

Legal Update



Tobacco Control
Legal Consortium



Dear Tobacco Control Professional:

Welcome to the latest issue of the *Legal Update*, the newsletter of the Tobacco Control Legal Consortium. The Consortium is a national network of legal programs supporting tobacco control policy change across the United States. We invite you to visit our website at www.tclconline.org.

Consortium Unveils Database of Tobacco-Related Law Journal Articles

The Tobacco Control Legal Consortium is pleased to launch a new tool for effective tobacco control: a free, searchable, online bibliographic database of every North American law review and journal article that could be found on tobacco control. This unique policy resource is designed to support the efforts of tobacco control attorneys, policymakers, advocates, and public health professionals around the world. The database is available at <http://tobaccolawreviews.org>. Already it contains information about hundreds of legal articles on everything from tobacco industry liability to smoking in prisons to youth smoking. Future database enhancements will include the addition of information on tobacco law and policy articles in public health and related social science journals.

The *Tobacco Law and Policy Database* is a joint project of the Tobacco Control Legal Consortium, the William S. Richardson School of Law at the University of Hawai'i at Mānoa, and the Center for Tobacco Regulation, Litigation and Advocacy at the University of Maryland School of Law.



The *Tobacco Law and Policy Database*

Engle Decision Leaves Big Tobacco at Continuing Risk

On July 6, a long-awaited decision of the Florida Supreme Court overturned the largest jury verdict in history, the \$145 billion punitive damage award against major cigarette manufacturers in *Engle v. Liggett Group, Inc.*, the long-running litigation by an estimated 700,000 Florida smokers. News coverage tended to focus on the reversal of the unprecedented punitive damage award and the Court's ruling that the case will no longer proceed as a class action. Defendants worked hard to "spin" the decision as marking the end of one of their greatest litigation threats.

In reality, the decision relieves the manufacturers of some threats but opens others. The Court's complex eighty-page decision requires Florida smokers to assert their claims individually and gives them one year to file new lawsuits. Importantly, however, the decision preserves most of the gains that had been made in the twelve years of *Engle* litigation, which included the longest trial in U.S. history. While Florida smokers must

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Affiliated Legal Resource Centers:

- **California**
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- **Maryland**
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- **Massachusetts**
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- **Minnesota**
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- **New Jersey**
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- **Ohio**
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now assert their cases individually, these individual cases will begin with key elements of the smokers' claims already proved. Under the Court's ruling, most of the powerful factual findings made by juries in prior stages of the litigation will be treated as *res judicata*, a legal term meaning these findings will be treated as "givens" in the new cases.

The new cases will begin with the following findings treated as already proven:

- Cigarette smoking causes thirteen types of cancer, coronary heart disease, chronic obstructive pulmonary disease and other specific diseases.
- Defendants' cigarettes are defective and unreasonably dangerous.
- Defendants' cigarettes are addictive.
- Defendants have conspired together to conceal and misrepresent the health effects of their cigarettes.
- Defendants have behaved negligently and have breached the implied warranties on their cigarettes.

This means that individual Florida claimants will begin their new cases with a tremendous "head start." They will not need to prove any of the points already established, and defendants will not be allowed to challenge those findings. Claimants will still bear the burden of proving that they smoked a defendant's cigarettes, that the smoking caused their individual illnesses, and (if they allege fraud) that they personally relied on a defendant's fraudulent claims.

No tobacco litigation is simple or easy, and new individual claims in Florida will pose challenges. But the Florida Supreme Court's reversal of the earlier consolidated punitive damage verdict, while removing a massive immediate threat to manufacturers, also means that individual claimants will be free to seek their own awards of punitive damages—a factor that may make a virtually endless stream of individual cases economically viable. Within a week after the court's decision, in fact, the first individual claim had been filed by 55-year-old lung cancer patient Linda Jones.

For a copy of the *Engle* decision, click [here](#). The Tobacco Control Legal Consortium joined the Tobacco Control Resource Center in Boston in submitting a "friend-of-the-court" [legal brief](#) in the case, supporting the position of the plaintiffs.

Nepal's Supreme Court Orders Smoking Restrictions

On June 13, 2006, thanks to the decade-long efforts of dedicated lawyers, the Supreme Court of Nepal ordered the national government to prohibit smoking in all public places, effective immediately. The Court's ruling also requires the Nepalese government to promote public awareness of the health dangers of smoking and to outlaw tobacco advertising in print media.

Back in 1996, attorney Prakash Mani Sharma of a small nongovernmental organization, Pro Public, brought the first of several daring "Public Interest Litigations" against the Nepalese government, arguing that tobacco advertising was glamorizing smoking, and that his government's failure to do something about it offended the right to life and the right to a healthy environment guaranteed by Nepal's Constitution. Although the Court asked the government to provide directives to advertisers, it did not outlaw tobacco ads. In 1999, the Nepalese government did ban television and radio advertising, but left print media unregulated. Last year, Sharma and two colleagues, Raju Prasad Chapagai and Tek Tamrakar, filed a new case, asking that smoking be prohibited in all public places, and again urging the court to outlaw print ads of tobacco products. This time they were successful. "The court has struck a blow for public health," said the public interest lawyer. "This is something the government ought to have done years ago."

American Legacy Foundation Wins Key Advertising Case

On July 17, the Delaware Supreme Court ruled that the American Legacy Foundation's powerful youth smoking prevention advertising campaign, truth[®], does not violate the 1998 Master Settlement Agreement between state attorneys general and four major tobacco companies.

The legal decision concludes four years of unsuccessful efforts by Lorillard to force the withdrawal of the Legacy Foundation's hard-hitting ads, based on claims the ads violate the Master Settlement Agreement's "vilification clause," which prohibits the Foundation from using ads that "vilify" tobacco companies or their executives. This month's [ruling](#) from Delaware's high court concluded that "The advertisements are not insidious, disparaging, offensive, belligerent, nor fiercely or severely critical. Nor are they denouncements that are both unfounded and abusive or slanderous."

In its ruling, the Court described several of the edgy ads. In one, a professional dog walker telephones Lorillard and offers to sell the company dog urine because it contains urea, an ingredient the ad says is put into cigarettes. According to the Court, “The tone of the youth in the advertisements is usually expressly friendly or helpful, even if implicitly drawing attention to unflattering facts about past actions of tobacco companies or their employees. The youth’s messages, and thus the advertisements themselves, do not qualify as personal attacks or vilifications.” The Court thus concluded that the Foundation’s ads were consistent with the terms of the Master Settlement Agreement.

The Tobacco Control Legal Consortium was pleased to join other national organizations in a successful friend-of-the court legal brief supporting the Foundation’s position in the case. To view the Delaware Court’s opinion, click [here](#). For background information on *Lorillard v. American Legacy Foundation*, click [here](#).

Smokin’ Links

If you haven’t heard about it yet, check out www.globalSmokefreePartnership.org for information about Global Smokefree Partnership, an important new multi-partner initiative formed to promote effective smoke-free air policies worldwide. The Partnership, coordinated by the International Union Against Cancer (UICC), helps practitioners and smoke-free advocates access evidence for smoke-free policies; request assistance from a network of experts; and support smoke-free policies around the world.

Upcoming Tobacco Law Event

“Waiting to Exhale: The Future of Tobacco Litigation.” October 27, 2006; Quest Business Centers, 8405 Pulsar Place, Columbus, Ohio. A one-day conference on the future of tobacco litigation, sponsored by the Ohio Association of Trial Lawyers in partnership with the Tobacco Public Policy Center at Capital University Law School. Click [here](#) to register. Registration due by October 1, 2006.

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The [Legal Update](#) newsletter is a service of the Tobacco Control Legal Consortium.



From the Director’s Desk

Heartfelt thanks to the hundred-plus attorneys, advocates and supporters who joined us for the first-ever global attorneys’ reception at the World Conference on Tobacco or Health in Washington on July 13. It was especially rewarding for Consortium members from the U.S. to meet attorneys from Australia, Brazil, India, Kenya, Malaysia, Mexico, New Zealand, Nigeria, Sri Lanka, Tanzania, Uganda and elsewhere—many of whom work in relative isolation and with only limited resources. Their dedication, creativity and courage are a source of endless inspiration. For proof, one need look no farther than the story in this issue about public interest attorneys in Katmandu whose bold litigation is making Nepal smoke-free. Let’s hope the many friendships begun in Washington become a network of connections allowing legal professionals worldwide to draw encouragement and insights from one another.

Doug Blanke

Note: While we make every effort to ensure the information in this newsletter is accurate and complete, the Tobacco Control Legal Consortium is unable to guarantee this information. Material is provided for informational purposes and is not intended as legal advice. We encourage readers with questions to consult an attorney familiar with the laws of their jurisdictions.

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