



U.S. v. Philip Morris: Key Tobacco Industry Admissions

The Back Story

In 1999, the United States Department of Justice (DOJ) sued several major tobacco companies for fraudulent and unlawful conduct and reimbursement of tobacco-related medical expenses.¹ The circuit court judge dismissed the DOJ's claim for reimbursement, but allowed the DOJ to bring its claim under the Racketeer Influenced and Corrupt Organizations Act (RICO). 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 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.

On August 17, 2006, U.S. District Court 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. Both parties filed appeals to the U.S. Court of Appeals. The DOJ sought an injunction against the tobacco companies to restrict their actions and prevent future RICO violations. To obtain this injunction, the government needed to demonstrate a "reasonable likelihood of further violations in the future."² The tobacco companies argued that there was no reasonable likelihood of future violations because of their current public positions concerning their products.³ In making this argument, **the tobacco companies stated that they have "admitted for years" that "smoking causes lung cancer," "smoking is addictive," and smoking "low tar cigarettes may not be safer."**⁴

On May 22, 2009, the three-judge federal panel unanimously upheld Judge Kessler's decision finding the tobacco companies liable. On June 28, 2010, the U.S. Supreme Court declined to hear further appeals in this nearly decade-old federal government's landmark lawsuit, leaving the final verdict as is – an unprecedented finding that for the last fifty years the major tobacco companies deceived the American public about the devastating health effects of smoking and secondhand smoke.

This Tobacco Control Legal Consortium Fact Sheet summarizes key tobacco company admissions resulting from *U.S. v. Philip Morris* – admissions likely to be of vital interest to other countries considering tobacco litigation.

Tobacco companies have admitted that (1) smoking causes lung cancer and other serious disease, (2) smoking is addictive, and (3) smoking low tar cigarettes may not be safer.

Industry Admission: Smoking Causes Lung Cancer

In arguing they were precluded from committing RICO violations in the future, the tobacco companies admitted that smoking causes lung cancer and other serious disease.⁵ Specifically, Philip Morris informed its customers through its website that Philip Morris “agrees with the overwhelming medical and scientific consensus that cigarette smoking causes lung cancer, heart disease, emphysema and other serious diseases in smokers.”⁶ R. J. Reynolds indicated that “smoking, in combination with other factors, causes diseases in some individuals,”⁷ and Lorillard stated that it “agree[s] with and accept[s] the Surgeon General’s and other public health authorities’ views [that smoking causes lung cancer and other serious diseases], which includes any disease.”⁸ While the district court saw these concessions as “half-hearted,” the tobacco companies argued that the “semantic quibbling” over the inclusion of words like “in combination with other factors” and “risk factor” in their public positions does not demonstrate that in the future the tobacco companies will deny that smoking causes disease.⁹

Industry Admission: Smoking is Addictive

Not only did the tobacco companies admit that smoking causes disease, they also admitted that smoking is addictive.¹⁰ Again, the tobacco companies argued that their public positions preclude them from being able to commit RICO violations in the future.¹¹ The appellant-defendants’ brief referenced three public statements as proof of their public position that smoking is addictive.¹² First, Philip Morris stated that it “agrees with the overwhelming medical and scientific consensus that cigarette smoking is addictive.”¹³ Second, R. J. Reynolds acknowledged that smoking is addictive, as the term addiction is currently used.¹⁴ Finally, Brown and Williamson specifically cited the Surgeon General’s 1988 definition of addiction when admitting that cigarette smoking is classified as addictive.¹⁵ The tobacco companies stress that “the important thing for smokers to know is that *smoking* is addictive.”¹⁶

Industry Admission: Low Tar Cigarettes May Not be Safer

The tobacco companies also claimed that they provided consumers with information that low tar cigarette smokers may “change the way [consumers] smoke in order to obtain more nicotine,” and as a result “get the same amount of tar and nicotine. . . as they would from higher tar cigarettes.”¹⁷ Philip Morris advised its customers that “[t]he amount of tar and nicotine you inhale will be higher than the stated tar and nicotine yield numbers if, for example, you block ventilation holes, inhale more deeply, take more puffs or

smoke more cigarettes.”¹⁸ R. J. Reynolds informed its customers that “‘there is no such thing as a safe cigarette’ and that the use of descriptors does not mean that a cigarette is safer.”¹⁹ Lorillard told its customers that “all cigarettes are dangerous,” and that “low tar cigarettes do not present a clear reduction in risk.”²⁰

Conclusion

The record is clear and the verdict is in: the tobacco companies in *United States v. Philip Morris USA Inc.* admitted that smoking causes disease, smoking is addictive and smoking low tar cigarettes may not be safer. Tobacco companies can no longer deny the serious danger smoking causes. By their own admission, if the tobacco companies were to claim that smoking does not cause disease “no rational consumer would believe them.”²¹ The tobacco companies’ own statements show that smoking has serious health consequences. For those without the time to read Judge Kessler’s monumental [Opinion](#), check out the Tobacco Control Legal Consortium’s series of publications, *The Verdict Is In: Findings from United States v. Philip Morris*, at <http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/united-states-v-philip-morris-doj-lawsuit>, which contains highlights from Judge Kessler’s findings.

The information contained in this document is not intended to constitute or replace legal advice. We encourage anyone considering the implementation of any tobacco-related law or policy to seek out local legal counsel to obtain legal advice on these issues.

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¹ *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.

² *Id.* at 1132 (citing *S.E.C. v. Savoy Indus., Inc.*, 587 F.2d 1149, 1168 (D.C. Cir. 1978)).

³ *Id.* at 1134; Brief for Appellant-Defendants, *United States v. Philip Morris USA, Inc.*, 2008 WL 2682541, at *53 [hereinafter Defs. Br.].

⁴ *Philip Morris USA, Inc.*, 566 F.3d at 1134; Defs. Br. at *53-58.

⁵ Defs. Br. at *53.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at *53-54.

⁹ *Id.* at *54.

¹⁰ *Id.*

¹¹ *Id.* at *53.

¹² *Id.* at *55-56.

¹³ *Id.* at *55.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at *55-56.

¹⁷ *Id.* at *56.

¹⁸ *Id.* at *57.

¹⁹ *Id.*

²⁰ *Id.* at *58.

²¹ *Id.* at *54 (emphasis added).