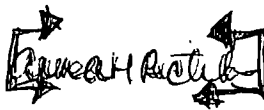


DRAFT
STATEMENT ON TOBACCO RULING
September 28, 2000

Today, Judge Kessler ruled that the Justice Department can proceed in its case to hold the tobacco industry accountable for its fraudulent and conspiratorial effort to deceive consumers, and particularly young people, about the dangers of tobacco. In this landmark decision, the judge determined that there was a legal basis to pursue the government's claim that the tobacco companies had defrauded the American people, and that the case should therefore proceed to trial. We are pleased that the American people will have their day in court. For Congress to try to block the process now by denying funding that is critical to allowing this litigation to proceed would amount to a special protection shielding Big Tobacco from legal responsibility for the harm they have caused.



Q & A on Ruling to Allow Tobacco Litigation to Proceed

Q. What's your reaction to the judge's ruling on the federal tobacco litigation?

Today, Judge Kessler ruled that the Justice Department can proceed in its case to hold the tobacco industry accountable for its fraudulent and conspiratorial effort to deceive consumers, and particularly young people, about the dangers of tobacco. In this landmark decision, the judge determined that there is a legal basis to pursue the government's claim that the tobacco companies had conspired to defraud the American people, and that the case should therefore proceed to trial. The judge stated that "a significant portion" of the government's case can go forward, specifically its claims under RICO for disgorgement of all profits the tobacco companies derived from their pattern of racketeering activity from 1953 to the present. The judge explicitly noted that "the extent of Defendants' potential liability remains, in the estimation of both parties, in the billions of dollars."

We are pleased that the American people will have their day in court. For Congress to try to block the process now by denying funding that is critical to allowing this litigation to proceed would amount to a special protection shielding Big Tobacco from legal responsibility for the harm they have caused.

This is a massive litigation effort that the tobacco industry will fight vigorously and with its virtually unlimited resources. Now that the judge has ruled that the government is legally justified in bringing this action, I call on Congress to fully fund the lawsuit by agreeing to include in the budget the \$26 million that this Administration has requested. We believe that this request represents a reasonable investment of government resources. Consider that the state of California spent approximately \$14 million in 1999 alone to fund its lawsuit against the industry, *and the tobacco industry currently spends more than \$15 million a day to market and promote cigarettes in the United States.*

The government's lawsuit should be decided in the courts by judges and juries based on the facts and evidence presented: no industry, including the tobacco industry, should be permitted to try and thwart a federal lawsuit by enlisting Congress to block the Department from pursuing its case.

Q: The judge threw out two of three counts in the Complaint. Isn't that a huge loss for the Government?

A: The lawsuit proceeded under two powerful legal theories that would allow us to hold the tobacco companies accountable for their actions – one involving RICO, the Racketeering Influence and Corrupt Organizations Act and the other involving certain healthcare statutes. Judge Kessler said that the RICO claim exposes the tobacco industry to billions of dollars in potential liability and she has ruled that the RICO claim will proceed to trial. In order to hold the tobacco companies accountable for its actions, the government needed to prevail on only one of the theories, which it did.

Q. What are the next steps?

A. DOJ will proceed to discovery and go forward to litigate on the merits. The court has scheduled a hearing for 2003.

Q. Will you appeal the portion of the judge's decision dismissing the MCRA claim?

A. The Department of Justice is still reviewing that.

What does this mean for our efforts to fund DOJ's litigation -
Public Health is priority
Msg is for Congress to provide funding so that

Appeal dismissal of the 2 counts?

→ No decision has been made about this -

→ There is no right to appeal -
interlocutory appeal - need to ask permission to appeal.

Press reporting gov't is claiming entitled to go forward w/
injunctive relief under the RICO -

We still (DOJ) intend to seek injunctive relief & disgorgement of
profits -

~~What can you get under RICO~~

What could we have gotten out of 2 dismissed
counts that can't get out of RICO?

Cannot determine yet -

DRAFT
TALKING POINTS ON TOBACCO RULING
September 28, 2000

- Today, the U.S. District Court ruled that the Justice Department can proceed in its case to hold the tobacco industry accountable for its fraudulent and conspiratorial efforts to deceive the American people, particularly young people, about the dangers of tobacco.
- In this landmark decision, the judge determined that there was a legal basis to pursue the government's claim that the tobacco companies had defrauded the American people, and that the case should therefore proceed to trial.
- The judge stated that "a significant portion" of the government's case can go forward, specifically its claims under RICO for significant injunctive relief and disgorgement of all profits the tobacco companies derived from their pattern of racketeering activity from 1953 to the present. The judge explicitly noted that "the extent of Defendants' potential liability remains, in the estimation of both parties, in the billions of dollars." →
- Under this cause of action, the government seeks to stop the tobacco companies from continuing their illegal, fraudulent conduct into the future, and prevent them from profiting from the illegal conduct they have already engaged in for so many decades,
- Because the law allows the U.S. to move forward on this solid legal ground, the Department of Justice's efforts should be fully funded so that the tobacco industry is held accountable, public health remains a priority, and the American people can have their day in court.
- For Congress to try to block the process now by denying funding that is critical to allowing this litigation to proceed would amount to a special protection shielding Big Tobacco from legal responsibility for the harm they have caused.

unlawful fraudulent conduct is
what's at stake

Billions of dollars are @ stake @

Department of Justice



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STATEMENT REGARDING TODAY'S DECISION IN TOBACCO CASE

Statement by Assistant Attorney General for the Civil Division David W. Ogden in response to today's decision by U.S. District Judge Gladys Kessler in U.S. v. Philip Morris Inc. et al:

"We are pleased the court has ruled that we can go forward with this important case. We look forward to proceeding to trial and holding the tobacco companies accountable for the fraudulent conduct alleged in this lawsuit."

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