

Court backs 2006 ruling

Appeals panel affirms cigarette-makers' loss

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A federal appeals court agreed yesterday with the major elements of a 2006 landmark ruling that found the nation's top tobacco companies guilty of racketeering and fraud for deceiving the public about the dangers of smoking.

A three-judge panel of the U.S. Court of Appeals in Washington unanimously upheld requirements that manufacturers change the way they market cigarettes.

The requirements, which have been on hold pending appeal, would ban such labels as "low tar," "light," "ultra light" or "mild," because such cigarettes have been found no safer than others.

Throughout the 10 years the case has been litigated, tobacco companies have denied committing fraud. The companies argued that the ban on labels such as "light" would cost them hundreds of millions of dollars.

Philip Morris USA and its parent company, Altria Group Inc., said they will appeal to the U.S. Supreme Court.

"The court's conclusions are not supported by the law or the evidence presented at trial, and we believe the exceptional importance of these issues justifies further review," Altria attorney Murray Garnick said.

R.J. Reynolds Tobacco Co. said it is considering its opinions, including appealing to the U.S. Supreme Court.

"R.J. Reynolds strongly believes that neither the evidence presented at trial nor the legal standards justify a finding of liability," said Martin Holton III, a senior vice president and general counsel for Reynolds.

"Reynolds is pleased, however, that the Court of Appeals reaffirmed that the disgorgement of profits is not an available remedy in this case.

"We are also pleased that the Court of Appeals affirmed the District Court's decision not to require several of the remedies sought by the government, and ruled that some of the remedies the District Court ordered were too broad."

Matthew Myers, the president of the Campaign for Tobacco-Free Kids, said that the appeals decision "represents a dramatic victory for public health and an emphatic condemnation of the tobacco industry and its behavior."

His group is one of six health advocacy groups that participated in the lawsuit.

The government filed the civil case under a 1970 racketeering law commonly known as RICO, used primarily to prosecute mobsters in cases in which there has been a group effort to commit fraud.

The suit was first filed in 1999 during the Clinton administration and pursued by the Bush administration after unsuccessful attempts to settle.

The nine-month trial, heard by Judge Gladys Kessler of U.S. District Court without a jury, included live and written testimony from 246 witnesses and almost 14,000 exhibits in evidence.

Prosecutors said that the companies secretly agreed not to compete over whose products were the least hazardous to smokers to make sure they didn't have to publicly speak to the harm caused by smoking.

"The government presented evidence from the 1950s and continuing through the following decades demonstrating that the defendant manufacturers were aware -- increasingly so as they conducted more research -- that smoking causes disease, including lung cancer," the appeals court wrote in a 92-page opinion.

The government also argued that the manufacturers lied about the dangers of secondhand smoke, manipulated cigarettes to maintain addiction, intentionally marketed to youth and destroyed documents to hide the dangers and protect themselves in litigation.

Internal documents introduced at trial showed that industry researchers found smokers compensate for reduced nicotine in "low-tar" cigarettes by taking more frequent puffs and inhaling more deeply to satisfy their addiction. Yet they continued to market those cigarettes as less harmful.

The government had asked Kessler to make the companies pay \$10 billion for a national smoking-cessation program, but Kessler said that wasn't within her legal authority.

The government appealed that decision, but the appeals court upheld it.

Besides Reynolds, Philip Morris and Altria, other manufacturer defendants are Brown & Williamson Tobacco Corp.; British American Tobacco Ltd.; Lorillard Tobacco Co. and Liggett Group Inc.

Liggett was excluded from the ruling because the judge said that the company admitted smoking causes disease and is addictive and cooperated with government investigators.

The appeals court dismissed two other defendants from the suit -- Counsel for Tobacco Research-U.S.A. and the now-defunct Tobacco Institute -- because they did not make or sell tobacco products.