Tobacco Control
Legal Consortium

Everything You Ever Wanted to Know about *U.S. v. Philip Morris* But Were Afraid to Ask

In 1999, the United States Department of Justice (DOJ) sued several major tobacco companies for fraudulent and unlawful conduct under the Racketeer Influenced and Corrupt Organizations Act (RICO). On August 17, 2006, Judge Gladys Kessler issued a 1,683 page opinion holding the tobacco companies liable for violating RICO by fraudulently covering up the health risks associated with smoking 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.”

U.S. v. Philip Morris is a pivotal event in the history of tobacco control. The depth and breadth of the information contained in the district court’s opinion is overwhelming and difficult to digest. The scope of the still-ongoing litigation is tremendous and can make the case seem perplexing. This document will review the case and the resulting remedies imposed by the court.

Key Dates

- September 22, 1999 – The United States filed suit against nine cigarette manufacturers and two tobacco industry front groups.

- August 17, 2006 – Judge Kessler ruled in favor of the United States, imposing a variety of remedies on the defendants. The defendant tobacco companies appealed.

- May 22, 2009 – The Court of Appeals for the D.C. Circuit upheld Judge Kessler’s opinion with a few modifications to the remedies.

- June 28, 2010 – The U.S. Supreme Court denied the tobacco industry’s appeal, rendering the lower court ruling final.

- Present – Since the Supreme Court upheld the lower court decision, the litigation has focused on how the remedies imposed by Judge Kessler will be implemented. The tobacco industry continues to attempt to block the remedies from being enforced by challenging the enforcement procedures or challenging the jurisdiction of the court.

The Parties

The Plaintiff:

- The United States

The Defendants – Although there were originally nine defendants, because of jurisdictional limitations of the court and mergers and acquisitions within the tobacco industry, the remaining defendants are:

- Altria Group, Inc.
- Philip Morris USA, Inc. (a division of Altria)
- R.J. Reynolds Tobacco Co. (a division British American Tobacco plc)

The Post-Judgment Parties – Following the acquisition of Lorillard, Inc. by Reynolds American, Inc., four cigarette brands were sold to Imperial Tobacco PLC, a UK-based company. Imperial and its subsidiaries retain the responsibility of upholding the court's orders with respect to these four brands. Imperial's US subsidiaries are:

- ITG Brands, LLC
- Commonwealth – Altadis, Inc.

The Public Health Intervenors – The courts allowed several third-party groups who had a vested interest in the outcome of the litigation to join the suit and file briefs with the court. They are:

- American Cancer Society
- American Heart Association
- American Lung Association
- Americans for Nonsmokers' Rights
- National African American Tobacco Prevention Network
- Tobacco-Free Kids Action Fund

The Claims

Effective Claims – The U.S. brought two claims against the tobacco companies which were ultimately successful.

- The Defendants conducted business through a pattern of racketeering activity, brought pursuant to the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(c)), which allows the U.S. to impose civil penalties on enterprises that conduct affairs through a pattern of racketeering activity.

- The Defendants 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 the nicotine delivery of cigarettes; (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 the youth market; and (7) not produce safer cigarettes, brought under the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1962(d)), which allows the U.S. to impose civil penalties on those who conspire to conduct affairs through a pattern of racketeering activity.

Dismissed Claims – The U.S. brought two other claims that the courts threw out because the industry's activities were outside the scope of these laws.

- The U.S. sought reimbursement of tobacco-related medical expenses under the Medical Care Recovery Act (MCRA) (42 U.S.C. § 2651), which allows the U.S. to recover the reasonable value of medical care and treatment under circumstances creating tort liability upon a third party.

- The U.S. sought reimbursement of tobacco-related medical expenses under the Medicare Secondary Payer Provisions (MSPP) (42 U.S.C. § 1395), which allows the U.S. to recover payments made by the Health Care Financing Administration when third parties are responsible for payment.

The Remedies

The U.S. sought to have eleven remedies imposed on the tobacco companies. Four have been imposed, five remedies were eliminated during litigation, and two are still being litigated.

Enforced Remedies:

- Prohibition of Brand Descriptors – The use of the terms "low tar," "light," "ultra light," "mild," "natural," and similar descriptors by the tobacco companies to describe their products is forbidden.

- Disclosure of Disaggregated Marketing Data – The tobacco companies must disclose disaggregated marketing expenditures to the Department of Justice for the purpose of enforcing the court's orders.

- General Injunctions – The tobacco companies must refrain from the following activities: engaging in racketeering activities; managing or reconstituting the Council for Tobacco Research, the Tobacco Institute, the Council for Indoor Air Research (third-party front groups used by the industry to perpetuate their racketeering activities) or any successor entities; or making false statements about cigarettes.

- Costs – The tobacco companies are obligated to pay the costs of the litigation expenses. These expenses have already exceeded $7,000,000.

Rejected Remedies:

- Disgorgement – The U.S. asked the courts to force the Defendants to give up their ill-gotten gains. Under the law, all remedies that flow from violations of the RICO statutes must be forward-looking so as to prevent future violations. The appeals court observed that forcing an individual to divest him or herself of enterprises that commit RICO violations would indeed prevent future RICO violations but forcing the tobacco companies to disgorge past profits would not restrain future violations. The appeals court found that this would be a backward-looking remedy and thus rejected it.

- National Smoker Cessation Program – The U.S. asked the court to require the tobacco companies to fund a national smoking cessation program. Judge Kessler found that this remedy was not narrowly tailored to prevent future RICO violations. Although it would reduce smoking rates, it would not prevent the tobacco industry from propagating deception.

- Youth Smoking Reduction Targets – The U.S. asked the court to require the defendants to reduce youth smoking by 6% per year between 2007 and 2013. Judge Kessler found that this remedy was not narrowly tailored to prevent future RICO violations as there are many factors that contribute to youth smoking that the tobacco companies cannot control.

- Corporate Structural Changes – The U.S. asked the court to appoint an Independent Investigative Officer and an Investigative Hearing Officer to oversee the tobacco industry and ensure that they commit no future RICO violations. Judge Kessler found that this remedy would be inappropriate as it would create an unconstitutional delegation of judicial powers.

- Public Education and Countermarketing Campaign –The U.S. asked the court to require the tobacco companies to fund a public education and countermarketing campaign. Judge Kessler found again that this was not narrowly tailored to prevent future RICO violations.

Remedies in Litigation:

- Corrective Communications – The court ordered the tobacco companies to disseminate through newspapers, television, package onserts, retail displays and corporate websites, corrective statements about addiction, the adverse health effects of smoking, the adverse health effects of exposure to secondhand smoke, their manipulation of physical and chemical designs of cigarettes and light and low tar cigarettes. While the content of the communications and the methods of dissemination have been decided, R.J. Reynolds is currently challenging whether or not it must fulfill the obligations of Brown & Williamson as its successor in interest.

- Disclosure of Documents – The court ordered the tobacco companies to continue to operate document depositories in Minnesota and Guildford, England and on each company's website. The federal court has taken over jurisdiction of the Minnesota document depository. Litigation regarding this remedy will continue as the plaintiffs and intervenors are allowed to challenge the industry's decision to withhold documents from public view by virtue of their status as privileged or confidential.

Other Resources

The Consortium's website features other resources related to *U.S. v. Philip Morris*, including the district court's opinion and "The Verdict is In: Findings from United States v. Philip Morris." In addition, the Consortium developed a factsheet that explains how to use the Legacy Tobacco Documents Library to find the internal industry documents referenced in the opinion.

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