ISSUE 441 | MAY 25, 2012

FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

Codex Meeting to Target Draft U.S. Positions on Food Standards

The U.S. Department of Agriculture has **announced** a June 5, 2012, public meeting in Washington, D.C., to provide information and receive comments on draft U.S positions to be discussed at the 35th Session of the Codex Alimentarius Commission on July 2-7 in Rome, Italy.

Agenda items include revocation of existing Codex standards, proposals for the elaboration of new standards and for the discontinuation of work, general implementation status, and a draft Codex strategic plan for 2014-2019. *See Federal Register,* May 24, 2012.

APHIS Extends Comment Deadline for Proposed Bovine Import Regulations

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) has **extended** until June 14, 2012, the comment period for a proposed rule that would amend regulations governing the importation of live bovines and other animal products with regard to bovine spongiform encephalopathy (BSE). Under the **proposed rule**, APHIS would adopt World Organization for Animal Health criteria that identify a country's BSE risks as negligible, controlled or undetermined, bringing U.S. import regulations in line with international health standards.

APHIS has pushed back the deadline to allow "interested persons additional time to prepare and submit comments." Additional details about the proposed rule appear in **Issue 432** of this *Update*.

FSIS Issues Notice on Final Rule Regarding Misbranded Meat, Poultry

The U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) has issued a **notice** requiring inspectors to make establishments aware of how to comply with a May 8, 2012, final rule on misbranded meat and poultry. The rule requires establishments to prepare and maintain recall procedures, notify FSIS within 24 hours when adulterated or misbranded meat and poultry prod-

SHB offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

For additional information on SHB's Agribusiness & Food Safety capabilities, please contact

Mark Anstoetter
816-474-6550
manstoetter@shb.com

or

Madeleine McDonough
816-474-6550
202-783-8400
mmcdonough@shb.com

If you have questions about this issue of the Update, or would like to receive supporting documentation, please contact Mary Boyd (mboyd@shb.com) or Dale Walker (dwalker@shb.com); 816-474-6550.

ucts that could harm consumers have entered the marketplace and document their Hazard Analysis and Critical Control Point system food safety plans. The final rule was discussed in **Issue 439** of this *Update*.

FDA Meeting to Focus on International Capacity-Building Food Safety Plan

The Food and Drug Administration (FDA) has **announced** a public meeting titled "International Capacity Building with Respect to Food Safety." Scheduled for June 19, 2012, in Washington, D.C., the meeting will highlight "FDA's comprehensive plan to expand the technical, scientific, and regulatory capacity of foreign governments and their respective food industries in countries that export foods to the United States."

Under the auspices of the Food Safety Modernization Act, the capacity-building plan seeks input from food industry representatives, federal and foreign government officials, consumer organizations, and other stakeholders. The plan seeks (i) "[r]ecommendations for bilateral and multilateral arrangements and agreements, including providing for responsibilities of exporting countries to ensure food safety"; (ii) "[p]rovisions for secure electronic data sharing"; (iii) "[p]rovisions for mutual recognition of inspection reports"; (iv) "[t]raining of foreign governments and food producers on U.S. requirements for safe food"; (v) "[r]ecommendations on whether and how to harmonize requirements under the Codex Alimentarius"; and (vi) "[p]rovisions for multilateral acceptance of laboratory methods and testing and detection techniques." FDA has requested comments by July 20, 2012. *See Federal Register*, May 21, 2012.

EFSA Refutes Justification for French Ban on GM Maize

The European Food Safety Authority's Panel on Genetically Modified Organisms (EFSA GMO Panel) has issued an **opinion** on the French government's move to prohibit the planting of a certain GM maize variety, concluding that "there is no specific scientific evidence, in terms of risk to human and animal health or the environment, that would support the notification of an emergency measure under Article 34 of Regulation (EC) No 1829/2003." According to EFSA, which noted that most of the studies cited by French authorities were recycled from a 2008 submission on the same topic, the agency was unable to identify "any new science-based evidence" to support the country's ongoing ban.

Citing risks to environmental health, French Agricultural Minister Bruno Le Maire in March 2012 reinstated a ban against this particular variety of GM maize after French courts overturned a previous emergency measure. As one spokesperson explained to media sources, however, EU Health Commissioner John Dalli must now consider "how to follow up on this ruling, though technically we could ask France to raise its ban. The commission will wait

for the conclusions of the next environment ministers' meeting June 11 in Luxembourg and hopes for a positive outcome to its proposals for cultivation, which have been blocked for almost two years by France and others." *See AFP,* May 21, 2012.

Australian Agency Fines Olive Oil Maker Over "Extra Virgin" Claims

The Australian Competition and Consumer Commission (ACCC) has **fined** a Kensington, South Australia, olive oil manufacturer a total of A$13,200 for marketing its products as "extra virgin" even though they purportedly did not meet international grade standards. According to a May 18, 2012, ACCC press release, The Big Olive Company Pty Ltd over a four-month period "supplied nearly three thousand 500ml bottles of 'Oz Olio' oil with a representation of extra virgin olive oil on the front label." The commission has since alleged that some of these oils contained "more free fatty acids than permitted by olive oil trade standards," indicating that the "olives used to make the oil were old, damaged or otherwise of poor quality and the oil was not extra virgin olive oil at the time of bottling."

ACCC apparently decided to test four imported oils and three domestic labels after receiving complaints from the Australian Olive Association (AOA) about lower-quality oils being dubbed "extra virgin." Although the other product samples reportedly met voluntary standards for extra virgin oil, the commission has pledged to continue working with AOA to address its "broader concerns" about olive oil claims and to "ensure greater clarity in labeling."

"The term 'extra virgin' is widely understood by consumers to mean a premium product. Consumers should be able to trust that what's on the label is what's in the bottle," said ACCC Chair Rod Sims. "Misleading 'extra virgin' claims trick consumers into paying a premium for an inferior product. Traders who abuse the trust of Australian consumers in this way expose themselves to enforcement action."

Alabama Passes Legislation Barring Obesity-Related Lawsuits

The Alabama State Legislature has reportedly passed a bill (**HB 242**) that would prohibit lawsuits "based on claims arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food." Sponsored by Representative Mike Jones (R-Andalusia), the Commonsense Consumption Act would evidently bar civil actions on these grounds against "packers, distributors, carriers, holders, sellers, marketers, or advertisers of food products that comply with applicable statutory or regulatory requirements."

According to the May 18, 2012, issue of *Capitol Retail Report*, the Alabama Senate voted 29-0-2 in favor of the bill on the final day of the legislative session, delivering it to Governor Robert Bentley (R) for signature.

LITIGATION

ALJ Says Some Implied Health Claims in POM Wonderful Ads Not Substantiated

An administrative law judge (ALJ) has upheld some of the Federal Trade Commission's (FTC's) allegations that POM Wonderful violated federal law by making deceptive claims in some advertisements that the company's pomegranate juice and related products treat, prevent, or reduce the risk of heart disease, prostate cancer and erectile dysfunction. ***In re: POM Wonderful LLC*, No. 9344 (FTC, decided May 17, 2012)**. The ALJ's initial decision is deemed the decision of the FTC 30 days after it is served on the parties, unless appealed or placed on FTC's docket on its own motion.

According to the ALJ, some, but not all, of POM's ads could be interpreted as containing an "implied claim" that the company's products treat, prevent or reduce the risk of some diseases and that "these effects were clinically proven." The ALJ also determined that (i) "the appropriate level of substantiation for claims that a product treats, prevents, or reduces the risk of a disease is competent and reliable scientific evidence"; (ii) if such claims are made in connection with a food or food-derived product "that is not being offered as a substitute for medical treatment, double-blind, randomized, placebo-controlled clinical trials, such as those required by Food and Drug Administration [FDA], are not required"; and (iii) for claims that a food or food-derived product treats, prevents or reduces the risk of disease, "competent and reliable scientific evidence must include clinical studies, although not necessarily double-blind, randomized, placebo-controlled clinical trials, that are adequate to show that the product did treat, prevent, or reduce the risk of disease."

On these bases, the ALJ concluded that POM's substantiation was inadequate to support the implied claims in some of its ads, and thus they were false or misleading under federal law. "The evidence further shows that such health-related efficacy claims are material to consumers," said the ALJ. While the ALJ's cease and desist order is designed to prevent POM from engaging in deceptive advertising practices in the future, it does not include FTC's "proposed provision prohibiting Respondents from making any disease claim in the future, unless the claim has received prior approval from the Food and Drug Administration in accordance with Food and Drug Administration statutes and regulations."

POM Wonderful has responded to the decision by mounting an "aggressive" ad campaign in the national media including selected quotations; POM contends that the company has the "right to share valuable, scientifically validated information about the health benefits of its safe food with consumers." Among the quotations is "Competent and reliable scientific evidence supports the conclusion that the consumption of pomegranate juice and pomegranate extract supports prostate health, including by prolonging PSA doubling time in men with rising PSA after primary treatment for prostate cancer." Omitted is an ALJ caveat that follows the statement: "However, the greater weight of the persuasive expert testimony shows that the evidence relied upon by the respondents is not adequate to substantiate claims that POM products treat, prevent or reduce the risk of prostate cancer or that they are clinically proven to do so."

In a statement, the company's chief legal officer reportedly said, "Through its lawsuit against POM, the FTC tried to create a new, stricter industry standard, similar to that required for pharmaceuticals, for marketing the health benefits inherent in safe food and natural food-based products. They failed." The company also hailed the ALJ's rejection of FTC's request that POM receive pre-approval for its health claims. In this regard, the ALJ stated, "Neither FDA pre-approval, nor FDA standards for obtaining such approval, constitutes the required level of substantiation under the FTC Act or applicable case law." A company spokesperson called this "a huge win for us [and] for the natural food products industry."

According to a news source, POM has sponsored at least 100 studies on the health effects of pomegranate juice over the past decade, devoting more than $35 million to the research. New York University Nutrition Professor Marion Nestle commented on those aspects of the ruling dealing with conflicting research by noting, "It is not difficult to design research studies to give sponsors the answers they want and to make sure they are conducted well. POM is getting the best research that money can buy." She also indicated, "Health claims are about marketing, not health. Let's hope the FTC can make the decision stick." *See POM Wonderful News Release* and *FTC News Release*, May 21, 2012; *Law.com*, May 22, 2012; *Courthouse News Service* and *FoodPolitics.com*, May 23, 2012; *The New York Times*, May 25, 2012.

EEOC Not Entitled to Medical Information from Nestlé in Genetic Discrimination Case

A federal court in Kentucky has determined that the Equal Employment Opportunity Commission (EEOC) is not entitled to information about the medical examinations of Nestlé Prepared Foods employees in relation to a claim by one former employee that he was fired due to "genetic information" discrimination. *EEOC v. Nestlé Prepared Foods*, No. 5:11-mc-359-JMH-REW (U.S. Dist. Ct., E.D. Ky., decided May 23, 2012). So ruling, the court rejected in part a

magistrate judge's recommended disposition and denied EEOC's motion for enforcement of a subpoena.

According to the court, the information sought was irrelevant because there was no evidence that any other employee had alleged violations of the Genetic Information Non-Discrimination Act (GINA), 42 U.S.C. § 20000ff-1. While acknowledging that EEOC ordinarily "has broad access to evidence that is relevant to a charge being investigated," the court was "not persuaded that it has free reign to conduct a broad, company-wide investigation based upon a single allegation of an isolated act of discrimination." In this case, the former employee had apparently been terminated shortly after undergoing an employer-requested fitness-for-duty evaluation during which he "provided information concerning his family history of certain medical conditions."

Based on his allegation of "genetic information" discrimination, EEOC directed Nestlé to provide documents regarding each physician to whom the company had referred employees and detailed employment information about each employee who had submitted to medical examinations, such as reasons for not hiring or for terminating. Responding to questions about the materials' relevance, counsel evidently responded that EEOC did not know whether systemic discrimination had occurred at Nestlé. "At this point we don't know. We won't know that until we have the information and then we can determine whether or not that's the case."

In the court's view, not "every charge of discrimination justifies an investigation of the employer's facility-wide employment practices. To conclude otherwise would eviscerate the relevance requirement and condone fishing expeditions, against which the Sixth Circuit has warned. Here, the only alleged GINA violation arose from [the employee's] EEOC charge in which he checked the box for 'genetic information.'" While the court overturned the magistrate's ruling on relevance, it left undisturbed a finding that Nestlé had notice of its obligations under GINA.

Court Dismisses "All Natural" Suit Against Lifewater® Makers

A federal court in California has dismissed with prejudice a putative class action filed in March 2012 against the companies that make a line of SoBe® beverages known as 0 Calories Lifewater®. *Hairston v. S. Beach Beverage Co., Inc.*, No. 12-1429 (U.S. Dist. Ct., C.D. Cal., decided May 18, 2012). Further details about the case appear in **Issue 429** of this *Update*.

According to the court, state-law consumer-fraud claims based on the use of fruit names to describe the different Lifewater flavors and the use of common vitamin names instead of the vitamins' chemical names are preempted by federal law which allows both types of labeling. Food and Drug Administration (FDA) regulations, said the court, "explicitly permit manufacturers 'to use the name and images of a fruit on a product's packaging to describe the

characterizing flavor of the product even where the product does not contain any of that fruit, or contains no fruit at all.'" As well, FDA regulations permit the synonyms "Vitamin C" and "Ascorbic acid" to be used "in the alternative in a product's nutritional information labeling."

Because the "all natural" label designation was immediately followed by references to the fruit names and common vitamin names, the court found that the plaintiff's consumer fraud claims relating to the term "all natural" also failed. In this regard, the court stated, "it will be impossible for Plaintiff to allege how the 'all natural' language is deceptive without relying on the preempted statements regarding the fruit names and vitamins." The court also observed that any ambiguity from the perspective of the reasonable consumer is "clarified by the detailed information contained in the ingredient list, which explains the exact contents of Lifewater." Thus, the court ruled "that the challenge to the 'all natural' language on Defendants' Lifewater is not deceptive as a matter of law."

The court further determined that the plaintiff could not state a breach of warranty claim under the Magnuson-Moss Warranty Act because it is expressly "inapplicable to any written warranty the making or content of which is otherwise governed by Federal law," here, the federal labeling regulations that "govern the Lifewater labeling challenged by Plaintiff." According to the court, the plaintiff also failed to allege sufficient facts to sustain a warranty claim "because the label neither promises a defect-free product, nor guarantees a level of performance over a specific period of time. The challenged statements—'all natural with vitamins' and the names of various Lifewater flavors—are 'product descriptions' rather than promises that Lifewater is defect-free, or guarantees specific performance levels." The court dismissed the complaint without providing the plaintiff an opportunity to amend, finding that no amendment could cure its shortcomings.

Court Allows Truck Driver's Civil Rights Claims to Proceed Against Burger King Franchisee

A federal court in Pennsylvania has denied the motion for summary judgment filed by a Burger King franchisee sued for violating the civil rights of an African-American truck driver who alleged that restaurant employees spit in his sandwich before serving it. *Goodwin v. Fast Food Enters. #3, LLP*, No. 10-23 Erie (U.S. Dist. Ct., W.D. Pa., decided May 16, 2012). This motion was based on the assertion that the plaintiff would be unable to establish that the defendant is liable for the "allegedly discriminatory actions of the employees" and a request to strike the plaintiff's request for punitive damages. In a previous motion, also decided against the franchisee, the court determined that "there were triable issues of material fact concerning whether Goodwin's sandwich had been spat into and whether the incident, if it occurred, was racially motivated."

According to the court, the doctrine of *respondeat superior*, may not, as argued by the defendant, apply in cases brought against public entities under 42 U.S.C. § 1983, but it is available to establish liability in actions against private employers under 42 U.S.C. § 1981. Because the plaintiff had alleged that a supervisor "participated in the alleged discriminatory act by shielding Goodwin's vision so that another employee could spit into his sandwich" and because the supervisor was authorized to hire, fire, discipline, or promote restaurant employees, the court found the pleading sufficient to state a claim for liability against the defendant. As to the plaintiff's claim for punitive damages, the court found the record insufficiently developed to render summary judgment appropriate. While the defendant had relied on its purported "good faith" efforts to comply with civil rights law by training its employees and adopting a diversity policy, it failed to submit deposition testimony or documentation to support that defense.

California Labor Relations Board Enters Strawberry Farm Labor Dispute

The California Agricultural Labor Relations Board has filed a petition for injunctive relief against a Ventura County strawberry farming operation alleging unfair labor practices and seeking to stop the respondent from interfering with employees' free exercise of rights under the labor code. *State v. Montalvo Farms, LLC*, No. 56-2012-00416985-CU-PT-VTA (Cal. Super. Ct., Ventura Cnty., filed May 9, 2012). According to the petition, the farm hires Mixteco farmworkers, most of whom speak neither English nor Spanish. Due to language constraints, these workers allegedly endure "worse working conditions than other agricultural workers, including pervasive under-counting of their strawberry boxes picked, supervisors who charge for rides to work, injuries on the job that are ignored, and outright discrimination due to their inability to speak Spanish fluently."

One Mixteco worker, who is fluent in Mixteco and Spanish, apparently worked at the farm for several years and became a spokesperson for the Mixteco workers. He allegedly requested "better working conditions such as cleaner drinking water, cleaner restrooms placed closer to where the employees are working, a wage increase, and an end to the discrimination against and mocking of the way Mixteco employees speak Spanish." He also purport-edly became involved in union-organizing activities, conduct that allegedly coincided with the farm's refusal to re-hire him. The farm allegedly launched an anti-union campaign that included, according to the complaint, employee intimidation, refusal of union access and a physical assault. The petition seeks an order requiring the farm to cease and desist violating state labor law, take affirmative action to effectuate the law's policies and reinstate the worker who began organizing his fellow employees.

Advocacy Coalition Agrees to Drop Nanotechnology Lawsuit Against FDA

A coalition of advocacy organizations has reportedly agreed to dismiss as moot its lawsuit seeking an order requiring the Food and Drug Administration (FDA) to respond to its 2006 petition asking the agency to regulate products containing nanomaterials. Information about the lawsuit appears in Issue 422 of this *Update*. The organizations, including Food and Water Watch and the Institute for Agriculture and Trade Policy, apparently indicated that while the agency has rejected some of their key proposals, FDA has formally responded to the petition. FDA has said that it will not regulate nanomaterials as new substances, but will evaluate them based on their effects on foods, drugs and cosmetics. *See Capital Press*, May 18, 2012.

EU Court of Justice Confirms That Bunny Shape Cannot Be Registered as Trademark

The European Union (EU) Court of Justice has affirmed a General Court ruling that confectioner Lindt & Sprüngli, AG cannot register certain three-dimensional shapes, their colored wrappings or ribbons as European Community trademarks. *Chocoladefabriken Lindt & Sprüngli AG v. Office for Harmonisation in the Internal Mkt. (Trademarks and Designs)*, Case No. C-98/11 P (E.C.J., decided May 24, 2012). Additional details about the case appear in Issue 376 of this *Update*. The mark was sought for the shape of a sitting rabbit with a red ribbon. According to the court, the shape was "typical" for chocolate rabbits and was thus "devoid of any distinctive character." The court also found that the gold-foil wrapping and small bells and bows embellishments were "common elements in the case of chocolate animals." The court further ordered the chocolatier to pay the costs of the appeal.

OTHER DEVELOPMENTS

Various Government Agencies Investigating Chipotle's Hiring Practices

Chipotle Mexican Grill has filed a report with the Securities and Exchange Commission (SEC) advising that the U.S. Attorney for the District of Columbia "is conducting an investigation into possible criminal securities law violations relating to our employee work authorization verification compliance and related disclosures and statements." The probe follows investigations into the company's compliance with immigration laws by the U.S. Department of Homeland Security's Immigration and Customs Enforcement arm and public disclosure requirements by SEC. According to news sources, the company, which has indicated its intent to fully cooperate with the investigations, was forced to fire some 450 employees in 2011, after it learned that illegal immigrants had been hired to work in its Minnesota restaurants. Since then, the company has reportedly been using Homeland Security's E-Verify system to

confirm employee eligibility. *See Reuters* and *Law360*, May 18, 2012; *Bloomberg*, May 21, 2012

Consumer Watchdog Groups Urge PBS to Stop Chick-fil-A Promotions

The Campaign for a Commercial-Free Childhood (CCFC), Public Citizen and Corporate Accountability International are reportedly urging the PBS network to "end a four-year marketing agreement between the popular children's show 'Martha Speaks' and the fast food chain Chick-fil-A." The marketing agreement includes 15-second ads for the restaurant before and after the show and in-store giveaways at more than 1,600 Chick-fil-A locations.

According to the watchdog groups, "an astounding 56 million Chick-fil-A Kids' Meals—which contain as much as 670 calories and 29 grams of fat—were distributed in *Martha Speaks* co-branded bags" in 2011. The groups also called for PBS member station WGBH, which produces "Martha Speaks," to withdraw the ads from nomination for a children's marketing award. "PBS deserves lots of awards, but using a beloved character to lure kids to a fast food restaurant is nothing to celebrate," said CCFC's Susan Linn. *See CCFC Press Release*, May 23, 2012.

OSU to Patent "Vegas Strip Steak"

Oklahoma State University's (OSU) Robert M. Kerr Food and Agriculture Products Center has reportedly signaled its intention to patent a new kind of steak after unveiling the product at the "Protein Innovation Summit" held April 16-17, 2012, in Chicago, Illinois. According to media sources, OSU researchers have dubbed the cut of beef a "Vegas Strip Steak" and said it derives from a part of the animal previously used for hamburgers. "It's an un-obvious chunk of meat that has just been sitting there—a little diamond surrounded by a bunch of coal. The patent actually claims the kind of knife strokes that you make in order to create this cut of meat," explained OSU Associate Vice President for Technology Development Steve Price in a May 23, 2012, *NPR* interview. "You take this muscle, you make cuts here, here and here and you end up with this Vegas Strip Steak."

Because it would be difficult to keep this cutting technique as a trade secret, OSU has opted to patent its discovery in an effort to exact licensing fees from meat manufacturers wishing to produce and market the "Vegas Strip Streak." Ranging between 4 and 14 ounces, the new steak is described on the product's **Website** as similar in taste and tenderness to a New York Strip or Flat Iron cut. *See OSU Press Release,* May 8, 2012; *Gizmodo,* May 15, 2012; *Wired.Co.UK,* May 23, 2012.

MEDIA COVERAGE

Jennifer L. Pomeranz, "The Bittersweet Truth About Sugar Labeling Regulations: They Are Achievable and Overdue," *American Journal of Public Health*, May 17, 2012

"There are no longer any viable reasons to maintain outdated nutrition labeling standards for sugar," opines Jennifer Pomeranz, director of legal initiatives at Yale University's Rudd Center for Food Policy and Obesity, in this **article** urging the Food and Drug Administration (FDA) to revise sugar labeling regulations to better inform and protect consumers.

Citing recent developments such as recommendations by the U.S. Department of Agriculture and the American Heart Association to limit sugar consumption, "new and robust" science suggesting high-sugar intake is detrimental to human health, and the Institute of Medicine's call for front-of-packaging labeling for sugar, Pomeranz maintains that FDA's reluctance to require manufacturers to disclose sugar and added sugar is based on old science and obsolete concerns.

"The need for more information relevant to sugar on food labels is long overdue," she writes. "The government can currently require more information pertinent to total sugar consistent with the public health literature and scientific methods necessary for enforcement." She also asserts that revised labeling requirements could "lead to innovation and positive reformulation," spurring competition among companies to create products with less added sugar.

SCIENTIFIC/TECHNICAL ITEMS

CDC Study Notes Increase in Diabetes Among Adolescents

A recent study by the Centers for Disease Control and Prevention (CDC) has purportedly identified a sharp increase in the prevalence of prediabetes/diabetes among U.S. adolescents aged 12 to 19 years, from 9 percent in 1999-2000 to 23 percent in 2007-2008. Ashleigh May, et al., "Prevalence of Cardiovascular Disease Risk Factors Among US Adolescents, 1999–2008," *Pediatrics,* May 2012. Relying on data from 3,383 participants in the National Health and Nutrition Examination Survey (NHANES), CDC researchers concluded that among adolescents, "the overall prevalence was 14% for prehypertension/hypertension, 22% for borderline-high/high low-density lipoprotein cholesterol, 6% for low high-density lipoprotein cholesterol (<35 mg/DL), and 15% for prediabetes/diabetes during the survey period from 1999 to 2008."

The study's authors noted, however, that while there was "no significant change in prehypertension/hypertension and borderline-high/high low-density lipoprotein cholesterol prevalence from 1999-2000 to 2007-2008," prediabetes/diabetes prevalence rose by 14 percent. They also reported that 37 percent of the normal-weight, 49 percent of the overweight and 61 percent of the obese adolescents exhibited at least one cardiovascular disease risk factor during the course of the study.

"Parents should be concerned and aware of these findings," one CDC epidemiologist told *WebMD*. "The main story here is that in addition to obesity, you need to be aware of these other potential risk factors for cardiovascular disease, that these risk factors are present relatively early." *See WebMD,* May 21, 2012.

Researchers Identify Drug Residues in Baby Food

University of Almeria researchers have reportedly used a new "multi-residue" technique to identify veterinary drug residues in baby food, raising concerns about the need to better regulate the substances permitted in animal-based products. M.M. Aguilera-Luiz, et al., "Multiclass method for fast determination of veterinary drug residues in baby food by ultra-high-performance liquid chromatography–tandem mass spectrometry," *Food Chemistry*, June 2012. The study's authors evidently analyzed 12 meat products containing beef, pork or poultry and nine milk powder samples, all of which purportedly contained trace amounts of antibiotics, including sulfonamides and macrolides, as well as anthelmintics and fungicides. In particular, the results allegedly showed higher concentrations of veterinary drug residues in chicken and other poultry products.

"The concentrations detected have been generally very low," one of authors was quoted as saying. "On one hand, this suggests they are not worrying amounts, on the other hand, it shows the need to control these products to guarantee food safety." *See ScienceDaily.com,* May 18, 2012; *The Daily Mail,* May 22, 2012.

Saturated Fats Bad for Cognition, Claim Harvard Researchers

A recent study has reportedly claimed that higher saturated fat (SFA) intake "was associated with worse global cognitive and verbal memory trajectories" in women aged 65 years or older. Olivia Okereke, et al., "Dietary fat types and 4-year cognitive change in community-dwelling older women," *Annals of Neurology,* May 2012. Harvard Medical School researchers evidently analyzed data from 6,183 participants in the Women's Health Study over a four-year period, finding that those in the highest quintile for SFA consumption had "a higher risk of worst cognitive change" than their counterparts in the lowest quintile. At the same time, however, higher monounsaturated fat (MUFA)

Shook, Hardy & Bacon L.L.P.

FOOD & BEVERAGE LITIGATION UPDATE

ISSUE 441 | MAY 25, 2012

intake was related to better global cognitive and verbal memory trajectories. These results apparently led the study's authors to speculate that "different consumption levels of the major specific fat types, rather than total fat intake itself, appeared to influence cognitive aging."

"When looking at changes in cognitive function, what we found is that the total amount of fat intake did not really matter, but the type of fat did," said study author Olivia Okereke in a May 18, 2012, Brigham and Women's Hospital press release. "Our findings have significant public health implications. Substituting in the good fat in place of the bad fat is a fairly simple dietary modification that could help prevent decline in memory."

OFFICE LOCATIONS

Geneva, Switzerland
+41-22-787-2000
Houston, Texas
+1-713-227-8008
Irvine, California
+1-949-475-1500
Kansas City, Missouri
+1-816-474-6550
London, England
+44-207-332-4500
Miami, Florida
+1-305-358-5171
San Francisco, California
+1-415-544-1900
Tampa, Florida
+1-813-202-7100
Washington, D.C.
+1-202-783-8400