



FIRM NEWS

New York Times Cites Report Authored by Shook Partner

Shook Partner [Cary Silverman](#)'s "[Class Action Chaos: The Rise of Consumer Class Action Lawsuits in New York](#)," published in 2021 by the New York Civil Justice Institute, has been cited in the New York Times' "[Lawyer Up: Class-Action Suits Are Thriving in New York](#)." The article discusses the rise in consumer class actions filed in New York, with a focus on the legal groups responsible for a large portion of the filings.

LEGISLATION, REGULATIONS & STANDARDS

Group Petitions USDA to Prohibit 'Low-Carbon Beef' Label, Require Verification for Carbon Claims

The Environmental Working Group (EWG) has petitioned the U.S. Department of Agriculture (USDA) to prohibit meat producers from labeling their products as "Low Carbon" and require third-party verification for carbon claims and on-pack numerical disclosure.

In its [April 27 petition](#), EWG said that consumers viewing the Low-Carbon Beef label approved by USDA are likely to assume that beef using the label will help reduce greenhouse gas emissions. EWG said that even beef meeting the standard results in more greenhouse gas emissions than any other food choice.

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Shook 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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“Making matters worse, beef meeting USDA’s ‘Low-Carbon’ beef standard would still result in more emissions than much of the beef produced elsewhere in the U.S. or Canada,” EWG said. “By any measure, choosing beef is a bad choice for the climate.”

EWG also said consumers are “deeply confused” by similar carbon claims, such as “Net-Zero,” “Carbon Neutral,” “Carbon Negative,” “Climate Neutral,” “Net-Zero Carbon,” “Climate Positive” and “Carbon Positive.” The group argues that all carbon claims, including those relying on carbon offsets, should be verified by an independent third party.

The group is also asking USDA to require companies to include an on-pack numerical carbon disclosure alongside its carbon claims.

Gene-Edited Pigs Can Enter Food Chain for Consumption, FDA Says

The U.S. Food and Drug Administration (FDA) has given investigational authorization to Washington State University (WSU), allowing gene-edited pigs to enter the food chain for human consumption in the form of German-style sausages.

Jon Oatley, a professor in the School of Molecular Biosciences in WSU's College of Veterinary Medicine, is pioneering the use of the gene-editing tool CRISPR to improve genetic traits in livestock. He is working toward FDA approval of a line of gene-edited pigs, the university announced in a [May 1 news release](#).

“It’s important for a university to set the precedent by working with federal regulators to get these animals introduced into the food supply,” Oatley said in a statement. “If we don’t go through that process, all of the research we’re doing is for naught because it will never make it out into the public.”

FDA's authorization is limited to specific pigs processed at WSU's Meat Lab. The U.S. Department of Agriculture inspected the meat.

According to WSU, the pigs were gene-edited in a way to enable researchers to use them to sire offspring with traits from another male pig. The technology gene-edits male animals to be sterile, allowing scientists to implant them with another male's stem cells, creating sperm with the second male's desired traits.

Food Date Labeling Act Reintroduced in Congress



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ABOUT SHOOK

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.

Shook 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.



U.S. Reps. Chellie Pingree (D-Maine) and Dan Newhouse (R-Wash.) have reintroduced the Food Date Labeling Act in the U.S. House of Representatives, while Sen. Richard Blumenthal (D-Conn.) reintroduced the same bill in the Senate. “Studies have shown that Americans are confused by food date labels, resulting in a significant amount of food ending up in landfills,” the announcement states. “The Food Date Labeling Act will reduce food waste by standardizing date labels on food products.”



“Currently, there are no federal regulations related to date labels on food products, aside from infant formula. Date labeling regulations are left up to states, which means consumers are left trying to sort out a patchwork of confounding terms. ‘Sell by,’ ‘use by,’ ‘freshest on,’ and ‘expires on’ are just a few of the phrases currently being used on food products. The bipartisan Food Date Labeling Act establishes an easily understood food date labeling system—‘BEST If Used By’ communicates to consumers that the quality of the food product may begin to deteriorate after the date and “USE By” communicates the end of the estimated period of shelf life, after which the product should not be consumed. Under the bill, food manufacturers can decide which of their products carry a quality date or a discard date. It also allows food to be sold or donated after its labeled quality date, helping more food reach those who need it.”

Public Health Advocacy Groups Urge FDA to Review Titanium Dioxide’s Safety

Five public health advocacy groups are urging the U.S. Food and Drug Administration (FDA) to review and end its approval of the use of titanium dioxide as a food color additive. The Environmental Defense Fund, Center for Food Safety, Center for Science in the Public Interest and Environmental Working Group filed the petition March 13, 2023.

The groups say that recent scientific studies raise questions about the safety of the use of the color additive in food and its cumulative effects in the body.

“FDA has not reviewed the safety of synthetic TiO₂ since 1973—a half century ago—when it concluded that its use in food was safe,” the groups said in their petition. “That conclusion was primarily based on the finding that synthetic TiO₂ was not absorbed through the gastrointestinal tract, and the approval was based primarily on that conclusion. We now know that very small particles can pass through the gastrointestinal tract and accumulate in the human body, something that the agency did not know or consider in 1973.”

The petition cites the European Food Safety Authority's reevaluation of titanium dioxide, which resulted in the European Commission removing its approval of the use of titanium dioxide in 2022. "The Commission took the necessary steps to protect their constituents; FDA should do the same to protect the American people," the groups said.

FDA [will accept comments](#) on the petition until July 3.

USDA Proposes Declaring Salmonella an Adulterant in Breaded Stuffed Raw Chicken

The U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) has announced a proposed determination to declare *Salmonella* an adulterant in breaded stuffed raw chicken products when they exceed a very low level of *Salmonella* contamination.

According to an April 25 [news release](#), the move builds on FSIS' proposed regulatory framework—announced in October 2022—which seeks to reduce *Salmonella* infections tied to poultry products.

The Centers for Disease Control and Prevention estimates that *Salmonella* bacteria cause approximately 1.35 million human infections and 25,500 hospitalizations in the United States annually. Nearly one fourth of those infections are linked to poultry consumption, USDA said.

"USDA is taking science-based, decisive action to drive down *Salmonella* illnesses linked to poultry products," Agriculture Secretary Tom Vilsack said in a statement. "Today's proposal represents the first step in a broader effort to control *Salmonella* contamination in all poultry products, as well as a continued commitment to protecting American consumers from foodborne illness."

Under the proposal, FSIS would consider any breaded stuffed raw chicken products that include a chicken component that tested positive for *Salmonella* at one colony forming unit (CFU) per gram prior to stuffing and breading to be adulterated. FSIS is also proposing carry-out verification procedures to ensure producing establishments control *Salmonella* in these products.

USDA said that since 1998, FSIS and its partners have investigated 14 *Salmonella* outbreaks, with approximately 200 illnesses associated with these products. The most recent occurred in 2021, with illnesses reported in 11 states.

FSIS is seeking public comments on the proposed determination and proposed verification sampling program. Comments must be received within 60 days after publication in the *Federal Register*.

LITIGATION

Supreme Court Upholds California Limits on Pork Production

The U.S. Supreme Court has affirmed the Ninth Circuit’s ruling upholding a California ban on pork sold in the state that was produced from pigs “confined in stalls so small they cannot lie down, stand up, or turn around.” *Nat’l Pork Prods. Council v. Ross*, No. 21-468 (U.S., entered May 11, 2023). The challenge focused on the ban’s effect on pork producers outside of California—invoicing the Constitution’s dormant commerce clause, plaintiffs argued—because the state imports almost all of the pork sold within its borders.

The plaintiffs asserted that previous precedential rulings created an “almost *per se*’ rule against state laws with ‘extraterritorial effects.’” The court disagreed. “In our view, however, petitioners read too much into too little,” Justice Neil Gorsuch’s opinion states. “Consider, too, the strange places petitioners’ alternative interpretation could lead. In our interconnected national marketplace, many (maybe most) state laws have the ‘practical effect of controlling’ extraterritorial behavior. State income tax laws lead some individuals and companies to relocate to other jurisdictions. [] Environmental laws often prove decisive when businesses choose where to manufacture their goods. [] Add to the extraterritorial-effects list all manner of ‘libel laws, securities requirements, charitable registration requirements, franchise laws, tort laws,’ and plenty else besides.”

GoodBelly Juice Maker Sued for Digestive Health, Wellness Claims

A New York woman has filed a putative class action against the maker of GoodBelly’s fruit juice beverages, alleging it made misleading statements on product packaging touting the products’ ability to promote digestive health. *Gates v. NextFoods, Inc.*, No. 23-0530 (N.D.N.Y., filed April 27, 2023).

The plaintiff’s suit centers on representations that GoodBelly Probiotic JuiceDrinks promote “digestive health” and promote “overall health” and “overall wellness.” She says such representations are misleading because of the products’ sugar

content, which she claims directly harms digestive health, increasing inflammation and the risk of metabolic syndrome, obesity and type 2 diabetes.

“A reasonable consumer would not expect a product labeled as promoting ‘overall health,’ and ‘overall wellness’ to contain large amounts of another substance that directly and significantly increases risk of chronic diseases like metabolic syndrome, obesity, and type 2 diabetes and others,” she said in the complaint.

The plaintiff is alleging violations of New York’s Unfair and Deceptive Business Practices and False Advertising laws, negligent misrepresentation, intentional misrepresentation and unjust enrichment. She is seeking class certification, a recall of the products, disgorgement of NextFoods’ profits, restitution, damages and an award of attorney’s fees and costs.

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