THE ROLE OF LITIGATION IN TOBACCO CONTROL

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Why Litigation?

“The world is accustomed to thinking of the law as an instrument of justice, but not as an instrument of health. We expect epidemics to be defeated in the clinic or the community, not in the courtroom.

Yet the power of the law to help fight the global tobacco epidemic is now undeniable. Used with discipline, the law can awaken public outrage, strengthen public policies and redress injuries — results that advance both justice and health.”

W.H.O. World Health Organization, 2002
Examples of how tobacco litigation has made a difference

1. Equal time for anti-smoking ads on TV/radio (1967-1970)
   - Reimbursed states for public medical insurance paid out for treating tobacco caused diseases
   - Ended billboard advertising and print advertising in youth magazines
   - Funding for the national *Truth Campaign*
   - Ended the Tobacco Institute and Council for Tobacco Research
   - Caused the released previously secret business records of the tobacco industry
4. Provided funding for smoking cessation to Louisiana smokers (2004)
5. DOJ Racketeering case (2006)
   - Will require corrective statements to be issued by manufacturers (still waiting)
6. Overall, has increased the price of cigarettes (1954 to present)
7. Has changed the publics perception of smoking and the tobacco industry (1954 to present)
1966 legal petition sent to the Federal Communications Commission (FCC) demanded equal time on the public airways to show anti-tobacco ads under the **Fairness Doctrine**

Between 1967-1970: 13 million Americans stop smoking
It hasn’t been so easy suing tobacco companies

- 1st cases against the industry filed in 1954
- Multiple other cases filed 1954-1970
- All defense verdicts
- No cases filed during the 1970s
THE INDUSTRY HAS AN ARMY OF LAWYERS
“Secondly, the aggressive posture we have taken regarding depositions and discovery in general continues to make these cases extremely burdensome and expensive for plaintiffs’ lawyers, particularly sole practitioners.

To paraphrase General Patton, the way we won these cases was not by spending all of Reynolds' money, but by making that other son of a bitch spend all his.”

Mike Jordan, R.J.R. attorney, April 29, 1988
• In the mid-1980s new lawsuits are filed and things begin to change
Sullied Public image

Tobacco Chiefs say Cigarettes Aren’t Addictive, April 1994
In the mid-1990s, 4 state’s (FL, MS, TX, MN) sue the tobacco industry to recoup public insurance costs for the treatment of cigarette caused diseases. All 4 result in settlements. Other state’s join in the lawsuit, resulting in the 1998 Master Settlement Agreement between 46 states and the District of Columbia.

To pay for the MSA, cigarette companies increase the per pack price by $0.45. Cigarettes consumption declines by 21%
Tobacco Documents Released
I'm told, that the entire matter of addiction is the most potent weapon a prosecuting attorney can have in a lung cancer/cigarette case. We can't defend continued smoking as "free choice" if the person was "addicted."
• After 2000 there have been many more lawsuits filed and plaintiffs have been winning more than losing
Manageable risk

What would we like to see? We would like to see the industry – particularly RAI given its experience – reflecting the cost/losses of the Engle progeny litigation as an ongoing cost of business, reflected in higher pricing, and absorbed in ongoing results. In our view, losses associated with Engle progeny cases are more similar to absorbed legal defense costs than to truly anomalous one-off or non-recurring expenses. Simply put, they are a cost of doing business.
Lights litigation: Price/Miles Case in 2003, $10 billion

Before 2003

After 2003
$600M to pay for stop smoking treatments for Louisiana smokers (Scott class action, 2004)
VERDICT

2006: DOJ case

Federal Judge finds tobacco companies guilty of conspiracy to defraud consumers
Corrective statements will soon be coming to your newspaper.

We lied to you about nicotine:

We at Philip Morris, USA knew that nicotine is addictive. We lied to you, saying that it’s not.

We DO manipulate nicotine in cigarettes. We told you that we don’t.

We lied to you when we said all you have to do is choose to quit and you can.

We admit that many smokers need assistance to beat their nicotine addiction.

We are Philip Morris, USA
You should not trust anything that we have told you about nicotine or smoking.
In the early 1990s, flight attendants sue big tobacco for health damages from breathing in secondhand smoke...

In 1997, big tobacco settles the lawsuit for $350M creating a research foundation
Also, in the early 1990s, a class action lawsuit suit is filed on behalf of injured Florida smokers, resulting in the longest civil trial in American history...

"Every lawyer Susan and I ever discussed this with said 'Rosenblatt, you're out of your mind,' ... This was like taking on a country, taking on the tobacco industry."

- Stanley Rosenblatt
Verdict: $145 billion

In 2006, Florida Supreme Court overturned the $145 billion verdict, but allowed class members to file individual lawsuits, without having to prove that smoking caused disease, nicotine is addictive, and that cigarette companies lied about their products.
A tidal wave of cases since 2009
Tobacco

“Engle Progeny” Update

>5,000 cases pending

The industry’s principal legal threats grew out of prior class action anomalies: (i) Engle progeny emerged from the only smoking and health personal injury class action suit to go to trial; and (ii) The Miles/Price Lights claim (MO) emerged from one of the few Lights claims to proceed to trial.
A Fairly Stable Win-Loss Rate as Litigation Matures

Source: Company Data, Morgan Stanley Research; Note: Excludes Robinson verdict
Pensacola Circuit Court jury awards $23.6bn to plaintiff
"This verdict goes far beyond the realm of reasonableness and fairness, and is completely inconsistent with the evidence presented," J. Jeffery Raborn, a company vice president and assistant general counsel, said in a statement.
THE STORY
(not over yet)