

## **High court's tobacco ruling might have saved \$10.1 billion *Price* verdict, expert says**

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**By Chris Rizo**

Madison County's famous \$10.1 billion tobacco verdict might have held up, had a recent U.S. Supreme Court decision been in place, a legal expert said.

The case of *Price v. Philip Morris* was ultimately overturned by the Illinois Supreme Court, and the U.S. Supreme Court refused to hear the landmark case in which the class said they were duped by the tobacco company into believing their light brands were safer than regular cigarettes.

Madison County Circuit Court Judge Nicholas Byron ruled from the bench in 2003 for the class under a section of the Illinois Consumer Fraud Act. The case was brought by lead plaintiff Sharon Price, an East Alton police dispatcher.

Fast forward more than two years since the U.S. Supreme Court declined to hear *Price*, and the same body ruled Monday that smokers may in fact sue over deceptive marketing of so-called light cigarettes. The decision gives the go-ahead to a class action lawsuit by a group of Maine smokers who say they were misled by the company's advertising of "light" and "low tar" cigarettes.

In their 5-4 ruling, the justices said that federal law doesn't shield cigarette makers from state lawsuits accusing them of deceiving consumers by marketing "light" or "low tar" cigarette brands.

Washington Legal Foundation Chief Counsel Richard Samp said had that ruling been issued before the Madison County case, life could be different today for Virginia-based Philip Morris USA.

"That judgment would have probably been upheld if the decision had been effect at the time the Illinois Supreme Court had ruled," Samp said. "So the potential for lots of dollars is out there."

A flood of class actions, he predicted, will likely be filed against cigarette makers given the ruling.

"There will be many, many class actions that will be filed, and not an insignificant number of them will be certified, and once you have a certified class action there is a potential for damage awards that run into the billions of dollars," Samp said.

He added that Madison County could be stage to some of the potential lawsuits, mostly because judges there certify class actions "at the drop of a hat and they throw around big

judgments."

In the Maine case decided this week, a class sought to sue Altria Group and its Philip Morris USA unit, claiming they broke Maine state law barring deceptive business practices. The lawsuit was quite similar to the one filed in Madison County years earlier.

Samp said Monday's decision will have "a very large impact on the tobacco industry because there are many of these types of suits out there," Samp said. "If they can go forward the potential for liability in these kinds of cases is enormous."

The "potential for lots of dollars" to be made by trial lawyers is out there following Monday's ruling, Samp said, noting that plaintiffs' attorneys could file class actions against cigarette companies for allegedly defrauding consumers over claims just how much tar and nicotine is in light cigarettes.

He said lawyers will likely seek refunds for individual consumers who bought light or low-tar cigarettes.

"While that might not be very much for any one consumer, enterprising plaintiffs' lawyers can go into court and try to get a class action certified for every smoker within that state, and then try to say each one of them wants \$10,000 in damages," Samp said. "That can add up pretty quickly."

Defending itself against the class action, Altria argued the case should not move forward since tobacco products are regulated by the Federal Trade Commission, not by individual states. Altria said the class' claims are preempted by the Federal Cigarette Labeling and Advertising Act of 1965.

A federal judge originally dismissed the class action against the cigarette maker, but the 1st U.S. Circuit Court of Appeals in Boston overturned the decision.

Associate Justice John Paul Stevens wrote the court's majority opinion. He was joined by Associate Justices Stephen Breyer, Ruth Bader Ginsburg, Anthony Kennedy and David Souter.

Dissenting were Chief Justice John Roberts and Associate Justices Samuel Alito, Antonin Scalia and Clarence Thomas.

The case is *Altria v. Good*, 07-562.