

Obesity

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Are Fast Food Lawsuits Likely to Be the Next 'Big Tobacco'?

The answer seems to rely on whether or not there is evidence that fast food is inherently defective and whether or not the Big Food companies know it. The assertion is that it is not inherently defective and guilty knowledge would only be determined if a case went as far as the Discovery procedure.

The author reviews the litigation to date and comments on the likely development of food/obesity claims.

Pelman v McDonald's Case:

Began in Aug 2002 The plaintiffs alleged that McDonald's: was negligent in selling foods high in fat, sugar, salt and cholesterol; failed to warn customers about the ingredients in its food; and negligently marketed food products that were addictive. All but three of the highly amended claims were dismissed *Pelman v. McDonald's Corp.*, 2006 WL 2663214 (S.D.N.Y. Sept. 16, 2006). Matters still to settle upon include false advertising, failure to disclose the presence of additives and breaking a promise to provide nutritional information. The author notes significant hurdles such as generic causation and specific causation remain e.g. where else had the plaintiffs been eating, had not been addressed.

Other cases against McDonald's have focussed on failure to disclose that chips contained beef fat and breaking a promise to remove trans fats from its foods. Both were settled in the form of charitable donations; \$10 million and \$7 million respectively.

Statutes

Twenty-three states have enacted laws that provide at least some protection or immunity to food companies faced with the threat of obesity lawsuits. Wording might be along the lines: no food manufacturer, distributor or seller "shall be subject to civil liability for personal injury or wrongful death to the extent such liability is premised upon a person's weight gain or obesity, or a health condition related to weight gain or obesity." But liability is not limited if the food company fails to provide legally required nutritional information or provides materially false information.

The Federal "cheeseburger bill" has been passed twice in the House of Representatives but not by the Senate.

Discovery

It is asserted that claims against fast food providers to date have rarely led to Discovery. It was this step that was central to the success of tobacco litigation; discovery unearthed memos and reports indicating a degree of knowledge and understanding that had hitherto been denied (or not accepted) and were beneficial to the case of the claimant.

Comment

It seems likely that the major fast food chains and food manufacturers will have already undertaken research into issues which could lead to liability claims and to have discussed them in minuted meetings. Of interest would be their understanding of addiction, market surveys to establish actual rates and patterns of consumption, medical contraindications, effects of dietary supplements and legal compliance issues.

There is, apparently, no evidence that fast food is inherently defective.