

Go-ahead for 'light' tobacco court fight

■ Judge delivers new blow to cigarette manufacturers

By Lauren Foster in New York

A US federal judge yesterday dealt a blow to the tobacco industry when he ruled a case involving the big cigarette makers and tens of millions of smokers of "light" cigarettes could proceed to trial as a national class action.

The Schwab claim – filed in 2004 under the federal Racketeer Influenced Corrupt Organizations Act (Rico) – alleges cigarette companies defrauded smokers into believing "light" cigarettes were safer than regular ones.

The class includes anyone in the US who bought cigarettes that were labelled "light" or "lights" between 1971 and 2006.

Lawyers are seeking as much as \$200bn in damages, which would automatically be tripled under Rico.

The ruling by US District Judge Jack Weinstein sent tobacco shares lower. Altria Group, parent of Philip Morris USA, fell more than 6 per cent, while Reynolds American, owner of R.J. Reynolds, was down more than 3.5 per cent.

Altria has been closely watching the case as it is preparing to spin-off its 88.1 per cent stake in Kraft Foods.

"This ruling may moderately delay the timing of a Kraft spin-off by several months, but we do not believe that it sends the process 'off the tracks'," David Adelman, analyst at Morgan Stanley, told clients.

Judge Weinstein denied the industry's request for a pre-trial appeal of the class certification, which means Schwab will proceed to trial as a national "lights" class action claim. Jury

selection is expected to begin in January.

"This is a significant judgement," said Michael Hausfeld, partner at Cohen, Milstein, Hausfeld & Toll, the firm representing the smokers. "It is another condemnation on the merits of the tobacco business practices over more than a quarter of a century, and a milestone with respect to the procedures for class action as it certifies the largest class in terms of period, number and potential damages."

PM USA and R.J. Reynolds said they would seek review of the class certification decision to the Second Circuit Court of Appeals – where the industry has a successful record of defending itself – and a stay of the trial court proceedings pending a decision by the appellate court.

Last year the Second Circuit threw out the Simon II class action that Judge Weinstein certified on behalf of millions of US smokers claiming punitive damages against the industry.

"We adamantly believe the 2nd Circuit Court will decertify the class given the past success the tobacco industry has experienced in this court," said Bonnie Herzog, analyst at Citigroup, in a report.

Yesterday's ruling follows an opinion last month by a federal judge in the District of Columbia, that tobacco companies lied about the dangers of smoking and banned them from using terms such as "light".

Defendants include PM USA, R.J. Reynolds, Brown & Williamson (now part of Reynolds American), Lorillard, British American Tobacco and Liggett.