On Tuesday, July 17, 2012, the U.S. Food and Drug Administration (FDA) published a final rule effectively banning the chemical additive bisphenol A (BPA) from baby bottles and child “sippy” cups. The rule is a response to the announcement by the American Chemistry Council that BPA is no longer used to manufacture such products in the United States and will not be used in these products in the future.

In March 2012, the FDA denied a petition from the National Resources Defense Council to ban BPA from all food and drink packaging. The U.S. Congress, however, is still considering legislation that would effectively override the FDA’s decision and ban BPA in all canned food containers and plastic drink bottles. At the same time, members of Congress are petitioning the FDA to issue a rule banning BPA in canned food liners, small reusable food and beverage containers, and children’s food packaging. Many U.S. states have banned or are considering banning BPA from other items, including toys.

The future of BPA in both food and non-food products depends in part on the assessment of the relevant scientific evidence. Nixon Peabody recently published a review of this evidence. We observed that, as a whole, the studies relied upon by proponents of bans or limitations on BPA lack the scientific reliability of studies showing no adverse health effects. For example, weight-of-the-evidence analyses of studies of BPA demonstrate that studies on the effects of low-dose exposure to BPA that meet rigorous scientific criteria tend to show no adverse effects from low-dose BPA exposures. In contrast, studies showing potential adverse effects of such exposure are less numerous and less scientifically reliable. In addition, the reliable scientific evidence shows that adverse effects seen in exposed laboratory animals cannot easily be extrapolated to humans. Finally, there is insufficient evidence linking the trace amounts of BPA in humans to actual adverse health effects, and studies of general human populations have shown little correlation between BPA levels and various indicia of adverse effects. Our detailed analysis can be accessed here.

The fight over BPA and its effects could move to the courtroom. Although plaintiffs seeking damages under various consumer protection laws have not generally been successful, personal injury lawyers continue to solicit clients claiming disease or injury related to BPA. Looking to the future, the
FDA will likely remain under pressure from various consumer advocacy groups and politicians with regard to BPA in food and drink packaging.

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