

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.

Profiling the Tobacco Control Resource Center

The Tobacco Control Resource Center (TCRC) has been actively involved in honing legal approaches to tobacco control for more than 25 years. The organization grew out of the Massachusetts Group Against Smoking Pollution in the late 1970s. In the early 1980s, Northeastern University School of Law professor Dick Daynard became involved and refocused the organization from activism to legal research and advocacy.

In 1984, TCRC launched the Tobacco Products Liability Project to encourage tobacco litigation as part of a tobacco control and cancer reduction public health strategy. That project has hosted more than 20 tobacco litigation conferences and encourages lawsuits as part of a public health and cancer control strategy.

By the early to mid 1990s, the professional staff expanded and TCRC began to work on a myriad of legal research and projects funded by the Massachusetts Tobacco Control Program, the Robert Wood Johnson Foundation, the National Cancer Institute, and others. TCRC staff has written dozens of journal and law review articles, amicus briefs, drafting and reviews of legislation, and working papers.

TCRC is a division of the Public Health Advocacy Institute (PHAI) at Northeastern University School of Law in Boston. PHAI's broader law and public health mission, which includes an obesity legal taskforce and a motor vehicle hazard archives project, permits our staff of eight attorneys to examine the transferability of innovative tobacco control research to other public health legal issues while continuing to work on our core tobacco control mission.

-Mark Gottlieb, Executive Director, PHAI



Pictured left to right: Chris Banthin (Director), Ed Sweda (Senior Attorney); Travis Roe (Administration); Sara Guardino (Senior Staff Attorney); Dr. Jess Alderman (Senior Staff Attorney); Lissy Friedman (Senior Staff Attorney); Jason Smith (Associate Executive Director of PHAI); Marlo Miura (Staff Attorney); and Mark Gottlieb. Dick Daynard was in India working on human rights-based approaches to smokefree laws.

In This Issue:

- [Profiling the Tobacco Control Resource Center](#)
- [From the Director's Desk: Making Sense of the DOJ's Ruling](#)
- [First National Apartment Management Company Adopts Smoke-free Policy](#)
- [Israel Becomes first Nation to Enforce the Framework Convention on Tobacco Control](#)
- [Demographic Differences in Support for Policy Interventions](#)
- [Resource Roundup](#)
- [Upcoming Tobacco Law Event](#)

Affiliated Legal Resource Centers:

- **California**
[Technical Assistance Legal Center \(TALC\)](#)
- **Maryland**
[Legal Resource Center for Tobacco Regulation, Litigation & Advocacy \(LRC\)](#)
- **Massachusetts**
[Tobacco Control Resource Center \(TCRC\)](#)
- **Michigan**
[Smoke-Free Environments Law Project \(SFELP\)](#)
- **Minnesota**
[Tobacco Law Center](#)
- **New Jersey**
[Tobacco Control Policy and Legal Resource Center](#)
- **Ohio**
[Tobacco Public Policy Center](#)

From the Director's Desk



Making Sense of the DOJ Ruling

It's official: the tobacco manufacturers are the “racketeers” we thought they were. That much is clear from Judge Gladys Kessler’s historic August 17 ruling in *United States v. Philip Morris*. But the tobacco control community is still sorting out other implications of the seemingly incongruous decision.

The Judge’s [1,683-page opinion](#) is a scathing inventory of the ways these companies “marketed and sold their lethal products with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs of that success.” Just as importantly, the ruling demonstrates that the fraud goes on.

And yet, constrained by last year’s controversial ruling of the Court of Appeals, Judge Kessler was unable to order the most powerful remedies sought by intervening health groups and the government, including a national cessation program; mandatory reductions in youth smoking rates; and meaningful countermarketing campaigns. No one, it seems, was more frustrated by this outcome than Judge Kessler herself, who went out of her way to point out that these stronger remedies would “unquestionably serve the public interest.”

What now? The ultimate impact of the case will depend in part on three questions, and on what we do to influence the answers:

- Will the damning evidence catalogued in Judge Kessler’s opinion be put to good use in the court of public opinion? The sheer heft of the decision is daunting—printing a copy literally burned out the printer here at the Legal Consortium—but it is a treasury of show-stopping material. As the recent Surgeon General’s Report is to secondhand smoke, so this decision is to tobacco industry conduct. When Surgeon General Carmona released the report on secondhand smoke this summer, he declared, “The debate is over.” So it is with the tobacco industry conspiracy in the wake of this ruling. We need to let America know that this debate, too, is over.
- Will litigants be allowed the benefit of these definitive findings? Under the legal doctrine of “collateral estoppel,” questions that have once been fully decided against a party can’t be re-litigated in later cases. Will tomorrow’s tobacco industry victims be allowed to prove their cases by invoking Judge Kessler’s findings as “givens”? If these findings aren’t treated as conclusive, it’s hard to imagine what findings would be; no case in history has been more thoroughly litigated. The question gets its first test in a federal courtroom in Brooklyn on September 13, as litigants debate whether Kessler’s ruling that the manufacturers are using fraud to sell “light” cigarettes should be considered binding in private “lights” cases.
- Most importantly, will the Department of Justice appeal the decision to seek stronger remedies? Last year, the Department argued that restricting racketeering-law remedies undermines its ability to pursue organized crime. But now that the appellate court has let Big Tobacco off the hook, the Department is silent about whether it will object. As has happened before in the long history of this case, a public outcry may help the Department make the right decision about an appeal.

Tobacco control advocates can influence the answers to all of these questions. By integrating the new findings into all their public advocacy, by supporting efforts to make these rulings binding in ongoing litigation, and, above all, by encouraging the government to bring an appeal to pursue the strongest possible remedies, advocates can help increase the ultimate impact of this unprecedented case.



First National Apartment Management Company Adopts Smoke-free Policy

First Centrum Communities recently became the first national apartment management company to adopt smoke-free policies in all its apartment communities. Beginning September 1, 2006, all new residents signing leases for apartments managed by First Centrum must agree not to smoke anywhere on apartment building grounds, including their own apartment units. This policy will apply to all of First Centrum Communities' forty-nine apartment communities in six states, totaling 5,452 apartment units. Although the new policy will not apply to current residents, the buildings will eventually become 100% smoke-free as current smoking residents move out of their apartments and new residents move in under the smoke-free leases.

Residents of the Courthouse Square apartment building in Ann Arbor, Michigan, whose age and medical conditions make the presence of second-hand smoke a detriment to their quality of life and health, made the initial request for a 100% smoke-free apartment building. First Centrum was "amazingly responsive" in cooperating with the Legal Consortium's Michigan affiliate, the Smoke-Free Environments Law Project, and the Fair Housing Center of Southeastern Michigan to honor the residents' request for a smoke-free apartment building. The risk of fire caused by lit cigarettes will also be eliminated as this policy takes effect, as will the need for extra cleaning and painting of apartments vacated by smokers.

To learn more about First Centrum Communities' smoke-free policy and other smoke-free housing legal issues, visit www.mismokefreeapartment.org. For additional information, visit the Apartments and Condominiums sections of the Smoke-Free Environments Law Project site at <http://www.tcsg.org/sfelp/apartment.htm> and <http://www.tcsg.org/sfelp/condos.htm>.

Israel Becomes First Nation to Enforce the Framework Convention on Tobacco Control

The Israeli High Court of Justice set an international legal precedent on July 5, 2006 when it applied the provisions of the World Health Organization's Framework Convention on Tobacco Control (FCTC) in hearing the appeal of a pregnant woman who was exposed to secondhand smoke in a restaurant, despite Israel's staunch smoke-free workplace laws.

The local Small Claims Court awarded Irit Shemesh only nominal compensation, and the District Court did not intervene, but Justice Rubinstein granted her appeal and increased her compensation tenfold. Citing the FCTC, Justice Rubinstein pointed out that secondhand smoke causes "death, disability and illness" and that all countries that ratified the FCTC have an obligation to protect their inhabitants from secondhand smoke. This case is believed to mark the first time a high court has cited the FCTC as a legal source for its ruling. To learn more about *Irit Shemesh v. Fucachetta Ltd.*, click [here](#).

Demographic Differences in Support for Policy Interventions

A study reported in the June 2006 issue of *Addictive Behaviors* examines attitudes toward tobacco control policies based on five demographic variables: gender, age, race, ethnicity, and education. Among the study's findings:

- Women were significantly more likely than men to favor strong tobacco control policies.
- Blacks had significantly more favorable attitudes than whites toward increasing tobacco-related public education.
- Older people were more likely than young people to support restrictions on advertising and promotion, increasing public education, and increasing environmental restrictions
- People with higher levels of education were significantly more supportive of increasing taxes and fees and increasing environmental restrictions.

For more information on the study, click [here](#).

Resource Roundup

- Over the last six years, cigarette manufacturers have steadily increased the nicotine content of most cigarette brands, including the brands most popular with underage smokers, according to a dramatic new report from the Massachusetts Department of Public Health. Nicotine levels in Kool cigarettes, one of the menthol brands favored by two-thirds of African American smokers, increased by a startling twenty percent. For a copy of the report, click [here](#).
- The University of California, San Francisco (UCSF) Library & Center for Knowledge Management has released the 12th edition of its [Tobacco Documents Bibliography](#), compiling information on nearly 450 scientific and other publications based on research and analysis of the internal tobacco industry documents.
- The American Lung Association's SLATI (State Legislated Actions on Tobacco Issues) report is an up-to-date guide to all tobacco control and public smoking laws in the 50 states and the District of Columbia. To learn more about SLATI and to read its most recent report, click [here](#).
- The CDC Office on Smoking and Health has updated its "Employer Action Steps" webpage, designed to help businesses develop and implement smoke-free workplaces. The page includes many links to reports and studies. To view the "Employer Action Steps," click [here](#).

Upcoming Tobacco Law Event

"Public Health and Human Rights." November 4-8, 2006; The American Public Health Association's 134th Annual Meeting and Exposition, Boston, Massachusetts. Check out the session "Law Literacy for Public Health Practitioners" on Saturday, November 4, 2006. Click [here](#) to register.

Contact Us:

Phone:

651.290.7506

Email:

tobaccolaw@wmitchell.edu

Web:

www.tclconline.org

Address:

875 Summit Avenue
St. Paul, MN 55105



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

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.

Copyright © 2006 by the Tobacco Control Legal Consortium