



Case Law Outline: *Altadis U.S.A., Inc. v. Prince George's County, Maryland*

Introduction

In 2013, the Maryland Court of Appeals altered the legal landscape in Maryland by finding that state law preempts some local tobacco control laws. This outline provides a brief summary and analysis of the Court's opinion in *Altadis U.S.A., Inc. v. Prince George's County, Maryland*, 431 Md. 307 (2013).

Parties

- Cigar Manufacturers, Distributors, Wholesalers, Retailers, Trade Groups, and a Prince George's County taxpayer (referred to as Altadis)
- Prince George's County, Maryland

Issue

- Does state law preempt Prince George's County, a charter county, from adopting an ordinance regulating the minimum pack size of cheap cigars?

Procedural History

- In 2009, Altadis sued Prince George's County in the Circuit Court for Prince George's County (trial court). The Circuit Court found in favor of the County, concluding that the ordinance was constitutional and that the County had the authority to pass such an ordinance.
- Altadis appealed and the Court of Appeals (highest appellate court) heard the case.

Facts

- In 2009, the Prince George's County Council passed an ordinance regulating the packaging of cheap cigars; the County Executive signed the ordinance.
- The ordinance prohibited the purchase, sale, distribution, or gift, by a retailer, wholesaler, or their agent or employee, of individual or "unpackaged" cigars. The term "unpackaged cigars" is defined in the

Prince George's County Code as "any cigar or cigar product not contained within a sealed original package of at least five (5) cigars or cigar products."

Applicable Law

- **Preemption:** a higher level of government limits or eliminates the power of a lower level of government to regulate certain issues.
- **There are 2 types of preemption:**
 - *Express preemption*- law explicitly states whether it preempts a lower-level authority.
 - *Implied preemption*-a court decides that the higher-level authority has preempted the lower-level authority because it conflicts with the higher-level or because the higher level has legislated comprehensively, demonstrating its intention to prevent a lower-level from enacting law in a specific field.

Court's Reasoning

- The Court reasons that the legislature has passed extensive laws relating to the packaging and sale of tobacco products and preempts any local jurisdiction from regulating in this area. Because of the breadth and extent of these laws, the legislature did not intend to leave any authority to locals to regulate this subject matter.
- The Court focuses on the existence of Business Regulations Title 16.5, passed in 2011, that created a licensing scheme for the distribution and sale of non-cigarette tobacco products.
- Specifically, the Court also highlights the definition of "package" as "not more than 10 cigars" which it argues is at odds with the Prince George's County ordinance, defining a cigar package as "at least 5."

Conclusion

- The local ordinance is preempted by state law.

LRC Analysis

- Altadis initially appealed to the Court of Special Appeals, but the Court of Appeals (highest court in Maryland) asserted jurisdiction over the case.
- In reaching its decision, the Court relies almost exclusively on the existence of the 2011 licensing provisions that did not exist when the Prince George's County Council passed the packaging law. The ordinance was enacted in 2009, oral argument took place in 2010, *the state licensing scheme passed in 2011*, and the Court's opinion was published in 2013.
- The 2011 law was a collaborative effort between the Office of the Comptroller and public health experts to create a regulatory scheme for non-cigarette tobacco products, known as "other tobacco products" (OTP), such as chewing tobacco. One of the law's purposes was to require retail locations to obtain a license to sell these products so that local health departments knew where they were sold. LRC Director, Kathi Hoke, worked closely on this bill and guarantees that no one believed this law would impact the Prince George's County ordinance.
- The Court draws attention to a specific provision in the licensing scheme that defines "package" as not more than 10 cigars. It compares this definition to the Prince George's County ordinance definition of a package as only 5 cigars, and claims that these definitions are at odds. Because "5 cigars" is certainly "not more than 10 cigars," these definitions are in fact NOT at odds, but are consistent.

- This sticking point tells us that the Court has interpreted broad implied preemption because the state has already legislated extensively in this field and didn't intend to leave legislative authority to locals.

Altadis Fallout

- The Court's decision can be read either narrowly or broadly.
 - *Narrow reading*: The Court only preempts locals from enacting laws relating to cigar packaging.
 - *Broad reading*: The Court preempts locals from enacting laws relating to the sale and distribution of non-vape tobacco products.
- Most local jurisdictions were advised by their county office of law to interpret this case broadly. As a result:
 - No jurisdiction has proposed an ordinance regulating cigarettes or other tobacco products (OTP) for fear of lengthy and expensive legal challenge; and
 - Some jurisdictions have stopped enforcing local laws that existed prior to the *Altadis* decision.