

Tobacco conspiracy proved, U.S. claims

Companies sum up the trial differently

By Hilary Roxe
Associated Press

WASHINGTON — Justice Department lawyers argued yesterday that they had shown that cigarette makers concealed the addictive nature of smoking and targeted kids in advertising, while company lawyers vehemently denied the claims at a civil racketeering trial.

Both sides offered U.S. District Judge Gladys Kessler interim summaries in the trial that began in September and is expected to last several more months. In a lawsuit filed under a 1970 racketeering law, the government alleges that tobacco companies conspired for decades to hide the hazards associated with smoking.

"The United States has shown by the overwhelming amount of evidence ... that there is a reasonable likelihood that the tobacco companies' conduct ... will continue," government lawyer Renee Brooker argued.

Tobacco company lawyers argued the government hadn't proved their fraud allegations.

"They still can't find a consistent theory in the case," said David Bernick, a lawyer representing Brown & Williamson Tobacco Corp.

An appeals court this month barred the government from seeking \$280 billion it claims the industry earned through fraudulent activities. The Justice Department said it will appeal and asked Kessler to consider other penalties, such as making tobacco companies pay for smoking cessation programs.

Government lawyers said scientific research had proved that smoking was dangerous by the early 1980s. Justice Department

lawyer Frank Marine said the tobacco industry continued to deny or question the evidence publicly, even while internal industry documents dating as far back as the early 1960s discussed the addictive nature of smoking.

But Dan Webb, representing Philip Morris, said that not even federal health officials claimed cigarette smoking was addictive until a surgeon general's report did so in 1988, and debate over the criteria for addiction continued for years after that.

Webb questioned "how it can be that we're involved in a fraud scheme and the others are not?"

Tobacco companies say they have reversed their claims in recent years, stating on their Web sites that smoking is addictive.

"After decades of fraud, it is not enough just to say, 'We agree smoking is addictive,'" Marine said.

Marine also questioned the qualifications that companies attach to such statements. Brown & Williamson's Web site, for example, states that smoking is addictive but also says "it is inappropriate to call cigarette smoking addictive in the same sense as heroin, cocaine or other hard drugs." Before its 2004 merger with R.J. Reynolds, B&W was based in Louisville.

Though the government accuses tobacco companies of marketing to youths through decades-old symbols, such as the cowboy used in ads for Philip Morris' Marlboro cigarettes, the industry says the ads are aimed at attracting adult smokers.

In addition, tobacco companies say the \$206 billion Master Settlement Agreement profoundly changed the marketing landscape by limiting how tobacco companies could advertise. But government lawyers said that since 1997, cigarette companies have doubled their spending on marketing to more than \$12 billion.