Why tobacco litigation?

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Just how important is litigation in achieving the goals of the tobacco control community?

When a Los Angeles jury recently assessed $28 billion in punitive damages against Philip Morris in Bullock v Philip Morris Companies, the tobacco control community cheered. The jury had calculated that only one in 28 000 Californians who have suffered from tobacco caused disease ever sues, so to make Philip Morris confront the real cost of its misbehaviour, they multiplied a typical $1 million compensatory damage award (for medical bills, lost wages, and pain and suffering) by 28 000. Right on! Even though the trial judge subsequently reduced the award to $28 million, that is still enough to encourage many more suits to be filed.

Why ask “why tobacco litigation?” The reason is that the tobacco control community may soon have to decide just how important litigation is to achieving its goals. Two current examples put the issue nicely. First, the recently certified “Simon II” punitive damage class action would strip the punitive damages claims from all cases that may be brought against tobacco companies by Americans who have become ill from their products, and allow these instead to be decided by a single jury verdict or settlement. Although in theory plaintiffs would still be able to recover compensatory damages in individual actions (medical expenses, lost income, pain and suffering, and so on), in practice they may not be able to find lawyers willing to take their case on contingency fee where punitive damages are off the table.

Thus while this procedure, if upheld on appeal, may offer financial benefits for tobacco victims and the tobacco control community, it may also effectively quash tobacco litigation in America. Furthermore, a possible jury decision finding the tobacco companies owe little or no punitive damages would be binding on all individual plaintiffs. What position should we take on this? Disagreement about the merits of a similar tradeoff in the “Global Settlement” of 1997 led to civil war within the community. The increasing possibility of bankruptcy for tobacco companies that could very well make Philip Morris’ case an isolated phenomenon further weakened the industry’s position behind us? There are several reasons for believing that the best is yet to come.

First, unlike legislation and administrative regulation, litigation operates retrospectively, asking the question whether the corporate decisions that contributed to the plaintiff’s illness were reasonable or unreasonable, in good

FUTURE POTENTIAL

While these accomplishments have obviously been extremely important, what can be expected from additional litigation? Are most of the potential benefits behind us? There are several reasons for believing that the best is yet to come.

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CONCLUSION

The cheering is justified. Litigation has achieved benefits for tobacco control that were simply not obtainable otherwise. So long as the threat of litigation remains viable, tobacco companies may be deterred from pursuing outrageous schemes that do not violate specific laws or regulations. More areas of past industry misconduct remain to be explored and exposed. And the benefits for tobacco control outside the USA have only just begun.

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