



## Tips on Using *The Verdict Is In: Findings from U.S. v. Philip Morris*

On December 14, 2011, as part of the remedy phase of *U.S. v. Philip Morris* – the historic tobacco industry civil racketeering case – the U.S. Department of Justice (the DOJ) and the nation’s largest domestic tobacco companies finally resolved a dispute over an online collection of tobacco industry documents. The following day, U.S. District Court Judge Gladys Kessler signed a [consent order](#) to a settlement agreement that will require Philip Morris USA and its parent company, Altria Group, along with R.J. Reynolds, to pay \$6.25 million to improve public access to the country’s largest online collection of internal tobacco industry documents, and to continue to release these documents through 2021. Critical materials cited in the [Final Opinion](#) of *U.S. v. Philip Morris* are among the more than 13 million documents housed in the University of California-San Francisco (UCSF) database.<sup>1</sup>



Although this is just the latest development in the ongoing saga of what many refer to as “the DOJ tobacco case,” it is a significant outcome of the decision and will continue to allow the court’s findings to be used to support and advance tobacco control policies. This fact sheet is designed to take a brief look back at the tobacco case that made history – *U.S. v. Philip Morris* – and to provide tips on using resources such as the Consortium’s *The Verdict Is In* to locate critical evidence from the findings about the tobacco industry’s fifty-year conspiracy to defraud America and the world about the health risks of tobacco products.

### **Q: What, in a nutshell, was the DOJ tobacco lawsuit all about?**

**A:** In 1999, the United States Department of Justice [sued](#) several major tobacco companies for fraudulent and unlawful conduct and reimbursement of tobacco-related medical expenses.<sup>2</sup> The court dismissed the DOJ’s claim for reimbursement, but allowed the DOJ to bring its claim under the Racketeer Influenced and Corrupt Organizations Act (known as RICO).<sup>3</sup> The DOJ then sued on the ground that the tobacco companies had engaged in a decades-long conspiracy to –

1. Mislead the public about the risks of smoking;
2. Mislead the public about the danger of secondhand smoke;

3. Misrepresent the addictiveness of nicotine;
4. Manipulate cigarette design to increase nicotine addiction;
5. Deceptively market cigarettes characterized as “light” or “low tar,” while knowing that those cigarettes were at least as hazardous as full flavored cigarettes;
6. Target youth; and
7. Fail to produce safer cigarettes.

The litigation took [six years](#), including nine months of trial, hundreds of depositions and thousands of exhibits.<sup>4</sup>

**Q: What was the final decision?**

**A:** On August 17, 2006, Judge Kessler issued a [final order](#), and [roughly 1,700-page long opinion](#), holding the tobacco companies liable for violating federal racketeering laws by fraudulently covering up the health risks associated with smoking and for unlawfully marketing their products to children. Significantly, the court found that the cigarette industry is likely to continue its wrongdoing if steps are not taken to change substantially the manner in which the industry is overseen.<sup>5</sup> As one result of this decision, the tobacco companies are required to continue to make available any documents they turned over in litigation regarding smoking and health.

**Q: How significant are the court’s findings?**

**A:** The court based its ruling on findings that set forth in exhaustive detail evidence establishing that the tobacco companies engaged in a massive 50-year scheme to defraud the public, including consumers of cigarettes, in violation of civil provisions of the federal racketeering law. Almost every page of the [Final Opinion](#) contains nuggets of important information – information of interest to everyone, but particularly the public health community.<sup>6</sup> This is a landmark decision, laying to rest any doubt about the industry’s role in the global tobacco epidemic.

**Q: What happened in the appeals process?**

**A:** The tobacco companies filed an appeal to the U.S. Court of Appeals. On May 22, 2009, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit issued a [unanimous opinion](#) upholding Judge Kessler’s judgment and almost all of the remedies she imposed in the case. Both the tobacco companies and the federal government then appealed to the Supreme Court. The industry sought to overturn the court’s liability ruling, and the federal government and intervening public health groups sought stronger remedies, such as requiring the tobacco companies to fund nationwide public education and smoking cessation campaigns and to forfeit illegal profits. On June 28, 2010, the Supreme Court declined to hear the appeals on both sides, letting stand the devastating verdict against the tobacco companies.

As a result of the December 2011 settlement agreement, the tobacco companies will pay \$6.25 million into a court fund that will be used to improve indexing and free public access

to the tobacco industry document websites and the [Minnesota Document Depository](#) (a hard copy archive). This agreement will help the public access the existing documents, as well as those that the industry is required to release through 2021.

**Q: What's the purpose of *The Verdict Is In*?**

**A:** Consortium attorneys were so impressed at the breadth of evidence arrayed against the tobacco industry in Judge Kessler's monumental Opinion that they resolved to find a way to make this evidence more accessible to the public. They were aware that few people would have the time to read all 1,700 pages of the opinion. And they were convinced that the public health community – including lawyers, researchers, journalists, students, the government, and the public at large – could benefit from a distillation of the most telling and significant verbatim quotes from the Opinion. These select quotes clearly and directly chronicle the story of the industry's 50-year conspiracy to defraud the public about the dangers of tobacco use.

As a result, three months after the [Final Opinion](#) was issued, the Consortium produced a series of publications, called [The Verdict Is In](#), derived entirely from Court findings. *The Verdict Is In* presents highlights from each of the seven main topics in the findings:

- [The Hazards of Smoking](#)
- [Addiction](#)
- [Nicotine Levels](#)
- [Light Cigarettes](#)
- [Marketing to Youth](#)
- [Secondhand Smoke](#)
- [Suppression of Information](#)

The entire [Verdict Is In Special Collection](#) is available on the Consortium's website at [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org).

**Q. How can members of the tobacco control community use the findings in the Final Opinion to support tobacco control laws and policies?**

**A:** The information cited in the [Final Opinion](#), as well as excerpts cited in [The Verdict Is In](#), can equip policymakers, health advocates, regulators, and the public at large with key facts about the tobacco companies and their executives and their history of manipulating public policy and misleading the public about the risk of tobacco addiction. The internal tobacco industry documents cited in the Opinion can be used to reveal the industry's historical role in suppressing information, and to gain insight into the methods it used to target marketing to youth and deceive the public about nicotine levels, addiction, and the hazards of light cigarettes and secondhand smoke. These documents provide hard evidence for attorneys building a case for tobacco control laws and policies or facing legal challenges to tobacco control measures.

Each month approximately 16,000 academic researchers, tobacco control advocates, lawyers, journalists and students from around the world access UCSF's Legacy Tobacco Documents

Library, where the original documents cited in the Opinion can be found.<sup>7</sup> In 2010, visitors from 190 different countries used the database, reflecting global interest in the tobacco industry's strategies in manipulating scientific and political processes and engineering products and marketing to maximize sales.<sup>8</sup>

**Q: How do you locate the actual documents cited in the Final Opinion (and the excerpts from *The Verdict Is In*)?**

A: Each of the quotes highlighted in *The Verdict Is In* is cited in endnotes using the original numbered paragraphs found in the Final Opinion, so readers can find an excerpt in its original context in the Opinion. The publication serves as a gateway document, featuring a series of highlighted key points to whet the reader's appetite. Both the [Opinion](#) and *The Verdict Is In* contain endnotes, footnotes and internal cites to the tobacco industry documents that Judge Kessler relied upon (such as publications, correspondence, court transcripts, internal memos, financial records, and dozens of other original source documents). These citations include a reference to a Bates number, the unique number that was placed on each document in the litigation.

The fastest and easiest way to access the source documents cited in the Opinion is to use the online UCSF Legacy Tobacco Documents Library at <http://www.library.ucsf.edu/tobacco>. Simply enter the Bates number found in the citation in either *The Verdict Is In* or Judge Kessler's Opinion, into the search engine on the UCSF Legacy Tobacco Documents Library home page. The search result will contain the source document.

The [USCF Legacy Tobacco Documents Library](#) contains documents above and beyond those that were produced in this *U.S. v. Philip Morris* case. It is a digital archive of over 13 million documents produced by major tobacco companies and organizations. Many of these documents focus on the tobacco companies' advertising, marketing, manufacturing, sales, political, public relations and scientific activities. The archive, which was established as part of the [Master Settlement Agreement](#), contains several major collections of tobacco documents, including a collection on tobacco litigation, and a separate [U.S. v. Philip Morris collection](#). The archive contains both the full text of each document, as well as searchable metadata for each document (i.e., basic information such as the author, title, date, and subject terms).

Visitors to the Legacy Library can search, view, download and print documents using several different options, including key words or phrases, organizations, dates, Bates numbers, document types, and Boolean operators (such as "and," "or," or "not"). Information about the many ways to access the documents is available on the website's [FAQ page](#), along with suggestions on ways to conduct searches on various tobacco-related topics.

Those who have never explored the Legacy Library will be surprised at the ease with which they can identify source documents cited in *U.S. v. Philip Morris* and other tobacco litigation. These documents, while a sobering reminder of past tobacco industry deception, are also

evidence of how far we need to go to prevent the industry from continuing to deceive the world about its products and its tactics.

*Last updated January 2012.*

## Endnotes

<sup>1</sup> United States v. Philip Morris USA Inc., 449 F. Supp. 2d 1 (D.D.C. 2006), *aff'd in part & vacated in part*, 566 F.3d 1095 (D.C. Cir. 2009) (per curiam), *cert. denied*, 130 S. Ct. 3501 (2010). For additional information about *U.S. v. Philip Morris*, visit the Public Health Law Center web page at <http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/united-states-v-philip-morris-doj-lawsuit>.

<sup>2</sup> United States v. Philip Morris USA, Inc., 566 F.3d 1095 (D.C. Cir. 2009). The tobacco companies included appellant-defendants Philip Morris USA Inc. (Philip Morris); Altria Group, Inc.; R. J. Reynolds Tobacco Company (R. J. Reynolds); Brown & Williamson Holdings, Inc.; Lorillard Tobacco Company (Lorillard); and British American Tobacco (Investments) Limited (BAT).

<sup>3</sup> In February 2005, the U.S. Court of Appeals for the D.C. Circuit [ruled](#) that disgorgement (or repayment) of illegal profits, a remedy aimed at past violations, is not a valid remedy, since it neither prevents nor restrains a party from committing future RICO violations. In July 2005, the [district court granted](#) several health group organizations permission to intervene in the lawsuit so they could be heard on the issue of remedies that the court should order. The public health intervenors were the Tobacco-Free Kids Action Fund, American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers' Rights, and National African-American Tobacco Prevention Network.

<sup>4</sup> See Sharon Eubanks, [Video: Public Health Law in the Trenches: United States v. Philip Morris](#) (Feb. 19, 2010) (a Public Health Law Center video recording where Sharon Eubanks, former lead counsel representing the Department of Justice in *U.S. v. Philip Morris USA*, et al., provides an overview of the lawsuit and shares insights on the litigation). For a *U.S. v. Philip Morris* litigation timeline and related legal documents, visit the U.S. Department of Justice's [Litigation Against Tobacco Companies](#) website at <http://www.justice.gov/civil/cases/tobacco2/index.htm>.

<sup>5</sup> See *U.S. v. Philip Morris USA Inc.*, 566 F.3d at 1609.

<sup>6</sup> The findings would also be helpful in future litigation against the industry. See, e.g., Tobacco Control Legal Consortium, *U.S. v. Philip Morris: Key Tobacco Industry Admissions* (2010), available at <http://www.publichealthlawcenter.org/sites/default/files/resources/tclc-fs-dojadmissions-2010.pdf>.

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<sup>7</sup> See U.S. Dep't of Justice, Press Release, Philip Morris and R.J. Reynolds Settle with Justice Department Over Tobacco-Industry Document Databases (Dec. 14, 2011), *available at* <http://www.justice.gov/opa/pr/2011/December/11-civ-1635.html>; *see also* University of California – San Francisco Legacy Tobacco Documents Library, *available at* <http://legacy.library.ucsf.edu/?jsessionid=60D871F7ACBAD965FAD85D22F70BFB8F.tobacco03>.

<sup>8</sup> University of California – San Francisco, Press Release, UCSF to Receive Tobacco Papers, Funding to Improve Public Access to the Documents (Dec. 15, 2011), *available at* <http://www.ucsf.edu/news/2011/12/11138/ucsf-receive-tobacco-papers-funding-improve-public-access-documents>.