

New York Federal Court Rejects Tuna Manufacturer's Failure to Warn Defense

Article By:

Daniel M. Krainin

Mackenzie S. Schoonmaker

Rejecting Defendants' argument that the federal government's decision not to adopt a warning requirement was fatal to Plaintiff's claim, a federal court in New York allowed Plaintiff's failure to warn claim regarding the presence of mercury in tuna to proceed to trial. See [*Porrazzo v. Bumble Bee Foods LLC and Stop & Shop Supermarket Co.*](#), No. C10-4367-TSZ (S.D.N.Y. Feb. 26, 2014).

Plaintiff claimed that Defendants failed to warn that regular consumption of the tuna could cause mercury poisoning. Defendants -- Bumble Bee Foods, LLC, which canned the tuna, and Stop & Shop Supermarket Co., a supermarket chain which sold it -- moved for summary judgment arguing, among other defenses, that Plaintiff could not succeed on its failure-to-warn claims because it failed to show the tuna was dangerous. *Porrazzo*, slip op. at 6. In rejecting Defendants' claims, the court found that the Defendants did "not deny that the tuna they sell contains methylmercury, which is known to have deleterious health effects if ingested in sufficient quantities." *Id.* at 5.

Defendants further argued that they were entitled to summary judgment on their failure to warn claim because the level of methylmercury in its tuna was within U.S. Food and Drug Administration's internal enforcement guidelines and the FDA opted to issue only an advisory, rather than a required, warning on tuna products. *Id.* at 6. The court, however, emphasized that "the FDA's decision not to adopt a warning requirement does nothing to absolve [D]efendants of liability if they breached their common law duty to warn," and to hold otherwise "would entirely vitiate the failure to warn doctrine." *Id.* at 7.

© 2025 Beveridge & Diamond PC

National Law Review, Volume IV, Number 133

Source URL: <https://natlawreview.com/article/new-york-federal-court-rejects-tuna-manufacturer-s-failure-to-warn-defense>