

— KNOWLEDGE-BASED PUBLICATION —

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White Claw is Ready to Conquer the Globe

Dear Client:

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JAGLOM BREAKS DOWN FOR US THE SEISMIC COMPLAINT AGAINST DBI

There were lots of moving parts and allegations made in the Seismic Brewing cross-complaint against DBI Distributing. So we got veteran beverage lawyer Drew Jaglom of Tannenbaum Helpern Syracuse & Hirschtritt LLP on the hook to explain its more salient points to us as if we were fifth graders, and he didn't disappoint.

Recall in yesterday's BBD that tiny 6k barrel California craft brewer, Seismic, cross-sued DBI after the latter sued them for refusing to consent to having its distribution rights sold to Reyes, as Seismic didn't want Reyes to change the sweetheart contract they had with DBI, and plus they thought DBI didn't perform anyway (see [BBD 08-26-2020](#)), and in the complaint they

dialed the M word several times (for monopoly, not murder).

But we must stress that this suit is against DBI, not Reyes, even though they get plenty of ink.

Here's Drew to explain:

“Although the complaint makes allegations of anticompetitive conduct, monopsony [when there's only one buyer] and other asserted misconduct by Reyes, it does not assert any claims against Reyes. It also does not assert any antitrust claims against DBI, or anyone else.

“There are only two causes of action asserted. The first is a garden-variety breach of contract claim based on (i) the claimed attempt to assign the Seismic distribution rights to Reyes without Seismic's consent and (ii) the asserted failure of DBI to meet agreed sales targets. The second asserts bad faith by DBI, which is also essentially a breach of contract claim....”

So two basic contract claims, and a bad faith claim. But on the first claim, Drew points out that DBI did seek out Seismic's consent to transfer rights to Reyes. Says Drew:

“On the first basic breach of contract claim, Seismic asserts that DBI attempted to assign the Seismic distribution rights without Seismic's consent. But based on my reading of the facts asserted – and assuming the facts in the

complaint to be true – that doesn't seem to be what happened.

“Rather, DBI made a deal to sell its business to Reyes, and requested Seismic's consent. Reyes failed to provide Seismic with information it had asked for [according to the complaint], and tried unsuccessfully to get Seismic to accept different contract terms, so Seismic refused to consent.

“DBI then moved the brand to Markstein instead, albeit more slowly than Seismic would have liked. So on the facts as stated, DBI tried to sell the Seismic rights to Reyes with Seismic's consent, didn't get that consent, and so transferred the brand to Markstein instead, presumably with the consent of Seismic. That does not sound to me like DBI attempted to assign the rights without Seismic's consent.”

No harm, no foul. So why include this assertion in the complaint? We'll get to that later.

On the second claim.....

“Seismic's second claim, that there was a contractual 'Failure to Perform' because DBI missed sales targets in three of five consecutive quarters, seems to have more validity, if the facts bear out the claim. If that's what happened, Seismic had the right to terminate without compensation,” write Drew. “I note that the contract expressly provided that 'failure to meet a sales or distribution goal in the Annual Plan

does not alone constitute a material breach or default under this Agreement. Notwithstanding the foregoing, Distributor shall use best efforts to achieve the marketing, sales, and distribution targets set forth within each Annual Plan, and a failure to achieve such targets may trigger Supplier's termination rights as set forth in Section 9(d).'"

Continues Drew: "To claim damages for breach would require a showing that DBI failed 'to use best efforts to develop and increase the sale of Products throughout the Territory' and to 'use best efforts to pursue and implement each Annual Plan.' That is a more difficult showing to make, although Seismic does assert such a failure."

"As to the bad faith claim, it's a bit much to believe that the \$400 million deal to sell DBI's entire business to Reyes was entered into 'with the motive intentionally to frustrate Seismic's enjoyment of contract rights.'"

Now that is kinda hilarious. I doubt Seismic barely entered anybody's mind when this deal was done.

As we noted yesterday, Seismic was founded by Christopher Jackson, the youngest kid of the Jackson Family Wines founders, a top ten U.S. winery. So presumably he and his family are used to playing by wine industry rules, which

typically have much more supplier-friendly contracts.

* * *

Until tomorrow,
Harry, Jenn and Jordan

“Old age is the most unexpected of things that can happen to a man.” – Leon Trotsky

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