

# Court Tosses Judgment vs. Philip Morris

## Illinois Supreme Court Throws Out \$10 Billion Judgment Against Philip Morris

By RYAN KEITH    December 15, 2005

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**SPRINGFIELD, Ill.** - The Illinois Supreme Court threw out a \$10 billion judgment against Philip Morris USA on Thursday, ruling that the company that makes top-selling Marlboros and other brands did not defraud customers in its marketing of "light" cigarettes.

The court reversed the verdict and sent the case back to Madison County court with instruction to dismiss the class-action lawsuit.

The state Supreme Court ruled in a 4-2 decision that the Federal Trade Commission specifically allowed companies to characterize their cigarettes as "light" and "low tar," so Philip Morris did not improperly mislead customers about the health impacts of its cigarettes.

"If the FTC has specifically authorized the use of the terms .... PM USA (Philip Morris) may not be held liable under the Consumer Fraud Act, even if the terms might be deemed false, deceptive or misleading," Justice Rita Garman wrote for the majority.

A spokeswoman for Philip Morris USA, a unit of Altria Group Inc., said the company was "gratified" by the ruling but would have no further comment.

Stephen Tillery, a lawyer for the plaintiffs, said they would pursue appeal options, which include asking the state Supreme Court to reconsider its decision or heading to federal court. He said the court missed an opportunity to improve the world's health and reversed stances taken by other courts.

"For consumers in Illinois and throughout the world, it's a bad day," Tillery said. "We're very, very disappointed."

Altria Group shares climbed \$3.55, or 4.8 percent, to \$77.28 in afternoon trading on the New York Stock Exchange, below its peak earlier in the day of \$78.68 but well above its previous 52-week high of \$75.60.

The cigarette maker, which accounts for about half of the U.S. cigarette market, argued the case should never have been declared a class-action on behalf of some 1.1 million light cigarette smokers who bought light cigarettes in Illinois.

The smokers did not accuse the company of harming their health. They claimed Philip Morris knew when it introduced light cigarettes in 1971 that they were no healthier than regular

cigarettes, but hid that information and the fact that light cigarettes actually had a more toxic form of tar.

Madison County Judge Nicholas Byron had agreed that Philip Morris misled customers into believing they were buying a less harmful cigarette. In March 2003, he ordered the company to pay \$10.1 billion \$5 billion in compensatory damages, \$3 billion in punitive damages and \$2.1 billion in interest.

Two of the court's seven justices filed written dissents, and another, Chief Justice Robert Thomas, took no part in case because he had a professional relationship with an attorney in the case.

"The court's action today is predicated upon an erroneous and irresponsible interpretation of our Consumer Fraud Act," Justice Charles Freeman wrote in his dissent, arguing the ruling weakens state protections in favor of federal regulation.

Philip Morris appealed directly to the state Supreme Court two years ago, arguing the trial court's decision was flawed in several ways.

It insisted its cigarettes performed as advertised. Those advertisements met federal guidelines and never promised lights were less hazardous than other cigarettes, the company said.

Smokers who wanted lighter flavor and less tar and nicotine could get that through its light brand, prominent attorney and former Illinois Gov. Jim Thompson argued for Philip Morris. It wasn't the company's fault if a smoker negated any health benefits by taking deeper puffs or smoking more cigarettes, the company contended.

Philip Morris also argued the case's class-action status should not have been granted because each person smoked differently and chose particular brands of cigarettes for different reasons. It said the plaintiffs failed to prove each customer covered in the class was defrauded.

The plaintiffs argued that requiring individual proof for every person would essentially eliminate class-action cases under state law.

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