

2003 TRIAL LAWYER OF THE YEAR FINALISTS
Trial Lawyers for Public Justice

The Trial Lawyer of the Year Award is bestowed annually upon the trial lawyer or lawyers who have made the greatest contribution to the public interest by trying or settling a precedent-setting case. This year's finalists were nominated for their committed work in cases addressing a broad range of social issues, including exposing FBI misconduct; protecting the poor's access to health care; holding HMOs accountable; fighting for emotional distress damages; defending due process rights; winning sweatshop reforms; beating big tobacco; and, holding insurers accountable.

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STEPHEN M. TILLERY, GEORGE A. ZELCS, STEVE A. SWEDLOW, DONALD M. FLACK, LISA R. KERNAN, MICHAEL BRICKMAN, JERRY HUDSON EVANS, KIMBERLY S. KEEVERS, GERGORY A. LOFSTEAD, JAMES C. BRADLEY, NINA HUNTER FIELDS, GERSON H. SMOGER and STEPHEN A. SHELLER

Battling Big Tobacco: Price v. Philip Morris USA

Stephen M. Tillery, George A. Zelcs, Steve A. Swedlow, Donald M. Flack, and Lisa R. Kernan of Carr Korein Tillery LLC in Chicago, **Michael Brickman, Jerry Hudson Evans, Kimberly S. Keevers, Gergory A. Lofstead, James C. Bradley, and Nina Hunter Fields** of Richardson, Patrick, Westbrook & Brickman, LLC of Charleston, South Carolina, and **Gerson H. Smoger** of Smoger & Associates, P.C. in Dallas pursued an innovative legal strategy to win a precedent-setting \$10.1 billion damages judgment (including \$3 billion in punitive damages) against the nation's largest tobacco company in the first class action lawsuit tried on behalf of "light" cigarette smokers. The landmark consumer fraud judgment, achieved in March 2003, was the first to hold a tobacco company accountable for the deceptive labeling of "light" cigarettes. Within weeks of the verdict, defendant Philip Morris USA declared that it is removing the words "Lowered Tar and Nicotine" from packages of Marlboro Lights cigarettes.

The plaintiffs' legal team advanced an untried legal theory in case: instead of seeking to recover damages for personal injury or addiction, they sought to establish liability under the Illinois Consumer Fraud Act based on evidence that Philip Morris falsely represented that its "light" cigarettes delivered lower tar and nicotine than regular cigarettes. The undisputed evidence at trial proved that "light" cigarettes are by design not significantly lower in tar and nicotine, but contain even more harmful constituents than do regular cigarettes. The court found that Philip Morris was aware of this increased harm since 1971, but marketed its cigarettes as "Lights" in order to increase its market share in the face of growing public concern over the health effects of smoking.

The trial team advanced \$3 million in litigation costs, examined millions of pages of documents produced by Philip Morris, and created a database that electronically

archived 120 depositions. The landmark ruling – and the specific findings of fact made by the court in this precedent-setting class action lawsuit – will hound Philip Morris in all future personal injury or deceptive marketing actions. The ruling also paves the way for new lines of attack against the tobacco industry as a whole.

Stephen A. Sheller of Sheller, Ludwig & Badey P.C. in Philadelphia is also named as a finalist in this case for discovering the light cigarette fraud and initiating the litigation strategy to remedy the deception.