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Chairman: Jerry Steinman
Publisher & Editor: Benj Steinman
Executive Editor: Eric Shepard

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Tex Distribs & Regulators Lose Lotsa Battles, But Out-of-State Retailers Still Stymied

Post-*Granholm* world just got a little weirder. US Dist Ct in Tex sent lotsa mixed messages in resolving suit by out-of-state retailers seeking to ship direct to Tex consumers. Most of fed judge's logic, reasoning, approach *and* remedy came down squarely on side of direct shippers, with crucial exception that in effect stopped shippers again. He tossed Tex laws that barred out-of-state retailers from shipping to Tex consumers, since Tex allowed Tex retailers to do it. He sided with those who believe *Granholm* barred discrimination vs any tier. That no-no not limited to producers, he ruled, countering what some distrib advocates have argued since *Granholm* decided. He also supported retailers that state has burden of proof when it discriminates to show laws serve legit purposes. Ain't up to challengers to prove state's reasons not legit. That's key because proving those interests are legit is difficult at best. And he backhanded Texas' stated purposes for discrimination: reducing underage access, collecting taxes and necessity to preserve 3-tier system. Finally, he showed little, if any deference to 21st Amendment and virtually no acknowledgment that alcohol is unique.

That's quite a list of losses. But just when you thought judge would create free-for-all in Tex, he also ruled Tex can constitutionally require out-of-state retailers to buy wine from Tex distribs before shipping to Tex consumers. Net-net: those retailers in same spot they started: effectively stopped from shipping to Tex. Indeed, one retailer complained that Calif law bars it from receiving product from Tex distribs. But judge said that Tex law requiring purchase from Tex distrib doesn't discriminate. So it stands.

Beyond effectively halting direct shipments from non-Tex retailers, judge provided "big victory" to regulators, according to vet alc bev atty Richard Blau. How so? Judge ruled that "limited exception" to 3-tier that allows out-of state wineries to ship to Tex consumers "does not permit the conclusion that Texas has relinquished its right to regulate the vast remainder of wine sales through its three-tier system." Lotsa biz people and attys argued the opposite, sez Richard: that those "farm winery" and other exceptions basically meant states had waived traditional reasons for 3-tier laws. But fed court judge breathed life into those reasons and even echoed earlier Sup Ct language that 3-tier system "unquestionably legitimate." But another alc bev atty, Drew Jaglom, sees "blind spot" in Tex judge's making Tex distribs "magically different" and upholding requirement all retailers buy from them. Next logical step, in Drew's opinion: a "claim by an out-of-state wholesaler arguing that under the dormant Commerce Clause, it has the right to sell alcohol to out-of-state retailers (and for that matter in-state retailers) for resale in Texas," simply by purchasing Tex wholesale license. And what, if you own distributorships in multiple states, including Tex? Tex decision conflicts directly with NY decision that went distribs way last fall, Drew, the judge, and others point out. Yet another reason to expect *Granholm II* sometime down the road. For more key quotes and access to the full decision, visit our website: www.beerinsights.com.

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EDITORIAL ADDRESS: PO Box 264, West Nyack, NY 10994 Phone (845) 624-2337 Fax (845) 624-2340 Email: bmiexpress@aol.com Website: www.beerinsights.com ISSN #0300-7480. Copyright 2008 by Beer Marketer's INSIGHTS, Inc. All Rights Reserved. **Warning:** It is illegal under Federal Copyright Law to make copies of any kind of this newsletter without our permission. Copyright violations will be prosecuted. Beer Marketer's INSIGHTS shares 50% of net settlements or jury awards with persons who provide essential evidence of illegal photocopying. INSIGHTS guarantees confidentiality. To report illegal photocopying, contact Betsy Koch, with the law firm Levine, Sullivan, Koch & Schulz: Confidential phone: (202) 508-1128.