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Food & Beverage **Law**



New Jersey: A hot bed of food litigation

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Marcus Rayner, president, New Jersey Civil Justice Institute. - (NJCJI)

Did you hear the one about the lady who is **suing Starbucks because there was too much ice in her iced coffee**? Unfortunately, this is not the set-up line for a great joke, but the subject of a pending lawsuit.

Lawsuits against the food industry gain notoriety because they are viewed by the public as a shocking or humorous. But as the number of these suits grows, the novelty wears off. People begin to view these sorts of lawsuits as legitimate, and the prediction that food is the next tobacco (aka: the next big payday for trial attorneys) begins to sound less farfetched.

As **NJBIZ's recent series on food and beverages in New Jersey** highlighted, our state is a foodie paradise. Unfortunately,

we are also a hot bed of food litigation. In fact, New Jersey is second only to California in the number of food-based lawsuits filed in its courts. Companies here are no more blameworthy than companies elsewhere, nor are New Jersey citizens especially more litigious than residents of other states. So what is fueling our state's food litigation fire? The culprit is the New Jersey Consumer Fraud Act. The CFA virtually invites food-based litigation (and frankly, a lot of other litigation) because 100 percent compliance is difficult and the act's remedies are very generous.

The law requires judges to award treble damages (triple damages in non-lawyer speak) and attorneys' fees in all successful CFA cases. There are few other laws that allow attorneys to reap such bountiful rewards, so this one draws them in like moths to a flame. There is actually a lawyer up in Bergen County that appears to be buying products just so he can file CFA suits.

No matter how ridiculous the subject of a food-based consumer lawsuit is, defending against it is always costly. In fact, it is so expensive to defend against these suits, many are settled, regardless of the merits of the case.

Whether a case is litigated or settled, the costs are passed along to consumers in the form of higher retail prices. So, ironically enough, excessive litigation in the name of consumer protection actually ends up hurting consumers.

Need proof this is happening? Try ordering a \$5 Footlong the next time you are at a Subway. The popular promotion disappeared and prices rose shortly after a CFA lawsuit over the length of bread was filed in New Jersey courts.

There's no way we can completely prevent people from filing outrageous food lawsuits, but we can stop rewarding the practice by amending our laws to make New Jersey a less desirable forum for cases where there is no actual fraud going on. Our state's consumers and businesses deserve as much.

Marcus Rayner, president, New Jersey Civil Justice Institute. Since helping to found the Institute in 2007, Rayner has established the group as the state's leading business organization dedicated to civil justice reform and sound legal policy. Under his leadership, the organization has grown from a start-up to an association representing over 100 of New Jersey's leading companies, professional associations, business trade groups, and defense lawyers.

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