

Cigarette judgement up in smoke

Court reverses \$10.1 billion judgement against Philip Morris

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SPRINGFIELD - A divided Illinois Supreme Court reversed a Madison County judge on Thursday, throwing out a \$10.1 billion judgment against Philip Morris USA in a class-action lawsuit over the tobacco company's marketing of "light" cigarettes.

The lawsuit involved 1.1 million smokers who accused the cigarette-maker of deliberately misleading them into thinking that "light" cigarettes were healthier than regular ones. Madison County Judge Nicholas Byron had found Philip Morris liable for fraud under the Consumer Fraud Act in 2003, and he had ordered the company to pay damages.

But in Thursday's decision, the Supreme Court said that Philip Morris could not be sued under the Consumer Fraud Act. That is because the Federal Trade Commission "specifically authorized" the use of terms such as "light" and "low tar" in describing tobacco products, said the opinion written by Justice Rita Garman.

Specific authorization "does not require formal rule-making or official definitions" and may instead result from regulatory activity, the opinion said.

In a dissent, Justices Charles Freeman and Thomas Kilbride said they believe the FTC did not specifically authorize Philip Morris to use the disputed phrases.

Because a majority of justices determined the lawsuit could not move forward, they did not rule on the plaintiffs' claim that Philip Morris "intentionally deceived the public," the opinion said. The high court sent the matter back to Madison County and ordered the lawsuit to be dismissed there.

Philip Morris USA, whose parent company is Altria, issued a two-sentence statement after the court released its ruling: "Philip Morris USA is gratified by today's Illinois Supreme Court decision in the Price case. The company will have no further comment on today's decision."

Attorney Stephen Swedlow, who represents the suing smokers in the Illinois case and also is involved in a similar case in Missouri, said he was disappointed in the decision.

"But I am not going to give up the pursuit and vindication of this fraud in this and other jurisdictions," he said.

Swedlow and a fellow attorney, Joseph Power, said their clients' remaining options include seeking a rehearing from the Illinois Supreme Court and asking the U.S. Supreme Court to take up the case.

Swedlow said he would base an appeal on the argument that, counter to Thursday's court opinion, the FTC never authorized the use of terms such as "light" to describe cigarettes.

In a news release, American Cancer Society CEO John Seffrin said the Supreme Court ruling "is based on legal technicalities and in no way exonerates Philip Morris" from the allegations of deceptive marketing.

Still unresolved is the question of whether Thursday's decision will have a wide-ranging impact on class-action suits, which bring together large numbers of people who have similar legal claims.

In his dissent, Freeman noted this is the second time in six months that the court "has completely reversed a multibillion dollar verdict in favor of a corporate defendant." The high court in August reversed a \$1 billion judgment against State Farm Insurance Co. in a class-action suit brought by customers who said the company had defrauded them by failing to pay for high-quality replacement parts in damaged cars.

Freeman wrote that a majority of the court's justices have "become increasingly desensitized to the interests of the average Illinois consumer. There is little doubt in my mind that these decisions will send a chill wind over consumer protection."

Freeman also acknowledged "the very real problems that exist in the world of class-action lawsuits," including the potential for abuse. But he said he fears "that a majority of my colleagues will continue to hold large class actions to different standards in an effort to reduce the perception that the Illinois court system serves as a playpen for the disingenuous class-action practitioner."

The tobacco case, known as Sharon A. Price vs. Philip Morris, originated in Madison County. The Metro-East county, which has been labeled a "judicial hellhole" by an organization that

wants to change the civil justice system, has a reputation of being friendly to plaintiffs in civil lawsuits.

Just six of the Supreme Court's seven justices participated in Thursday's decision. Chief Justice Robert Thomas recused himself from the case. Power, an attorney for the smokers, is representing Thomas in an unrelated matter.

Four justices, Republicans Garman and Lloyd Karmeier and Democrats Thomas Fitzgerald and Mary Ann McMorrow, agreed to overturn the judgment against Philip Morris. Garman authored the main opinion, and Karmeier wrote a "special concurrence" spotlighting additional aspects of the case.

Democrats Freeman and Kilbride dissented.

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