Shook, Hardy & Bacon L.L.P.

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FOOD & BEVERAGE LITIGATION UPDATE

CONTENTS

LEGISLATION, REGULATIONS AND STANDARDS

Youth Sports Legislation Calls for Energy Drink Guidelines

Recent legislation (S.B. 2718) introduced by U.S. Sen. Robert Menendez (D-N.J.) and U.S. Rep. Bill Pascrell (D-N.J.) has called for energy drink guidelines as part of a wider initiative to ensure children's safety in athletics. According to a September 8, 2014, press release, the Supporting Athletes, Families and Educators to Protect the Lives of Athletic Youth Act (SAFE PLAY Act) combines previous legislative efforts to address "concussions, cardiac arrests, heat-related illness, and consumption of energy drinks."

The bill would require the Department of Health and Human Services, Food and Drug Administration (FDA) and Centers for Disease Control and Prevention to (i) "develop information about the ingredients used in energy drinks and the potential side effects of energy drink consumption," and (ii) "recommend guidelines for the safe use of energy drink consumption by youth, including youth participating in athletic activities." Although the proposed guidelines would cover all liquid dietary supplements and beverages that contain caffeine and taurine, guarana, ginseng, B vitamins, or any other ingredient "added for the express purpose of providing physical or mental energy," the bill stops short of providing FDA with the authority to regulate the marketing and sale of energy drinks on school campuses.

"As we encourage our children to be healthy athletes, we must also do everything possible to protect them as they participate in sports," Pascrell was quoted as saying. "It's imperative that our coaches, trainers, parents and athletes have the necessary tools to ensure the safety of our youngest athletes on the playing field." *See Sen. Menendez and Rep. Pascrell Press Releases*, September 8, 2014.

Members of Congress Appeal to FTC on Children's Food Advertising

A group of U.S. senators and a group of U.S. representatives, all Democrats, each sent an identical **letter** to Federal Trade Commission (FTC) Chair Edith Ramirez calling for a report on 2014 food and beverage marketing expenditures aimed at children. They found it "unacceptable" that FTC "is not actively working on projects focused on food marketing to children," pointing out

that data gathered during 2014 and compiled into a report could serve as a five-year follow-up to a similar 2012 report on 2009 data. "A follow up report would help policy makers, public health practitioners, industry representatives, and the public understand how food marketing directed at children and adolescents has changed over the last five years and provide a critical opportunity to evaluate the continued role of such marketing in regards to the health of our nation's children."

The senators who signed the letter were Sens. Tom Harkin (D-Iowa), Richard Durbin (D-Ill.), Richard Blumenthal (D-Conn.), John Rockefeller IV (D-W.Va.), and Sherrod Brown (D-Ohio), and the representatives who signed include Reps. Rosa DeLauro (D-Conn.), Charles Rangel (D-N.Y.), Mark Takano (D-Calif.), James Moran (D-Va.), Barbara Lee (D-Calif.), and Eleanor Holmes Norton (D-D.C.).

Children Consume More Salt Than Recommended, Says CDC

The Centers for Disease Control and Prevention (CDC) has **published** a September 2014 *Vital Signs* report claiming that nine in 10 U.S. children "eat more sodium than recommended." Noting that children ages 6-18 years consume an average of 3,300 mg sodium per day, CDC estimates that 43 percent of children's daily sodium intake "comes from just 10 common food types: pizza; bread and rolls; cold cuts and cured meats; sandwiches like cheeseburgers; snacks, such as chips; cheese; chicken patties, nuggets, and tenders; pasta mixed dishes, such as spaghetti with sauce; Mexican mixed dishes, such as burritos and tacos; and soup."

The agency is urging the federal government to apply new nutrition standards that aim to halve the sodium content of some foods served in schools by 2022. It also asks food manufacturers to replace sodium "with alternatives like spices, herbs, and vegetables," and to gradually reduce the sodium content of their products. "Most sodium is already in food before you buy it or order it," notes CDC. "About 65% comes from store foods, 13% from fast food and pizza restaurant foods, and 9% from school cafeteria foods."

EPA to Discuss Diisononyl Phthalate at Upcoming ISIS Meeting

The U.S. Environmental Protection Agency (EPA) has **published** preliminary materials for the Integrated Risk Information System (IRIS) toxicological review of diisononyl phthalate (DINP), a plasticizer used in food-contact materials. Slated for discussion at the IRIS Bimonthly Public Science Meeting to be held October 29-30, 2014, in Arlington, Virginia, the preliminary materials include (i) "a planning and scoping summary," (ii) "information on the approaches used to identify pertinent literature," (iii) "results of the literature search," (iv) "approaches for selection of studies for hazard identification," (v) "presentation of critical studies in evidence tables and exposure-response arrays," and (vi) "mechanistic information for DINP."

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In addition to feedback on these general topics, EPA has specifically requested public comment and discussion on "DINP-induced liver effects, including spongiosis hepatis"; "the evidence for DINP-induced male reproductive toxicity; "the relevance of the xenograft and ex-vivo tissue studies"; the human relevance of animal studies associating mononuclear cell leukemia with DINP exposure; and the "transparency and utility of mechanistic data." The agency is also seeking "any additional studies published or nearing publication that may provide data for the evaluation of human health hazard or dose-response relationships."

Codex Meeting to Focus on Nutrition and Foods for Special Dietary Uses

The U.S. Department of Agriculture and Food and Drug Administration have **scheduled** an October 28, 2014, public meeting in Washington, D.C., to solicit comments about draft positions to be considered at the 36th Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) of the Codex Alimentarius Commission in Bali, Indonesia, on November 24-28. Issues on the October 28 meeting agenda include a (i) discussion paper on biofortification, (ii) proposed draft revision of the Codex General Principles for the Addition of Essential Nutrients to Foods, (iii) proposed draft revision of the list of food additives, and (iv) a proposal to review the Codex Standard for Follow-Up Formula. *See Federal Register*, September 10, 2014.

NOSB to Consider BPA Ban for Organic Food Packaging

The U.S. Department of Agriculture's National Organic Program has **announced** a public meeting of the National Organic Standards Board (NOSB) on October 28-30, 2014, in Louisville, Kentucky. The meeting will include recommendations from the board's six subcommittees on a wide range of topics, including "substances petitioned to the National List of Allowed and Prohibited Substances (National List), substances on the National List that require NOSB review before their 2015 and 2016 sunset dates, updates from working groups on technical issues, and amendments to guidance on organic policies."

In particular, the Handling Subcommittee **intends** "to take up the issue of whether to prohibit BPA [bisphenol A] in packaging material used for organic foods in light of mounting evidence that it may be harmful." To this end, NOSB plans to prioritize research dedicated to finding "suitable alternatives for the linings of cans used for various organic products such as tomatoes, beans and soups." *See Federal Register*, September 8, 2014.

FDA to Improve Internal Processes for Evaluating Chemical Risks in Food

The Food and Drug Administration (FDA) is reportedly taking measures to bolster intra-agency program processes based on a comprehensive review of the scientific capacity and management of the Chemical Safety Program across the Center for Food Safety and Applied Nutrition (CFSAN) and Center for Veterinary Medicine (CVM). FDA plans to address improvements in the principal categories of science, communication and collaboration, and training and expertise. Among other things, the agency intends to (i) update the agency's Toxicological Principles for the Safety Assessment of Food Ingredients (Redbook); (ii) establish consistent methodologies for safety and risk assessments within and across CFSAN offices and between CFSAN and CVM; (iii) increase collaboration on emerging issues with other federal agencies; and (iv) create an experts database to help identify potential collaborators both inside and outside the agency. *See FDA Constituent Update*, August 28, 2014.

UK to Create Food Crime Unit in Response to Final Report Analyzing Food Supply Networks

The Department for Environment, Food and Rural Affairs (DEFRA) and Food Standards Agency on September 4, 2014, issued a **final report** evaluating U.K. food supply networks and containing recommendations for government action to address any weaknesses. The government commissioned the report from University of Belfast Professor Chris Elliott following a 2013 incident known as "Horsegate" in which various beef products were found to be adulterated with undeclared horse meat.

In response to the report's eight major recommendations, the government has vowed to establish a Food Crime Unit by the end of 2014. Supported by a number of state, local, federal, and international law enforcement agencies, the Unit will reportedly focus its initial efforts on gathering intelligence about the nature and risks of food fraud. Other actions the government reportedly plans to implement go from setting up a network of food analytical laboratories to using standardized testing methodologies and creating a Group on Food Integrity and Food Crime to improve coordination across government departments. *See DEFRA News Release*, September 4, 2014.

"30% Less Fat" Claim Censured by Ad Watchdog

The U.K. Advertising Standards Authority (ASA) has **upheld** complaints against a TV commercial claiming that Kellogg's "Special K Multi Grain Porridge" contained "30% less fat than other porridges." According to ASA, which received complaints from PepsiCo Inc. and 14 other competitors, Kellogg Marketing and Sales Co. (UK) Ltd. argued that the advertisement's reduced-fat comparative claim complied with the Annex to EC Regulation 1924/2006 on Nutrition and Health Claims Made on Food.

To this end, Kellogg provided ASA and Clearcast with the data and methods used to conduct product comparisons under this regulation. The company reportedly explained that all varieties of Special K porridges contained 5.5 percent fat or less, whereas the top 75 percent of porridge products on the market contained an average fat content of 7.84 percent. "Kellogg also pointed out than none of the products included in the comparison had a fat content of 5.5% or less," noted ASA. "They believed that the voice-over and super clearly explained the basis of the comparison by stating that the product had at least 30% less fat than the average fat content of most porridge products on the market."

Although ASA agreed that the products selected as the basis of the comparison "were in the same category of food and were therefore 'alternatives for consumption,'" the authority ultimately upheld the complaints on two grounds. First, the ruling found that the comparison did not include enough products to show "the range of fat content within the food category 'porridge,'" noting that the ones selected "on the basis of market share could lead to porridges with above average fat contents being over-represented." Second, ASA determined that, contrary to the regulation's instructions, the comparison did not feature products ready for consumption: "[T]he addition of milk to the dry Kellogg and comparator products would result in a reduction in the percentage difference of fat between the products."

"Because we had not seen evidence that the comparator products selected were representative of the category, and the comparative claim was based on the fat content of Special K porridge and the comparator products when they were dry and therefore cannot be consumed as porridge, we concluded that the comparative nutrition claim was in breach of the Code," concluded ASA.

Dutch Agency Issues First BPA Report

The Dutch National Institute for Public Health and the Environment (RIVM) has **released** the first part of its bisphenol A (BPA) report, which provides an

overview of regulatory and scientific developments through March 2014. Slated for publication in 2015, the second part of the report will assess the European Food Safety Authority's final opinion on the risks of BPA exposure for consumers; a Scientific Committee on Emerging and Newly Identified Health Risks assessment of patients exposed to BPA; and two advisory reports from the Dutch Health Council on prenatal BPA exposure and BPA analogues.

In addition to summarizing what is known about BPA's environmental impact, the current report addresses human BPA exposure via consumer products, food, medical devices, and inhalation during the manufacture of BPA-containing epoxy resins. Based on this overview, RIVM concludes that despite various studies associating BPA with adverse immune effects, obesity, diabetes, and prostate cancer, "[t]here is still no conclusive evidence available that proves a low-dose effect."

"BPA and exposure to BPA are primarily managed by regulations at the EU level," notes RIVM. "The European Commission is also working on a criteria document to identify and define endocrine disruption and endocrine disruptors, which may affect the discussion around BPA as a possible endocrine disruptor. The outcomes of these initiatives may be expected in 2014 and later, and may have major implications for other regulatory frameworks."

LITIGATION

Florida Cases Accusing Bodacious Foods, Kashi of "All Natural" Mislabeling to Continue

A Florida federal court has rejected a motion to dismiss in a case accusing Bodacious Foods of labeling its cookies as "all natural" despite containing sugar, canola oil, dextrose, corn starch, and citric acid, which the plaintiff alleges should preclude Bodacious from using the "natural" label. *Dye v. Bodacious Food Co.*, No. 14-80627 (U.S. Dist. Ct., S.D. Fla., order entered September 9, 2014). Bodacious argued that the U.S. Food and Drug Administration (FDA) should have primary jurisdiction over the case, but the court disagreed, finding that FDA has declined to regulate the use of "natural" in food labeling. The cookie company also argued that its inclusion of all ingredients on the label was clear and not misleading, but the court found it "plausible that a consumer might rely on the 'all natural' representation without scrutinizing the ingredients or, alternatively, that a consumer might incorrectly believe that sugar, canola oil, dextrose, corn starch, and citric acid are 'all natural' ingredients."

In a case with similar issues, another Florida federal court has preserved most of a lawsuit accusing Kashi of deceiving customers by using genetically modified organisms (GMOs) in food products it labeled as "all natural," finding that the plaintiffs' claims were well-pleaded. *Gabbamonte v. The Kellogg Co.*, No. 12-21678 (U.S. Dist. Ct., S.D. Fla., order entered September 5, 2014). The plaintiffs objected to the use of several ingredients—pyridoxine hydrochloride, alpha-tocopherol acetate, hexane-processed soy ingredients, and calcium pantothenate, as well as GMO soy, corn, soy-derivatives, and corn-derivatives—in Kashi's cereal products, snack bars, cookies, crackers, crisps, entrees, pilaf, pizza, and waffles. As in *Bodacious*, the court denied the idea that FDA has primary jurisdiction over "all natural" disputes. It also found the plaintiffs' complaint to be well-pleaded. "To conceive how the [second amended complaint] could possibly be pled with any more particularity strains the imagination," the court said, and the plaintiffs' claims had sufficient plausibility to proceed, but only as to the products they actually purchased.

Beck's False Advertising Case to Proceed

A Florida federal court has denied Anheuser-Busch's motion to dismiss a case accusing the beverage company of misleading consumers into believing that Beck's beer was still brewed in Germany, finding that the plaintiffs adequately pleaded their claims. *Marty v. Anheuser-Busch Cos.*, No. 13-23656 (U.S. Dist. Ct., S.D. Fla., order entered September 5, 2014). In 2012, Anheuser-Busch moved production of Beck's, brewed in Germany from 1873, to St. Louis, Missouri. The company added a "Product of the U.S.A." disclaimer to the Beck's packaging, but the plaintiffs argued that the disclaimer was too small, too difficult to read due to its white script on a silver background and blocked by the cans or bottles in the carton, and the court agreed, allowing the unjust enrichment and consumer protection violations claims to proceed. Citing the plaintiffs' statements that they stopped buying Beck's when they learned of its brewing source, the court granted Anheuser-Busch's motion to dismiss the request for injunctive relief because the plaintiffs did not have standing to allege future harm.

Challenge to Idaho Law Criminalizing Agricultural Investigations Proceeds

A federal court in Idaho has denied, in part, the motion to dismiss filed by state officials in a challenge filed by animal-rights activists and other groups to a law that criminalizes the undercover investigations of agricultural operations. *Animal Legal Defense Fund v. Otter*, No. 14-0104 (U.S. Dist. Ct., D. Idaho, order entered September 4, 2014). The court agreed to dismiss the governor who lacked enforcement authority under the law and emphasized that its rulings did not address the merits of the plaintiffs' claims of First Amendment

and Equal Protection violations, as well as preemption under three federal laws that protect whistleblowers.

According to the court, the law was enacted after Mercy for Animals Dairy released a video of workers abusing cows at an Idaho dairy. The footage had been obtained by an undercover investigator who misrepresented his identity to gain access to the facility and made the audiovisual recordings without the dairy owner's knowledge or consent. As a result of the undercover investigation, the dairy owners fired the employees shown in the video, installed surveillance cameras throughout their facility and promised to use the video as an employee-training tool. The Idaho Dairymen's Association then wrote and sponsored a bill that would criminalize this type of undercover investigation by creating the new crime of "interference with agricultural production," and it was swiftly enacted.

The court rejected the state's challenge to the plaintiffs' standing as to subsection (c) of the law—criminalizing the act of gaining employment with an agricultural production facility by force, threat or misrepresentation with the intent to cause economic or other injury to the facility's operation—but not subsection (e)—criminalizing intentional acts that cause physical damage or injury to the agricultural production facility's operations, livestock, crops, personnel, equipment, buildings, or premises. The court found that the plaintiffs had alleged a concrete plan to violate subsection (c) but not subsection (e), and the plan could subject them to prosecution.

The court also rejected the state's claim that the law "does not implicate the First Amendment because it is a generally applicable law aimed solely at wrongful conduct, not speech." In this regard, the court stated, "If [the plaintiffs'] allegations prove true—that the law was not designed as a generally applicable prohibition on fraud or trespass or conversion, but rather as an indirect penalty for criticizing animal agriculture—the Court would have to apply at least some degree of heightened scrutiny." The court cited precedent establishing that "the state cannot make it a crime to publish lawfully obtained, truthful information about a matter of public significance."

The court further disagreed that the law regulates conduct and not speech, ruling that both types of expressive activity—certain misrepresentations and audiovisual recordings, i.e., conduct preparatory to speech—are protected speech. Among other matters, the court referred to protected union activity in discussing whether misrepresentations constitute protected speech, noting that paid union representatives may lie about or omit information about union affiliation in an employment application to gain access to a facility to solicit support for union representation. As to audiovisual recordings, the court distinguished between those who record and do not disseminate—and

thus will never be punished for filming—and those who record and choose to publish their videos. "A law that expressly punished activists for publishing videos of agricultural operations would be considered a regulation of speech," the court wrote, and because enforcement of the law would have the same effect, "it too should be considered a regulation of speech."

With the law singling out just one type of speech, the court found that it would be subject to strict scrutiny and would "pass constitutional muster only if [it is] the least restrictive means to further a compelling interest." In the court's view, those who will be prosecuted under the law are those who film abuse on a farm but not those who film, for example, the owner's children visiting the farm in a positive light. The legislative history purportedly buttressed this conclusion. The complaint includes legislator statements about preventing animal rights activists' speech, the need to protect the dairy industry from "the court of public opinion," and references to animal rights activists as "terrorists," "extremists," "vigilantes," and "marauding invaders."

The court further found that the plaintiffs had stated a plausible equal protection claim, ruling that the law creates a classification between whistleblowers generally and whistleblowers in the agricultural industry and had allegedly been enacted with animus. Citing recent U.S. Supreme Court jurisprudence, the court noted that the legislature's "actual purposes" are relevant to an equal protection "more searching form of rational basis review," particularly where the law exhibits "a desire to harm a politically unpopular group." In light of the complaint's animus allegations, if proven true, "the Court must skeptically scrutinize any offered justifications for section 18-7042 to determine whether bare animus motivated the legislation or whether the law truly furthers the offered purposes. To be rational, a law must serve a 'legitimate' end, and antipathy can never be a legitimate end."

The court concluded by finding that the preemption claims, brought as a facial challenge and not as applied, were ripe for review, observing that the plaintiffs face an immediate dilemma: they must choose between complying with the law and risking prosecution by engaging in whistleblower conduct that they claim federal law explicitly encourages and protects. "There can be no question that [the plaintiffs have] expressed a present intention to engage in conduct that could subject [them] to prosecution under section 18-7042," which they allege is unconstitutional.

NRDC Seeks Rehearing in FDA Livestock Antibiotic Litigation

The Natural Resources Defense Council (NRDC) and other groups have requested that the Second Circuit Court of Appeals reconsider its decision that the U.S. Food and Drug Administration (FDA) is not required to begin

proceedings to withdraw approval of certain antibiotics in livestock feed. *NRDC Inc. v. FDA*, No. 12-2106 (2d Cir., petition filed September 8, 2014). Additional details about the Second Circuit's split ruling appear in Issue 531 of this *Update*. According to a news source, the petitioners contend that the panel majority overlooked FDA's initial findings that the use of antibiotics in animal feed is unsafe and "writes the withdrawal provision out of the Food and Drug Act." FDA considered the safety of penicillin and tetracyclines in animal feed in 1977, but never conducted adversarial hearings with industry as purportedly required under the law, opting instead to seek the voluntary withdrawal of animal feed with antibiotics from the market. *See Law360*, September 10, 2014.

Monsanto Reaches Agreement in Principle over GM Wheat Contamination

In light of representations that the parties are close to settlement, a multidistrict litigation (MDL) court has continued to stay proceedings in litigation alleging that the isolated appearance of genetically modified (GM) wheat in Oregon, which purportedly led Japan and South Korea to suspend imports of soft-white wheat from the United States, caused wheat farmers to sustain economic losses. *Barnes v. Monsanto Co., C.A.*, MDL No. 13-2473 (U.S. Dist. Ct., D. Kan., order entered September 10, 2014). Information about the lawsuit filed by Kansas farmer Ernest Barnes appears in Issue 486 of this *Update*. The court ordered the parties to file stipulations of dismissal of the soft-white wheat claims on or before September 29, 2014, or to submit a scheduling order, discovery plan and early mediation plan by November 7.

Peanut Corp. of America *Salmonella* Outbreak Trial Nears End

Defense counsel and a U.S. attorney made their closing arguments September 11-12, 2014, in the criminal trial of three former Peanut Corp. of America officials and employees who were charged with mail and wire fraud, obstruction, conspiracy, and other counts relating to a nationwide 2008-2009 Salmonella outbreak linked to the company's Blakely, Georgia, facility. *United States v. Parnell*, No. 13-cr-12 (U.S. Dist. Ct., M.D. Ga., Albany Div.). Details about the charges appear in Issue 472 of this *Update*.

The prosecution reportedly rested its case on September 11 in a trial that began August 2, and just one defendant—Michael Parnell—chose to present any evidence during a session lasting about an hour. His counsel argued that Michael was not a company director and never received a Peanut Corp. paycheck; rather, he was a customer who purchased tainted food from his brother Stewart's plant, said a news source. Former owner Stewart Parnell decided not to introduce any testimony, and during closing argument, his

counsel sought to distance the individual man from the company, which concededly falsified documents. Counsel was quoted as saying, "PCA is not Stewart Parnell. Stewart Parnell is not PCA." *See Associated Press*, September 10, 2014; *WALB.com*, September 12, 2014.

Prop. 65 Suit Challenges 4-MEI in Ginger Beverage Products

According to a news source, the Center for Environmental Health has filed a lawsuit under California's Safe Drinking Water and Toxic Enforcement Act (Prop. 65), alleging that Reed's Ginger Products fails to warn consumers about the caramel-coloring chemical 4-methylimidazole (4-MEI) purportedly present in its soft drinks. *Ctr. for Envtl. Health v. Reed's, Inc.*, No. n/a (Cal. Super. Ct., Alameda Cnty., filing date unknown). In a June 26, 2014, 60-day notice, the center claimed that the company had violated the law since January 2012, stating, "No clear and reasonable warning is provided with these products regarding the carcinogenic hazards associated with 4-MEI exposure." Prop. 65, a voter-approved law, requires warnings to consumers about exposures to substances known to the state to cause cancer or reproductive hazards and allows private individuals or organizations to enforce it. *See Courthouse News Service*, September 11, 2014.

Proposed Berkeley Soda Tax Language Changed

A California state court has adjusted the language in the soft drink tax on the November 2014 ballot by replacing "high-calorie, sugary drink" with "sugar-sweetened beverages" to clarify the proposed tax and to conform with election codes. *Johnson v. Numainville*, No. RG14786763 (Cal. Super. Ct., Alameda Cnty., order entered September 2, 2014). Agreeing with the two Berkeley residents who filed the lawsuit, the court found that "the ballot question here asking whether a tax should be imposed on 'high-calorie, sugary drinks' is likewise a form of advocacy and therefore not impartial. This phrase suggests that the tax will be limited to certain beverages that contain more than the average calories and too much sugar; in other words, beverages that most people would find to be unhealthy." The court also found issue with the City Attorney's Impartial Analysis of the measure, which described it as a tax on "high-calorie, low nutrition" products, because "this phrase similarly seems designed to sway voters in favor of voting for passage by suggesting that the beverages being taxed are not good for voters." The report also described some of the beverages subject to the tax as "heavily presweetened tea," which the court found to be misleading and struck the "heavily" descriptor from the analysis. Finally, the court agreed with the city on the statement that "the tax would be payable by the distributor, not the customer," finding the phrase not partial or misleading despite the plaintiffs' argument that the cost would likely be passed down to customers via higher prices. Additional information on the lawsuit appears in Issue **535** of this Update.

Shook, Hardy & Bacon L.L.P.

FOOD & BEVERAGE LITIGATION UPDATE

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SCIENTIFIC/TECHNICAL ITEMS

Allergic Reaction to Pesticide on Blueberries Reported

A recent study in the *Annals of Allergy, Asthma and Immunology* reportedly attributes an anaphylactic reaction in a 10-year-old girl to the antibiotic pesticide applied to the blueberries in the pie she was eating. François Graham et al., "Risk of allergic reaction and sensitization to antibiotics in foods," *Annals of Allergy, Asthma and Immunology*, September 2014. The girl was known to be allergic to penicillin and cow's milk but not to any ingredients in the blueberry pie. Following weeks of testing on the girl and on the sample of pie, researchers concluded that the streptomycin, an antibiotic often used as a pesticide to combat the growth of bacteria, fungi and algae in fruit, caused her reaction. "As far as we know, this is the first report that links an allergic reaction to fruits treated with antibiotic pesticides," lead author Anne Des Roches was quoted as saying in a September 3, 2014, press release from the American College of Allergy, Asthma & Immunology.

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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.