

E-Cigarette Class Action Suit Stymied by Federal Law

Article By:

Domenic B. Sanginiti, Jr

A class action failure-to-warn lawsuit against e-cigarette companies was thrown out by the Central District Court of *California* last week. The suit, filed by plaintiffs from CA, IL, and NY, included claims that the accused companies, including Lorillard Tobacco Co. and Reynolds American Inc. (which bought Lorillard in 2014), deceptively advertised the health benefits of e-cig products over traditional cigarettes.

The judge ruled federal law superceded state regulations citing the U.S. Food and Drug Administration (FDA)'s rule making e-cigarettes subject to the [Family Smoking Prevention and Tobacco Control Act](#). Under Federal law tobacco products only need to carry a warning regarding the addictive properties of nicotine. States cannot mandate stricter labeling requirements.

The only claim that appears to have survived is an unfair competition claim that the companies neglected to warn consumers of the dangers of toxic chemicals in the products. California's [Safe Drinking Water and Toxic Enforcement Act of 1986](#) requires notices on the labels for certain hazardous chemicals including formaldehyde which are known to be present in e-cigarettes. The honorable Judge Selna, who presided over the case, referenced Ninth Circuit Court of Appeals decisions that discount point-of-sale notices and advertising as insufficient to meet labeling requirements under the law.

Exactly which chemicals are included in different brands of e-cigarettes is unknown but an FDA study found “detectable levels of toxic cancer-causing chemicals, including an ingredient used in anti-freeze, in two leading brands of e-cigarettes and 18 various cartridges.” Formaldehyde has also been discovered. In addition, the flavorings used in vaping devices contain dangerous chemicals such as Diacetyl which may cause lung damage when smoked.

The judge elaborated on the surviving cause of action by stating that “state labeling requirements...that are ‘different from, or in addition to,’ the FDA’s requirement are preempted” from the Federal supercedence rule.

Despite the dismissal of seven counts in this class action suit, the remaining cause of action is likely to result in discovery of previously unknown chemicals in the e-cigarette fumes and liquids—perhaps resulting in additional lawsuits.

E-cigarette companies remain under a microscope as more and more dangers are revealed to

consumers. Since introduction to the market, there have been a series of explosions causing catastrophic injuries to innocent e-cigarette users. And although the chemical dangers and health risks are relatively unknown, more and more cases are likely to arise—especially if the companies continue to hide chemical composition and known dangers to users of the products.

COPYRIGHT © 2024, STARK & STARK

National Law Review, Volumess VI, Number 320

Source URL: <https://www.natlawreview.com/article/e-cigarette-class-action-suit-stymied-federal-law>