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La Croix Loses Rule 11 Battle but Wins War, as Plaintiff Retracts Lawsuit Allegations

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National Beverage Corporation, the maker of the popular LaCroix sparkling water products, failed to obtain Rule 11 sanctions against a consumer plaintiff, but ultimately scored a major victory recently, when the plaintiff not only withdrew her lawsuit, but also took the remarkable step of publicly retracting her claims alleging that LaCroix "all natural" and "100% natural" marketing and labeling was misleading.

The proposed class action, *Rice v. National Beverage Corp. d/b/a LaCroix Sparkling Waters*, No 1:18-cv-7151 (N.D. Ill.), put forth a host provocative allegations. It claimed that LaCroix's image of an "innocent," "naturally essenced," and "all natural product" belied the disturbing reality of a product containing synthetic compounds that cause kidney tumors (limonene), are used to treat cancer (linalool propionate), and kill cockroaches (linalool). The Complaint, originally filed in Illinois state court, asserted claims under the Illinois Consumer Fraud and Deceptive Business Practices Act, as well as for breach of warranty, and unjust enrichment.

National Beverage countered with provocative statements of its own, declaring in its Answer and Affirmative Defenses that plaintiff's suit was "reckless," "meritless," and filed in bad faith. It subsequently moved for fees and sanctions under Federal Rule of Civil Procedure 11. It argued that its own testing revealed that its water did not contain any synthetic ingredients, and that plaintiff based her "frivolous" claims on an unreasonable interpretation of FDA regulations, tested only one flavor of water while making allegations that included other flavors, and engaged in "financial terrorism" against National Beverage by issuing a press release designed to hurt the company's bottom line.

In a July 2019 order denying the Rule 11 motion, Judge John B. Gottschall admitted that "[d]efendant makes a sympathetic case," but found that its "outraged, repetitive brief" contained little evidence to compel the court to issue sanctions. First, Judge Gottschall noted that he could not issue sanctions based on a complaint originally filed in state court, and defendant "points to no post-removal activity to which Rule 11 applies."

However, because plaintiff had not questioned Rule 11's applicability, Judge Gottschall nevertheless undertook a Rule 11 analysis. Even still, he found defendant's evidence in support of sanctions lacking. He noted that defendant failed to fully explain why plaintiff's arguments were frivolous. Such an explanation was especially important here, where the claims at issue involved specialized knowledge involving chemical compounds. Simply put, "[n]ot being a biologist and having no expert assistance," Judge Gottschall ruled that he could not substantiate defendant's contentions.

Though it failed to win sanctions, National Beverage ultimately emerged victorious. In a letter retracting her claims and announcing the withdrawal of her suit, plaintiff explained that a laboratory she previously commissioned for testing has since confirmed it could not determine if the ingredients it had tested were "synthetic," since the same ingredients "can be derived naturally."

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