

Up in Smoke

By Reg P. Wydeven
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One of my favorite episodes of 'Seinfeld' featured everyone enjoying fat-free yogurt at the local yogurt shop. The yogurt tastes so good that Jerry believes there's no way it's fat free. The gang bets on the fat content of the yogurt and have it tested in a laboratory. Despite Kramer's best attempts to seduce the scientist to sway the outcome, the test results reveal the yogurt did contain fat.

Even though everyone gained weight from eating the fat-laden yogurt, they were still infuriated that Jerry exposed the truth, most notably Newman. Though Jerry thought he was helping them, his friends were upset because something they enjoyed and thought was good for them turned out to not be so. Smokers of "light" cigarettes feel the same way.

That's why they're suing the tobacco industry, claiming they were tricked into smoking what they thought were safer cigarettes. Conceivably tens of millions of smokers just won an early victory in their war against big tobacco after a federal judge in New York granted class action status to their potentially \$200 billion lawsuit.

The suit, which began in 2004, now has a trial date set for January 22, 2007. The lawsuit names Philip Morris USA, Inc., R.J. Reynolds Tobacco, Lorillard Tobacco Co. and other companies as defendants. The class of plaintiffs is made up of anyone who purchased cigarettes that were labeled "light" or "lights" since the early 1970s, when tobacco companies began marketing them. Light cigarettes were promoted as a lower-risk alternative to regular cigarettes, even though the tobacco companies' own internal documents allegedly showed they knew the risks were about the same.

To assist the judge in his ruling, the plaintiffs presented expert witnesses that testified that more than 90 percent of the smokers purchased light cigarettes based on health concerns, as opposed to taste or other factors. They also presented findings from a separate study showing that had smokers known the truth about the health risks of light cigarettes they would have expected discounts of 50 to 80 percent per pack. The claim for \$200 billion in damages is based partly on this study.

Swayed by these findings, the judge granted class action status, claiming the certification was "critical to [the] plaintiffs' case." The judge held that no other practicable judicial method would allow tens of millions of smokers' claims to be heard, citing the expensive and time-consuming litigation procedures would outweigh the small amount of possible recovery for each smoker.

Going even further, the judge also stated he would "entertain a motion to extend the class ... to encompass smokers of all 'low tar' brands rather than 'lights' alone."

The nation's largest cigarette manufacturer, Phillip Morris, intends to appeal the judge's decision to grant class action status to the suit. It, along with the other tobacco companies, asserts that the lawsuit relies on flawed data and should not be certified as a class action. They also said that it would be impossible to determine each smoker's motive for buying light cigarettes without surveying each one named in the suit.

Since the ruling was issued, tobacco stock prices sank as much as 4 percent. On 'Seinfeld', Jerry's discovery causes the yogurt shop to go under. We'll have to wait to see if this class action lawsuit has the same effect on the tobacco industry.