



# THE MASTER SETTLEMENT AGREEMENT: AN OVERVIEW



By the 1990s, the public health and economic tolls of smoking were clear. Although cigarette use was on the decline, one in four U.S. adults continued to smoke.<sup>1</sup> Also concerning was the trend among youth. Between 1991 and 1995, youth smoking prevalence increased more than seven percentage points from 28 percent to 35 percent.<sup>2</sup>

Cigarettes cause cancer and other diseases, as the Surgeon General first concluded in its historic 1964 report,<sup>3</sup> and healthcare systems bear a sizable share of these tobacco-related costs. Six studies between 1976 and 1993 found smoking accounted for between 6 and 8 percent of U.S. healthcare costs, which amounted to more than \$50 billion in 1993,<sup>4</sup> and a quarter of state Medicaid expenditures.<sup>5</sup>

To recover costs incurred to treat sick and dying cigarette smokers, several states sued



the country's largest cigarette manufacturers, including Philip Morris Incorporated (now known as Philip Morris USA Inc.) ("Philip Morris"), R.J. Reynolds Tobacco Company ("R.J. Reynolds"), Brown & Williamson Tobacco Corporation ("Brown & Williamson"), and Lorillard Tobacco Company ("Lorillard"). On November 23, 1998, Philip Morris, R.J. Reynolds, Brown & Williamson, and Lorillard (collectively the "Original Participating Manufacturers"), along with forty-six states, four

U.S. territories, the Commonwealth of Puerto Rico, and the District of Columbia (the “Settling States”), entered into the Master Settlement Agreement (MSA), the largest civil litigation settlement in U.S. history. Later, additional tobacco manufacturers, known as Subsequent Participating Manufacturers, settled with the states under the MSA. (Original and Subsequent Participating Manufacturers are referred to collectively as Participating Manufacturers.)

As outlined in the MSA, the Settling States released the Participating Manufacturers from past and future legal claims for costs incurred by the states for smoking-related illnesses and death and for equitable relief. The release did not include the individual claims of their residents. In exchange, the Participating Manufacturers agreed to make annual payments in perpetuity to the Settling States and to substantially restrict their advertising, promotion, and marketing of cigarettes.

This publication answers frequently asked questions about the MSA and its implications for public health.<sup>6</sup> For more information, including additional publications and resources, see the Public Health Law Center’s [website](#) or the National Association of Attorneys General’s [website](#).

#### **Q: What was the focus of the litigation?**

**A:** From the mid-1950s through 1994, individuals brought over 800 claims against cigarette manufacturers for damages related to the effects of smoking.<sup>7</sup> However, the manufacturers, raising defenses such as contributory negligence and the individual responsibility of smokers, generally prevailed in these lawsuits. In 1994, a number of states, beginning with Mississippi,<sup>8</sup> sued the largest cigarette manufacturers under a variety of legal theories, including state consumer protection and antitrust laws, arguing that cigarettes contributed to health problems that triggered significant costs to state health-care systems. In 1997, four states (Mississippi,<sup>9</sup> Minnesota,<sup>10</sup> Florida, and Texas), reached settlements to recover for Medicaid and other health expenses resulting from smoking-caused illnesses. (These states are referred to collectively in the MSA as the “Previously Settled States.”) After these settlements, the major manufacturers, facing a growing number of suits by other states,<sup>11</sup> joined with those states and petitioned Congress for a global resolution in June 1997. Congress failed to pass the global settlement agreement, but the manufacturers and the Settling States were still able to reach a settlement in November of the following year: the Master Settlement Agreement.<sup>12</sup>

#### **Q: Who is party to the MSA?**

**A:** The MSA is a settlement agreement between the Settling States, the Original Participating Manufacturers, and the Subsequent Participating Manufacturers.<sup>13</sup> The number of Participating Manufacturers remains fluid as, over the years, some additional manufacturers have settled with the states and others have gone out of business. As of October 2018, there are more than 50 Participating Manufacturers who are bound by the terms of the MSA.<sup>14</sup>



**Q: Why did the parties agree to settle?**

**A:** According to the first section of the MSA, the parties settled “to avoid the further expense, delay, inconvenience, burden and uncertainty of continued litigation (including appeals from any verdicts).”<sup>15</sup> The Settling States intended the MSA to further their “policies designed to reduce Youth smoking, to promote the public health and to secure monetary payments to the Settling States.”<sup>16</sup> The MSA settles only state and local government lawsuits; the tobacco industry gains no protection from class-action lawsuits and claims brought by individuals, labor unions, and private health-care insurers.<sup>17</sup>

## Q: How much does the MSA require the Participating Manufacturers to pay the Settling States?

**A:** The MSA set up initial, annual, and “strategic contribution” payments from Participating Manufacturers to the Settling States. Each year, an independent auditor calculates the settlement payment to be made by each Participating Manufacturer and the amount to be received by each Settling State.<sup>18</sup> If parties disagree with the auditor’s calculations, the matter is submitted to binding arbitration by three neutral arbitrators who must be former federal judges.<sup>19</sup>

- **Initial payments.** In addition to annual payments beginning on April 15, 2000, the MSA required Participating Manufacturers to make upfront payments in each of the first five years after the MSA’s execution, or a total of about \$12.75 billion, adjusted for the volume of cigarette shipments in those years compared to the volume in 1997.<sup>20</sup>
- **Annual payments (made in perpetuity).** Just as the Settling States’ Medicaid and other health-care costs due to their citizens’ smoking-related illnesses will likely continue indefinitely, the MSA provides that the Participating Manufacturers’ payments to the Settling States will continue in perpetuity.<sup>21</sup> The “base amounts” of these annual payments gradually increase from 2000 to 2018 and remain at the 2018 amount in perpetuity. The amounts were \$4.5 billion in 2000, \$5.0 billion in 2001, \$6.5 billion from 2002–2003, \$8.14 billion from 2008–2017, and \$9 billion in 2018 and each subsequent year in perpetuity. Participating Manufacturers pay billions of dollars annually to the Settling States. For example, in 2018 the Participating Manufacturers paid close to \$7.2 billion to the Settling States. As of July 2018, the Participating Manufacturers have paid over \$126 billion to the Settling States.<sup>22</sup> The Settling States receive an allocation of these payments based on a percentage set forth in Exhibit A to the MSA. Importantly, calculations of annual payments are complex and are subject to a variety of potential adjustments and offsets, including an inflation adjustment and a volume adjustment.<sup>23</sup> Most significantly, percentage reductions in cigarette shipment volumes have been greater than inflation adjustments since 1997, so actual annual payments have been lower than those set forth as base amounts in the MSA and can be expected to continue to be. Participating Manufacturers are required to make annual payments based on their shares of national cigarette sales and shipments. In addition, Participating Manufacturers have routinely withheld payments or made them into an escrow account pending resolution of disputes relating to certain of the above-mentioned adjustments. Settling States receive an allocation of these payments based on a percentage set forth in Exhibit A to the MSA.



- **Strategic Contribution Payments.** These payments serve as “bonus payments” for states that invested resources into the litigation that led to the MSA. The payments are allocated according to the percentages set forth in Exhibit U to the MSA, which were based on “each Settling State’s contribution to the litigation or resolution of state tobacco litigation.”<sup>24</sup> The Participating Manufacturers’ base Strategic Contribution Payment amount is \$861 million each year from 2008 to 2017,<sup>25</sup> subject to the same adjustments as the annual payments.<sup>26</sup>

**Q: What else does the MSA do?**

**A:** The MSA restricts specific conduct by Participating Manufacturers, including advertising and certain lobbying activities, creates a national tobacco control foundation, and dismantles several tobacco industry initiatives. Specifically:

- **It imposes significant prohibitions and restrictions on tobacco advertising, marketing and promotional programs or activities.**<sup>27</sup> For example, it prohibits or restricts:
  - Direct and indirect targeting of youth
  - Use of cartoon characters
  - Billboards, transit ads, and other outdoor advertising not in direct proximity to a retail establishment that sells tobacco products
  - Product placements in entertainment media
  - Free tobacco product samples (except in adult-only facilities)
  - Gifts to youth in exchange for proofs of purchase
  - Branded merchandise
  - Brand name sponsorships
- **It prohibits certain practices that seek to hide negative information about smoking, such as:**
  - Lobbying against particular kinds of tobacco control legislation and administrative rules<sup>28</sup>
  - Agreements to suppress health-related research
  - Material misrepresentations about health consequences of using tobacco<sup>29</sup>



- **It creates a tobacco prevention foundation and disbands tobacco-industry initiatives**
  - The MSA created the American Legacy Foundation (now known as the Truth Initiative), a research and educational organization that focuses its efforts on preventing teen smoking and encouraging smokers to quit. The foundation is responsible for “The Truth” advertisement campaign,<sup>30</sup> which has had success in reducing youth smoking.<sup>31</sup>
  - The MSA dismantled key tobacco industry initiatives, including The Center for Indoor Air Research,<sup>32</sup> The Tobacco Institute,<sup>33</sup> and The Council for Tobacco Research.<sup>34</sup> In addition to disbanding these specific centers, the MSA prohibits Participating Manufacturers from creating other industry-wide groups unless such groups agree to act consistently with the MSA’s provisions.<sup>35</sup>
- **It requires the Participating Manufacturers to make available online the non-privileged documents they disclosed during the discovery phase of the tobacco litigation, as well as any such documents produced in discovery in any federal or state civil action concerning smoking and health.<sup>36</sup>**

**Q: How are the restrictions on the cigarette companies enforced?**

**A:** Under Section VII of the MSA, each Settling State may bring an action to enforce the Agreement or the Consent Decree (the settlement contained in a court order) with respect to disputes or alleged breaches within its territory. The court that entered a Settling State’s Consent Decree has exclusive jurisdiction to implement and enforce the MSA with respect to that state. Section VIII(a) of the MSA places responsibility on the National Association of Attorneys General (NAAG) to coordinate and facilitate the MSA’s implementation and enforcement on behalf of the attorneys general of the Settling States. NAAG carries out this mandate through an attorney general-level Tobacco Committee and an Enforcement Working Group, which consists of attorney general office staff working on tobacco issues, and the NAAG Tobacco Project, which is comprised of staff attorneys within NAAG who support state enforcement efforts. (The NAAG Tobacco Project is now known as the NAAG Center for Tobacco and Public Health.) Enforcement typically begins when a state attorney general office or NAAG observes a potential violation of the MSA, or a member of the public or a public organization complains about a Participating Manufacturer’s marketing practices to a state attorney general or NAAG. If the matter is not resolved through negotiation, one or more Settling States may decide to bring an enforcement action against the Participating Manufacturer.

**Q: What remedies do states have for violations of the MSA?**

**A:** The Settling States have several remedies for addressing MSA violations:

- **Voluntary cessation.** Often a desire to avoid litigation can induce companies to abandon challenged marketing campaigns. The U.S. Smokeless Tobacco Company, for instance, withdrew a false statement about product safety after the Rhode Island Attorney General ordered the company to desist in 1999.<sup>37</sup> Brown and Williamson discontinued its “B-Kool” campaign in 2000 after being investigated jointly by a number of states.<sup>38</sup>
- **Litigation.** Some of the MSA’s provisions contain ambiguities or gaps that have led to litigation. These have included, for example, the issues of whether free matchbooks are “merchandise” under the MSA,<sup>39</sup> whether magazine advertisements are intended to target youth,<sup>40</sup> and whether the prohibition on brand-name sponsored events has been violated.<sup>41</sup> If the plaintiff state prevails, it can seek:
  - *Injunctive relief.* Though several Participating Manufacturers amended their advertising practices in the wake of the multi-state backlash against the B-Kool campaign, R.J. Reynolds did not make similar substantial changes. As a result, California sued the company and the court ordered Reynolds, among other things, to take reasonable measures to reduce youth exposure to its advertising.<sup>42</sup>



- *Monetary remedies.* These could range from investigative costs<sup>43</sup> to funds that must be earmarked for tobacco prevention efforts<sup>44</sup> to punitive penalties.<sup>45</sup> Monetary remedies are unavailable under the MSA alone.
- *Attorney's fees.* Courts in every MSA state have approved a Consent Decree to facilitate enforcement of the MSA.<sup>46</sup> The availability of monetary penalties and attorney's fees as remedies for violations of a Consent Decree is a key difference between its enforcement and enforcement of the MSA.<sup>47</sup>

### Q: Are there restrictions on how states use MSA funds?

**A:** While the MSA states that its primary purpose for the Settling States is to decrease youth smoking and promote public health,<sup>48</sup> it does not contain any provisions requiring states to allocate settlement revenues to tobacco prevention and cessation.<sup>49</sup> As a result of decisions by state legislatures, which are responsible for deciding how the money is spent, state coffers lined with this money, coupled with billions in tobacco taxes and other substantial funds from tobacco companies, have not been used for tobacco control and prevention programs. Between 1998 and 2017, the Settling States received over \$126 billion in payments; however, less than 1 percent of these funds were earmarked for state tobacco prevention programs.<sup>50</sup>

Often state legislatures have used tobacco settlement payments to cover budget shortfalls or address fiscal priorities in areas other than tobacco prevention and cessation. In fact, few states have allocated more than a nominal amount of their tobacco settlement revenue to fund tobacco prevention and cessation programs,<sup>51</sup> making tobacco control programs the *smallest* state budget category to receive MSA funds.<sup>52</sup> Further, the percentage of MSA funds earmarked for tobacco control programs has steadily decreased over time, from approximately 6 percent in 2001 to only 1.9 percent in 2015.<sup>53</sup> Instead, states have allocated MSA payments to fund general programming in a variety of areas such as budget financing, tax credits, and health-care programs.<sup>54</sup> As of 2018, in fifteen states, funding did not exceed even 10 percent of the recommended level.<sup>55</sup>

While each of the Settling States receives MSA settlement funds in amounts well above both the minimum and ideal funding levels recommended by the CDC for tobacco cessation or prevention, they spend significantly less. In 2017, states on average received MSA payments that were 242 percent of CDC recommended funding levels, yet they spent 26 percent of those recommended levels.<sup>56</sup> In 2017, seventeen states did not allocate any of their MSA payments to tobacco prevention and cessation programs.<sup>57</sup>



**Q: What is securitization and why have some state and local governments securitized MSA payments?**

**A:** As noted above, the MSA does not limit how the Settling States may use their funds. Some state and local governments have securitized their future MSA payments in which they issue a bond backed by future payments. In other words, “By securitizing ... the state trades a potentially risky future stream of payments for a certain lump-sum payment,” often to generate short-term cash to cover budget shortfalls.<sup>58</sup> Securing bonds has allowed state governments to finance capital improvements, fund health-care projects, and receive an upfront lump sum of cash rather than waiting each year for the MSA payments.<sup>59</sup> By 2010, eighteen states, the District of Columbia, and three U.S. territories securitized some or all of their revenue entitlements from the MSA payment schedule into bonds.<sup>60</sup> The issued bonds totaled \$40 billion and are backed by expected future MSA payments.<sup>61</sup>

Many state and local governments’ tobacco bond ratings have been downgraded in recent years, reflecting the difficulty they now face in meeting interest and maturity requirements.<sup>62</sup>

The downgrade was the result of several factors, including downward MSA payment adjustments based on the declining volume of cigarette sales by Participating Manufacturers, unanticipated by the financial industry. The declining sales were caused in turn by declining cigarette consumption, the increased sale of products by cigarette manufacturers not signatories to the MSA, and tax increases.<sup>63</sup> Taking these factors into account, some states have issued new bonds or refinance earlier issues.<sup>64</sup>

Participating Manufacturers have also made it a standard practice to dispute payments to the Settling States, allowing them to withhold portions of settlement payments or to place the payments in an escrow account pending resolution of the dispute.<sup>65</sup> Both of these actions prevent states from using the payments for current tobacco bond obligations.

The reduced MSA payments and the tobacco bond obligations are each connected to a state's ability to repay the tobacco bonds.<sup>66</sup> Depending on the terms of the bond instruments, a state that no longer receives adequate MSA payments to fund its bond obligations has the choice to either default on the bonds or find money to make the required payments, which could be taken from elsewhere in the state's budget or generated through a tax increase. With the exception of a tax increase, none of these are appealing options for states experiencing revenue problems. Moreover, the political support for a tax increase simply may not exist in some states.

### **Q: How much money have the Settling States received as a result of the MSA?**

**A:** As of July 2018, Participating Manufacturers have paid the Settling States over \$126 billion in settlement funds,<sup>67</sup> and will pay billions more in perpetuity.<sup>68</sup> The Participating Manufacturers' aggregate annual payment is distributed among the Settling States according to a percentage, or allocable share, that is assigned to each state in the MSA. California and New York are the largest recipients, each receiving 12.76 percent of all MSA payments. As of July 2018, each of these two states has received close to \$16 billion in MSA payments.<sup>69</sup>

### **Contact Us**

Please feel free to contact the Public Health Law Center's Tobacco Control Legal Consortium at [publichealthlawcenter@mitchellhamline.edu](mailto:publichealthlawcenter@mitchellhamline.edu) with any questions about the information included in this fact sheet or other questions regarding tobacco control policies.

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## Endnotes

- 1 Centers for Disease Control and Prevention, *Trends in Current Cigarette Smoking Among High School Students and Adults, United States, 1965-2014* (2016), [https://www.cdc.gov/tobacco/data\\_statistics/tables/trends/cig\\_smoking/index.htm](https://www.cdc.gov/tobacco/data_statistics/tables/trends/cig_smoking/index.htm).
- 2 *Id.*
- 3 U.S. Dep't of Health, Education, and Welfare, Public Health Service, *Smoking and Health: Report of the Advisory Committee to the Surgeon General of the Public Health Service, 1964*, <https://profiles.nlm.nih.gov/ps/access/NNBBMQ.pdf>.
- 4 Kenneth E. Warner et al., *Medical Costs of Smoking in the United States: Estimates, Their Validity, and Their Implications*, 8 TOBACCO CONTROL 3, 290-300 (1999).
- 5 In 1993, nearly 15 percent of state Medicaid expenditures were to address smoking, amounting to \$13 billion. Leonard S. Miller et al., *State Estimates of Medicaid Expenditures Attributable to Cigarette Smoking, Fiscal Year 1993*, 113 PUBLIC HEALTH REPORTS 2, 140-51 (1998), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1308653>.
- 6 The information contained in this document is not intended to constitute or replace legal advice.
- 7 Robin Miller, Annotation, *Validity, Construction, Application, and Effect of Master Settlement Agreement (MSA) Between Tobacco Companies and Various States, and State Statutes Implementing Agreement, Use and Distribution of MSA Proceeds*, 25 A.L.R. 6th 435 (2007).
- 8 *In re Mike Moore, Attorney General, ex rel., State of Mississippi Tobacco Litigation*, Cause No. 94-1429 (Chancery Ct., Jackson, Miss., 1996).
- 9 Barry Meier, *Acting Alone, Mississippi Settles Suit with 4 Tobacco Companies*, N.Y. TIMES, July 4, 1997, <http://www.nytimes.com/1997/07/04/us/acting-alone-mississippi-settles-suit-with-4-tobacco-companies.html>.
- 10 Led by Minnesota Attorney General Hubert Humphrey, and in partnership with Blue Cross and Blue Shield of Minnesota and the law firm Robins, Kaplan, Miller & Ciresi, *State of Minnesota v. Philip Morris* was the largest case in Minnesota history and the first state lawsuit against major tobacco companies to go to trial. The case was settled and the state awarded \$6.1 billion over 25 years, and \$200 million annually thereafter, in perpetuity. Under the settlement, Minnesota received six one-time payments, which were distributed into three separate accounts: The Tobacco Use Prevention and Local Public Health Endowment, the Medical Education Endowment, and an Academic Health Center Account within the Medical Education Endowment. Blue Cross and Blue Shield of Minnesota received an additional \$469 million, which seeded the organization's Center for Prevention, among other tobacco-related activities. Beyond the financial compensation, however, the Minnesota settlement forced the public disclosure of 35 million pages of internal tobacco industry documents, which have since informed hundreds of scientific articles, government reports, and policy debates across the US and globally, including those that led to the Framework Convention on Tobacco Control, the first public health treaty negotiated under the auspices of the World Health Organization. Former U.S. Surgeon General, Dr. C. Everett Koop, famously said in 1998, "*State of Minnesota v. Philip Morris* is one of the greatest public health achievements of the 20th century." See *Minnesota Tobacco Settlement Agreement* (publications and resources on the Public Health Law Center website), <http://www.publichealth-lawcenter.org/topics/tobacco-control/tobacco-control-litigation/minnesota-litigation-and-settlement>.
- 11 As of October 1996, sixteen states had brought suit. See *Utah Sues Tobacco Companies*, WASH. POST, Oct. 1, 1996, at A9 (reporting that Utah joined fifteen other states, along with many counties and cities, in filing lawsuits against major tobacco companies).
- 12 Master Settlement Agreement (1998), <http://www.naag.org/assets/redesign/files/msa-tobacco/MSA.pdf>.
- 13 Since the MSA became effective, mergers and acquisitions have left R.J. Reynolds as the successor in interest to Brown & Williamson and Lorillard, leaving two Original Participating Manufacturers remaining.



- 14 Participating Manufacturers Under the Master Settlement Agreement as of October 1, 2018, National Association of Attorneys General, <http://www.naag.org/assets/redesign/files/Tabacco/2018-10-01%20PM%20List.pdf>.
- 15 Master Settlement Agreement, *supra* note 12, § I.
- 16 *Id.*
- 17 C. Stephen Redhead, *Tobacco Master Settlement Agreement (1998): Overview, Implementation by States, and Congressional Issues*, CONG. RES. SERV. 2 (Nov. 5, 1999).
- 18 See generally Master Settlement Agreement, *supra* note 12, § XI.
- 19 *Id.*, § XI(c).
- 20 *Id.*, § IX(b). After applying the volume adjustment, the initial payments for the first five years were somewhat lower.
- 21 See *Symposium—Tobacco Regulation: The Convergence of Law, Medicine & Public Health Essays*, 25 WM. MITCHELL L. REV. 373, 693 (1999). The states uncovered evidence that the tobacco companies had known for years about the damage caused by their products, but had conspired to suppress the information and mislead smokers, the general public, and public officials, and the states invoked Racketeer-Influenced Corrupt Organization statutes and sought sweeping injunctive and equitable relief (demands for future restrictions on tobacco industry behavior) and historic monetary recoveries. Peter Pringle, *The Chronicles of Tobacco: An Account of the Forces that Brought the Tobacco Industry to the Negotiating Table*, 25 WM. MITCHELL L. REV. 387 (1999), [http://heinonline.org/HOL/Page?handle=hein.journals/wmitch25&div=37&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/wmitch25&div=37&g_sent=1&collection=journals).
- 22 Nat'l Ass'n Att'ys Gen., *Payments to Date as of July 19, 2018*, [http://www.naag.org/assets/redesign/files/Tabacco/2018-07-25\\_\\_Payments\\_to\\_States\\_Inception\\_through\\_July\\_19\\_2018.pdf](http://www.naag.org/assets/redesign/files/Tabacco/2018-07-25__Payments_to_States_Inception_through_July_19_2018.pdf); see also Master Settlement Agreement, *supra* note 12, § IX(c)(1).
- 23 *Id.* Other adjustments include previously settled states reduction, non-settling states reduction, the non-participating manufacturer adjustment, the federal tobacco legislation offset, the litigating releasing parties offset, and offsets described in MSA subsections XI(i), XII(a)(4)(B), and XII(a)(8).
- 24 Master Settlement Agreement, *supra* note 12, § IX(c)(2), Exhibit U.
- 25 *Id.*
- 26 *Id.* § IX(c)(1).
- 27 See generally *id.*, § III.
- 28 See *id.*, § III(m); see also Master Settlement Agreement Restrictions on Tobacco Company Lobbying Efforts, Campaign for Tobacco-Free Kids, <http://www.tobaccofreekids.org/research/factsheets/pdf/0064.pdf>. For instance, the MSA bars any efforts by the tobacco companies or their lobbyists to oppose proposals to restrict youth access to vending machines; include cigars in the definition of tobacco products; enhance enforcement of laws forbidding sales of tobacco products to youth; support the use of new technology to enforce age-of-purchase laws; limit promotions of non-tobacco products that use tobacco products as prizes or giveaways; enforce access restrictions through penalties on youth possession or use; limit tobacco product advertising or the wearing of tobacco logo merchandise in or on school properties; and limit non-tobacco products designed to look like tobacco products (e.g., candy cigarettes).
- 29 See Master Settlement Agreement, *supra* note 12, § III(r).
- 30 THE TRUTH, <http://www.thetruth.com>.
- 31 Cheryl Heaton, *Who's Afraid of the Truth?*. AM. J. PUB. HEALTH 91, 554–58 (2001).

- 32 This initiative was initially formed and funded by Lorillard, Philip Morris, and R.J. Reynolds. Among other purposes, the center sought to call into question reports linking environmental tobacco smoke (second-hand smoke) to lung cancer. Unlike the Tobacco Institute, the industry aimed to cast this center as a completely separate non-profit entity. Anne Landman, *Daily Doc: The Center for Indoor Air Research (CIAR)*, TOBACCO.ORG, TOBACCO NEWS & INFORMATION (Mar. 12, 2000), <http://archive.tobacco.org/Documents/dd/ddciar.html>.
- 33 After it forced the institute to disband, the MSA required all of its internal documents to be placed online. The tobacco industry used The Tobacco Institute as its main arm in challenging anti-tobacco studies and initiatives. “[T]he bulk of public relations activity concerning industry response to the smoking and health controversy emanates from The Tobacco Institute ... [T]he Institute acts as official spokesman for the industry, always reflecting the official strategy positions agreed upon by all members.” *Status Report and Update: Public Relations Strategy of U.S. Tobacco Manufacturers re Smoking & Health Controversy*, TOBACCO INST. (May 1, 1976), <http://industrydocuments.library.ucsf.edu/tobacco/docs/ptpk0146>.
- 34 This was the name given in 1964 to the Tobacco Industry Research Committee, which was formed in 1953. The council primarily functioned as a public relations wing of the tobacco industry, calling into question accusations linking cigarettes to ill health and promoting cigarette consumption. The council’s efforts, along with those of the Center for Indoor Air Research, played a central role in the fraud and misinformation charges brought against tobacco companies in the 1990s. See Tobacco Industry Research Committee, Sourcewatch.org, [http://www.sourcewatch.org/index.php/Tobacco\\_Industry\\_Research\\_Committee](http://www.sourcewatch.org/index.php/Tobacco_Industry_Research_Committee).
- 35 Companies are still permitted to fund independent research efforts, academic institutions and other community organizations. For example, from 2000 to 2007 before it shut down, the Philip Morris External Research Program awarded some \$200 million to 470 research projects at 60 different medical schools. Researchers under the auspices of the program published 1,200 articles in peer-reviewed journals ranging from SCIENCE and NATURE to the JOURNAL OF CLINICAL INVESTIGATION. See David Grimm, *Philip Morris Pulls the Plug on Controversial Research Program*, 319 SCIENCE 1173 (2008). Altria continues to donate to a variety of national, regional and local organizations working in youth development, environmental protection, civic engagement and the arts. In 2017, this charitable giving totaled \$54.7 million. *Investing in Communities*, ALTRIA, <http://www.altria.com/Responsibility/Investing-In-Communities/Pages/default.aspx> (Oct. 16, 2018).
- 36 Master Settlement Agreement, *supra* note 12, § IV. This requirement expired on June 30, 2010, but has been continued until September 1, 2021, under the judgment entered in the federal government’s RICO action against the major cigarette manufacturers. *United States v. Philip Morris USA, Inc.*, 449 F.Supp.2d 1, 941-44 (D.D.C. 2006). The documents are also still available in the Legacy Tobacco Documents Library at <https://industrydocuments.library.ucsf.edu/tobacco>.
- 37 Dennis Eckhart, *The Tobacco Master Settlement Agreement: Enforcement of Market Restrictions*, Tobacco Control Legal Consortium 4 (2004).
- 38 This multi-state investigation was pivotal in prompting other companies to reduce youth exposure to their ads in national magazines. See *id.* at 5.
- 39 *State ex rel. Jim Petro v. R.J. Reynolds Tobacco Co.*, 820 N.E.2d 910 (Ohio 2004) (finding that R.J. Reynolds’ matchbooks bearing brand names are brand name merchandise prohibited by MSA § III(f)).
- 40 *People of the State of California ex rel. Bill Lockyer v. R.J. Reynolds Tobacco Co.*, 11 Cal.Rptr.3d 317 (Cal. Ct. App. 2004) (2004) (ruling that R.J. Reynolds intended to target youth in violation of Section III(a) because of the degree to which youth were exposed to its magazine ads).
- 41 *The People ex rel. Bill Lockyer v. R.J. Reynolds*, 132 Cal.Rptr.2d 151 (Cal. Ct. App. 2003) (ruling that R.J. Reynolds placed billboards at sites of brand name sponsorships for a longer time than permitted by MSA); *State of Arizona ex rel. Terry Goddard v. R.J. Reynolds Tobacco Co.*, 75 P.3d 1075 (Ariz. Ct. App. 2003) (same). *But see State ex rel. Spitzer v. R.J. Reynolds Tobacco Co.*, No. 401561/01, at \*6, 8 (N.Y. Sup. Ct. Jan 30, 2002), <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=qqcf0064> (ruling in favor of R.J. Reynolds on same issue and finding New York’s proffered interpretation of the MSA to be “unreasonable” and “a disingenuous effort to confuse”).

42 Eckhart, *supra* note 37, at 6.

43 *Id.* at 7.

44 *Id.* at 4.

45 State of California v. R.J. Reynolds Tobacco Co., No. GIC 764118 (San Diego Cnty. Super. Ct., 2002). *But see* CA Sup Court case People *ex rel.* Lockyer v. R.J. Reynolds Tobacco, Co., 124 P.3d 408 (Cal. 2005).

46 All states have such Consent Decrees except for Mississippi, Florida, Texas, and Minnesota, since these states pursued individual settlements with four tobacco companies, settlements that preceded the MSA.

47 Eckhart, *supra* note 55.

48 Master Settlement Agreement, *supra* note 12, § I.

49 *Id.* at Sec. III (m, n).

50 *Actual Annual Tobacco Settlement Payments Received by the States, 1998–2017*, Campaign for Tobacco Free Kids 1 (2017), <https://www.tobaccofreekids.org/assets/factsheets/0365.pdf>.

51 Ctrs. for Disease Control & Prevention, *State Tobacco Revenues Compared with Tobacco Control Appropriations — U.S., 1998–2010*, 61 MORBIDITY & MORTALITY WKLY REP'T 20, 370 (2012).

52 Lisa Shames, *Tobacco Settlement: States' Allocations of Payments from Tobacco Companies for Fiscal Years from 2000 to 2007*, U.S. GAO 6 tbl.2 (Feb. 27, 2007), <http://www.gao.gov/assets/120/115580.pdf>.

53 Cary P. Gross et al., *State Expenditures for Tobacco-Control Programs and the Tobacco Settlement*, 347 NEW ENGLAND J. MEDICINE 14, 1080 (2002).

54 Generally, higher MSA payments have been associated with weaker tobacco control measures within states. See Jayani Jayawardhana et al., *Master Settlement Agreement (MSA) Spending and Tobacco Control Efforts*, 9 PLOS ONE 12, e114706 (2014). In North Carolina, an increasing percentage of MSA payments through 2003 were diverted into general state coffers (16 percent in 1999 to 47 percent in 2003). See Alison Snow Jones et al., *Funding of North Carolina Tobacco Control Programs Through the Master Settlement Agreement*, 97 AM. J. PUBLIC HEALTH 1, 36 (2007). In a specific example from New York, rather than using MSA revenues for tobacco control, the state used \$700,000 of MSA funds for golf carts and a sprinkler system at a public golf course, Virginia spent \$12 million of MSA funds to lay fiber-optic lines for broadband cable, and Alabama spent \$1 million of MSA funds to improve juvenile offender boot camps, alternative schools, metal detectors, and surveillance cameras in public schools. During that time, Michigan spent 75% of MSA funds on college and high-school scholarships, using *none* of the settlement funds for tobacco cessation or prevention programs. Howard Markel, *Burning Money*, N.Y. TIMES, Aug. 22, 2005, <http://www.nytimes.com/2005/08/22/opinion/22markel.html>.

55 Am. Lung Ass'n, *State of Tobacco Control 2018* (January 2018), <https://www.lung.org/assets/documents/tobacco/state-of-tobacco-control.pdf>.

56 Calculated based on data from: Nat'l Ass'n Att'ys Gen., *Payments to Date as of July 19, 2018*; Ctrs. for Disease Control & Prevention, *Best Practices for Comprehensive Tobacco Control Programs — 2014 Fact Sheet* (2014), [https://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/index.htm](https://www.cdc.gov/tobacco/stateandcommunity/best_practices/index.htm); Am. Lung Ass'n, *State of Tobacco Control 2018* (January 2018), <https://www.lung.org/assets/documents/tobacco/state-of-tobacco-control.pdf>.

57 Am. Lung Ass'n, *supra* note 7155.

58 Jody Sindelar & Tracy Falba, *Securitization of Tobacco Settlement Payments to Reduce States' Conflict of Interest*, 23 HEALTH AFFAIRS 5, 188 (2004).

59 See, e.g., Cal. Debt & Inv. Advisory Comm'n, *Issue Brief: Tobacco Securitization Bond Issuance in California* (2009), <http://www.treasurer.ca.gov/cdiac/reports/tobacco.pdf>.



- 60 *Tobacco Bonds: Janney Fixed Income Strategy*, Janney Montgomery Scott (Dec. 6, 2010).
- 61 *Tobacco Bonds to See Reduced Payments Next Year*, REUTERS (Sept. 19, 2013), <http://www.reuters.com/article/2013/09/19/municipals-tobaccobonds-idUSL2NOHF1AP20130919>.
- 62 See *Moody's Places 31 Tobacco Settlement Bonds Under Review*, MOODY'S INVESTOR SERV. (Jan. 22, 2013), [https://www.moodys.com/research/Moodys-places-31-tobacco-settlement-bonds-under-review--PR\\_264367](https://www.moodys.com/research/Moodys-places-31-tobacco-settlement-bonds-under-review--PR_264367); *More Concern Over Tobacco Bonds*, FMSBONDS, INC. (Jan. 29, 2013), [http://www.fmsbonds.com/news/bond\\_article.asp?id=434](http://www.fmsbonds.com/news/bond_article.asp?id=434).
- 63 See *Janney Fixed Income Strategy*, *supra* note 60. Many local governments not only receive a share of their state's tobacco payments, but have securitized those payments. For example, in California approximately half of the state's MSA payment is allocated to the cities of Los Angeles, San Diego, San Francisco, and San Jose (these cities filed their own lawsuits against the tobacco companies), and the 58 counties. Between 2001 and 2009, twenty-eight local California agencies issued \$3.6 billion in tobacco securitization bonds. See, e.g., Cal. Debt & Inv. Advisory Comm'n, *Tobacco Securitization Bond Issuance in California* (Issue Brief) (2009), <http://www.treasurer.ca.gov/cdiac/reports/tobacco.pdf>.
- 64 See Alan Schankel, *Muni Report: Janney Investment Strategy Group*, July 18, 2018, <https://www.janney.com/File%20Library/Muni%20Sector%20Scorecard/Tobacco-Bond-Update-Jul-2018.pdf>; Hilary Russ, *New Jersey to Refund Junk Tobacco Bonds for \$3.2 Billion of High-Grade Paper*, REUTERS (March 29, 2018), <https://www.reuters.com/article/us-usa-municipals-deals/new-jersey-to-refund-junk-tobacco-bonds-for-3-2-billion-of-high-grade-paper-idUSKBN1H53A7>.
- 65 Alan Schankel, *Tobacco Sector Update: Janney Fixed Income Strategy*, June 15, 2012, <https://www.janney.com/file%20library/muni%20sector%20scorecard/tobacc-sector-update-june-15--2012.pdf>.
- 66 See *Janney Fixed Income Strategy*, *supra* note 60.
- 67 See Nat'l Ass'n Att'ys Gen., *supra* 22.
- 68 NAAG *Tobacco Project: 11 Years of MSA Coordination*, 4 NAAGAZETTE 1 (2009), <http://www.naag.org/publications/naagazette/volume-3-number-4/naag-tobacco-project-11-years-of-msa-coordination.php>.
- 69 See Nat'l Ass'n Att'ys Gen., *supra* 22.