

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 Law Center

Since 2000, the Tobacco Law Center, a public interest legal center at the William Mitchell College of Law in St. Paul, Minnesota, has helped advocates use the power of law to fight the global tobacco epidemic. Part emergency-response team, part think tank, the Center combines practical legal services with thoughtful research and analysis. We work hard to maintain high standards of accuracy, objectivity and scholarship while focusing on results and customer service.

The Tobacco Law Center is especially proud to have played a role in developing fourteen of Minnesota's fifteen smoke-free ordinances. Today, our Minnesota work focuses on intensive support to eleven community coalitions building the capacity for continuing policy change for improved public health, beginning with comprehensive smoke-free laws. Our other initiatives have addressed workers' rights, tobacco marketing regulation, youth access to tobacco, Internet cigarette sales, and international tobacco control. Current research projects focus on the legal challenges of smoke-free policymaking in regional settings and blue collar workers' access to smoking cessation benefits.

The Center's staff includes five attorneys, a program manager, two administrative coordinators and several law student research assistants. As the coordinating center of the Tobacco Control Legal Consortium, the Tobacco Law Center is home to the Consortium's staff attorneys, who provide legal technical assistance to advocates and officials in states without legal centers, and coordinate the work of the Consortium's affiliates in developing legal briefs, publications, workshops and other Consortium initiatives. Please check out our website at www.tobaccolawcenter.org.



Front row, left to right: Maggie Mahoney (staff attorney), Kerry Cork (staff attorney), Susan Weisman (senior staff attorney), Joan Flynn (program manager).

Back row: Angela Pelnar (research assistant), Jean Mornard (administrative coordinator), Doug Blanke (director), Mike Freiberg (staff attorney), Abby Mayer (research assistant), Robin Wagner (administrative coordinator), Kevin Beck (research assistant), Steven Klein (research assistant) is not pictured.

In This Issue:

- [Profiling the Tobacco Law Center](#)
- [Colorado Latest State to Add Legal Resource Center](#)
- [Legal Consortium Files Brief in Historic Punitive Damages Case](#)
- ["Lights" \(Schwab\) Case Plaintiffs Win Class Action Status](#)
- [R.J. Reynolds Agrees to Stop Selling Candy-Flavored Cigarettes in U.S.](#)
- [From the Director's Desk](#)
- [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](#)

Colorado Latest State to Add Legal Resource Center

Please join us in congratulating Colorado, which will soon be the latest state to have a tobacco control legal center! The American Lung Association of Colorado (ALAC) is in the process of recruiting an attorney to join its newly named Secondhand Smoke Technical Assistance and Legal Resource Center. The new Tobacco Legal Resource Manager will be based in ALAC's state headquarters in Greenwood Village, Colorado, and will work closely with ALAC's tobacco team staff, as well as with state and local partners, to provide legal technical assistance on tobacco law-related issues in Colorado.

All of us – tobacco control attorneys, public health professionals, and advocates alike—welcome this newest, and much needed, addition to the Tobacco Control Legal Consortium's national network of tobacco law centers.

Legal Consortium Files Brief in Historic Punitive Damages Case

On September 15, the Tobacco Control Legal Consortium and its Massachusetts affiliate, the Tobacco Control Resource Center, filed a friend-of-the-court (“*amicus curiae*”) legal brief in the closely watched upcoming U.S. Supreme Court punitive damages case, *Philip Morris USA v. Williams*. As reported in our [May/June 2006 Legal Update](#), Philip Morris USA is appealing a decision of the Oregon Supreme Court upholding a \$79.5 million punitive damages award to the family of Jesse Williams, a smoker for forty years who died of lung cancer. The Legal Consortium's brief argued that justice requires higher punitive damages against companies that use “scorched earth” litigation to ensure that few of their victims ever have a day in court. For a copy of the brief, click [here](#).

“Lights” (Schwab) Case Plaintiffs Win Class Action Status

In a milestone ruling last month, a highly-respected federal judge in New York approved class certification in a \$200 billion lawsuit over whether Philip Morris USA and other tobacco firms deceived consumers by marketing so-called “light” cigarettes as safer options than regular cigarettes. The ruling by Judge Jack Weinstein of the Eastern District of New York created what may be the largest class action lawsuit in history: *Schwab v. Philip Morris USA*. The suit, named for lead plaintiff Barbara Schwab, alleges the tobacco companies conspired to market “light” cigarettes in a way that suggested lower tar and nicotine delivery when the companies knew the “light” cigarettes were no less harmful than other cigarettes. The lawsuit does not seek damages for personal injuries, but for the monetary loss of consumers who received something other than what they thought they were buying when they purchased Defendants’ “light” cigarettes.

On October 6, 2006, Philip Morris USA and other defendant tobacco companies asked the U.S. Court of Appeals in the Second Circuit to overturn the class certification decision, and requested a stay of all proceedings, which could prevent the case from starting as scheduled on January 22, 2007. The Legal Consortium has joined in an amicus brief prepared by the Tobacco Control Resource Center supporting the class certification. For a copy of the brief, click [here](#).

R.J. Reynolds Agrees to Stop Selling Candy-Flavored Cigarettes in U.S.

On October 11, 2006, R.J. Reynolds Tobacco Company and the Attorneys General of thirty-eight states entered a settlement in which R.J. Reynolds agreed to stop selling and marketing certain cigarettes in the United States. The Attorneys General argued that R.J. Reynolds violated the 1998 Master Settlement Agreement's prohibition against targeting youth when it sold cigarettes with candy, fruit, or alcoholic beverage flavors. The recent settlement bans the sale of existing cigarette brands with these flavors and the future sale of cigarettes with names or packaging suggesting these flavors. R.J. Reynolds, which markets Camel, Kool, and Salem brands, also has agreed to stop advertising cigarettes using or evoking images of candy, fruit, or alcoholic beverages and to stop distributing scented promotional materials.

The agreement does not apply to cigarettes sold outside the United States. Moreover, the advertising restrictions do not apply either to cigarettes sold in adult-only venues or to adult-only promotions. To view a copy of the settlement, click [here](#). The New York Attorney General's press release lists the jurisdictions joining the settlement, and can be viewed by clicking [here](#).

From the Director's Desk

Next week's elections will see tobacco initiatives on ballots from coast to coast. Ballot campaigns aren't new, as advocates in many states can attest, but the scale of this year's showdown is unprecedented. Voters in seven states—Arizona, California, Florida, Missouri, Nevada, Ohio and South Dakota—will decide whether to bypass their legislatures to achieve smoke-free environments, tobacco tax increases or increased prevention funding. And these battles may be the beginning of a long-term trend.

The question is whether this represents an opportunity or a threat. The uncertainty reflects a titanic clash between the vast resources of the tobacco industry, on the one hand, and the rising tide of public opinion, on the other. There's no denying the power of the industry's mind-boggling bankroll, and this year the gloves are off. With the DOJ trial behind it, the industry has dropped its mask of reform and opened its checkbook. Philip Morris and RJ Reynolds are said to have committed nearly \$100,000,000 to influencing the elections.

Health advocates don't have a big war chest. What they have instead is the rising tide of public opinion. Support for health initiatives, youth smoking prevention, and, above all, smoke-free environments, is deep and broadening. Poll after poll shows that voters' natural instincts are to support sound policies. That's why, in Arizona and Ohio, the industry has even been reduced to identity theft: promotion of impostor proposals masquerading as smoke-free initiatives—to distort the debate.

Will these tactics succeed? Will boatloads of cash trump the public interest, at least in this opening round of contests? And will this be the opening of a great new opportunity, or a major threat? We'll have some indication on November 8.



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.

Resource Roundup

The Center for Social Gerontology's [Smoking Policies in Facilities Serving Older Persons](#) website offers a wealth of valuable material on the impact of smoke-free laws and policies in nursing homes and other facilities serving the elderly. Resources on the site include PowerPoint presentations, studies, model policies and other legal resources.

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.

The American Cancer Society's "Great American Smokeout." November 16, 2006; smokers across the nation are encouraged to take part in this event. For more information, click [here](#), or call your American Cancer Society at 1-800-ACS-2345.

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.