U.S. v. Philip Morris: The Big Win Against Big Tobacco
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AGENDA

Introduction
   Desmond Jenson, J.D.
Public Health Intervention & Remedies Litigation
   Denny Henigan, J.D.
Impact on Civil Litigation
   Mark Gottlieb, J.D.
Impact on Advocacy
   Cynthia Hallett, M.P.H.
Question & Answer Session
U.S. V. PHILIP MORRIS
HISTORICAL CONTEXT
U.S. v. Philip Morris: The Big Win Against Big Tobacco

ABC News Settles Suits on Tobacco
Network Issues an Apology Over Report on Nicotine

New York Times – August 22, 1995

CBS's 60 Minutes interviews Brown & Williamson whistleblower, Jeffry Wigand, broadcasting first a redacted interview and then a full interview identifying him as a whistleblower.

Former Philip Morris Scientist Victor DeNoble testifies before Congress. April 28, 1994

Seven tobacco industry CEOs testify before Congress. April 14, 1994

Robert Reich, Secretary
Department of Labor
1993-1997

Hubert H. Humphrey III, Attorney General of Minnesota 1983-1999, filed the state’s lawsuit against cigarette manufacturers.

Rep. Henry Waxman (D-CA) chairs several hearings investigating the tobacco industry and the potential for government regulation.

Former Philip Morris Scientist Victor DeNoble testifies before Congress. April 28, 1994

Seven tobacco industry CEOs testify before Congress. April 14, 1994

Robert Reich, Secretary
Department of Labor
1993-1997

ABC News's DayOne broadcasts exposes on cigarette companies manipulating nicotine in March 1994 which lead to a defamation lawsuit.

David Kessler, Commissioner
U.S. Food and Drug Administration
1990-1997

Wall Street Journal – February 11, 1993

Smoke and Mirrors
How Cigarette Makers Keep Health Question ‘Open’ Year After Year
Council for Tobacco Research Is Billed as Independent But Guided by Lawyers
An Industry Insurance Policy

Robert Reich, Secretary
Department of Labor
1993-1997

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U.S. v. Philip Morris: The Big Win Against Big Tobacco
U.S. V. PHILIP MORRIS
CAUSES OF ACTION

• Medical Care Recovery Act 42 U.S.C. § 2651

• Medicare Secondary Payer Provisions 42 U.S.C. § 1395

• Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. § 1962(c)

• Racketeer Influenced and Corrupt Organizations Act 18 U.S.C. § 1962(d)
U.S. V. PHILIP MORRIS
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U.S. V. PHILIP MORRIS
DEFENDANTS

• Philip Morris Cos.
• Philip Morris, Inc.
• R.J. Reynolds Tobacco Co.
• Lorillard Tobacco Co.
• Brown & Williamson Tobacco Co.
• American Tobacco Co.
• The Ligget Group
• British American Tobacco Investments Ltd.
• The Council for Tobacco Research U.S.A., Inc.
• The Tobacco Institute, Inc.
U.S. V. PHILIP MORRIS
DEFENDANTS

• Altria Group, Inc. (formerly Philip Morris Cos.)
  – Philip Morris USA, Inc. (formerly Philip Morris, Inc.) a division of Altria Group Inc.
• R.J. Reynolds Tobacco Co., (RJR) a division of Reynolds American, Inc. (RAI)
  – Lorillard Tobacco Co., acquired by RAI
  – Brown & Williamson Tobacco Co. (B&W) a wholly owned subsidiary of British American Tobacco plc, which merged with RJR and became part of RAI
    • American Tobacco Co., merged with B&W prior to the merger of B&W and RJR
• The Liggett Group, now part of Vector Group Ltd., (Dismissed)
• British American Tobacco Investments Ltd. (Dismissed)
• The Council for Tobacco Research U.S.A., Inc. (Organization dissolved)
• The Tobacco Institute, Inc. (Organization dissolved)
U.S. V. PHILIP MORRIS
TIMELINE

Department of Justice files the lawsuit 9/22/1999

Oral arguments begin 9/21/2004

Public health groups intervene 7/7/2005

Closing arguments begin 6/7/2005

Judge Kessler issues her opinion 8/17/2006

Family Smoking Prevention and Tobacco Control Act signed into law 6/22/2009

Court of appeals upholds the decision 5/22/2009

Court of appeals upholds denial of motion to vacate 7/27/2012

U.S. Supreme Court declines to hear appeal 6/28/2010

Motion to vacate denied 6/1/2011

 Defendants file motion to vacate 4/4/2011

Present day, litigation is ongoing 10/18/2016

U.S. v. Philip Morris: The Big Win Against Big Tobacco
U.S. V. PHILIP MORRIS
JUDGE KESSLER’S 2006 OPINION
U.S. V. PHILIP MORRIS
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Roe v. Wade
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Brown v. Board of Education
21 pages
Bush v. Gore
30 pages
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987 pages
U.S. V. PHILIP MORRIS
R.I.C.O.

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U.S. V. PHILIP MORRIS
R.I.C.O. – ENTERPRISE
U.S. V. PHILIP MORRIS
R.I.C.O. – RACKETEERING ACTIVITY

PUBLIC HEALTH
LAW CENTER
Tobacco Control Legal Consortium

U.S. v. Philip Morris: The Big Win Against Big Tobacco
10/18/2016
U.S. V. PHILIP MORRIS
R.I.C.O. – 1962(C)

18 U.S.C. § 1962(c)
It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.
“Defendants devised a scheme to defraud and used mailings and wire transmissions for the purpose of furthering it. The purpose of the scheme was to obtain, from smokers and potential smokers, money, i.e., the cost of cigarettes, to fill the coffers of the corporate Defendants. Put more colloquially, and less legalistically, over the course of more than 50 years, Defendants lied, misrepresented, and deceived the American public, including smokers and the young people they avidly sought as “replacement smokers,” about the devastating health effects of smoking and environmental tobacco smoke, they suppressed research, they destroyed documents, they manipulated the use of nicotine so as to increase and perpetuate addiction, they distorted the truth about low tar and light cigarettes so as to discourage smokers from quitting, and they abused the legal system in order to achieve their goal -- to make money with little, if any, regard for individual illness and suffering, soaring health costs, or the integrity of the legal system.”

U.S. V. PHILIP MORRIS
R.I.C.O. – 1962(D)

18 U.S.C. § 1962(d)
It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.
“the cigarette company Defendants jointly participated at various times and to various degrees in creating, funding, directing and controlling Defendants [Council for Tobacco Research], [Tobacco Institute] and other entities and causing Defendants [Council for Tobacco Research] and [Tobacco Institute] to commit numerous racketeering acts to further those shared objectives. Furthermore, the frequent oral and written communications between and among Defendants illustrate their joint efforts to pursue their shared objectives. Significantly, Defendants worked together continuously, in many different venues and through many different entities, to disseminate their agreed upon deceptive public position denying the link between smoking cigarettes and adverse health effects, denying the addictiveness of smoking cigarettes and nicotine, and denying their marketing of cigarettes to young people.”

“each Defendant also agreed to facilitate the substantive RICO violation by concealing or suppressing information and documents which may have been detrimental to the interests of the members of the Enterprise. Such information might well have been discoverable in smoking and health liability cases against Defendants and therefore could have constituted, or led to, evidence of the link between smoking cigarettes, addiction, and adverse health effects.”

“each Defendant knew the goals of the Enterprise, the general nature of the conspiracy, and that other members of the conspiracy would commit at least two Racketeering Acts in furtherance of the Enterprise’s scheme to defraud. Indeed, each Defendant took substantial steps to facilitate the scheme to defraud that was the central purpose of the conspiracy, including committing numerous Racketeering Acts in furtherance of the Enterprise’s affairs. Hence, each Defendant entered into the requisite conspiratorial agreement.”

U.S. V. PHILIP MORRIS
REMEDIES

• Prohibition on Brand Descriptors (“Light,” “Low Tar,” “Ultra Light,” and “Mild”)

• Corrective Communications

• Disclosure of Documents and Disaggregated Marketing Data

• General Injunctions

• National Smoking Cessation Program

• Youth Smoking Reduction Targets

• Corporate Structural Changes

• Public Education and CounterMarketing Campaign

• Disgorgement of profits

• Litigation Costs
U.S. V. PHILIP MORRIS REMEDIES

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PUBLIC HEALTH LAW CENTER
Tobacco Control Legal Consortium
U.S. V. PHILIP MORRIS
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UNITED STATES v. PHILIP MORRIS USA, INC.

PUBLIC HEALTH INTERVENTION
AND THE BATTLE OVER RICO REMEDIES

Dennis Henigan
The Public Health Intervenors

- American Cancer Society
- American Heart Association
- American Lung Association
- Americans for Nonsmokers Rights
- National African American Tobacco Prevention Network
- Tobacco-Free Kids Action Fund (affiliate of Campaign for Tobacco-Free Kids)
Why Intervention?

• Appearance as *amicus curiae* ("friend of the court") vs. intervention

• Political interference by Bush Administration

• DOJ’s shift on remedy of smoking cessation program prompts public health intervention

• Judge Kessler finds intervenors have a protected interest in scope of remedies and “the federal government no longer adequately represents those interests.”
The Corrective Statements Remedy

• Defendants ordered to make corrective statement revealing the truth about cigarettes about five topics that were subjects of defendants’ fraud:
  – Adverse health effects of smoking
  – Addictiveness of smoking and nicotine
  – Absence of any significant health benefit from smoking “light” or “low tar” cigarettes
  – Manufacturers’ manipulation of cigarette design to ensure optimum nicotine delivery
  – Adverse health effects of secondhand smoke

• Statements to be disseminated through television, in newspapers, on defendants’ corporate websites, in pack onserts and at point of sale
Corrective Statements: The Legal Issues

• Defendants challenged court’s authority to order corrective statements under RICO statute and as First Amendment violation

• 2009 D.C. Circuit ruling upholds corrective statements remedy under RICO
  – RICO gives federal courts authority to “prevent and restrain violations of RICO . . . .”
  – Court held requiring defendants to communicate truth about their products would deter continued false and misleading claims; will “prevent and restrain” them from future RICO violations.
  – Court rejected First Amendment challenge: corrective statements would not infringe free speech rights of companies if confined to “purely factual and uncontroversial information.”

• However, ruling did not address specific corrective statements.
A Federal Court has ruled that Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA deliberately deceived the American public about the health effects of smoking, and has ordered those companies to make this statement. Here is the truth:

- Smoking kills, on average, 1200 Americans. Every day.
- More people die every year from smoking than from murder, AIDS, suicide, drugs car crashes, and alcohol, combined.
- Smoking causes heart disease, emphysema, acute myeloid leukemia, and cancer of the mouth, esophagus, larynx, lung, stomach, kidney, bladder, and pancreas.
- Smoking also causes reduced fertility, low birth weight in newborns, and cancer of the cervix.
A Federal Court has ordered Altria, R.J. Reynolds Tobacco, Lorillard, and Philip Morris USA to make this statement about the health effects of smoking.

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How Long Can This Go On?

• February, 2016, Judge Kessler called companies’ latest litigation tactics “ridiculous – a waste of time, energy and money for all concerned – and a loss of information for the public.”

• “It is obvious that Defendants are, once again, attempting to stall any final outcome to this long-standing litigation.”
Dennis Henigan
Director, Legal and Policy Analysis
Campaign for Tobacco-Free Kids

dhenigan@tobaccofreekids.org
USA v. Philip Morris USA: Impact on Civil Litigation

MARK A GOTTLIEB, JD
EXECUTIVE DIRECTOR

PHAI
The Public Health Advocacy Institute
Big ideas for advancing public health and social justice
Civil Litigation Background

3 Waves of Tobacco Litigation

First Wave: 1954-1973

• Focus on whether smoking causes lung cancer
• Industry questioned science
• Denied any duty to warn customers (warn of what?)
• All cases decided in industry’s favor
Civil Litigation Background

3 Waves of Tobacco Litigation

Second Wave (1983-92)

• “We deny that our products caused lung cancer;”
• “All smokers, including the plaintiff, are aware of the risks of smoking but smoke anyway because they enjoy it.”
• First glimpse into damaging internal documents
Civil Litigation Background

3 Waves of Tobacco Litigation

Third Wave: (1994-Present)
Civil Litigation Background

3 Waves of Tobacco Litigation

Third Wave: (1994-Present)

- Cost recovery actions, where governments or other third parties such as insurers bear the cost of treating cigarette-caused disease;
- Class actions where claims are essentially consolidated into a single lawsuit and trial to facilitate efficiency in the administration of justice; and
- Secondhand smoke cases, where the victim never smoked and could not be considered as “blameworthy” as a smoker.
- Individual smoker cases.
- All rely on internal documents, “insider” testimony, and company behavior.
- RICO litigation -
Civil Litigation Background

Third Wave: (1994-Present)

- Master Settlement Agreement – 1998
- Individual Verdicts – Boeken, Williams, Schwarz, etc.
- Florida Class Actions – Broin – Engle
- State Addiction Class Actions
- Third Party Recovery Cases – Falise, Nicaragua, Empire Blue Cross
Tobacco Industry as Racketeers: A Boost for Litigation?

On August 17, 2006 The Honorable Gladys Kessler of the United States District Court for the District of Columbia issued a 1,683 page opinion holding the tobacco companies liable for violating RICO by fraudulently covering up the health risks associated with smoking, falsely marketing “light cigarettes,” and for marketing their products to children.

“As set forth in these Final Proposed Findings of Fact, substantial evidence establishes that Defendants have engaged in and executed – and continue to engage in and execute – a massive 50-year scheme to defraud the public, including consumers of cigarettes, in violation of RICO.”
3 Potential Impacts

1) Settle certain claims in litigation from being re-litigated: Collateral estoppel.

2) Opinion provides a roadmap for plaintiffs’ attorneys.

3) Make use of references to key evidence, expert reports, and testimony (“treasure map”).
Collateral Estoppel

Collateral Estoppel (or “Issue Preclusion”) works to prevent repeat litigation by maintaining the finality of an earlier judgment.

“When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action ... , whether on the same or a different claim.“

-Restatement 2d of Judgments § 27 (1982).
Collateral Estoppel

Wouldn't It Be Nice

(California MADE)

The Beach Boys
Collateral Estoppel

Likely candidates for collateral estoppel: Light Cigarette Fraud

Seemingly perfect case: Schwab v. Philip Morris USA, Inc., et al.

- Brought in Federal Court;
- Class of “light” cigarette smokers allege violations of RICO;
- Issues around “light” cigarettes are largely similar to those in US v. PM
- Progressive and impactful federal judge – LBJ appointee – Jack B. Weinstein
Collateral Estoppel

Plaintiffs attempted to bar defendants from relitigating their liability for fraud and intentional misrepresentation of the health effects of light cigarettes.

Judge Weinstein declined to apply collateral estoppel in that case.

Reasons included:

(1) one of the defendants, Liggett, was a prevailing party in the DOJ case;

(2) estoppel based on a single recent victory would be inappropriate; and

(3) application of collateral estoppel would not increase judicial efficiency in this particular case.
Weinstein did suggest that, in other cases, collateral estoppel could be used and outlined the matters "in direct issue" Schwab and USA v. PM, as follows:

(1) Defendants devised and executed a scheme to defraud consumers by falsely denying, distorting, and minimizing the significant adverse health consequences of smoking.

(2) Despite their knowledge that "light" cigarettes provide no clear health benefit, defendants falsely marketed and promoted "light" cigarettes as less harmful than regular cigarettes in order to keep their customers smoking and sustain corporate revenues. This plan was successful.

(3) Defendants attempted to and did suppress and conceal scientific research and destroy documents relevant to their public and litigation positions.

Collateral Estoppel

Same result wherever plaintiffs sought to use collateral estoppel to use the verdict in USA v. PM to avoid relitigating issues.


Collateral Estoppel
Roadmap for Plaintiffs’ Attorneys
Some Key Findings

- Defendants have falsely denied, distorted and minimized the significant adverse health consequences of smoking for decades;

- Defendants have falsely denied that they can and do control the level of nicotine delivered in order to create and sustain addiction;

- Defendants falsely marketed and promoted low tar/light cigarettes as less harmful than full-flavor cigarettes in order to keep people smoking and sustain corporate revenues;

- Defendants have intentionally marketed to young people under the age of twenty-one in order to recruit "replacement smokers" to ensure the economic future of the tobacco industry; and

- Defendants suppressed and concealed scientific research and destroyed documents relevant to their public and litigation positions.

Roadmap for Plaintiffs’ Attorneys
E.G. “Lights”

(1) Low Tar/Light Cigarettes Offer No Clear Health Benefit over Regular Cigarettes.

(2) Based on Their Sophisticated Understanding of Compensation, Defendants Internally Recognized that Low Tar/Light Cigarettes Offer No Clear Health Benefit.

(3) Defendants Internally Recognized that Smokers Switch to Low Tar/Light Cigarettes, Rather than Quit Smoking, Because They Believe They Are Less Harmful.

(4) Despite Their Internal Knowledge, Defendants Publicly Denied that Compensation Is Nearly Complete and that the FTC Method is Flawed

(5) Despite Their Internal Knowledge, Defendants’ Marketing and Public Statements About Low Tar Cigarettes Continue to Suggest that They Are Less Harmful than Full-Flavor Cigarettes.
Roadmap for Plaintiffs’ Attorneys

(1) Marketing to youth  →  Defendants caused initiation of plaintiff
(2) Nicotine manipulation  →  Caused addiction of plaintiff
(3) Suppression of information  →  Prevented plaintiff from making an informed decision by manufacturing doubt.

These all go to causes of action such as:

1) Concealment
2) Negligence
3) Breach of warranty
4) Punitive damages
Treasure Map for Plaintiffs’ Attorneys

The Hazards of Smoking
- Addiction
- Nicotine Levels
- Light Cigarettes
- Marketing to Youth
- Secondhand Smoke
- Suppression of Information

The Verdict Is In:
Findings from United States v. Philip Morris

http://www.publichealthlawcenter.org/topics/special-collections/verdict-findings-united-states-v-philip-morris-collection
Tobacco Litigation 2016

Several thousand individual trials in Florida
Individual cases in Massachusetts
Individual cases in USVI
California
Tobacco Litigation 2016
USA v. Philip Morris USA: Impact on Civil Litigation

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Opportunities for Advocacy

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President and CEO

AMERICANS for NONSMOKERS' RIGHTS
ANR as an Intervenor

Americans for Nonsmokers’ Rights was allowed to intervene in the DOJ case because it has members that include parents of children who were concerned about the risks posed by tobacco smoke to the health and safety of themselves, their children, and their families, and who would be harmed by the ongoing deceptive marketing activities as well as false and misleading public statements by the industry if those activities were not ‘enjoined and remedied.’
On August 17, 2006, U.S. District Judge Gladys Kessler issued a final judgement & opinion in DOJ case against tobacco companies finding that they had violated civil provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO) and other laws.

As of August 17, 2016, we still did not have most of the remedies in place, including the Corrective Statements.

- The industry is also still engaged in similar behaviors to oppose smokefree laws and excise tax increases, promote e-cigarettes to youth, and work with allied partners to create confusion or doubt.
“Doubt is our product since it is the best means of competing with the ‘body of fact’ that exists in the mind of the general public.

It is also the means of establishing a controversy.”

Brown and Williamson, Smoking and Health Proposal, Bates No. 690010927/0935, 1969
Are we letting Big Tobacco get away with murder?

Can you feel it in the air? November 15th was the Great American Smokeout. All across the country, thousands will attempt to quit smoking, turning in their cigarettes in exchange for fresh smokefree air.

What a perfect day to take a stand against Big Tobacco. Will you join me? Here’s how and why.

The tobacco companies "marketed and sold their lethal product with zeal, with deception, with a single-minded focus on their financial success and without regard for the human tragedy or social costs that success exacted."

-U.S. District Judge Gladys Kessler

On August 17, 2006, United States District Judge Gladys Kessler ruled in favor of the Government in its case against Big Tobacco. These are the same charges brought against the Mafia. In addition, the U.S. District Court found that the tobacco companies had defrauded the American people by knowingly lying about the health risks of smoking, secondhand smoke exposure, and their marketing to children for 50 years--that’s half a century! Judge Kessler stated:

"The evidence in this case clearly establishes that Defendants have not ceased engaging in unlawful activity... Their continuing conduct misleads consumers in order to maximize Defendants’ revenues by recruiting new smokers (the majority of whom are under the age of 18), preventing current smokers from quitting, and thereby sustaining the industry."

Big Tobacco is not taking the court ruling lying down and has appealed the case. Although the conviction remains law, the remedies (or penalties) brought upon the tobacco companies have been put on hold. Your ability to take action, however, has not been put on hold. More importantly, you can use the court’s findings in your local and state smokefree efforts.

Don’t let this important ruling fade into the background, or--worse yet--allow the industry to negotiate a deal that would include easing or making the findings private and confidential. The public has the right to know!

The litigation was just the beginning. How the government proceeds in this case, and what tobacco control advocates do with its findings and remedies, is critical to preserving the intent and importance of the case to hold Big Tobacco accountable for wrongdoings by requiring the industry to change its behavior and provide remedies for all of those who suffered as a result of its fraudulent unlawful business practices.

What can we do about it? Let your voice be heard!

• Write to the Department of Justice: Tell Attorney General Michael Mukasey not to sell us out on this case, and let him know you expect the Department to pursue the strongest remedies and to hold the industry accountable for 50 years of defrauding the American public. Strongly urge him not to settle or capitulate on the remedies or negotiate any deal that would allow the industry to wipe away Judge Kessler’s findings.

  Michael Mukasey, Attorney General
  U.S. Department of Justice
  950 Pennsylvania Avenue, NW
  Washington, DC 20530-0001
  or via email at AskDOJ@usdoj.gov

• Write to your representative: Tell your Senator and Representative that you want Big Tobacco held accountable for 50 years of defrauding the American public. Urge him or her to oppose any government settlement or capitulation on the remedies. Let them know the findings of Judge Kessler are crucial and that the public must be made aware of the tobacco industry’s history of deception and fraud.

  Office of Representative (Name)
  United States House of Representatives
  Washington, D.C. 20515
  Or visit http://www.house.gov/writerep/ to find the exact address for your state rep

  Office of Senator (Name)
  United States Senate
  Washington, D.C. 20510
  Or visit http://www.senate.gov/general/contact_information/senators_cfm.cfm to find the exact address for your Senator.

  You can also write to/copy the state home office to be sure staff in DC and his or her home state are educated and aware of your concerns!

• Write to the Department of Health and Human Services (DHHS): The DHHS was the Justice Department’s client agency that is represented in the tobacco litigation. Ask them to contact the...
World No Tobacco Day, 2012
Bad Acts, published in 2012
Secondhand Smoke Findings

Judge Kessler’s decision contained numerous findings, including the following regarding Secondhand Smoke (referred to as ETS in the decision) *(emphasized added)*:

“Defendants have publicly denied what they internally acknowledged: that ETS is *hazardous to nonsmokers*”

“Internally, Defendants recognized that ETS is *hazardous to nonsmokers*”

“Internally, Defendants expressed concern that the mounting evidence on ETS posed a grave threat to their industry”

“Defendants undertook joint efforts to undermine and discredit the scientific consensus that ETS causes disease”

“*Defendants made false and misleading public statements denying that ETS is hazardous to nonsmokers*”

“*Defendants continue to obscure the fact that ETS is hazardous to nonsmokers*”

www.no-smoke.org
How have these findings been used for Tobacco Control Advocacy?

Can we really trust convicted racketeers who have lied before Congress to tell us the truth about Prop 56?
Feedback from the Field

“The tobacco industry is seen as a job creator and an ‘in-the-building partner’ for decision makers. Coalitions have, at times, resisted calling out the industry as they feel it makes them appear as a fringe group, over zealous and out of touch.”

“The industry has paid its dues; it is has changed; we cannot directly prove it is involved in opposition efforts.”

Bigger Question: How do we remind the public and key stakeholders of these past and ongoing opposition tactics in industry-friendly places, building accountability and establishing public health / tobacco control leaders as trusted partners in developing policies that save lives, and not relying on “the industry lied” argument.
Impact of U.S. v. Philip Morris on other issues

News Desk

Will the “Tobacco Strategy” Work Against Big Oil?  By Lincoln Caplan

According to InsideClimate News, the office of New York State Attorney General Eric Schneiderman had been investigating ExxonMobil for a year before it issued a recent subpoena for “documents on what Exxon knew about climate change and what it told shareholders and the public.” The subpoena compelled ExxonMobil to hand over scientific research and communications about climate change dating back to 1977. (Exxon and Mobil merged to become a single corporation in 1999.) The investigation is based on New York State’s consumer-protection and general-business laws and, crucially, the state’s Martin Act, InsideClimate News reported. That statute prohibits fraud or misrepresentation in the sale of securities and commodities, and gives the Attorney General extraordinary power to fight financial fraud.


ExxonMobil may face a reckoning under the Martin Act for its failure to disclose the environmental dangers of fossil fuels. Photograph by Laurent GRANDGUILLOT / REA / Redux
Chilling Effect: Silencing a Movement

Our silence is the industry’s victory: Preventing us from sharing these findings and exposing the industry’s efforts to prevent complying with all of the remedies will do further harm to public health.

If and when the Corrective Statements are released, they will not be as strong as the Intervenors had advocated.

Imperative that we collaborate to find constructive ways to share the findings and illustrate the industry’s engaging in similar if not the same ongoing behaviors that it was found guilty of in the case.

“This isn’t about picking on an industry. This is about unethical business practices.” And by an industry that knowingly and willingly deceived the American public about a product that it knew was deadly to users and to nonsmokers.
Questions/Comments?

Thank you!

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