Fruit Juice MDL Court Dismisses Claims

December 28, 2011 by Sean Wajert

The Massachusetts federal court overseeing multidistrict litigation against 11 beverage companies, including Coca-Cola Co. and Del Monte Corp., alleging that their fruit juices contained trace amounts of lead, dismissed the claims last week. In re Fruit Juice Products Marketing and Sales Practices Litigation, No. 11-2231 (D. Mass., 12/21/11).

Plaintiffs alleged that the defendants misled them into believing that certain of their products were safe, whereas the products in fact contained lead and posed a health risk, especially to children. The issue had caught the attention of the FDA, which concluded that while several of the products contained trace amounts of lead, in each case the level found would not pose an unacceptable risk to health. (The FDA's conclusion was based in part on a guidance report it issued in 2004. The agency concluded that many food products contain small amounts of lead because the substance is in the environment naturally and also released through many human activities.)

The majority of plaintiffs' claims were for violations of the consumer protection laws of states in which defendants maintained their principal places of business. Plaintiffs also brought claims under the consumer protection laws of all states in which potential class members purchased the products. Finally, the plaintiffs alleged breach of the implied warranties of merchantability and fitness for a particular purpose and for unjust enrichment.

Defendants moved to dismiss on several grounds, but the foundational argument that plaintiffs lacked standing was fatal to all of plaintiffs' claims, and was in the eyes of the court so compelling that it was unnecessary for the court to reach the numerous satellite theories that defendants offered.

To establish Article III standing, a plaintiff must first demonstrate that he has suffered an injury in fact. Whitmore v. Arkansas, 459 U.S. 149, 155 (1990). The injury must be concrete and the alleged harm actual or imminent, and not conjectural or hypothetical. Los Angeles v. Lyons, 461 U.S. 95, 101-02 (1983). If a plaintiff fails to allege sufficient facts to satisfy this requirement, the case must be dismissed.

In this case, plaintiffs did not allege a sufficient injury in fact. Plaintiffs offered two potential theories of injury in fact. First, they alleged that the lead in defendants' products posed a health risk and that, by consuming these products, they placed themselves and their children at risk of future harm from lead poisoning. Second, plaintiffs alleged that they suffered economic injury when they purchased products that defendants advertised as safe, but that in fact contained allegedly dangerous amounts of lead. Both theories, according to the court, ran into the same problem – plaintiffs failed to allege any actual injury caused by their purchase and consumption of the products.

The claim of exposure to "potential adverse health effects" or "potential harm" was insufficient for Article III standing. A threatened future injury must be "certainly impending" to grant Article III standing. In product liability cases, courts have held that to establish standing based on a threat of future harm, plaintiffs must plead a credible, substantial threat to their health. E.g., Herrington v. Johnson & Johnson Consumer Cos., Inc., 2010 WL 3448531, at *3 (N.D. Cal. Sept. 1, 2010); see also Public Citizen, Inc. v. Nat'l Highway Traffic Safety Admin., 489 F.3d 1279, 1293-96 (D.C. Cir. 2007); Sutton v. St. Jude Medical S.C., Inc.,419 F.3d 568, 570-75 (6th Cir. 2005). But the complaint here contained no

allegations that either plaintiffs or anyone else ever suffered any type of injury from consuming the products. The products were not recalled, and in fact, the FDA found that at least some of the specific products did NOT pose an unacceptable risk to human health.

Plaintiffs made no allegations as to the amount of lead actually in these products, did not claim that any particular amount in the products is dangerous, and did not allege that any specific amount had caused actual injuries to any plaintiff. The court also stressed that plaintiff did not allege that the levels of lead in the products violated any FDA standards. Under these circumstances, the allegations of risk of future harm to class members were insufficient to meet the "credible or substantial threat" standard. The claim of potential future injury was simply too hypothetical or conjectural to establish Article III standing.

The court cited a series of cases involving lead in lipstick, which we have posted on, making clear that the type of speculative future injury here cannot form the basis of a lawsuit. See Koronthaly v. L'Oreal USA, Inc., 374 F. App'x 257(3d Cir. 2010), aff'g 2008 WL 2938045 (D.N.J. July 29, 2008); Frye v. L'Oreal USA, Inc., 583 F. Supp. 2d 954 (N.D. Ill. 2008).

Plaintiffs' second theory of injury in fact was equally flawed. Plaintiffs alleged that defendants promised to provide products that were safe for consumption, but that plaintiffs received products that posed a health risk to them and their children. Consequently, the products were unsuitable for their intended purpose -- consumption -- and supposedly valueless. Because plaintiffs supposedly would not have purchased these products if they had known the products contained any lead, they suffered an economic injury -- the price of the product -- when they purchased the products.

But because plaintiffs were unable to show that any actual harm resulted from consumption of the fruit juice products, their allegation of "economic" injury lacked substance. The fact is that plaintiffs paid for fruit juice, and they received fruit juice, which they consumed without suffering harm. Again, the products were not recalled, did not cause any reported injuries, and did not violate any federal standards. The products thus had no diminished objective value due to the presence of the lead. These plaintiffs received the benefit of the bargain, as a matter of law, when they purchased these products and were able to consume them.

Other courts that have addressed similar "benefit of the bargain" standing arguments agree that plaintiffs who have not been injured by an allegedly defective product generally do not have standing to sue the product's manufacturer. See, e.g., Rivera v. Wyeth-Ayerst Labs., 283 F.3d 315 (5th Cir. 2002). Plaintiffs' allegations only support the contention that the levels of lead in the products were unsatisfactory to them. This allegation was simply insufficient to support a claim for injury in fact.