

however, play much of a role in the largely successful efforts in the USA to make public places smoke free. The lawsuits brought by states to recover their costs of providing medical care to the tobacco industry's victims succeeded in doing that and much more, but they did not bankrupt the industry as some tobacco control activists had hoped. The civil case brought by the US Department of Justice produced a powerful and encyclopaedic judicial opinion finding that the major cigarette manufacturers had been involved in seven different conspiracies to commit fraud and had earned the designation 'racketeers', but the court-ordered remedies were not significant. Some advocates fear that the Canadian medical cost recovery litigation will be settled without requiring the companies to disgorge incriminating internal documents. That said, litigation does contribute to tobacco control in important ways, including providing advocates with evidence and judicial language supportive of a broad range of tobacco control initiatives.

Article 4.5 of the WHO Framework Convention on Tobacco Control (FCTC) recognises that 'issues relating to liability... are an important part of comprehensive tobacco control'. Article 19, 'Liability', provides that 'Parties shall consider taking legislative action... to deal with... civil liability, including compensation where appropriate'. Legislation correcting the procedural rules that prohibit contingency fees and shift litigation costs to the losing party, permitting consumer class actions, and facilitating healthcare cost recovery lawsuits, are examples of such highly desirable legislative action. Article 19 also encourages parties to assist each other in carrying out legal proceedings and to share relevant information with each other, and invites the Conference of the Parties (COP) to develop 'appropriate international approaches to these issues' as well as to support parties in their activities relating to liability. What the COP could most usefully do is to set up a mechanism for collecting, archiving and sharing litigation documents and for providing advice and assistance—electronically or in person—to attorneys bringing liability cases against the tobacco industry.

For at least a decade tobacco company defendants in the US have admitted on their websites and ceased to deny in court that smoking is the major cause of lung cancer and chronic obstructive pulmonary disease (COPD), though they often contest the diagnosis or aetiology in particular cases. By contrast, and despite universal availability of the internet, tobacco defendants in Europe and Asia have been remarkably successful in confusing courts on the epidemiology of smoking

What this paper adds

This paper briefly summarises more than 60 years of litigation against the tobacco industry and discusses the strategy's continued usefulness around the world.

and disease. The recent acceleration in the globalisation of tobacco control efforts, inspired by the FCTC and supported by the Bloomberg and Gates Foundations, and the commitment of parties under Article 12 of the FCTC to conduct public education on tobacco control issues, can be expected to equalise around the world knowledge of basic tobacco epidemiology. Similarly, the presence of millions of easily accessible internal tobacco industry documents on the internet should simplify the process of establishing the liability of the major transnational tobacco companies and their affiliates.

While most tobacco product liability cases to date have been in the USA, the rest of the world should catch up over the course of the next 20 years. Canada, Argentina, Brazil and Israel each have multiple cases already. In the USA it took 42 years and three waves of litigation from the first filed case in 1954 to the first legal victory in 1996; success in a variety of types of cases soon followed. Every advance in tobacco litigation to date has been accomplished by lawyers who, despite their doubting colleagues, saw the possibilities for justice and pursued them. While each system imposes its own procedural hurdles and opportunities, creative and persistent lawyers can and will find routes to obtain justice in every region of the world.

Competing interests None.

Provenance and peer review Commissioned; externally peer reviewed.

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Feasibility of tobacco product liability litigation in Uganda: invited commentary

The US tobacco litigation experience discussed in the paper on product liability by Daynard and LeGresley¹ shows that suing the tobacco industry to hold it responsible for harm caused by its products is a daunting yet rewarding undertaking. While public interest litigation in Uganda brought about smoke-free legislation,² product liability litigation against the tobacco industry remains underdeveloped.

Uganda's legal system, based on English common law, allows individual personal injury claims and 'class action' or 'representative action' suits. Only two product liability cases have been brought against the tobacco industry in Uganda.^{3,4} Both were personal injury claims by individual smokers but were dismissed on technical grounds in their early stages. The plaintiffs were ordered to pay part of the defendants' costs, highlighting a disincentive for tobacco product liability litigation in low-income countries like Uganda. Such litigation is prohibitively expensive, especially when the financially superior tobacco companies use 'delay tactics' intended to pressure the plaintiff to give up. The proposal for legislation (relating to Article 19 of the Framework Convention on Tobacco Control) correcting the

procedural rules that shift litigation costs to the losing party,¹ would be relevant in Uganda. So would legislation granting legal aid to plaintiffs bringing claims against the tobacco industry.

Proving causation of disease by smoking would be particularly challenging in Uganda because of difficulty in tracing the necessary personal medical records of claimants. The paucity of data makes it difficult to bring suits against the tobacco industry to recover costs of treating tobacco-related illnesses. It is unclear whether the Ugandan government has the political will to sue tobacco companies. Furthermore, Uganda does not have a federalist political system to facilitate this type of litigation. However, in Nigeria the Federal government and three state governments, inspired by the USA, are suing British American Tobacco, Philip Morris International and International Tobacco Limited for costs of treating smoking-related diseases. These cases demonstrate to Uganda and the rest of Africa the evidential value of incriminating internal tobacco industry documents, the potential (via media coverage) for public education on

tobacco control and the importance of international collaboration in supporting product liability litigation.

Jacqueline Tumwine

Correspondence to Jacqueline Tumwine, Health and Environmental Rights Organisation (HERO-Uganda), Uganda; jt327@law.georgetown.edu

Competing interests None.

Provenance and peer review Commissioned; internally peer reviewed.

Tobacco Control 2012;**21**:228–229. doi:10.1136/tobaccocontrol-2011-050377

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Invited commentary

The article by Daynard and LeGresley¹ highlights the achievements of product liability on tobacco litigation in the USA. The concept of product liability for tobacco is still a new issue in many low- and middle-income countries. In Nepal, litigation is an indispensable part of the tobacco control bill becoming law. Product liability litigation is now becoming popular in Nepal and similar low- and middle-income countries.

In Nepal, product liability litigation against multinational tobacco companies was started in 2003 by the non-governmental organisation Non-Smokers' Rights Association of Nepal. This organisation pursued two lawsuits in 2007 and achieved the historical landmark victory against multinational tobacco companies in 2009 to ban advertisement, promotion and sponsorships; a contempt of court action in 2010 against giant multinational tobacco companies; and an international petition against derailing and delaying the tobacco control law. As a result, the tobacco control bill was passed and become a law in April 2011 and the enforcement of the ban on smoking in public places came into effect from August 2011, both of which are significant steps towards the tobacco control initiative in Nepal.

But the journey of tobacco litigation is still continuing in Nepal to implement the 75% pictorial health warning on

tobacco products. The litigation process and related efforts have drawn new attention to the public health hazards of tobacco.

The tobacco industry's vulnerability to product liability has not yet been seriously taken into account in tobacco control laws in middle- and low-income countries like Nepal. Thus, tobacco control advocates and litigation practitioners must be supported in pursuing such litigation. The Framework Convention on Tobacco Control and tobacco control laws must provide that governments or states take steps to pursue tobacco product liability settlement agreements with multinational tobacco companies similar to that of the Master Settlement Agreement in the USA. International funding agencies such as the Bloomberg and Gates Foundations should prioritise product liability litigation in low- and middle-income countries. The article shows some reluctance to adequately discuss disparity issues between the USA and global product liability on tobacco control policies.

Hom L Shrestha

Correspondence to Mr Hom L Shrestha, Nepal; nosmoran2002@hotmail.com

Competing interests None.

Provenance and peer review Commissioned; internally peer reviewed.

Tobacco Control 2012;**21**:229. doi:10.1136/tobaccocontrol-2011-050420

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