

Beverage Makers Owe No Duty To Warn About Alcoholism

Law360, New York (March 13, 2014, 5:40 PM ET) -- Alcoholic beverage makers facing inadequate warnings claims are well served by a recent federal court decision refusing to extend their duty to warn consumers of the purported risk of alcohol addiction.

No Duty to Warn of Obvious Danger

Finding that “the dangers of alcohol, including the risk of becoming an alcoholic, are obvious, regardless of whether one is predisposed to that disease,” a federal court in Idaho dismissed a products liability action filed by state department of correction inmates seeking to hold alcohol beverage makers liable for failing to warn the plaintiffs that consuming alcohol can be habit forming or addictive in *Brown v. Miller Brewing Co.* (2014).

The matter has since been appealed. Notably, while Miller Brewing Company is the first-named defendant, it was never served and has not participated in the litigation.

Because Idaho law does not support the recognition of a common law duty to warn on the part of alcoholic beverage manufacturers, the district court dismissed with prejudice a complaint that sought: (1) \$1 billion in damages for “far-reaching personal injuries and other harm, including lengthy periods of incarceration,” (2) new labeling and (3) a declaration that alcohol is habit-forming and addictive.

Among the plaintiffs’ allegations was that they would not have taken their first drink as youths and become alcoholics if the defendants had provided labels warning the public that even “reasonable drinking” can lead to alcohol addiction “due to the possibility of a predisposition” to the disease. They argued that this predisposition is not a commonly known danger thus distinguishing it from other commonly known dangers of alcohol abuse for which manufacturers have no duty to warn.

Acknowledging that Idaho courts had not yet addressed this precise issue, the court found that the state has adopted the Restatement (Second) of Torts Section 402A, which provides that products safely designed and manufactured can be dangerously defective if the manufacturer has reason to know of its dangerous propensities but fails to provide adequate warnings to purchasers or users. Still, under the restatement, “the duty to warn of a product’s dangerous propensities ‘is limited to situations wherein the danger is not obvious.’”

Quoting comment, the court referred to this section’s use of alcohol as “an illustration of a product in which there is no duty to warn of dangerous propensities because of the obvious nature of such a danger.”

The court found significant that nothing in existing state law supported the relief the plaintiffs sought in their complaint. The court also noted that, while a few intermediate state courts have proposed expanding manufacturers' duty "to answer to different types of alcohol abuse," no highest level state appellate court has done so. Accordingly, the court rejected the plaintiffs' invitation to extend the scope of alcohol warnings.

So ruling, the court reasoned, "It would be next to impossible to create an effective warning label that would warn of the myriad combinations of alcohol use and of human characteristics that might contribute to alcoholism. And, even if it could be done, it would be unnecessary, because the danger of alcoholism is subsumed in the general dangers of alcohol commonly known to the public."

The court further rejected claims that advertising focusing on the "pleasurable nature" of the products supports "a higher duty to warn against the perils of alcoholism." It concluded by noting that modern Americans have made the "political decision" to allow the sale of alcohol beverages and consign their regulation to legislative bodies. In the court's view, it would be inappropriate under these circumstances for a court to extend the law.

Other Potential Defenses

Even under the Restatement Third, Torts: Products Liability, courts may be constrained from imposing new warning duties on alcohol beverage manufacturers. Comment J to Section 2 of the Restatement Third provides that the trier of fact must decide the issue when reasonable minds may differ as to whether a particular risk was obvious or generally known. With the knowledge of the consumer as the analytic touchstone, a plaintiff would be hard-pressed to convince a court that alcoholism is not generally known as a potential risk associated with such products.

In some jurisdictions, such as California and Texas, the legislature has adopted a law rejecting manufacturers' liability for failure to provide adequate warnings where the product is: (1) inherently unsafe, (2) known to be unsafe by the ordinary consumer who consumes the product and (3) a common consumer product intended for personal consumption, such as sugar, castor oil, alcohol and butter (those items identified in Comment I to the Restatement [Second] of Torts Section 402A).

Issues the court did not address include whether the primary jurisdiction doctrine or the preemptive effect of federal alcohol labeling law would have deprived the court of jurisdiction to decide the type of claim the inmates pursued. While alcohol regulation is viewed as a matter not exclusively within the purview of either federal or state governments, few cases have to date considered these issues.

The Alcohol and Tobacco Tax and Trade Bureau ("TTB") is responsible for evaluating alcohol beverage labels — which must include certain health-related warnings — and issues a "Certificate of Label Approval" to the wine, distilled spirits or malt beverages applicant when the label meets bureau requirements. Only then can the alcoholic beverage be sold in the U.S. Defendants in cases seeking to impose liability based on their product labeling might consider invoking the primary jurisdiction doctrine given TTB's regulatory authority over alcohol beverage labels and whether the warnings comply with federal law.

Under 27 U.S.C. Section 215(a), which took effect in 1989, alcohol beverage containers must include the statement "GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."

Section 216 provides that, “No statement relating to alcoholic beverages and health, other than the statement required by [S]ection 215 of this title, shall be required under [s]tate law to be placed on any container of an alcoholic beverage, or on any box, carton or other package, irrespective of the material from which made, that contains such a container.”

Even if for some reason a court were not inclined to view this provision as expressly preemptive of an obligation arising under the common law, alcohol beverage producers would have a strong argument that they would be unable to comply with their federal law obligations if a court determined that state law imposed on them a duty to warn that alcohol can be addictive and poses a danger to certain susceptible individuals of developing alcoholism.

And such a requirement would interfere with express congressional policy that alcohol warnings not be impeded by “diverse, nonuniform and confusing requirements for warnings or other information on alcoholic beverage containers with respect to any relationship between the consumption or abuse of alcoholic beverages and health.”

Preemption, therefore, is a potentially potent tool for alcohol beverage producers in both the regulatory and litigation contexts. From a regulatory point of view, the TTB has emphasized that the law “preempts [s]tate governments from each requiring their own version of a health warning statement on alcohol beverage containers.”

This appears to foreclose additional warnings (e.g., the risk of alcoholism) imposed by state legislatures or regulators. On the other hand, establishing a preemption defense in the courtroom may require the additional step of establishing that a court-imposed labeling requirement (e.g., in the context of a failure-to-warn claim in a civil case) is properly deemed a preempted state-law requirement, which may remain an open question in some jurisdictions.

Plaintiffs inclined to argue that the lack of a government-mandated warning on alcohol beverages made and sold before the Alcoholic Beverage Labeling Act of 1988 took effect bolsters their claim that people were previously unaware of the dangers of drinking and they should be aware that at least one appellate court, reviewing the legislative history, has stated that the law’s passage did not indicate that the public was unaware of drinking’s purported hazards before its effective date. *Dauphin Deposit Bank & Trust Co. v. Toyota Motor Corp.* (1991).

Brown v. Miller Brewing Co. will bear watching through its Ninth Circuit appeal.

—By Gregory L. Fowler and Dale Johnson II, Shook Hardy & Bacon LLP

Gregory Fowler is a partner and Dale Johnson is an associate in Shook Hardy & Bacon's Kansas City, Mo., office.

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