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*BeverageDaily.com*

## **Obesity Lawsuits Loom for Soft Drinks Industry**

**January 25, 2006**

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Retrieved 01/25/06 from

<http://www.beveragedaily.com/news/ng.asp?n=65343-soft-drinks-obesity-lawsuit>

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A lawsuit aimed at getting soft drinks firms out of US schools on obesity grounds is now ready to go, says one of the leading lawyers involved to BeverageDaily.com, as new research suggests obesity litigation will become the next 'tobacco'.

Professor Richard Daynard, a lawyer who has already taken on the tobacco firms, spent much of 2005 gathering evidence and witnesses to launch a new court battle to get the soft drinks giants out of schools.

"We've done everything we need to do to prepare for the lawsuit, but we haven't decided exactly when or where to file it. It could be any time after this month," he said in an interview with [www.BeverageDaily.com](http://www.BeverageDaily.com).

The suit is expected to allege that soft drinks in schools breach state consumer protection laws and that vending machines are illegal as an 'attractive nuisance'.

"We have a product that has been shown to make a material contribution to childhood and adolescent obesity and we have it in schools where the kids are required to be for six or seven hours per day," said Daynard.

Nearly half of all US schools had an exclusive, so-called 'pouring rights' contract with a beverage company in the 2003-04 school year, according to a report published by the US Government Accountability Office last August.

A study on the use of litigation to defend public health, published last week and part-authored by Daynard, cited research stating each additional serving of sugar-sweetened soft drink increased a child's chance of obesity by 50 per cent.

The study, appearing in the American Journal of Preventive Medicine, said that while it was harder to prove that certain food products had a direct impact on obesity-related diseases, it was likely that litigation would be needed to address the obesity problem in the US; just as it was needed against tobacco firms.

It said that lawsuits targeting consumer protection acts were more likely to be successful. But, "successful litigation does not always require a victory in court; the goal of litigation can be to change public perception of an industry and ultimately to induce a change in industry practices".

Soft drinks firms, it seems, are set to become a big target.

The Centre for Science in the Public Interest confirmed that it too was preparing obesity lawsuits against soft drink companies – spurred on by recent actions against fast food chain MacDonald's.

A loose network of around 20 lawyers, nutritionists and campaigners have been sharing information for possible litigation against soft drink firms since autumn 2004, said one source close to the issue.

Authorities are also showing greater interest in kicking fizzy drinks out of schools.

The House of Representatives in the state of Massachusetts was set to vote this week on whether to ban junk foods, including fizzy soda, from schools. A total 38 states considered school nutrition bills last year, most of which included a vending machine component. At least 14 laws have now been enacted.

The American Beverage Association, backed by Coca-Cola and PepsiCo, has attempted to head-off complaints by voluntarily banning fizzy drinks in elementary schools.

It also took on voluntary restrictions in middle and high schools, and announced just before Christmas that sales of regular soft drinks in schools dropped 24 percent between 2002 and 2004.

The financial impact of the ABA's sacrifice was, however, questioned after it emerged Coca-Cola only got around one per cent of its sales from schools in North America.

"They could probably afford to clear them [soft drinks] out of schools but to be forced to do so because they are dangerous to kids is not going to resonate well with whatever their next huge marketing campaign is going to be," said Daynard.

A well-known problem for big firms in lawsuits is that information can emerge that does further harm to the company's public image.

The litigation study in the American Journal of Preventive Medicine said this became a big problem for tobacco firms as documents emerged revealing "a blatant disregard for public health".

Daynard said one potentially controversial issue regarding soft drinks firms may be how they got 'pouring rights' contracts in the first place.

One independent source also told [www.BeverageDaily.com](http://www.BeverageDaily.com) there were a number of unhappy former employees from Coca-Cola's bottling arm, Coca-Cola Enterprises.

The journal study, however, says the food and drink industry generally could find a way out of the litigation quagmire by continuing to focus on improvements to the health value of its products; something the tobacco industry was never able to do.

The industry's ability to do this, and communicate it effectively, will be crucial.

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A Whistleblower Explains "Project Denver"

<http://schoolpouringrights.com>