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Minnesota court revives suit against Philip Morris

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The Minnesota Court of Appeals has revived a class-action lawsuit against the Philip Morris tobacco company by smokers of its Marlboro Light cigarettes

The plaintiffs argued the company used fraud and misrepresentation to convince consumers that the light or low-tar cigarettes were less dangerous than standard varieties.

"Our assertion is this is consumer fraud — that you are misleading Minnesota consumers — and that Philip Morris should have to provide restitution to those purchasers under Minnesota consumer fraud statutes," said Kay Nord Hunt of the Minneapolis law firm Lommen, Abdo, Cole, King & Stageberg, who represents Gregory Curtis and the other plaintiffs.

An attorney with the Tobacco Products Liability Project of the Public Health Advocacy Institute at the Northeastern University School of Law in Boston described the decision as a "resounding victory" for plaintiffs.

In its opinion issued Tuesday, a three-judge panel of the appeals court ruled that the suit, filed in 2001 in Hennepin County, was not filed too late, as Philip Morris had argued.

The court said the suit could go forward as a class action, another important victory for plaintiffs.

And it ruled that the "public benefit" requirement to bring a claim for violation of consumer protection law was satisfied because the alleged false advertising was made to the public as a whole.

"The Court of Appeals is saying, look, when you make representations to the public at

large, over a long period of time, affecting hundreds of thousands of consumers in Minnesota, you meet the 'public benefit' test," Hunt said.

Philip Morris USA said in a statement that it is considering whether to appeal the ruling to the state Supreme Court.

The tobacco company said the certification of the case as a class action "is contrary to an overwhelming majority of decisions" in similar cases at state and federal levels.

"We believe it is inappropriate to give class-action status to smokers' claims because they raise numerous individual issues that can only be resolved based on the factual circumstances of each individual smoker," said Murray Garnick, a senior vice president for Altria Client Services, speaking on behalf of Philip Morris in the statement. Altria Group Inc., a holding company formed in 1985, owns Philip Morris.

Members of the class are defined as "(a)ll persons who purchased Marlboro Lights cigarettes in Minnesota for personal consumption from the first date (Philip Morris) sold Marlboro Lights in Minnesota (1972) through the date of the certification of the class." Hunt, the attorney, said the class was certified in November 2004.

In another element of the case, the appeals court upheld the lower court's ruling that the plaintiffs could not use the findings from a 2006 federal case

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against the tobacco industry by the U.S. Justice Department.

Federal law has changed the way light cigarettes are sold. In June 2009, Congress barred tobacco companies from describing their products as "light" or "low tar."

But in a "friend of the court" brief submitted by the Tobacco Control Legal Consortium, University of Minnesota law professor Prentiss Cox wrote that tobacco companies continue their "light cigarette" fraud simply by color-coding cigarette packages.

Cox quoted a New York Times article in which Harvard School of Public Health professor Gregory Connolly said the companies knew for "at least a decade" from World Health Organization actions that they would have to remove the offending words from their advertising.

They consequently had time to assemble other visual cues on the packages, such as lighter colors for lower tar and nicotine.

Plaintiffs and their supporters have argued that instead of quitting, many smokers switched to low-tar or "light" cigarettes in the belief they were choosing a safer alternative.

If Philip Morris does not appeal, the case goes back to Hennepin County for trial.

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