

RESEARCH PAPER

Litigation in Argentina: challenging the tobacco industry

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Objective: To evaluate the processes and outcomes of tobacco litigation in Argentina and to analyse the strategies of the tobacco industry to oppose litigation using tobacco industry documents.

Methods: A systematic search of tobacco industry documents on the internet dating from 1978 to 2002. Law library searches using Argentinean official and unofficial reports systems were combined with computerised online searches.

Results: There have been at least 15 failed litigation cases in Argentina and the tobacco industry presented a concerted defence in every claim regardless of cost. We categorised 11 cases as product liability and nicotine addiction, two as health care reimbursement, and two as criminal law and secondhand smoke. Industry strategies included hiring legal consultants from prestigious international and Argentinean law firms and developing litigation prevention programmes. Industry monitored legal academic meetings, controlled the development of new product liability legislation, obtained favourable opinions from experts, and closely observed the development of litigation in Argentina.

Conclusion: The strategies used by the industry have been successful in preventing recovery for tobacco injuries through litigation. Argentinean health advocates and lawyers need to be aware of the roles and strategies of the tobacco industry in order to develop effective litigation in Argentina.

Litigation offers the possibility of advancing tobacco control goals by effectively communicating the dangers of tobacco use through media coverage, compel manufacturers to raise prices to pay for liability costs, and compensate individuals for tobacco caused losses. After the success of tobacco litigation in the United States,^{1,2} expectations were raised that other countries would follow.³ After 35 years of industry success in US courts, the revelation of previously secret industry documents, new forms of aggregated litigation and novel legal strategies resulted in success for a handful of cases. Subsequently, state governments succeeded in recovering more than \$200 billion as part of the Master Settlement Agreement in the United States. The prospect of using litigation as a tobacco control method in other countries must address the challenges of adapting strategies to each legal system, the cost and benefits of the efforts and the possibility of accomplishing similar goals through other methods.⁴ By comparison to the United States, 334 suits have been filed in Brazil and of 154 verdicts all but five were favourable to industry with appeals pending.

Tobacco production and export plays a major role in Argentina's economy and the cigarette market controlled by subsidiaries of Philip Morris International (PM), Massalín Particulares S.A., and British American Tobacco (BAT), Nobleza Piccardo.^{5,6} As in other parts of the world, public perception of the tobacco industry is that it is essential to national economic growth.⁷ Argentina's judicial system includes provincial courts and a federal court system empowered to hear cases under constitutional and federal laws. Unlike in the United States, a court decision does not serve as precedent for future cases, even when there is a tendency to rule homogeneously within the area of the court's jurisdiction. The aims of this paper are to evaluate the process and outcomes of tobacco litigation in Argentina and to analyse the strategies of the tobacco industry in opposing litigation. We use this analysis to discuss the prospects for the future of using litigation as a tool to enhance tobacco control objectives in Argentina and Latin America.

METHODS

Between October 2003 and July 2004, tobacco industry document internet sites at the University of California San Francisco Legacy Tobacco Documents Library (<http://legacy.library.ucsf.edu/>), BAT documents archive (<http://www.bat.library.ucsf.edu/>), and at Tobacco Documents Online (www.tobaccodocuments.org) were searched. Search terms included litigation, lawsuit, Argentina, names of organisations, law firms, and attorneys using a "snowball" approach previously utilised in tobacco documents research. Privileged tobacco documents were those that were withheld from the public in attorney general actions and other specified civil smoking and health actions, based upon claims of attorney-client privilege, work product protection and/or joint defence/common legal interest privilege. Of the 152 retrieved documents, 71 (47%) were considered privileged and therefore not available.

We also used law library searches using Argentinean official and unofficial reporter systems. These were combined with computerised online searches using LexisNexis and El Dial (an online search engine for Argentinean case law, <http://www.eldial.com.ar>) to identify cases filed in Argentinean courts against the tobacco industry.

We categorised the litigation cases into: (1) product liability and nicotine addiction; (2) health care reimbursement; and (3) criminal law and secondhand smoke (SHS). We excluded one case of Argentinean parties in US courts⁸ and a pesticide exposure case involving tobacco growers.^{9,10} Documents on industry surveillance of tobacco litigation and litigation prevention strategies were also reviewed.

RESULTS

Table 1 provides a summary of the 15 resolved litigation cases in favour of the defendants and found in the tobacco industry documents and the Argentinean law library searches. Since 1996, over 100 product liability cases were filed in Argentina,

Abbreviations: BAT, British American Tobacco; ETS, environmental tobacco smoke; PM, Philip Morris International; SHS, secondhand smoke

Table 1 Completed tobacco litigation cases in Argentina, 1979–2003

Date	Case	Category	Mentioned in documents?
1979	Vanina, Orlando et al v. Massalín y Celasco S.A., Nobleza Piccardo and Argentinean Government ¹⁸	Product liability and addiction- criminal action case	Yes
1988	Fernandez José Eduardo v. Nobleza Piccardo SAIC ³²	Secondhand smoke case	Yes
1989	Lidia Nanci Chauque and Miriam Liliana Alarcon v. Juan Manuel Figueroa, Leopoldo Figueroa and Marcela Figueroa de Lee (Chauque et al v. Figueroa et al)	Secondhand smoke case	Yes
1996	Cornejo Eduardo Jacinto v. Nobleza Piccardo ¹⁵	Product liability and addiction case	Yes
1996	Pavon Herdello Marcos Aberto v. Nobleza Piccardo S. A. ⁵⁹	Product liability and addiction case	Yes
1999	Minisini Verdi Luis v. Nobleza Piccardo S.A.	Product liability and addiction case	No
1999	Calderari Enrique v. Nobleza Piccardo, Massalín Particulares, Philip Morris and British American Tobacco Company ²⁸	Criminal action case	Yes
2000	Taraborrelli Hugo v Massalín Particulares S.A. ¹³	Product liability and addiction case	Yes
2000	Taboada Otero Eduardo v/E.N. (M ^e de Economía) Sec. de Industria y Comercio et al ²	Product liability and addiction case	No
2000	Henricot v. Nobleza Piccardo S.A.	Product liability and addiction case	No
2001	Llano, Juan José v. Nobleza Piccardo S.A.	Product liability and addiction case	Yes
2001	Lodoli Roberto v Massalín Particulares ¹¹	Product liability and addiction case	Yes
2002	Quidi, María Adelina v. Nobleza Piccardo S.A. et al	Product liability and addiction case	No
2002	Sosa, Claudia v. Massalín Particulares S.A. ²⁷	Criminal action case	No
2003	Mela, Carlos José v. Nobleza Piccardo S.A. ¹⁶	Product liability and addiction case	No

but the exact number of claims is not publicly known, because of procedural limitations that prevent the disclosure of such information. Of the 15 completed cases, 11 were product liability and nicotine addiction cases and all have similarities in arguments and decisions.

Product liability and nicotine addiction cases

Judges in these cases commented on the contradictory nature of the claims because these were not clear on whether plaintiffs sought compensation for the physical damages produced by smoking or for the nicotine addiction. For example, Judge Kiper in "Lodoli Roberto v. Massalín Particulares S.A.", stated:

The content of the claim does not reveal if the plaintiff seeks recovery for damage produced by smoking or if the damage is the addiction. Before the ambiguity of the terms I agree with the judge a quo that the plaintiff did not request recovery for disability and therefore the damage is produced by the addiction to cigarettes, regardless of the physical damage caused by that addiction.¹¹

Most of the product liability cases used similar arguments and presented similar evidence, and therefore shared strengths and weaknesses.^{11–16} The plaintiffs were heavy smokers who had started smoking early, and at the time the suits were filed suffered from tobacco related illnesses. Plaintiffs admitted being addicted to nicotine and having tried to quit unsuccessfully and sought compensation for damages that cigarette smoking caused. The medical experts' opinions and written records of the plaintiffs' cigarette-related illnesses failed to persuade judges who concluded that the causal link was not adequately established.¹³ The Vanina et al v. Massalín Celasco et al case,^{17 18} filed in 1980, stated that the plaintiffs were:

Induced by subtle, reiterated and insidious propaganda conducted by all the media, found themselves involved in the consumption of cigarettes. What began as a mere pastime and entertainment became transformed into an addiction and dependency that was impossible to control.¹⁸

The responsibility of the tobacco industry was based on civil liability laws for negligent acts and on the knowledge that industry had about the adverse effects of nicotine. Government responsibility was based on the argument that it

was negligent in allowing and authorising the production of harmful goods, without regulating purchase and labelling until 1986. They provided no example of the "subtle and insidious advertising" or of any study related to tobacco advertising's psychological and behavioural effects. Industry's knowledge about the negative effects of smoking was stated without any supportive evidence.¹⁸ Industry attacked neither the content of the claim nor its legal theories, but instead, filed a plea of improper venue stating that the provincial courts were the appropriate venue because federal jurisdiction was only exceptional and restrictive.¹⁹

The judicial decision in the Vanina case concluded that industry's activity could not give rise to either civil or criminal liability as long as "it appears...that no one and nothing obliged those here seeking justice to engage in the indiscriminate smoking of cigarettes".²⁰ In addition, the judge stated:

Governments, in general, as an alternative to giving up tax revenues of great magnitude, either tolerate a health problem of epidemiological proportions or adopt contradictory attitudes, like being both for and against tobacco companies at the same time.²⁰

The crucial aspect of these complaints was establishing a causal link between the damages suffered by the smokers and the act of smoking. Plaintiffs argued their case by highlighting the dimensions of the tobacco epidemic, the carcinogens in tobacco smoke and the addictive nature of nicotine.¹⁵ However, the plaintiffs' cases showed many deficiencies. No scientific evidence was presented to support the claim of a causal link between tobacco smoke and disease and instead quotes from the popular press, text from encyclopedias and personal interviews were presented as evidence. An example of these arguments follows:

... articles which appeared in the newspapers Clarín, for 12/26/79, entitled: "Nicotinism: two Uruguayans die every day; La Nación, for 8/1/79: "A campaign against the smoking habit"; the newspaper La Razón for 7/6/79 reports on the campaign undertaken by LALCEC for stopping smoking, on 7/11/79 says[sic]: "One death every two minutes and the loss of more than 81 million working days have been caused in North America by ... smoking."¹⁸

In the response to the complaint in the Cornejo case, the defendants utilised that weakness as one of their own arguments:

After analyzing the bibliography quoted by the plaintiff it seems strange that nothing stated in the complaint is supported by it, moreover, the said bibliography provides accurate data which discredit the statements made by plaintiff...On the other hand use of journalistic material as a source of scientific assertion should not be accepted...Here we wonder how assertions by the plaintiff can be taken as true when plaintiff himself supplies elements which disqualify his own statement.¹⁴

The plaintiffs argued that tobacco industry liability was based on consumers' constitutional right to protection of their health, and the fact that industry produced an unsafe product that was marketed in misleading advertising. Plaintiffs alleged that they did not choose to smoke out of their free will but as a consequence of misleading advertising. Plaintiffs argued that industry was aware of the harmful effects of smoking and intentionally concealed such information from the public. Warning labels were inadequate, almost illegible and difficult to find on the package.¹⁵

Prescription or the time limit for commencement of a legal action is the period of time granted by the law during which a suit can be filed. Once that period of time has expired, the holder of a right is no longer entitled to sue in a court of law to enforce his rights. This element of civil law is based on the need to have judicial stability in the system. To determine the time limit of the civil action, judges have to decide into which legal category the relationship between smokers and tobacco manufacturers falls. Judges considered the parties' relationship to be controlled by extra contractual liability, as long as the consumer did not purchase the goods directly from the manufacturer but from a third party.¹³ Proposals about an implied contract or a direct relationship between the parties did not have legal support. Extra-contractual liability actions were allowed within a two year prescription period from the moment the illicit act occurred, or from the moment that the victim gained knowledge of the act.

Judges agree that the knowledge of the act is not the moment of its actual and effective knowledge (due to the intrinsic difficulty in producing evidence of such a fact), but the moment in which the knowledge of the fact was reasonable and possible. Thus, plaintiffs had to prove that the illicit act or their awareness of such happened no more than two years before the lawsuit was filed. Plaintiffs faced a difficult situation because they had to prove that their knowledge of the addiction or the damages from smoking had happened two years before the lawsuit was filed. If they failed to prove this point, the case would be lost under a peremptory defense. Furthermore, plaintiffs needed to provide evidence of the magnitude of the damage suffered by proving the extent and duration of their addiction, and the inability to quit smoking. If they failed to prove this point the case would be lost due to lack of injury and was considered critical by Judge Kiper in the Lodoli case:

The plaintiff admitted that he used to smoke at primary school, behind the teachers. He admitted that his addiction was getting worse...He was also hospitalized in 1992 and he was warned that smoking could be a risk factor for his health. It is noteworthy that the plaintiff was born in 1938, and since he was 18—that is since 1956—he has smoked sixty cigarettes per day.

In this factual context admitted by the plaintiff; can it be reasonable[sic] admitted that he was only aware of his

addiction in 1994 as a result of medical advise ...? Did he not suspect or intuit that he was suffering from an addiction and that he should find a way to make that impulse stop?¹¹

In another case the judge took into consideration the educational level of the plaintiff, and noted it was not plausible to believe that university graduates were unaware of the adverse effects of smoking.¹⁶ This perspective was supported by the theory of the voluntary assumption of risk and assumes that plaintiffs, aware of the hazards of smoking, voluntarily decided to continue with the high risk activity, and therefore should bear all responsibility for any injury that resulted thereof.

Cigarette manufacturers at the time when the plaintiffs in these cases started smoking were sold to or merged with other manufacturers. Thus, the subsidiaries of PM and BAT defendants filed exemptions of lack of passive legitimacy, stating that their companies were wrongfully sued. Until 2003, judges did not allow this, based on the fact that the product that the tobacco industry currently marketed was the alleged cause of the damage to the plaintiffs, independent of when production started. However, in the 2003 Mela v. Nobleza Piccardo case, Judge Sansó granted the exemption of lack of passive legitimacy.¹⁶ He considered that there was no real reason for suing a party that, at the moment the damage was caused, was not selling cigarettes. In the appeal, the plaintiff claimed that since the moment the addiction started was uncertain, there was a valid reason for suing those companies. The case received wide press coverage stressing the fact that the smoker was responsible for paying a large sum for court and attorneys fees.^{21 22}

Health care reimbursement cases

Health care reimbursement cases were defined as lawsuits that aimed to obtain payment for ailments arising from tobacco use and the industry was aware of the potential hazards these lawsuits posed. A 1998 BAT report from the office of Neil Withington (BAT Senior Solicitor) stated:

We are seeing an immediate effect of the changing US environment in a number of countries closely aligned to some aspects of the US culture.

An increase[in] litigation around the world and providing a framework for further regulatory controls are the most common symptoms of the US resolution outside the US.²³

The countries identified as having markets most likely to be influenced by events in the United States were Brazil, Japan, South Korea, Australia, Argentina, Chile, South Africa, Canada and Venezuela,²³ hence industry's interest in litigation developments in Argentina.²⁴⁻²⁶

Three provinces in Argentina—Rio Negro, Tierra del Fuego and La Pampa—signed decrees stating their intention to file health care reimbursement cases. The industry was concerned about the decree signed by the province of Rio Negro in 2000 and the fact that provincial officials had contacted US lawyers to assist with the lawsuit.^{24 26} A contract between Rio Negro and US attorneys Charles Siegel and Henry Saint Dahl was prepared, stating that US attorneys would pay for all initiation, preparation and discovery costs and fees regardless of whether the suit was lost, won or settled. For unclear reasons, this contract was never signed,²⁶ and there was no additional information about cases in the other provinces. To discourage these types of cases industry emphasised the extensive economic and administrative burden on the province if a suit was filed such as costs related to the audits of province's health expenses. In Argentina, the losing party

in a trial bears financial responsibility for paying all legal and judicial expenses with exceptions made when a party is not able to bear this economic burden. Thus, provinces were unlikely to sue the tobacco industry in Argentinean courts because of the possible risk of large financial burdens in case of a loss. One group that may be exempt from this burden was the bankrupt health care plans managed by labour unions that would be eligible for legal aid.²⁵

Criminal law provisions and secondhand smoke cases

Two cases were identified where the tobacco industry's responsibility was considered under criminal law^{27 28} for sale of goods harmful to one's health, fraud and homicide. A criminal action case against BAT and PM in Rosario, by plaintiff Enrique Calderari, claimed that smoking caused his mouth cancer. The criminal charges were alleged illegal distribution of products harmful to one's health and fraud. According to the judge, given the voluntary assumption of the risk of smoking, and the public knowledge of those risks, the chain of causation between the manufacturer and the sale of cigarettes, and any consequence of smoking, was broken. Moreover, since the production and distribution of cigarettes is legal, no criminal action could be successful.²⁸ The second criminal action suit we found was filed by the widow of a heavy smoker who had died from tobacco related disease, with charges of homicide, fraud and illegal distribution of dangerous products against Massalín Particulares. The claim was dismissed in December 2002 with similar arguments.²⁷

Tobacco industry documents showed how secondhand smoke (SHS) and the spread of non-smokers' rights was perceived as the "greatest threat to the viability of the tobacco industry".^{29 30} In 1989, industry monitored the development of the *Fernandez v. Nobleza Piccardo S.A.* lawsuit filed in Buenos Aires and related to SHS exposure in the workplace.^{9 10 31} Jesus Eduardo Fernandez was age 60 and had worked as a machine operator from 1975 to 1989,^{32 33} and claimed that he suffered from peripheral vascular disease as a result of 14 years of daily exposure to SHS in the San Martin Plant. Employees received one pack of cigarettes per working day for free and were allowed to smoke cigarettes on the production line at will.³² The defendants used the statute of limitation and the lack of causation as their main defence and overwhelmed the plaintiffs with numerous questions for discovery about lifestyle issues.³⁴ Scientific evidence and expert opinion were not presented and when the plaintiff realised that the proof of causation was the determinant factor in the suit, the time allowed for presenting evidence was over.

Subsequently, BAT produced a report on measurements of environmental tobacco smoke (ETS) in the San Martin plant of Nobleza-Piccardo and in public places in Buenos Aires led by Chris Proctor (BAT scientist; previously Covington & Burling senior scientific advisor (http://tobaccodocuments.org/profiles/people/proctor_christopher_j)).³⁵ The purpose of this "strictly confidential", 60 page report was to measure the levels of SHS in the workplace, in response to the Fernandez claim. This report was especially relevant at the moment as:

ETS issues are likely to intensify in Argentina over the next few years. As far as we are aware, the only scientific data on ETS in Argentina is that acquired in this study.³⁵

Levels of SHS were measured in working areas, smoking areas, offices, and employees' cafeterias within the San Martin plant and the report concluded:

...indicate that it is highly unlikely that there is any ETS present. This cannot be defined categorically as there is a

low level of nicotine (4.5 µg/ml) and a barely detectable amount of ETS related particulates (3 µg/m³), though it is expected that both of these readings would result from the processing operations occurring within SMD.³⁵

The study also calculated the possible exposure to ETS constituents in public places in Buenos Aires, including sites around the claimant's residence, nine restaurants, four bars, train trips, car trips and outdoor places.

It is perhaps not surprising that the ETS levels found in this study of various environments in Buenos Aires, fall within the range of levels found in other parts of the world such as North America and Europe.³⁵

The report was reviewed by a professor of organic chemistry at the University of Buenos Aires, Dr Eduardo Gros, who provided "third-party endorsement of the results", and the report recommended that: "Contact should be maintained with Dr. Gros and assistance given where appropriate."³⁵

Industry surveillance of tobacco litigation

Communication between the tobacco industry subsidiaries on the topic of litigation was supported in a 1996 memorandum between Timothy Lindon (assistant general counsel, PM) and David Murphy (outside counsel for PM), which described the importance of participating in BAT cases:

As we discussed I am attaching for your review the complaint and a draft answer on the Cornejo case. While the case is against the BAT affiliate, Nobleza Piccardo, we share outside counsel and this will most likely serve as a model for the answers in future cases.³⁶

Until 1991, the outside counsel for PM was Klein & Mairal who had handled at least two cases related to SHS and pesticide exposure.^{9 37-39} The 1990 budget detail from PM legal department showed billing for \$19 104 as legal fees from Klein & Mairal,⁴⁰ a prestigious large law firm.⁴¹ Each tobacco company agreed to pay half of the fees billed by Marval, O'Farrell & Mairal.²⁵ The tobacco industry was willing to invest large sums of money in order to win all the cases. Industry's financial commitment to countering litigation on product liability is mentioned in a 2000 BAT report.

We will spend what it takes to win trials but we will analyze what we spend to ensure being spent efficiently and effectively.²⁵

According to this BAT report, Marval, O'Farrell & Mairal received substantial payments from 1995 to 1999.²⁵ At least seven attorneys from five international law firms (Shook, Hardy & Bacon, Chadbourne & Parke, Watchel, Lipton and Rosen & Katz, Hunton & Williams and Davis Polk & Wardwell) collaborated with industry on tobacco litigation cases in Argentina. The activities included reviewing documents,^{36 42 43} providing weekly status charts,^{44 45} travelling to meet with medical experts and local attorneys,⁴⁶ providing examples of responses to complaints,⁴⁷ and participating in communication training seminars for attorneys from Argentina and Brazil.⁴⁸

Litigation prevention strategies

The content of a questionnaire to be used in a proposed survey conducted by PM was included in correspondence between executives of a strategic communications firm and

PM and reflects industry's strategies with regards to litigation.⁴⁹⁻⁵³ The survey results were not available because of their privileged content.⁵⁴ APCO Worldwide (a global strategic communications and public affairs firm created by Arnold & Porter law firm that has represented the US based tobacco industry; <http://www.apcoworldwide.com>) conducted the survey through its public relations division. In a 2000 report to PM, Mark Benson, defined the objective of the study as:

*Assessment of the likely support for tobacco health cost recovery litigation among opinion leading elements in the region and testing themes that may generate public opposition to such a course of action by the governments involved. Determine attitudes and opinions on tobacco policy and assess the best course for company public relations/public affairs programs.*⁵⁵

Focus groups were conducted with activists who drive most of the discussion about litigation against tobacco companies and senior executives of major firms and selected leaders from business advocacy organisations who would tend to be opposed to tobacco litigation, if viewed as a potential threat to their own business.⁵³ APCO considered that the survey could be a powerful outreach tool both for persuading public officials and for pre-empting adequate communication on litigation issues. For example, one of the sections of the survey dealt with the consequences of litigation, but only referred to taxpayers' cost, country image as viewed by foreign investors, loss of jobs, and spread of litigation to other industries.⁵³

In 2000, Gareth Cooper, a litigation counsel for BAT, travelled to Argentina to monitor the development of local product liability litigation.⁵⁶ Cooper considered that the attorneys from the local law firm Noetinger & Armando "were to be commended for the way in which you are dealing with the product liability litigation which we face in Argentina".⁵⁶ Cooper's meeting notes provided strategies of how the tobacco industry aims to control tobacco litigation in Argentina: (1) share best practices between end-markets; (2) transfer know how from US lawyers to local lawyers; (3) increase value added activities and develop models; and (4) to have Argentinean counsels manage a case without any Chadbourne involvement (BAT International counsel).²⁵

The main BAT lobbying activities were monitoring academic meetings, obtaining legal opinion of key professors, reviewing US decisions and articles, reviewing Brazilian decisions and sending them to people who might be interested, and analysing general doctrines.²⁵ Individuals were recruited to be industry representatives and asked to write documents to pre-empt litigation or to give conferences favourable to the pro-tobacco position.²⁵ Furthermore, Cooper noted that the development of the new Argentinean Civil Code could have an impact on product liability issues and was carefully monitored by the Argentinean counsels. He makes reference to a defence strategy in case of a negative impact on the tobacco industry's interests²⁵ and to the development of expert witnesses and the utilisation of US experts for the trials as special projects. Thus it was industry's litigation prevention strategies rather than legal arguments that constituted their first line of defence.⁵⁷

DISCUSSION

In the United States, health care reimbursement cases filed by individual states led to the endorsement of the Master Settlement Agreement (MSA), which entailed a settlement of more than \$200 billion for the tobacco industry.⁵⁸ The tobacco industry closely monitored tobacco litigation in Argentina with

the goal of preventing a legal situation similar to what occurred in the United States. Industry developed scientific arguments,³⁵ evaluated public acceptability of lawsuits,^{49-51 53 55} hired prominent law firms for its defense,^{41 46 59 60} and assured the quality of its counter-litigation strategy by consulting international counsels on the best course of action.^{46 47} Industry's strategy has been effective in obtaining unfavourable results in the tobacco lawsuits filed in Argentina as no tobacco manufacturer has yet paid any money due to damages to an alleged victim of a tobacco related illnesses.

Litigation in Argentina has not yet succeeded in institutionalising compensation for tobacco injuries and has failed to generate significant changes in the tobacco industry practices. Attorneys arguing cases for individuals suing the tobacco industry were always overmatched in resources and could not afford protracted litigation.⁵⁷ Product liability and nicotine addiction cases have had little legal support among Argentinean judges using the "voluntary" nature of smoking and awareness of hazards arguments. The influence of the tobacco industry in the country's economic and political arenas and the perception of these industries as socially responsible corporations support the court decisions to date. In the collective unconscious, there still remains an intense linkage between the notions of smoking and free will. Once again, the social acceptability of smoking in Argentinean society is a barrier to any possible change in tobacco control policies. Thus, if health advocates expect to obtain effective outcomes from litigation, they should first campaign to modify these social beliefs into realistic perceptions of smoking and tobacco industries. Tobacco control advocates have the opportunity to utilise industry documents to disclose the collusion among major international tobacco corporations over their refusal to acknowledge that smoking causes disease. Industry's effective marketing campaign can be transformed into a central and persuasive argument in courtrooms and the popular press in Latin America.

One of the main problems of tobacco litigation in Argentina has been poor use of the extensive scientific information available on the health effects of tobacco smoke.⁶¹ This is a deficiency that should be amenable to corrective action as health advocates can provide potential claimants with scientific evidence and expert witnesses that can support the causal link claims. Argentinean judges have not been receptive to the nature of nicotine addiction and the linkage between marketing campaigns and development of addiction among potential smokers. Appropriate use of available evidence in these areas is crucial for the potential success of litigation.

Tobacco litigation may also be enhanced in Argentina by utilising novel legal approaches that proved effective in other parts of the world. A broadening of the pairing of smoker-victim and manufacturer-defendant, to include persons exposed to SHS, activists, and health care professionals is desirable. An expansive range of "blameless victims" of tobacco will concentrate the debate on the industry's misbehaviours instead of the "voluntary assumption of risk" argument used by the tobacco industry. Thus, the class action suit can be a useful method to expand tobacco litigation. A class action is a legal tool that enables members of a group of persons suffering from a common injury to bring a suit to secure a definite adjudication of a remedy for that injury on behalf of the member of the class. Since 1994, as a result of a constitutional amendment, class actions have started to be filed in Argentinean courts, although restricted to selected cases requiring a strict definition of class, and the procedural rules are more severe. Thus, the practical implementation of this tool is debatable. In 1993, a new consumer law was passed in Argentina and stated that the producers or sellers of goods must provide truthful and objective information

What this paper adds

Tobacco litigation has proven to be a very effective device in tobacco control in the United States. However, tobacco litigation in the rest of the world remains underdeveloped. There have been no published articles documenting tobacco litigation in any Latin American country.

This paper presents an analysis of some of the most significant tobacco litigation cases in Argentina, emphasising the role and strategies of the tobacco industry in opposing this litigation. It demonstrates how the tobacco industry hired legal consultants from prestigious international and Argentinean law firms, developed litigation prevention research programmes, monitored legal academic congresses, controlled the development of new product liability legislation, contacted important legal authors to obtain favourable opinions and closely observed the development of litigation in Argentina. Furthermore, this paper discusses the prospects for the future of using tobacco litigation as a tool to establish tobacco control objectives.

regarding the essential characteristics of the goods or services. Goods or services that do pose a risk to the health or physical safety of consumers must be placed on the market with adequate warnings sufficient to guarantee the safety of consumers. The new protections granted by this consumer's law could engender more new tobacco litigation strategies linked to health care policy.

In Argentina, the tobacco industry has been successful in lobbying public officials to avoid smoke-free policies.⁶² A project was launched in Latin America to fuel the controversy about the health effects of SHS and to oppose smoke-free policies.⁶³ While the battles over the adoption and enforcement of tobacco control legislation continue throughout the country, one should consider how judicial decisions may play a role in reducing the harm from SHS. Learning from past mistakes and incorporating components from the successful approach in North America can map out litigation strategies in Argentina. The tobacco industry documents have given the public health community unprecedented insight into industry motives, strategies and tactics not available from any other source.⁶⁴ Health advocates in Latin America should utilise tobacco industry research to develop potential litigation strategies based on the industry's connections, concerns, weaknesses and intentions.

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The Lighter Side



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