

Illinois Court Addresses Liquor Liability Exclusion

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In its recent decision in *Netherlands Insurance Co. v. Phusion Projects, Inc.*, 2012 U.S. Dist. LEXIS 5222 (N.D. Ill. Jan. 17, 2012), the United States District Court for the Northern District of Illinois had occasion to consider the application of liquor liability exclusion.

The insured, Phusion Projects, produced and sold an alcoholic beverage that also contained significant quantities of “stimulants” such as caffeine, wormwood and taurine. Phusion was named as a defendant in several product liability suits brought by individuals claiming injuries as a result of having consumed the beverage. While the nature of plaintiffs’ injuries differed, all suits alleged, in pertinent part, that the combination of alcohol and stimulants in the Phusion beverage enabled plaintiffs to consume more alcohol without passing out, thus causing them to behave more erratically while intoxicated and/or causing them to suffer negative health effects.

Phusion’s primary and umbrella liability insurers denied coverage for the underlying suits on the basis of a liquor liability exclusion applicable to:

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

Phusion argued that the exclusion should not apply since the policies were purchased specifically to insure Phusion’s products, which the insurers knew were alcoholic, thus rendering coverage virtually nonexistent. The court rejected this argument, explaining that the policies provided coverage for other risks arising from Phusion’s products, such as “if Phusion sold tainted products and injured its customers in a manner unrelated to intoxication.” Phusion also argued that the exclusion applied only to “Dram shop” claims, i.e., liability against bars for their sale of alcohol to individuals who then cause injuries to others. The court rejected this argument as well, citing to the express language of the exclusion that broadly applied to any insured in the business of manufacturing, distributing and selling alcoholic beverages, not just those in the business of serving or furnishing such beverages.

Thus, finding the exclusion clear and unambiguous, the court concluded that the exclusion applied to four of the underlying suits alleging injuries as a result of plaintiffs being intoxicated, including a DUI-related suit and a suit alleging that an individual accidentally killed himself after his consumption of the Phusion beverage caused him to be awake, in an intoxicated state, for over thirty hours. The

court did, however, conclude that the exclusion did not apply to an underlying suit alleging that plaintiff developed a heart condition as a result of consuming the Phusion product since the his claim was based on the dangerous nature of the product rather than its intoxicating nature.