until it's consumed" to head off legal or regulatory matters, said Madeleine McDonough, also a partner and practice lead.

However, "we are litigators," Anstoetter said, which provides clients with the comfort of knowing that if risk management breaks down, "we can go the distance" in the courtroom and other settings.

Anstoetter, McDonough, McDonald and attorney Sarah Sunday talked with *Feedstuffs* at SHB headquarters in Kansas City, Mo.

Connecting expertise

The SHB agribusiness and food practice was created about 10 years ago, when it became apparent that SHB had

established considerable expertise in areas critical to the food supply chain, like agroterrorism/crisis management, biotechnology, environmental sustainability, food safety and compliance, legislative and regulatory work.

For instance, McDonough noted that she was a clinical pharmacist before getting her law degree and today handles SHB pharmaceutical law work and interaction with the Food & Drug Administration, while Anstoetter, with a background in engineering, has been involved predominantly in food production issues and environmental issues associated with food production.

"We connected all the dots — all the expertise," she said.

SHB puts those dots to work in representing individual producers, as well as agribusiness and food companies.

Risks, standards

In discussing SHB's concept of risk management, or risk avoidance, Anstoetter noted that the food supply chain has become so interdependent that it's difficult for any part of the chain "to silo" because any part — a farmer, an animal health or feed company, a packer, a retailer, etc. — becomes involved whenever a product "is handed off to them or whenever they hand off something to others."

A reputation is at stake in some way everywhere in the chain, McDonough said. A recall, for instance, is not only exhaustive and expensive but "affects reputations of everyone in the chain." SHB tries to prevent such problems through risk management, she said.

As SHB also litigates, "we understand what happens in a trial before a jury," McDonough said; "we understand the implications" of litigation and can use that knowledge to help clients develop risk management strategies.

"It's your product," he said, "and if you don't have the resources (to defend the product), your business may be on the line."

"We are trying to protect our clients," Anstoetter said. "There are places throughout the chain where decisions are made that affect products and the chain — 'tipping points' — and those tipping points need to be managed."

McDonald said this is leading to requirements within the supply chain for standards.

"The supply chain is saying, 'If you are selling to us, here are our standards that you have to comply with, that you have to satisfy,'" he explained.

He said these standards minimize risk and are used, in some cases, to differentiate products. What's important, McDonald said, is that the end of the chain "is reaching further back" into the chain in imposing standards.

Resiliency, response

Activist groups are targeting virtually every sector of the food supply chain for one reason or another, Anstoetter said.

Some of this resistance comes from individuals and organizations that are "entrenched" in the way food was produced 50 years ago and say that way is better for animal welfare, the environment and food safety, he said.

However, "I would argue just the opposite," Anstoetter said. "Large-scale production has tremendous controls" to care for animals, land and water and the quality of food.

Some of this resistance also comes from people who live near farms and plants and have the "not-in-my-backyard" mentality, but most of it comes from activist groups and plaintiff lawyers who are looking only for opportunities to litigate — with cases not grounded on fact — to advance an agenda and/or to realize financial gain, he said.

Modern agriculture also is struggling with misperceptions as more and more people move farther from the farm and even from rural areas, McDonald said.

As a nation, "we've left our farm roots. People do not understand what it requires to get food to the table," and it takes a lot of energy and expertise for food producers "to deal with special-interest groups because of that lack of understanding," he said.

There are hundreds of these activist groups, Sunday said: "They represent every facet of the debate, and they are extremely persuasive."

These aren't necessarily legal matters but societal matters that come with "a free and open society where people can affiliate as they want and with whom they want," Anstoetter said, and it becomes more complicated for food producers because of the internet and social media.

"This does impact our clients," he said, "and for this reason, we do get involved to help them."



Photo: Shook, Hardy & Bacon LLP

BOX OF TOOLS: The attorneys and staff at Shook, Hardy & Bacon LLP represent what Mark Anstoetter (right) described as a "strong box of tools" to help all parts of the food supply chain manage risk and defend themselves against challenges. Also shown are Christopher McDonald and Madeleine McDonough.

This brings the issue back to risk management, the attorneys said.

To be successful, food producers need to provide what consumers demand — good-tasting, high-quality and safe food that's convenient and a price value, McDonald said. However, they also must be resilient and able to respond to lawsuits and other actions triggered by those societal matters, he said.

Anstoetter said SHB tries to identify the "hot buttons" that can trigger a crisis and views those as opportunities "to adjust risk. We spend a lot of time with our clients in risk management."

He said SHB does not try to tell food producers how to finish a steer, grow a chicken or run a plant, meat case or restaurant "because we don't know how to run their businesses. However, we can give them advice on risk management and on where they can avoid or minimize risk."

To assist clients in managing risk, SHB provides one-on-one counseling, hosts regular seminars on emerging issues and publishes a weekly "Food & Beverage Litigation Update" that tracks those emerging issues.

SHB has a staff of engineers, biologists, toxicologists and other professional experts to help identify and track those issues. "We are uniquely positioned with the discipline and talent to go to every side of the table," Anstoetter said. ■

Key Points

- Firm defends agribusiness and food producers but puts "avoidance of complications" first.
- Practice emphasizes farm-to-fork strategy to manage risk from production to consumption.
- Every part of food supply chain has responsibility to other parts.

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FOP labels compelling but still confusing

By ROD SMITH

FRONT-OF-PACKAGE (FOP) labels represent “a compelling concept” for guiding consumers in their food selections, but they also can get so confusing to consumers that FOP labels won’t be any more successful than the current nutrition panels on the backs or sides of packages, according to Sarah Sunday, an attorney specializing in health and nutrition issues.

FOP labels are compelling because chronic disease is the leading cause of mortality in the U.S., and being overweight or obese, like two-thirds of U.S. adults are, increases the risk of chronic disease, she said.

Accordingly, an FOP label — whether a mini nutrition panel or a coding system such as checkmarks — supposedly would be so visual that a grocery shopper would have to see and use it, Sunday said.

Still, consumers have not shown that they understand and use FOP labels any better than back and side nutrition panels, she said, and FOP labels have the potential “to be very confusing to consumers.”

Furthermore, Sunday noted that the Food & Drug Administration, which is leading the charge for FOP labels, believes that the visual nature of the labels would encourage food manufacturers to reformulate their

products to make them healthier, which she suggested is outside the bounds of FDA.

Certainly, chronic disease, heart disease and obesity must be addressed, and “there is something to be said for encouraging people to make healthful decisions” regarding the foods they buy and eat, Sunday said. However, food manufacturers will reformulate their products to meet consumer demand, and a number already are doing so to reduce the fat and sodium content, she said.

Sunday, an attorney with Shook, Hardy & Bacon LLP, talked with *Feedstuffs* at her office in Washington, D.C., and emphasized that her thoughts do not reflect those of the firm or its clients. Shook, Hardy & Bacon has a large agriculture and food practice (nearby story).

Central issues

FOP labeling did, in fact, start with the food industry in the 1990s, when food producers that met the American Heart Assn.’s heart health requirements were allowed to use its heart health checkmark on the front of their packages, Sunday noted.

A coalition of food processors, health researchers, scientists and retailers developed the “Smart Choic-

es” FOP labeling program with 19 different food categories — including certain dairy and meat products — that met their established nutrient requirements based on the Dietary Guidelines for Americans, she added.

Smart Choices has suspended activities pending the outcome of FDA’s FOP rule-making (*Feedstuffs*, Dec. 14, 2009). FDA currently is awaiting recommendations from a committee established within the Institute of Medicine and is conducting its own studies on the different kinds and effectiveness of FOP labels (*Feedstuffs*, May 10).

One of the central issues FDA needs to unravel, Sunday said, is how well consumers understand and use FOP labels, especially given FDA’s own research that found that consumers responding to an FOP label are less likely to then read and use the package’s back or side nutrition panels.

The FOP label — or, in lieu of that, a counter or shelf “label” — must be based on consistent nutrient information, she said, pointing to how different “scoring systems” available today are based on different nutrient ideas and measurements. FDA needs to come up with one system that’s easy for consumers to grasp and use, she said.

It’s obvious that the current back or side nutrition panels have not prevented obesity, Sunday said, so “we need a better model.”

Calories, serving sizes

Sunday suggested that better models could focus more on calories and serving sizes. Consumers do look for and understand calories, and perhaps an FOP label showing the total number of calories in the package — not per serving — would be helpful, she said.

“Who eats a half a cup of ice cream? No one,” she said.

However, if a person knows how many calories are in the entire package of ice cream, he or she might pay closer attention to his ice cream consumption, Sunday said.

Indeed, maybe serving sizes need to be updated, she suggested, and maybe food manufacturers would reformulate their products more quickly than they would for an FOP label listing nutrition information.

Sunday said FOP labels would be positive for fresh meat and poultry because meat and poultry have positive nutritional profiles — low in carbohydrates, fat and sodium, etc.

Labels pulling consumers to the dairy and meat cases and the fruit and vegetable section could help them make healthier food buying decisions, she said. ■

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