

protecting and advancing the nation's health by educating the public and advocating effective disease prevention and health promotion programs. The Surgeon General issued a report on the dangers of smoking in 1964.

Things to Think About

* Some have argued that the placing of warnings on cigarette packs in 1966 was actually a good thing for the tobacco industry. They contend that this enabled the tobacco industry to say that people could not then claim they were unaware of the hazards of smoking and therefore the tobacco industry was not to blame if they still chose to smoke. Do you find this argument persuasive? Do you think warnings on cigarette packs discourage people from smoking? Do you think radio and television ads that discourage smoking are effective?

* The tobacco industry generates over \$50 billion annually and employs hundreds of thousands of people. Many farmers rely on tobacco for their livelihood. Do you think that governmental attempts to drastically reduce the use of tobacco products should include measures to aid the people whose livelihoods might thereby be harmed? How, for example, can tobacco farmers be led to raise other crops?

* Since the evidence is clear that cigarette smoking is dangerous, do you think cigarettes should be banned altogether? What problems might be caused if smoking cigarettes became illegal the way that using certain addictive drugs is?

* The tobacco industry argued that Grady Carter could have quit at any time. Do you find this argument convincing? Do you know people who have quit smoking? If so, how were they able to do it?

* The tobacco industry often argues that individual freedom is an important issue in the smoking debate. For example, you cannot forbid people from engaging in other risky behaviors, such as skydiving, without curtailing their personal freedoms. Is this a fair and persuasive comparison? Do you think that people have an inherent right to indulge in dangerous pastimes? What if the costs of their actions have economic implications, such as raising insurance costs or forcing governments to pay for their health care?

* Why do you think people begin smoking? At what age do you think most people begin to smoke? The tobacco industry often argues that their advertising is meant to make people switch brands and not to get people to begin smoking. Do you think cigarette advertising plays a major role in getting people to start smoking?

Internet Resources

<http://www.courtvtv.com/casefiles/verdicts/carter.html> — A brief summary of the case from Court TV.

<http://www.library.ucsf.edu/tobacco/> — From the University of California at San Francisco, a rich site called the "Tobacco Control Archives." Contains, among other things a trove of documents called the "Brown & Williamson Collection."

<http://www.tobaccowars.com/> — A large searchable site that calls itself "your source for tobacco control news and information." Contains news items on the Carter case.

http://www.motherjones.com/mother_jones/MJ96/tobacco_timelin e2.html — A timeline on tobacco history from Columbus's voyage to today.

<http://no-smoking.org/nov00/11-24-00-2.html> — The text of the Florida State Supreme Court decision of November 22, 2000 (see "Timeline").

http://resource.lawlinks.com/Content/Legal_Subject_Index/tort_la w_product_liability/Tobacco.htm — An interesting site on liability law and the tobacco industry with some information on the Carter case.

<http://ourworld.compuserve.com/homepages/lyndellemccoymccoy/tobliti g.htm> — A page called "Three Cases Filed by Anti-Smokers and The Results." The Carter case is one of the three.

<http://medicolegal.tripod.com/dangeroustobacco.htm> — An interesting and comprehensive site called "Dangerous Tobacco: Evidence from Smoker's Rights Cases" (including the Carter case).

Other Resources

Glantz, Stanton A. and Balbach, Edith D. *The Tobacco War: Inside the California Battles*. University of California Press, 2000.

Glantz, Stanton A., et.al. *The Cigarette Papers*.

University of California Press, 1998.

Kluger, Richard. *Ashes to Ashes: America's Hundred-Year Cigarette War, the Public Health, and the Unabashed Triumph of Philip Morris*. Vintage, 1997.

Males, Mike A. *Smoked: Why Joe Camel Is Still Smiling*.

Common Courage Press, 1999.

Mollenkamp, Carrick., et.al. *The People Vs. Big Tobacco: How the States Took on the Cigarette Giants*. Bloomberg Press, 1998.

Orey, Michael. *Assuming the Risk: The Mavericks, the Lawyers, and the Whistle-Blowers Who Beat Big Tobacco*. Little, Brown, 1999.

Parker-Pope, Tamara. *Cigarettes: Anatomy of an Industry from Seed to Smoke*. New Press, 2001.

Phelps, David. *Smoked: The Inside Story of the Minnesota Tobacco Trial*. MSPBooks, 1998.

Tate, Cassandra. *Cigarette Wars: The Triumph of "The Little White Slaver"*. Oxford Univ. Press, 1999.

Zegart, Dan. *Civil Warriors: The Legal Siege on the Tobacco Industry*. Delacorte Press, 2000.

While not about the Carter case, the film The Insider (1999), starring Al Pacino and Russell Crowe, is a fascinating look at the tobacco industry from the point of view of tobacco executive-turned-whistleblower Jeffrey Wigand.

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TOBACCO ON TRIAL: CARTER v. BROWN & WILLIAMSON

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WORLD ALMANAC® —VIDEO— LANDMARK CONSUMER RIGHTS TRIALS

When we purchase a product or use a service, we have the right to expect that what we buy is safe. And yet defective products and harmful services are common—indeed, most of the cases in the courts today arise out of just such occurrences. And sometimes lawsuits over products and services result in cases that grip the public in a major way. These cases may attract attention because of the huge numbers of people involved, the novel areas of modern life they reflect, or simply the large amounts of money involved. LANDMARK CONSUMER RIGHTS TRIALS examines some of these unforgettable cases.

TOBACCO ON TRIAL CARTER v. BROWN & WILLIAMSON

Challenging Big Tobacco

As early as 1795, a German physician noticed that cancer of the lip was more frequent in people who smoked tobacco pipes. Ever since, the evidence that smoking tobacco can be harmful to health has been accumulating. Several types of scientific studies provide evidence of the link between smoking and health problems: Studies of populations of smokers find a greater incidence of certain diseases, animal experiments demonstrate harmful effects from the substances contained in tobacco smoke, and autopsies allow physicians to observe directly the damage caused to the body by smoking. It has been estimated that as many as 90 percent of all lung cancers are caused by cigarette smoking, and studies have found smoking to be related to other cancers, respiratory disease, and cardiovascular disease.



Only in the last few decades have governments become widely active in discouraging smoking. Important measures that they have taken include prohibiting smoking in certain places, raising taxes on tobacco products, and educating the public on smoking's hazards through such means as newspaper and television advertisements and classroom presentations. Most countries now mandate some kind of warning label on cigarette packages and many others have banned tobacco advertising in some areas, especially on radio and television.

In addition to these actions of government, people have challenged the tobacco industry in court. In recent times cigarette manufacturers have been hit with a host of lawsuits—some initiated by individuals and others by groups, such as the major lawsuit against the tobacco giants recently launched by a coalition of attorneys general from many U.S. states. The individuals contend that cigarettes are an inherently dangerous and addictive product that has harmed their health, or the health of a family member, and that the tobacco industry, knowing all along that cigarettes were deadly, failed to warn them of the dangers. The attorneys general sought compensation for the cost of treating sick smokers in state facilities and for other health-related expenditures made by their state governments.

One of the most prominent of these lawsuits against the tobacco industry was that brought against the tobacco giant Brown & Williamson by a 66-year-old cancer victim named Grady Carter. His trial raised some of the most fundamental issues in the entire tobacco dispute.

The Issue: Accepting Risk

In defending itself against lawsuits, one of the tobacco industry's most successful arguments has been what might be called the "acceptance-of-risk" defense. The industry's lawyers argue that people do in fact know that cigarettes are dangerous and that they choose to assume the risk of smoking them anyway. The tobacco industry, therefore, cannot be liable for what happens to them. Grady Carter's legal team, however, countered that the story was not quite that simple. They argued that persons are enticed into smoking at a vulnerable age, nearly always in their teens, by clever advertising and that then they become nicotine addicts who find it nearly impossible to quit, even though they would like to. More than that, the attorneys argued that the tobacco industry even manipulated nicotine in cigarettes to ensure their addicting powers. Thus the issue became whether or not Grady Carter, and by extension, millions of other smokers, really did make a free choice to smoke.

Important People

Bezanon, Tom — Attorney for Brown & Williamson.

Carter, Grady — 66-year-old plaintiff in Carter v. Brown & Williamson. A lung cancer sufferer, he began smoking cigarettes in 1947. For 25 years, he smoked Lucky Strikes, a brand manufactured by Brown & Williamson.

Carter, Grady, Jr. — Son of Grady Carter. He tried to get him to quit smoking by giving him photographs of healthy and unhealthy lungs.

Carter, Millie — Wife of Grady Carter.

TIMELINE

February 2, 1936 — An article in the Journal of the American Medical Association reports a connection between smoking and lung cancer.

1947 — Grady Carter starts smoking.

1953 — A study by Dr. Ernest Wydner reports that he was able to create cancer in mice by giving them tobacco tar.

December 15, 1953 — Partly in response to the Wydner study, the chief executives of the major tobacco companies meet in the Plaza Hotel in New York City. They set up what is called the Council for Tobacco Research, which they claim, will study cigarettes and health. Critics charge that the CTR avoids the health issues and is little more than a public relations ploy.

1955 — John Heller of the National Cancer Institute reports that "the risk of acquiring lung cancer is greater among smokers than nonsmokers."

1963 — Brown & Williamson's parent company, British American Tobacco, commissions scientists to study the effect of nicotine. Documents deriving from this research are later stolen by Merrell Williams (see Important People) and made public.

1963 — Addison Yeaman (see Important People) writes a secret memo about nicotine.

1964 — Luther Terry, Surgeon General of the United States (see Vocabulary), issues a report condemning cigarette smoking.

1966 — The first warning is placed on cigarette packages. It states "Caution: Cigarette smoke may be hazardous to your health."

1971 — Cigarette commercials are banned from the airwaves and replaced by public service announcements warning of the dangers of smoking.

1983 — Grady and Millie Carter get married.

August 1983 — The family of Rose Cipollone (see Important People) files a lawsuit against the tobacco industry (Cipollone v. Liggett Group, Philip Morris and Loews).

June 13, 1988 — The family of Rose Cipollone wins a \$400,000 judgment against the tobacco industry. The verdict is overturned on appeal in 1990.

January 1988 — Merrell Williams (see Important People) is hired by Wyatt, Tarrant & Combs, a law firm representing Brown & Williamson.

1988 — The U.S. Surgeon General states nicotine is an addictive drug.

January 1991 — After spitting up blood, Grady Carter finally quits smoking, cold turkey.

February 14, 1991 — Grady Carter learns he has lung cancer

1992 — The plaintiffs in the Cipollone case drop their suit because it has become too expensive to pursue.

1994 — After a damaging series of newspaper and television stories about the tobacco companies' research on nicotine, the chief executive officers of the leading tobacco companies are summoned to appear before the U.S. Congress, where they state that they do not believe that nicotine is addictive.

August 1996 — The Grady Carter trial concludes with the award of a \$750,000 verdict. It is the first damage award against the tobacco industry since the Cipollone verdict in 1988.

June 22, 1998 — A Florida appeals court strikes down the Carter verdict, stating that the suit was filed six days too late.

November 22, 2000 — The Florida State Supreme Court reinstates Grady Carter's award.

March 7, 2001 — The Florida State Supreme Court refuses to allow Brown & Williamson to avoid paying Carter while the company pursues its federal appeal. The next day Carter receives a check for \$1,087,191.

June 29, 2001 — The U.S. Supreme Court declines to hear Brown & Williamson's appeal of the Florida State Supreme Court's decision.

Cipollone, Rose — Woman who died of lung cancer in 1984 after 44 years of smoking. In 1988 her family won a \$400,000 judgment against the tobacco industry. The verdict was overturned on appeal.

Feingold, Alan — Lung specialist who testifies at the Carter trial that smoking is a public health threat.

Gaskins, Sam — Foreman of the jury in Carter v. Brown & Williamson.

Horton, Nathan — Lung cancer victim whose family sued the tobacco industry.

King, June — One of the jurors in Carter v. Brown & Williamson.

Kotler, George — One of several other plaintiffs who sued the tobacco industry for cigarette-related health problems.

O'Hanley, Peter — Epidemiologist (see Vocabulary) who testifies at the trial that he can't say for sure that cigarettes caused Grady Carter's cancer.

Pearl, Gary — Pathologist (see Vocabulary) who testifies that Grady Carter's cancer was not caused by smoking.

Pritchard, Bill — Defense attorney in Carter v. Brown & Williamson.

Riley, Thomas — Defense attorney in Carter v. Brown & Williamson.

Rogers, Richard — Lung cancer victim who family sued the tobacco industry.

Sheffler, Bruce — Attorney for the defense. He argues that when Grady Carter began smoking in 1947, the tobacco industry did not know about the dangers of smoking. But he also contends that by the time of the Carter trial the hazards of cigarettes had been known for decades.

Thompson, John — Psychiatrist who testifies that Grady Carter could have quit smoking at any time if he had really wanted to.

Williams, Merrell — Paralegal who was hired by one of the law firms representing Brown & Williamson to sort documents. He steals many of these documents, which turn out to be highly damaging to the tobacco industry.

Wilner, Norwood (Woody) — Attorney for Grady Carter

Yeaman, Addison — General counsel for Brown & Williamson who, in 1963, writes a notorious secret memo that says in part: "We are, then, in the business of selling nicotine, an addictive drug effective in the release of stress mechanisms."

Yergin, Bruce — Grady Carter's physician who diagnoses lung cancer.

Vocabulary

adenocarcinoma — A type of lung cancer that develops in the outlying reaches of the lung. Less treatable than other lung cancers, it is the type of cancer contracted by Grady Carter.

epidemiologist — One who studies the incidence, distribution, and control of disease in a population.

pathologist — One who studies the essential nature of diseases and of the changes they cause.

plaintiff — A person who brings a legal action, such as a lawsuit. In Carter v. Brown & Williamson, the plaintiff was cancer victim Grady Carter.

Surgeon General — Since 1871, the chief medical officer of the United States. Among other things, the Surgeon General administers the U.S. Public Health Service and is charged with