

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.

From the Director's Desk

Dear Colleagues,

For years, you've been telling people how the tobacco industry lies about its products and manipulates public policy. But it's not just your word against theirs any more. Now it's official.

The recent court decision in *U.S. v. Philip Morris*, the government's fraud case against cigarette manufacturers is the definitive account of their conspiracy to mislead America, distort public opinion and sabotage our laws. It's all there, from the lies about secondhand smoke, to the marketing to kids, to the phony claims for light cigarettes. The ruling puts to rest any notion that these companies have changed their ways. And the court doesn't mince words. Consider a few quotes:

- "Every aspect of a cigarette is precisely tailored to ensure that a cigarette smoker can pick up virtually any cigarette on the market and obtain an addictive dose of nicotine."
- "Defendants extensively – and successfully – marketed and promoted their low tar/light cigarettes as less harmful alternatives to full-flavor cigarettes, although they knew for decades that there is no clear health benefit from smoking low tar/low nicotine cigarettes."
- The defendants "suppressed, concealed, and terminated scientific research; they destroyed documents including scientific reports and studies; and they repeatedly and intentionally asserted the attorney-client and work product privileges over many thousands of documents (not just pages) to thwart disclosure to plaintiffs in smoking and health related litigation and to federal regulatory agencies, and to shield those documents from the harsh light of day."
- Tobacco industry youth smoking prevention campaigns "are not designed to effectively prevent youth smoking." Instead, industry documents suggest these programs are "designed . . . for public relations rather than . . . youth smoking prevention."

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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](#)

A hundred findings like these are buried in the court's [opinion](#). The only problem is that it's 1700 pages long. So how can you make effective use of it in your work?

That's where we come in. The Tobacco Control Legal Consortium is very pleased to provide you a powerful new tool for truth: a publication we call *The Verdict Is In*. We've extracted the key findings from the decision. They address what the government called "the seven pillars of the fraud": lies about smoking and disease, addiction, nicotine manipulation, secondhand smoke, marketing to youth, light cigarettes and suppression of evidence. And we've assembled them in a user-friendly format for easy reference. *The Verdict Is In* is available at <http://www.tobaccolawcenter.org/dojlitigation.html>.



We hope this publication will quickly earn a central place on your bookshelf, and that it will help your efforts to strengthen public policies and hold these companies accountable.

Intervenors in DOJ Case File Notice of Intent to Appeal for Strong Remedies

On November 9, the public health intervenors in *U.S. v. Philip Morris*—the Tobacco-Free Kids Action Fund, American Cancer Society, American Heart Association, American Lung Association, Americans for Nonsmokers' Rights and National African American Tobacco Prevention Network—filed official notice that they intend to appeal the remedies portion of Judge Kessler's ruling so they can argue in support of stronger remedies. For documents filed by the public health intervenors, click [here](#).

The U.S. Department of Justice (DOJ) has also filed a notice of appeal, but that notice does not indicate whether the DOJ will aggressively challenge the limited remedies that were ordered and seek to broaden them significantly. The cigarette company defendants have also begun their appeal of Judge Kessler's entire judgment and order.

More California Cities Consider Ordinances Making Smoking a Public Nuisance

The city of Dublin, California, recently charted new legal territory in the fight against tobacco by passing an ordinance that classifies cigarette smoke as a public nuisance, allowing residents to sue if a neighbor's smoke wafts onto their property. Now other California cities, such as Belmont and Emeryville, are considering passing ordinances of their own classifying smoking as a nuisance, and are using the Dublin ordinance as a reference in forming these ordinances.

The Dublin ordinance protects the rights of those who wish to keep their homes smoke-free and who find that their neighbor's cigarette smoke infiltrates their homes and property. Just as nuisance laws do not prevent people from playing loud music at home, this ordinance would not prevent people from smoking in their homes. It would, however, offer a legal remedy for those who are annoyed or harmed by their neighbor's smoke. To learn more about the Dublin ordinance, click [here](#). To view the ordinance, click [here](#).

Elsewhere in the nation, ordinances and policies classifying cigarette smoke as a public nuisance are gaining in legal acceptance. A Colorado district court judge recently upheld a condominium complex's bylaws making units smoke-free and classifying cigarette smoke as a nuisance. The judge determined that the smoke smell that wafted in-between neighboring condominium units constituted a nuisance, regardless of whether any actual smoke passed between units. Click [here](#) to learn more about the Colorado decision.

Michigan Smoke-Free Apartment Initiative Receives Prestigious Spirit of Collaboration Award

On November 3, a program of the Legal Consortium's Michigan affiliate, the Smoke-Free Environments Law Project (SFELP), was awarded a Spirit of Collaboration Award by the Michigan Cancer Consortium for its work in assisting apartment owners to adopt smoke-free apartment policies in their buildings. The Spirit of Collaboration Award is given to organizations that engage in exemplary cancer control collaborations. Congratulations to SFELP's Michigan Smoke-Free Apartment Initiative for working to increase the availability of smoke-free housing! To learn more about the Michigan Smoke-Free Apartment Initiative, click [here](#) and [here](#). Click [here](#) to learn more about the Spirit of Collaboration Award.

Secondhand Smoke Costs Billions

The American Academy of Actuaries in Washington recently released a study estimating that medical and economic costs associated with secondhand smoke's effect on non-smokers in the United States could be over \$5 billion annually. For the full study, click [Economic Effects of Environmental Tobacco Smoke](#).

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The Legal Update newsletter is a service of the Tobacco Control Legal Consortium.