In California, Coffee Is No Longer Carcinogenic. Was It Ever?

By Josh Bloom — June 6, 2019

California's Proposition 65, which began its miserable life as *The Safe Drinking Water and Toxic Enforcement Act of 1986*, now has little to do with safe water or safe anything else. It's a bad joke to scientists, a plague on California businesses (1), and a goldmine for attorneys. Why? Because if a shoe manufacturer is selling shoes that are not marked with a cancer warning label then the company owners can be (and [1]were [2]) sued for failing to warn consumers about the presence of a Prop 65 chemical (2). You can't be too careful because we all know about the "shoe cancer crisis."

The enforcement of Prop 65 is based on a "bounty hunter" system - any individual can sue a company for failing to "warn" shoppers that their product(s) contain one of the 900+ chemicals now on the list, regardless of whether there is an actual risk or not. The bounty hunters just happen to be law firms, which can make a very nice (but parasitic) living by ambushing company owners with lawsuits, supposedly on behalf of the state of California (hah!), because a product contains a trace of a chemical on the list, despite the fact that roughly 100% of the time the chemical will do no harm.

Perhaps the king of the bounty hunters is the group Council for Education and Research on Toxics [3] (CERT) - a non-profit which has no website just a contact - Raphael Metzger [4], an attorney that has mastered the art of the corporate shakedown. More on that later.

The term "bounty hunter" could not be more accurate. Between 2000 and 2016 California businesses paid more than $284.7 million [5] to settle Proposition 65 cases because they didn't put a label on a product. That bounty did not result in one drop of clean water or one healthier person,

Existential Labels In California
but it probably did wonders for the California Porsche market. Two-thirds of the settlement money, some of which was at the expense small businesses that sold a harmless product - went to attorney fees. Lisa Halko, a defense attorney who was quoted in The Los Angeles Times, really nailed it in 2009 when she described what is nothing more than a legal shakedown (emphasis mine):

"[T]he problem is that the law allows anybody to bring a case by finding a listed chemical in a product even if it is present in an amount 1,000 times below the 'no observable effect' level. The defendant can prove the level is meaninglessly low -- but that is extremely expensive to do in court. Defendants end up settling with the plaintiff even when they are not liable, to avoid the expense of litigation."

Lisa Halko, a defense lawyer against Prop 65 suits

How stupid is this? (See Should California Put A Warning Label On Your Penis? Do we really need a label on shoes? Tell me any benefit to public health by doing this. There is none. In fact, it's actually harmful (see below).

Since the presence of a chemical/food on the list, which now numbers more than 900, has little or nothing to do with public health, it is reasonable to conclude that the absence of a chemical won't make a difference either. So, now all you California coffee drinkers can relax and enjoy your cuppa Joe knowing that all of a sudden it is safe because California, in all its wisdom, has decided that coffee is exempt from the provisions of Prop 65. There are three possible explanations for this action:

1. Coffee shouldn't have been on the list in the first place.
2. Coffee should have been on the list but suddenly became non-carcinogenic, perhaps by "decarcinogation," an imaginary process based on decaffeination.
3. Californian Superior Court Judge Elihu Berle's 2018 ruling that put it there in the first place was too absurd, even for California.

Answers are 1 and 3 are correct. The minuscule amount of acrylamide in coffee will never hurt anyone. Otherwise, we'd all have cancer; the FDA has stated that 40% of our calories come from foods that contain the chemical. In fact, coffee has been studied countless times; the consensus is that it either has no impact on cancer or prevents it. Only in California could coffee both cause, and prevent cancer.
Or perhaps it has something to do with the fact that the coffee industry stood up to the vultures at Council for Education and Research on Toxics (CERT), a truly vile group that has sued 100 coffee companies, including Starbucks, 7-Eleven, Whole Foods (how funny is this?), and Target for not labeling coffee, which, like a whole bunch of common foods, contains a tiny amount of acrylamide. Acrylamide is technically a "carcinogen," but only in rats that are fed absurdly high amounts of the chemical. Starbucks and others paid off the extortionists to get them to go away and hold up someone else.

Whatever the reason, the California Office of Environmental Health Hazard Assessment (OEHHA), part of the California EPA, decided that coffee doesn’t pose a significant cancer risk after all and, proposed an exemption from Proposition 65.

(My esteemed colleague, Dr. Alex Berezow, did a smackdown on Metzger and Prop 65 last year. See In California, Coffee Causes Cancer And Lawyers Collect The Fee.)

This is hardly the first time that CERT has used the phony acrylamide scare to extort money from companies. Burger King didn't have it their way, coughing up $1.25 million in 2002 because of acrylamide in its French Fries, $700,000 of which went to Attorney Raphael Metzger - the contact for the group, which does not have a website. McDonald's got off "easy." They only had to cough up 693,500 McDollars. And guess who filed the suit? Why, it was the Metzger Law Group, which brags about its success in suing companies that failed to put a pointless, make that, counterproductive, label on a jar.

Counterproductive is accurate. Silly labels like this don't benefit public health, they harm it. Because when you label everything, in reality, you really label nothing. One coffee drinker told AP News:

“It’s like cigarettes. Like, damn, now I’ve got to see this? Dude, I’m enjoying my coffee.”

There's the harm - equating the risk of coffee and cigarettes, which, even though it's ridiculous, will no doubt make some Americans throw up their hands and say "if everything is going to give me cancer, why stop smoking?"

So, coffee merchants get a break in California, but what about all the businesses who have already had their pockets picked to the tune of hundreds of millions of dollars? Will they get the bounty back? No way. They're screwed because of Mickey Mouse science and Goofy laws.

Speaking of which...
NOTES:

(1) One of many examples of how Prop 65 hurts businesses. California wine companies are facing fines of $2,500 per bottle for selling wine online without the warning label (alcohol is listed as a carcinogen on the Prop 65 list). Seriously? Wine?

(2) The chemical in question was di-n-butyl phthalate, a widely-used plasticizer, which is also found in perfumes and nail polish products. It is supposedly a reproductive toxin, which is what got it onto the list. So don't have sex while wearing shoes. Or with your shoes.

(3) Judge Berle ruled that coffee companies failed to prove that coffee is safe - something that is impossible. This is the toxicological equivalent of "when did you stop beating your wife?"

(4) These guys:
May 1, 2002

Jack M Greenberg, Chairman, C.E.O., and President
McDonald’s Corporation
One McDonald’s Plaza
Oak Brook, IL 60523

RE: NOTICE OF PROPOSITION 65, CALIFORNIA HEALTH & SAFETY CODE
SECTION 25249.6, VIOLATIONS: EXPOSURE OF CONSUMERS TO
CARCINOGENIC SUBSTANCES WITHOUT FIRST GIVING WARNINGS

Dear Mr. Greenberg:

This office represents the Council for Education and Research on Toxics (“CERT”), a California public benefit corporation whose charitable purposes are education and research regarding toxic substances.

CERT’s charitable purposes. That’s rich! Image: Meme Generator [18]

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