

'Light Cigarette' Smokers Get Class-Action Status

Tobacco Firms Are Exposed To New \$200 Billion Claim; A Kraft Spinoff Faces Delay

By VANESSA O'CONNELL

A federal judge's decision to grant class-action status to tens of millions of "light cigarette" smokers exposes major tobacco companies to a new \$200 billion claim for damages and will delay an expected plan by Philip Morris USA parent Altria Group Inc. to spin off its Kraft Foods Inc. unit.

U.S. District Judge Jack Weinstein in Brooklyn, N.Y., made the pretrial ruling yesterday in a 2004 lawsuit alleging that Philip Morris USA, Reynolds American Inc.'s R.J. Reynolds Tobacco Co., and Loews Corp.'s Lorillard Tobacco unit, among others, falsely marketed "light" and "low-tar" cigarettes as a lower-risk alternative to conventional higher-tar smokes.

Lawyers for the plaintiffs argued that tobacco companies reaped between \$120 billion and \$200 billion in additional revenue because of what they describe as a pattern of deceiving the public about the dangers of smoking light cigarettes. Because the suit is being brought under federal racketeering law, the amount of damages in the case could be tripled.

Not only is the judge's decision a legal setback for the tobacco industry, it further delays Altria's expected spinoff of its 88%-owned Kraft unit. The spinoff would be part of a long-planned breakup of Altria

Legal Blow to Tobacco

The "Schwab" case:

- **Plaintiffs allege** Philip Morris USA, R.J. Reynolds and other defendants violated federal laws by falsely claiming that "light" cigarettes were safer than higher-tar cigarettes.
- **Plaintiffs seek between \$120 billion and \$200 billion** in extra revenue earned by tobacco companies.
- **Lawsuit represents** the claims of as many as 50 million smokers of "light" cigarettes nationwide.
- **Class-action filed** in the U.S. District Court for the Eastern District of New York in 2004, before Judge Jack B. Weinstein.
- **In pre-trial proceedings**, Judge Weinstein "certified" the class. Tobacco companies are appealing the certification to the Second Circuit Court of Appeals in New York.
- **Jury selection** scheduled to begin Jan. 22.

Source: WSJ research

into two or three separate entities, but the New York company has put the restructuring on hold while it resolves outstanding legal challenges. Thanks to the tobacco industry's recent winning streak in lawsuits against it, many investors had expected Altria to announce the spinoff at an Oct. 25 board meeting.

But Judge Weinstein's opinion in the light-cigarette lawsuit, known for lead plaintiff Barbara Schwab, makes it difficult for Altria to proceed with a Kraft spinoff for the moment. "Today's deci-

sion inevitably delays any restructuring," William Ohlemeyer, associate general counsel for Altria, said in a conference call with analysts and investors. "Today's decision, however isolated it is, is not a step toward clarity [regarding litigation]; it is a step back of sorts," Mr. Ohlemeyer said.

Plaintiffs in the class-action suit could seek to block the restructuring with a court injunction by arguing that the breakup of Altria might jeopardize their ability to collect damages they might win. As a result, some observers now believe the board might delay a spinoff until an appellate court reverses Judge Weinstein's class-certification decision, which might not happen for another year—if at all.

Judge Weinstein, who was appointed to the federal bench in 1967 by President Lyndon B. Johnson, is known for his tendency to embrace novel legal theories to resolve complicated issues. The 85-year-old federal judge has tended to favor class-action suits as an efficient way to force major companies to pay out large sums when large groups of people have suffered. He has presided over lawsuits involving Agent Orange and asbestos, as well as a jury trial that found gun manufacturers liable for death and injury to shooting victims.

In his decision yesterday, Judge Weinstein denied the companies the right to have him seek an immediate appellate review of his class-certification decision. Past class-action tobacco suits have failed because courts have found smokers too diverse a group to have their claims lumped together. But Judge Weinstein

said class-action certification is "critical" to this light-cigarette smokers' case. "The small amount of possible recovery for each smoker could not justify the expensive and time-consuming pretrial and trial procedures required," he wrote.

Plaintiffs' attorney Michael Hausfeld estimated that as many as 50 million people in the U.S. could be a part of the class, which represents anyone who purchased cigarettes that were labeled "light" after they were put on the market, beginning in the early 1970s.

Tobacco companies said they would appeal the ruling to the Second U.S. Circuit Court of Appeals in New York. The tobacco companies also will seek a stay of all trial-court proceedings pending a decision by the appellate court. Jury selection in the case is set to begin Jan. 22.

"There is a real question of whether the ruling will hold up on appeal," says Robert Rabin, a professor at Stanford Law School. "Class actions in tobacco haven't fared well, and we have to see whether the Second Circuit will be receptive to Weinstein's action."

The judge's decision drove tobacco shares sharply lower. At 4 p.m. in New York Stock Exchange composite trading, Altria shares were down \$5.26, or 6.4%, to \$77.06, while Reynolds shares fell \$2.27, or 3.7%, to \$59.75.



Online Today: WSJ reporter Vanessa O'Connell talks about the significance of the tobacco ruling, at WSJ.com/Video. Plus, WSJ.com subscribers can read analysts' reactions at WSJ.com/OnlineToday.