

Philip Morris calls cigarette ruling invalid

Firm alleges judge ignored federal law

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SPRINGFIELD -- Philip Morris USA told the Illinois Supreme Court on Wednesday that federal oversight of the tobacco industry bars Illinois consumers from bringing state fraud claims against the company for allegedly misleading them about the safety of "light" cigarettes.

In its challenge of a \$10.1 billion class-action fraud ruling in March, the unit of Altria Group Inc., said a state judge ignored federal regulations in ruling that smokers were deceived by the terms "lights" and "lowered tar and nicotine" on cigarette packages.

"Where there is a deliberate policy of the federal government, individual states cannot be allowed to obstruct that policy," said James Thompson, attorney for Philip Morris and former governor of Illinois. "Congress mandated what warning should go on the package and in advertising."

Joseph Power Jr., an attorney for the class of 1.1 million smokers, countered that state law does not conflict with regulations of the Federal Trade Commission, which oversees tobacco advertising.

Philip Morris also argued that the case never should have been declared a class action, and that customers didn't suffer any economic damage from choosing light cigarettes over regular cigarettes.

A decision is not expected for several months.

The oral arguments drew such a large crowd that the high court set up a second room for viewers to watch a live television feed.

The case has drawn widespread attention because of the possible financial harm it could cause Altria and for its impact on public health. Philip Morris has removed the "lowered tar and nicotine" description from its packages of light cigarettes.

Although similar cases are pending in other state courts, the Illinois suit remains the only "light" case to go to trial, providing a road map to other attorneys on how to win such suits if the judgment is upheld.

At trial this year, plaintiffs introduced scientific evidence that showed that people smoke light cigarettes differently but receive the same nicotine and tar as they would from regular cigarettes. Scientists call the behavior "compensation."

Thompson said compensation is an individual issue, because some smokers smoke more cigarettes, while others take deeper puffs. He also said that some of the class members testified at trial that they did not compensate.

"Smokers' compensation habits, if they are designed by smokers to override the product that Philip Morris promised and delivered, cannot give smokers relief," Thompson said.

Stephen Swedlow, who also represented the class, said it's possible that some smokers did not compensate completely but that didn't rule out a class-action suit against Philip Morris.

Swedlow further explained that if the legal requirement is that each class member prove individually that they were deceived, and that deception led them to buy light cigarettes, then there is "no such thing as class actions" under the consumer-fraud statute. He argued that the court must balance individual issues with common issues that exist for the class.

"Isn't 'light' a very vague term," Justice Mary Ann McMorrow asked. "How do we know light means the same thing to everybody?"

Swedlow said that 75 percent of the respondents in a survey said that "light" means safer. He added that the concept of light cigarettes was created as something that was better for smokers.

Philip Morris has contended that "light" referred to the cigarettes' flavor.

Thompson said that even if the court finds Philip Morris deceived smokers, the plaintiffs failed to prove any economic loss.