

## 23 Year History of the Racketeering Lawsuit Against the Tobacco Industry: Guilty of Deceiving the American Public

In 1999, the U.S. Department of Justice (DOJ) filed a lawsuit against major tobacco manufacturers Philip Morris USA, R.J. Reynolds Tobacco, Lorillard, and Altria to hold the industry accountable for more than 50 years of conspiring to defraud the public in violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act. Big Tobacco, an industry which has for decades knowingly addicted and endangered the lives of millions of Americans for their own profit, must now post the truth about their deadly products, including at the point-of-sale (POS) for approximately 220,000 tobacco retailers.

Six public health organizations – the **American Cancer Society**, American Heart Association, American Lung Association, Americans for Nonsmokers' Rights, National African American Tobacco Prevention Network and the Tobacco-Free Kids Action Fund – joined the case as intervenors in 2005 to ensure public health interests were effectively represented and have participated in every phase of the lawsuit since.

A broad overview of the case is found on our website at

<https://www.fightcancer.org/news/departments-justice-lawsuit-against-tobacco-industry>

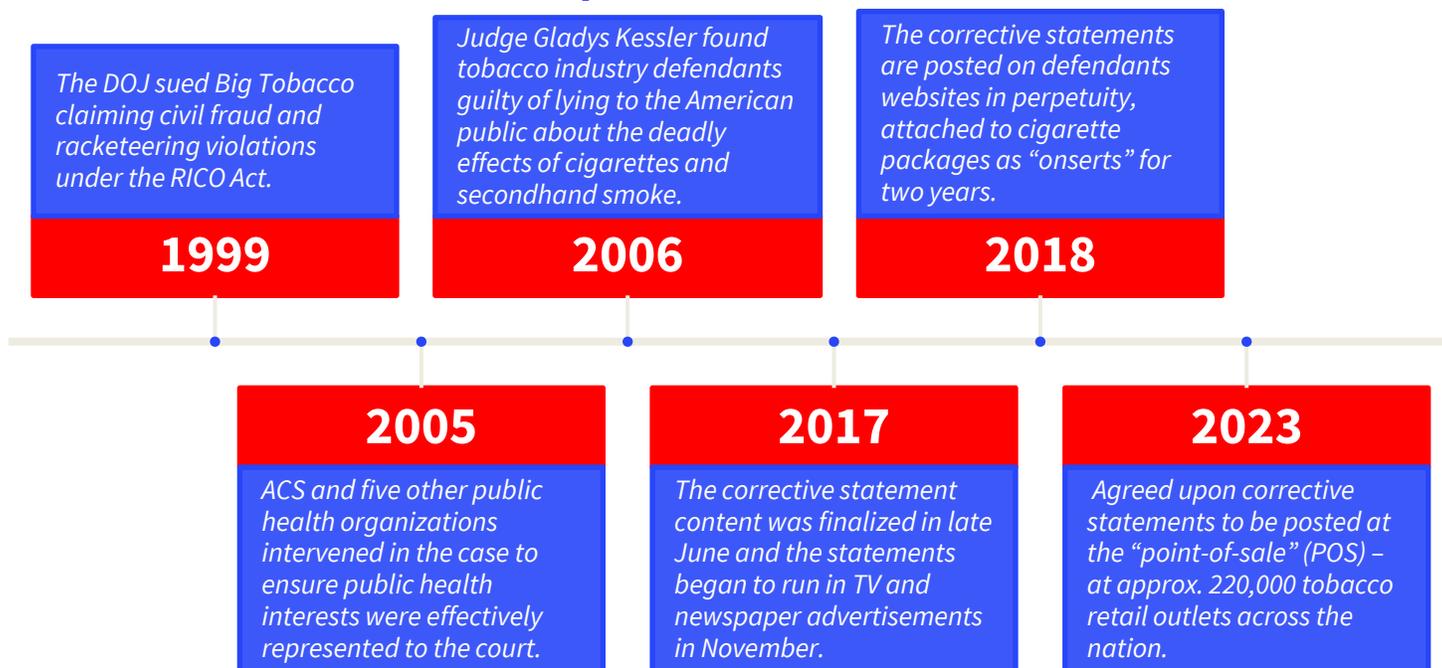
## Judge Kessler's Landmark 2006 Decision Finding Big Tobacco Guilty

In 2006, Federal District Court Judge Gladys Kessler found the major cigarette manufacturers guilty of violating civil provisions of RICO and guilty of lying to the American public about the deadly effects of cigarettes and secondhand smoke. The nearly 1,700-page ruling found that:

“Over the course of more than 50 years, Defendants lied, misrepresented, and deceived the American public, including smokers and the young people they avidly sought as ‘replacement smokers,’ about the devastating health effects of smoking and environmental tobacco smoke, they suppressed research, they destroyed documents, they manipulated the use of nicotine so as to increase and perpetuate addiction, they distorted the truth about low tar and light cigarettes so as to discourage smokers from quitting, and they abused the legal system to achieve their goal – to make money with little, if any, regard for individual illness and suffering, soaring health costs, or the integrity of the legal system.”

Judge Kessler held cigarette manufacturers could be compelled to make “corrective statements” on topics about which they had historically defrauded and deceived the public in order to “prevent and restrain future harm.” Big Tobacco was required to tell the truth in court-ordered ads about the dangers of smoking beginning in 2017.

## The 23 Year Timeline of The Department of Justice RICO Lawsuit



### Future Posting of Point-of-Sale Corrective Statements at Retailers

The DOJ, public health intervenors and defendant manufacturers all agreed to the proposed consent order to avoid a trial and expedite the display of corrective statements. The consent order resolves years of dispute about the display of the corrective statements at retail POS that followed Judge Kessler’s landmark 2006 ruling that Big Tobacco had violated RICO by deceiving the public in five specific areas: the adverse health effects of smoking, the addictiveness of smoking and nicotine, lack of significant health benefit of smoking “light” or “low” tar cigarettes, manipulation of cigarette design to optimize nicotine delivery, and the adverse health effects of exposure to second hand smoke.

The longstanding issue around POS was whether the court’s order makes “due provision” for the rights of retailers, who were not defendants in the underlying RICO case. Two trade associations representing cigarette retailers – the National Association of Convenience Stores and the National Association of Tobacco Outlets – participated in the negotiation of the consent order and have told the court that it satisfies applicable legal requirements.

Judge Kessler retired; Judge Friedman now presides over the case. On December 6, 2022, Judge Friedman issued an order approving the DOJ/RICO settlement. Philip Morris USA, R.J. Reynolds Tobacco, Lorillard, and Altria will have to amend or supplement their contracts with retailers that participate in their merchandising programs to require the posting of POS corrective statement signs in participating retailers’ stores for a period of 21 months at approximately 220,000 retailers nationwide.

The order takes effect January 1, 2023, and provides a six-month ramp up period during which the manufacturers amend their contracts with retailers and distribute signs. Then a three-month posting period follows July 1 through September 30, 2023, during which the initial round of signs must be installed.

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**From October 1, 2023 through June 30, 2025, the signs must be displayed at all times, with different corrective statements being rotated at specified intervals.**

The settlement includes detailed audit provisions requiring an independent auditor to conduct about 6,000 random audits per period (4 periods) and audits of all locations submitted as noncompliant through a tip line. If the auditor finds a noncompliance rate among the representative sample of greater than 15% (as calculated pursuant to the proposed order):

- in the **first, second or third audit periods**, the manufacturers will pay a civil penalty to the U.S. Treasury of **\$3,500,000** to be apportioned among manufacturers as determined by manufacturers;
- in the **fourth audit period**, the manufacturers will pay a civil penalty to the U.S. Treasury of **\$7,500,000** to be apportioned among manufacturers as determined by manufacturers.

### The basic architecture, requirements, and colors of the POS Corrective-Statement Signs.



Source: Guidelines for Court-Ordered POS Corrective-Statements Signs

## Commonly Asked Questions about New Retailer Point-of-Sale Sign Requirements<sup>1</sup>

- 1. How many stores will be affected by the Order?** About 220,500, as that is how many stores are currently covered by marketing agreements with Philip Morris USA, R.J. Reynolds Tobacco, Lorillard, and Altria.
- 2. What will the signs say?** There are 17 distinct “corrective statements,” all specified by the Court many years ago. See the mandated statement language on page 4 of this factsheet.
- 3. Who designed the signs?** The signs were designed by communication experts retained by DOJ.
- 4. How big will the signs be?** In most stores, the signs will be 348 square inches. In smaller, “kiosk” stores, the signs will be 144 square inches.
- 5. Where will the signs be posted?** In most stores, the signs will be posted in highly visible places above (or adjacent to) merchandising “sets” – the familiar fixtures displaying cigarettes for sale.

<sup>1</sup> Q&A information provided by the law firm [Anderson & Kreiger LLP](#).

- 6. How many signs will there be in each store?** In many stores, just one. In the largest stores, and in stores that have “off-set” marketing displays, there will be two or three signs.
- 7. When must the signs be posted?** The Order takes effect January 1, 2023, and allows 9 months for implementation: 6 months for the manufacturers to amend their agreements with retailers, produce and distribute the signs; retailers then have 3 months to get the signs posted. *From October 1, 2023 through June 30, 2025, the signs must be displayed at all times, with different corrective statements being rotated at specified intervals.*
- 8. How long will the signs be displayed?** The signs must be displayed for a total of 21 months. Halfway through the “implementation period,” there will be a “rotation period” when different signs must be posted at every store, so there is a new, fresh corrective statement displayed to each store’s customers.
- 9. How will compliance with the order be monitored?** Independent auditors acceptable to the government and public health intervenors will monitor compliance at the manufacturers’ expense. The auditors will inspect a randomly selected sample of stores four times during the 21-month “implementation period” – and, in addition, will inspect stores that have been identified on a public “tip line” as non-compliant. There will be approximately 24,000 random audits in total, as well as audits of retailers reported through the tip line.
- 10. Are there any dispute resolution provisions in the order?** Yes. The order calls for the establishing of a “Working Group” with equal representation of the government and intervenors, on one side, and the Manufacturers and retailers, on the other. The Working Group will attempt to resolve disputes that may arise as the Order is implemented. A neutral “Adjudicator” will settle disputes when the Working Group is unable to do so.

## The Court-Ordered Corrective Statements

In a win for protecting and advancing our nation’s public health, tobacco companies were ordered to publish statements that tell the truth about their deadly products. Known formally as “**corrective statements**,” the plain-language statements are intended to stop the industry from engaging in further fraud and hold it responsible for decades of deceptive advertising practices that targeted our nation’s youth in the hopes of hooking a new generation of tobacco users. To be clear, tobacco companies fought for well over a decade to delay and weaken implementation of the corrective statements.



The long-awaited statements ran in industry-funded advertisements in major newspapers, on national TV, as “onset” attachments on cigarette packages, and will remain indefinitely on Big Tobacco’s websites. Read the mandated statement language on page 5 of this factsheet.

## The Court-Ordered Corrective Statements

A Federal Court ruled that Philip Morris USA, R.J. Reynolds Tobacco, Lorillard, and Altria deliberately deceived the American public about the health effects of smoking, and has ordered those companies to make the following statements:

### Adverse Health Effects of Smoking

- Smoking kills, on average, 1200 Americans. Every day.
- More people die every year from smoking than from murder, AIDS, suicide, drugs, car crashes, and alcohol, combined.
- Smoking causes heart disease, emphysema, acute myeloid leukemia, and cancer of the mouth, esophagus, larynx, lung, stomach, kidney, bladder, and pancreas.
- Smoking also causes reduced fertility, low birth weight in newborns, and cancer of the cervix.

### Addictiveness of Smoking and Nicotine

- Smoking is highly addictive. Nicotine is the addictive drug in tobacco.
- Cigarette companies intentionally designed cigarettes with enough nicotine to create and sustain addiction.
- It's not easy to quit.
- When you smoke, the nicotine actually changes the brain - that's why quitting is so hard.

### Lack of Significant Health Benefit from Smoking “Low Tar,” “Light,” “Ultra Light,” “Mild,” and “Natural” Cigarettes

- Many smokers switch to low tar and light cigarettes rather than quitting because they think low tar and light cigarettes are less harmful. They are not.
- “Low tar” and filtered cigarette smokers inhale essentially the same amount of tar and nicotine as they would from regular cigarettes.
- All cigarettes cause cancer, lung disease, heart attacks, and premature death - lights, low tar, ultra lights, and naturals. There is no safe cigarette.

### Manipulation of Cigarette Design and Composition to Ensure Optimum Nicotine Delivery

- Philip Morris USA, R.J. Reynolds Tobacco, Lorillard, and Altria intentionally designed cigarettes to make them more addictive.
- Cigarette companies control the impact and delivery of nicotine in many ways, including designing filters and selecting cigarette paper to maximize the ingestion of nicotine, adding ammonia to make the cigarette taste less harsh, and controlling the physical and chemical makeup of the tobacco blend.
- When you smoke, the nicotine actually changes the brain - that's why quitting is so hard.

### Adverse Health Effects of Exposure to Secondhand Smoke

- Secondhand smoke kills over 38,000 Americans each year.
- Secondhand smoke causes lung cancer and coronary heart disease in adults who do not smoke.
- Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory infections, ear problems, severe asthma, and reduced lung function.
- There is no safe level of exposure to secondhand smoke.