Beverage Maker Not Liable for Alleged Failure to Warn

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The maker of a drink containing alcohol and caffeine was not liable to a woman allegedly injured when the driver of the motorcycle on which she was a passenger crashed, after the driver consumed the beverage. See Cook v. MillerCoors LLC, No. 11-1488 (M.D. Fla., 10/28/11).

The operator of the motorcycle in the accident was killed, and plaintiff Cook, who was a passenger, was injured. Prior to the crash, the driver allegedly had consumed several "Sparks" alcoholic beverages containing caffeine and other stimulants, manufactured by defendant.

Cook argued that alcoholic beverages such as Sparks containing stimulants are "uniquely dangerous" because they appeal to younger drinkers and because the addition of caffeine enables one to drink more alcohol without feeling as intoxicated as one normally would. Thus, she alleged, consumers of these beverages are more likely to "engage in dangerous behavior such as driving." She asserted the driver did not appear impaired, even though toxicology reports from his autopsy revealed that his blood alcohol level was 0.10 at the time of the crash.

Defendant responded that the risks associated with operating a motor vehicle while under the influence of alcohol are well known; therefore, it could not be held responsible for the operator's choice to consume Sparks then illegally operate his motorcycle. The addition of other ingredients to the beverage did not lessen his responsibility to refrain from operating his motorcycle after having consumed the alcohol, and his actions, not the manufacture of Sparks, proximately caused Cook's injuries. The crux of the defense motion to dismiss thus was that there is no cause of action against a manufacturer of alcoholic beverages for injuries resulting from their consumption because the effects of alcohol consumption are well known. With a response from plaintiff that the legion of such holdings in courts everywhere apply to "conventional" alcoholic beverages, not to an alcoholic beverage mixed with stimulants which allegedly suppress the consumer's subjective awareness of alcohol's well-known effects.

Regarding the failure to warn theory, a plaintiff must establish the existence of a duty. A manufacturer's duty to warn arises when there is a need to inform consumers of dangers of which they are unaware. The effects of alcohol and the need to not drink and drive are universally known. While plaintiff argued about the unconventionality of this product, plaintiff did not and could not allege that the driver was unaware that he was drinking alcohol. His alleged subjective awareness of the speed or impact of those effects did not alter the legal reasoning of precedent that holds that there is no duty to warn because of the universal recognition of all potential dangers associated with alcohol.

Plaintiff also failed to adequately allege how the product was unreasonably dangerous for the design defect claim. The effects of alcohol are universally and objectively well known, irrespective of the operator's alleged subjective awareness of them. The defectiveness of a

design is determined based on an objective standard, not from the viewpoint of any specific user, said the court.

Moreover, plaintiff's theories failed as to proximate cause. Plaintiff alleged that the manufacturer's negligence caused the driver to become intoxicated to the point of impairment, causing the crash and Cook's injuries. In Florida, however, voluntary drinking of alcohol is the proximate cause of an injury from an intoxicated driver, rather than the manufacture or sale of those intoxicating beverages to that person. This doomed the negligence claim.

Readers can readily see why the court was reluctant to make an exception to the rule for the "unconventional" beverage. There are hundreds of alcohol-containing products that are not "conventional" in one way or another, by taste, ingredients, color, manufacturing process, advertising... To shift responsibility from the person who over-consumes one of these and then drives impaired is to send the absolutely wrong policy message.

Courts have typically recognized no duty on the maker, regardless of plaintiff's attempt to differentiate either themselves or the product. See, e.g., Malek v. Miller Brewing Co., 749 S.W.2d 521 (Tex. App. 1988) (finding no duty to warn despite claim that advertising led plaintiff to believe that "Lite" beer was less intoxicating than other beer); Pemberton v. Am. Distilled Spirits Co., 664 S.W.2d 690 (Tenn. 1984); Greif v. Anheuser-Busch Cos., Inc., 114 F. Supp. 2d 100 (D. Conn. 2000)(particular, alleged tolerance of an individual consumer); MaGuire v. Pabst Brewing Co., 387 N.W.2d 565 (Iowa 1986).