

TODAY'S "The Vital Link" WHOLESALE



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A PUBLICATION OF THE MICHIGAN BEER & WINE WHOLESALERS ASSOCIATION

UNITED STATES SUPREME COURT REJECTS CHALLENGE TO FACE TO FACE TRANSACTIONS

Despite the fact that it has been four years since the United States Supreme Court issued its decision in Granholm v Heald, the constitutionality of many state based liquor regulations is still being litigated across the country. While the Granholm case made it clear that states cannot facially treat out-of-state wine suppliers differently than in-state wine suppliers, it left many questions unanswered.

Some of those questions revolve around state regulations that appear to treat in-state and out-of-state suppliers the same but arguably treat them differently when the law is applied. When a statute is challenged based on the theory that its application discriminates against out-of-state entities, courts must balance the disparate impact that the out-of-state entity experiences against the benefits of the law. If the benefit outweighs the disparate impact, the law is deemed valid.

In fact, the United States Supreme Court just rejected a case that claimed an Indiana statute discriminated against out-of-state suppliers in its application. The case, Baude v Heath, was out of the State of Indiana. The Supreme Court's decision to reject the plaintiff's appeal allowed the Seventh Circuit Court of Appeals decision which upheld the statute to stand.

In response to the Granholm lawsuit, Indiana passed a statute allowing both in state and out-of-state wineries to ship wine to consumers in Indiana. However, in order to receive a wine shipment the consumer must first visit the winery and engage in a face to face transaction with the winery. A face to face transaction requires a consumer to purchase wine at the winery and have their

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Container smuggling fix on hold

After a hard fought victory in 2008 to pass legislation intended to crack down on illegal can and bottle smuggling, Michigan now finds itself struggling to implement safeguards against smugglers who are robbing Michigan taxpayers of millions of dollars each year.

While certain new penalty provisions and posting requirements have taken effect, unfortunately, the majority of the anti-smuggling protections that were signed into law by Gov. Jennifer Granholm and which were scheduled to take effect on March 31 have yet to be implemented. This means that the problem of can and bottle smuggling continues. Put on hold are critical safeguards, such as requiring cans and bottles sold in Michigan to carry special markings and reverse vending machines in Michigan that accept them be specially retrofitted to read these markings.

Because of an inability to commit to making the right kind of investment for Michigan's future, implementation

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of the anti-smuggling law is being held up and these delays are allowing smugglers to continue to cash in on Michigan's deposit law and robbing Michigan taxpayers.

Unfortunately, what has happened is worsening the situation. By taking action, the Legislature has brought light to the problem and the publicity has increased the fraudulent activity along the border. "I've already lost well over \$54,000 this year" remarked Greg O'Neil, President of O.K. Distributors in St. Joseph.

"We've come so far. What we need now is to complete the project" says O'Neil. The Granholm Administration pledged \$1 million to help jump start the machine upgrades. No work can begin until the money is in a dedicated account. Until then, people will just keep exploiting the system. "We know the budget is tight, however, by fixing this problem, we will keep beer and pop sales in Michigan. Not only will it help me, the beer guy, it will also help the mom and pop party stores and the large grocery chains who sell my products" remarks O'Neil.

According to state officials and law enforcement, smugglers rob Michigan taxpayers of upwards of \$13 million each year by illegally redeeming cans and bottles from other states, and cashing in on Michigan's 10-cent

can and bottle deposit – the nation's highest. Monies collected from those deposits go to a fund that pays for environmental cleanups in neighborhoods and supports recycling at local businesses.

"The real loser in the whole system is the State of Michigan" says Mike Miller, President of Floral City Beverage in Monroe. "When I take back fewer cans than I sell, I send the difference to the State to help with environmental clean up. Today, I take back more cans than I sell, the State will get nothing from me" continues Miller.

The law increases penalties from \$500 and 93 days in jail to a higher \$5,000 and 5 years in jail for returning fraudulent containers. Also, on March 31, all stores accepting containers for return were to post signage alerting people of the new penalties. However, the special markings on Michigan containers and retrofits of reverse vending machines, the keys to stopping illegal smuggling, cannot begin until \$1 million is placed in the fund for machine upgrades.

Bottom line: We need to finish what we started or it could have serious consequences to Michigan businesses and the state treasury!

PRESIDENT'S REPORT



As summer settles in, so do the respective activities of the association and member companies.

Once May roles around, the phones get a little quieter at the association offices as wholesalers gear up for the frantic warm weather selling season. Those not close to the industry often don't know how important summer and improved weather contribute to the success of wholesaler's sales in a given year. Good weekend weather, especially in tourist areas around the state, are critical to "making the numbers" in any given year. Here's to sunny weekends and a great summer selling season!

But while the phones grow a little quieter at the association offices, important work continues. We're putting the finishing touches on plans for an exciting and informative Summer Convention and Annual Meeting of Members which is previewed in this issue. Planning is also underway for our Fall Harvest Celebration in Lansing on September 16th. Our inaugural fall party last year celebrating the 75th Anniversary of the Repeal of Prohibition was a big hit for both wholesalers and the legislative crowd, and we look

forward to a repeat performance.

On a more serious note, we are also busy with the dues collection cycle and working with the Finance Committee to develop budgets for the new fiscal year beginning July 1. Despite the continuing economic problems faced in the state, the beer and wine wholesaling industry remains stable and the association's budget and advocacy programs will remain strong as we confront the challenges of 2010.

We are also busy keeping a close eye on budget developments in the State Capitol. Once again, the state is faced with significant budget deficits; and as the Legislature grinds through the process of passing budgets, there will be the inevitable push to increase revenue. Wholesalers must continue to be vigilant in talking to legislators about the negative consequences of any increase in beer or wine taxes. Our current high tax rate and costs of the bottle bill already drive significant business out of our state. In these tough economic times, we don't want to drive more economic activities away from Michigan businesses!

So, it's business as usual for both wholesalers and the association. Keep on selling America's favorite beverages in a responsible manner, and we've got your backside here in Lansing!

UNITED STATES SUPREME COURT REJECTS CHALLENGE TO FACE TO FACE TRANSACTIONS cont'd from page 1

identity and age verified at the winery. Once this is accomplished, the winery may accept internet or phone orders from the customer and ship the product directly to the customer.

Plaintiffs argued that such a system made it easier for in-state and more difficult for out-of-state wineries to ship product to Indiana consumers. In addition, plaintiffs claimed that the requirement of an initial age and identification check would not achieve Indiana's goal of preventing minor access to alcohol. In other words, the plaintiffs argued that the application of the law discriminated against out-of-state entities and did not provide a strong enough benefit to Indiana to allow the statute to be constitutional.

Indiana justified the law by arguing that an initial face to face transaction applied evenly to both in-state and out-of-state entities and was necessary in order to prevent minor access to alcohol. In essence, Indiana reasoned that by requiring a winery to establish the age and identity of an individual prior to shipping product to the individual it would reduce the likelihood of minors ordering alcohol from the winery over the internet.

In weighing the arguments, the Seventh Circuit Court wisely declined to accept plaintiff's position that age and identification checks are not an effective way to combat minor access to alcohol. In so doing, the Court upheld Indiana's face to face requirement re-enforcing common sense state regulations.

The United States Supreme Court's decision to reject plaintiffs request for appeal is applauded by those in the industry who believe that state regulation is the most effective tool in preventing minor access to alcoholic beverages.

The Baude v Heath decision sends an important message to both state regulators and those wishing to scale back or overturn state regulations: Facially neutral state laws, even those that arguable have some disparate treatment of out-of-state entities, will be upheld as valid exercises of state regulatory power when a state benefit outweighs any real or perceived disparate treatment of out-of-state entities.

Even more important, this ruling is yet another example of courts throughout the country limiting the holding of the Granholm v Heald case to its facts and reaffirming state regulatory power over alcoholic beverages. This is a trend that supporters of state based

alcohol regulations hope will continue in light of the appointment of a new United States Supreme Court Justice.

Those involved in the alcohol beverage industry are watching the recent appointment and upcoming nomination hearings with increased interest as Judge Sonia Sotomayor has experience hearing alcohol regulation cases. Those



Judge Sotomayor

familiar with the Granholm case will recall that it involved both Michigan's and New York's bans on direct shipments from out-of-state suppliers. Judge Sotomayor sat on the Second Circuit Court of Appeals when the New York case was heard and voted to uphold the New York statute. While it is impossible to tell how a judge may rule in the future, Judge Sotomayor's vote to uphold New York's statute is comforting.

News Flash: Just as this edition was going to print, the legal trend toward upholding common sense state regulations grew even stronger. The 2nd Federal Circuit Court of Appeals just issued in its decision in the case of Arnold Wines v Boyle and upheld the state of New York's ban on out-of-state retailer shipments. Plaintiffs in this case argued that the United States Supreme Court's decision in Granholm extends beyond discrimination of products and producers and goes so far as to prohibit states from treating in-state and out-of-state retailers differently.

In issuing its decision, the 2nd Circuit soundly rejected plaintiff's attempts to expand the Granholm decision to retailers and indicated that the Granholm decision essentially demands lower courts to limit its application. This is a huge victory for state based regulations. The MB&WWA extends congratulations to the State of New York and its citizens.

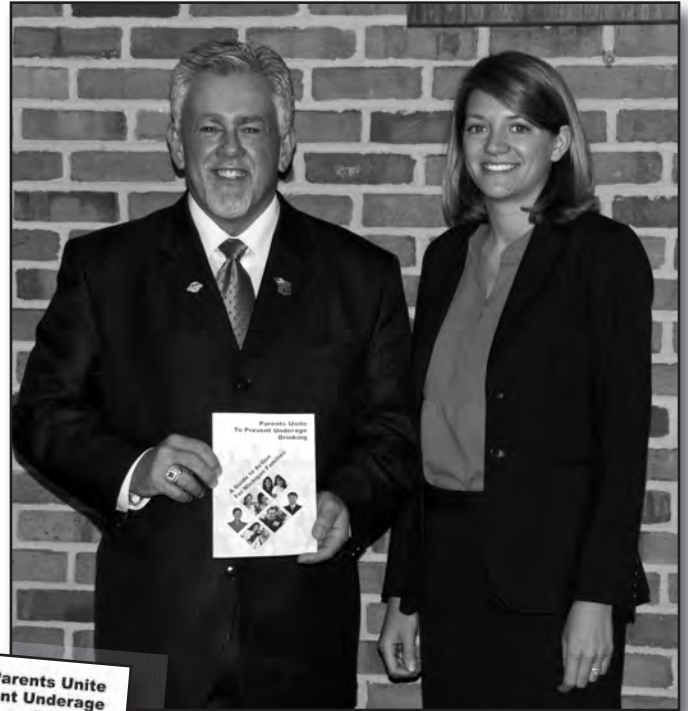
Distributors Focus on Fight against Underage Drinking

Michigan beer and wine distributors are at the forefront of efforts to fight underage drinking. During this year's prom season, distributors once again spearheaded several successful programs that are giving parents, educators and students the tools they need to make better choices and reduce incidences of illegal teen drinking.

This prom and graduation season, distributors helped put 35,000 "Parents Unite to Prevent Teen Drinking" brochures into the hands of schools to distribute to parents. This joint project between the Michigan Beer and Wine Wholesalers Association and the Michigan Association of Secondary School Principals contains useful information and resources for parents to fight underage drinking. Since 2002, distributors and principals have given away more than 470,000 copies of the free booklets, making this the most widely distributed book in Michigan schools aimed at reducing underage drinking.

In 2009, local distributors took the lead at the local level to work with governments and schools in their communities to spread the word about Parents Unite. Central Distributors in Romulus partnered with Mayor Alan Lambert and his staff to promote Parents Unite. Mayor Lambert spoke about these booklets at a City Council hearing and how they could help prevent teen drinking. The mayor also cut a public service announcement for the booklets to be aired on local cable TV. In Oakland County, Powers Distributing also played a strong role in promoting Parents Unite. Working with local schools, Powers helped produce a PSA for its local cable station. Jerry Powers also saw his guest column on Parents Unite run in the Oakland Press. Across the state, distributors tailored the Parents Unite program for their individual communities, including partnering with local educators, counselors and the media to get the word out about these useful booklets.

The efforts to fight teen drinking don't happen just during the prom and graduation seasons. All throughout the school year, distributors are aggressively reaching out to their communities to take action against this problem. As part of our commitment, we continue to sponsor motivational speakers to talk to students and educators in local schools about the importance of making the right choice when it comes to alcohol. One speaker, Sarah Panzau, who has been a part of this effort for years, continues to not only connect with students, but also



Aubree Ellis, Central Distributors in Romulus works closely with Romulus Mayor Alan Lambert and others in the Romulus community to distribute Parents Unite.

attract the news media, including being the subject of powerful feature profiles in the Detroit Free Press and the Monroe Evening News earlier this year.

In addition to these popular and effective speakers, distributors are also taking every opportunity to distribute promotional materials about fighting underage drinking at public events in schools, local colleges and other locations. In Lansing, the MBWWA set up a booth in the state Capitol to distribute materials and bring attention to underage drinking. Locally, some distributors are also seizing every opportunity: Central Distributors partnered with Schoolcraft College in Livonia during its "mocktail" party to promote responsibility.

While the fight against underage drinking is far from over, distributors – working with law enforcement, educators, schools, parents, local businesses and many others – are making progress in the fight against underage drinking. Together, we can continue these important efforts and do our part to help teens and families in our community be safe.

Legislators Given First-Hand Experience in Beer Business

Over the last few months, MB&WWA distributor members have been treating legislators to personal tours of their extensive beer warehouses. From this perspective, anyone can gain an up close and personal look at the sophisticated inner workings of how beer comes from the brewery to store shelves. “We want everyone to know that beer distributors are real people who hire local workers and pay good wages” says Kit Morgeson, Marketing Manager at O & W, Inc. in Ypsilanti. “We call on our legislators all the time in their offices in Lansing; we want to offer them the opportunity to get to know us and our business back in their district” continues Morgeson.

Touring a warehouse also brings to light the enormous recycling effort every beer distributor undertakes as a part of their responsibility under the Bottle Bill. Morgeson concludes, “These tours offer a great deal of insight into the beverage distribution industry.”

Michigan’s beer distributors have been challenged to get everyone one of the legislators from their area through their warehouses, and they’re off to a great start in 2009. In June alone, Great Lakes Beverage in



Detroit, Rave Associates in Ann Arbor, I.H.S. Distributing in Kalamazoo, Hubert Distributors in Pontiac, Powers Distributing in Orion, Tom Ryan Distributing and John P. O’Sullivan Distributing both in Flint, along with O & W, Inc. have provided their local legislators tours of their facilities.

In fact, these distributors are giving Michigan’s elected leaders the one-two punch by collaborating on the day’s events and scheduling multiple tours in the area on the same day. “Coordinating the tours not only allows us the opportunity to get our legislators in our buildings, it allows them the opportunity to kill two birds with one stone and meet all of their constituent distributors” remarked Cheryl Caleca of Tom Ryan Distributing in Flint.

Many more tours have taken place and even more are scheduled for the rest of the summer. These summer months offer a great time to discover the inner workings of the beer distribution process. Already this year, over 50 percent of the newly elected freshmen legislative class has received their personal tours. Schedule yours today!

Here We Go Again: Groups pressure to raise beer tax

It’s déjà-vu as groups from around the country put pressure on Congress and state legislatures to raise taxes on beer. The notion of increasing the excise tax on beer and wine continues to circulate as lawmakers continue to wrestle with the budgets. The argument is that the beer tax hasn’t been touched in a number of years. However, Michigan already has the highest taxes in the Midwest. In fact, excise taxes are the most expensive ingredient in beer. More than 40 percent of the cost of each beer is due to taxes in one form or another.

Because Michigan’s excise taxes are already the

highest in the region, Michigan businesses are at a disadvantage with other neighboring states. We lose businesses, jobs and even revenue to Ohio, Indiana and Wisconsin. Raising the tax will only provide incentive for individuals to purchase beer and wine in neighboring states.

At a time when many industries are struggling, Michigan’s beer industry stands out as a rare positive story that is contributing to the state’s economy by providing stable jobs and significant contributions to Michigan’s communities.

Budweiser Clydesdales Show Support for Michigan Distributors

On Wednesday, June 17, the world famous Budweiser Clydesdales stood front and center at the Capitol with Michigan's beer distributors to spotlight the good-paying jobs and economic contributions of Michigan's beer industry. As part of the Capitol tour, the Clydesdales visited with Lansing's M & M Distributors to bring attention to the dangers of raising the beer tax.

"The Clydesdales are a great reminder that Michigan has some of the hardest working people around and that we can overcome this tough economy" says Doug Barr, M & M Distributors, Inc. The Clydesdales' appearance in Lansing is one of 300 made annually by the five traveling teams of horses.

The Clydesdales are pictured here in front of Michigan Beer & Wine Wholesalers Association headquarters.



Pat Fox Leaves Legacy as Insurance Program Chair

Since its inception in 1990, Pat Fox of Henry A. Fox Sales has chaired the MB&WWA Group Insurance Trust. At the trust's Annual Meeting this past May, Pat stepped down after nearly twenty years of steady leadership and Doug Wanty of O&W Inc. was elected to the post.

Mr. Fox's stewardship of this important member and employee benefit program is a principle reason for the program's success. During a time of dramatic increases in health insurance costs, the trust was totally focused on

the interests of the participating companies and the covered employees. The program maintained a philosophy of low administrative costs and conservative investment of assets which more often than not resulted in lower rate increases than was experienced in the general marketplace.

Over the last twenty years, 90% of the currently active member companies have benefited from the program. It has grown from a program with \$8.5 million in premiums to nearly \$23 million. Additionally, when the program experiences good claims years, the members directly benefit either through reduced rates increases or direct premium holidays and rebates. Between 1990 and 2008, the program has returned over \$11.3 million in premium payments to participating companies and employees.

The trustees assembled in May thanked and paid tribute to these many years of dedicated service to a critical membership program. "This truly is an end of an era" declared the newly elected trust chair Doug Wanty. "The success of this program is in no small measure a result of the judicious oversight and keen insight of Pat Fox. I know it is a cliché but he will truly be a tough act to follow", Wanty continued.

While stepping down as chair, Pat will continue to serve as a trustee elected by the MB&WWA Board.

PLAN AHEAD—MARK YOUR CALENDAR

*Michigan Beer and Wine
Wholesalers Association
Fall Harvest Celebration*

*September 16, 2009
5:00-7:30 p.m.
332 Townsend Street
Lansing, Michigan*

JOIN US UP NORTH FOR NETWORKING, EDUCATION AND FRIENDSHIP



Dynamic State Leaders:

Lt. Governor John Cherry is scheduled on Thursday, July 30; and confirmed rising stars of the legislature who will participate on the legislative panel on Friday, July 31 are Sen. Mike Prusi (D-Ishpeming), Rep. Andy Coulouris (D-Saginaw), Sen. Roger Kahn (R-Saginaw), Rep. Kevin Elsenheimer (R-Bellaire) and Rep. Pete Lund (R-Shelby Twp.).

Hear From Our Top Regulators:

Nida Samona, MLCC chair, and Administrative Commissioners Pat Gagliardi and Don Weatherspoon will be on hand for the regulatory panel on Friday, July 31.

National Beer and Wine Industry Leaders:

Craig Wolf, WSWA President and CEO and Paul Pisano, NBWA Vice President, Industry Affairs and General Counsel will provide a complete national update on the beer and wine wholesaling industry.

Schedule of Events

Thursday, July 30, 2009

- 2 p.m.-5 p.m. Annual Meeting, Election of Officers and Directors
5-6 p.m. Registration
6:30-8:30 p.m. Family evening, dinner and activities
Special Guest: Lt. Governor John Cherry

Friday, July 31, 2009

- 8:30-11:30 a.m. Legislative and Regulatory Panels
11:30-1 p.m. Lunch, exhibits and hospitality
1 p.m. Golf tourney – Betsie Valley

Saturday, August 1, 2009

- 9-Noon Craig Wolf, Paul Pisano
11:45-1:15 p.m. Lunch w/ exhibits
6:30-9:30 p.m. Children's activity w/ dinner
6:30-7:30 p.m. Cocktail Reception
7:30-9:30 p.m. Banquet & annual recognition of leadership/entertainment

Sunday, August 2, 2009

Departure

In-Memoriam

We are saddened by the deaths of:

Wayne Lee, president of Alpena Beverage Company in Alpena.
Wayne was a member of the MB&WWA board of directors for a number of terms through 1992.

Elizabeth (Betty) Klopccic, beloved wife of Don Klopccic, mother of Don Klopccic Jr., and Keith, West Side Beer Distributing and Central Distributors.

Our deepest sympathies are extended to their families and friends.

PAC CONTRIBUTORS

MB&WWA Information

Anderson Distributing Company	Ludington Beverage Co., Inc.
Atlas Sales, Inc.	M & M Distributors, Inc.
Bayside Beverage Corporation	Marchetti Distributing Co., Inc.
Bink's Wines & Beverages	MB&WWA Staff
Caswell-Latocha, Inc.	O.K. Distributors, Inc.*
Central Distributors	O & W, Inc.
Custer Beer Co.	Paw Paw Wine Distributor Co.*
Daniel L. Jacob & Co., Inc.	Petitpren Inc.*
Earl Smith Distributing Company*	Pike Distributors, Inc.
Eastown Distributors Company	Powers Distributing Company, Inc.
Fabiano Brothers, Inc.	Silver Foam Distributing Company*
Floral City Beverage, Inc.	Thompson Beverage Company, Inc.
Gerry's Dist. Co.	Tom Ryan Distributing Company
Great Lakes Beverage Company	Tri-County Beverage Company*
H. Cox & Son, Inc.	Tyler Sales Company, Inc.
Hubert Distributors, Inc.*	West Side Beer Distributing
Huron Distributors, Inc.	Wicksall Distributors, Inc.
I.H.S. Distributing Company, Inc.*	
Imperial Beverage Company	
Jozaitis Distribution Company, Inc.	
Kent Beverage Company, Inc.	

\$137,123.00

*Indicates employee contributions

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