

Associated Press

Philip Morris Challenges Fraud Ruling

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Philip Morris USA Challenges \$10.1 Billion Consumer Fraud Ruling in Illinois Supreme Court

SPRINGFIELD, Ill. (AP) -- Philip Morris USA challenged a \$10.1 billion consumer fraud ruling Wednesday, telling the Illinois Supreme Court that its "light" cigarettes performed as advertised.

Attorney James Thompson, a former Illinois governor representing Philip Morris, said smokers who wanted lighter flavor got it and smokers who wanted less tar and nicotine could get that, too. The company is not to blame, he said, if a smoker ended up canceling any health benefits by taking deeper puffs or smoking more cigarettes.

"He got what he was promised. He got a cigarette that, if he smoked in the same way, delivered what Philip Morris promised," Thompson told the justices.

But attorneys representing 1.1 million light cigarette smokers in Illinois argued that Philip Morris knew when it introduced light cigarettes in 1971 that they were no healthier. The attorneys said the company hid the information, including that the cigarettes had a more toxic kind of tar.

Showing the justices a poster-sized picture of a pack of cigarettes, attorney Stephen Swedlow pointed out the words "light" and "lower tar and nicotine."

"What smokers of Marlboro Lights didn't know and couldn't know is that both of those promises were a lie," Swedlow said, noting that the reference to lower tar and nicotine was dropped after this lawsuit.

Unlike many other high-profile cigarette lawsuits, this case does not accuse Philip Morris of harming customers' health. Instead, it accuses the company of committing consumer fraud by leading customers to believe they were buying a less harmful kind of cigarette.

Madison County Judge Nicholas Byron sided with the customers last year and ordered Philip Morris to pay \$10.1 billion - \$5 billion in compensatory damages, \$2.1 billion in interest and \$3 billion in punitive damages.

The verdict added to Madison County's reputation as one of the most lawsuit-friendly jurisdictions in the country. The massive bond Philip Morris was originally required to post -- \$12 billion -- threatened the company's solvency until the state Supreme Court agreed to a smaller amount.

With several similar cases stalled until this one is decided, the Supreme Court took the unusual step of hearing the appeal directly, letting it skip the appellate court. Still, it could be months before the court makes its ruling.

Philip Morris, now a part of Altria Group Inc., urged the justices to reverse the verdict on several technical grounds.

Thompson argued the case should never have been granted class-action status because each person smoked differently and had different reasons for choosing a particular brand of cigarettes. He said the plaintiffs failed to prove that every single customer was defrauded.

Swedlow countered that if the justices require individual proof for every person "then there is no such thing as a class action under the Consumer Fraud Act in Illinois."

Some justices seemed to agree with him. Justice Charles Freeman at one point told Thompson, "Your attack seems to be against the whole concept of class actions."

Thompson also claimed federal law leaves regulation of cigarette advertising to the Federal Trade Commission, barring lawsuits at the state level. Swedlow said state action is allowed in cases of fraud.

Philip Morris may face a struggle at the Supreme Court simply because of numbers.

Four justices on the seven-member court must agree before it can take any action. But only five justices took part in Wednesday's oral arguments.

One justice, Robert Thomas, has a professional relationship with an attorney in the case and has recused himself. Another, Philip Rarick, is retiring; his replacement will decide after taking office in January whether to take part in the case.