

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PHILIP MORRIS USA, INC. f/k/a  
PHILIP MORRIS INCORPORATED, et al.,

Defendants.

Civil Action  
No. 99-CV-02496 (GK)

**MOTION OF THE LUNG CANCER ALLIANCE  
FOR LEAVE TO APPEAR AS AMICUS CURIAE**

Amicus the Lung Cancer Alliance (LCA) respectfully moves for leave to appear as amicus curiae in this case. There follows a brief description of LCA and an explanation for our reasons for requesting leave to submit a brief limited to the question of the appropriate remedy.

**A. The Lung Cancer Alliance.** LCA is a nonprofit public health and patient advocacy organization. LCA is the only national organization dedicated solely to advocating for people with lung cancer, their families and caregivers, and those at risk for the disease. Founded in 1995 in Washington State as the Alliance for Lung Cancer Advocacy, Support and Education, LCA took its current name in 2005 and is now headquartered in Washington, D.C. LCA's Board of Directors and Medical Advisory Board include nationally recognized experts in lung cancer research, treatment and care,

as well as individuals with extensive experience on policy issues affecting lung cancer patients.

Through education, advocacy, public events and other activities, LCA seeks to inform policymakers and the public at large concerning the magnitude of lung cancer as the leading cancer killer; the need for more effective smoking cessation programs, greater resources for research on lung cancer, support for early detection, and more effective treatments for all disease stages. LCA also operates patient education and support programs for people directly affected by lung cancer, distributes literature, and maintains a website at [www.lungcanceralliance.org](http://www.lungcanceralliance.org) with current information on all aspects of lung cancer diagnosis, treatment and disease management. LCA's overriding goal is the eventual elimination of lung cancer.

**B. Interest of Proposed Amicus.** LCA's interest in this case derives from the fact that cigarette smoke is the cause of the overwhelming majority of lung cancer cases. Eighty-seven percent of lung cancer fatalities are smoking-related. The choice of remedies in this case has enormous implications for LCA's constituency.

While LCA strongly supports the proposals of the United States and the Public Health Intervenors aimed at smoking cessation and at limiting the numbers of new smokers (especially young people), in the proposed filing we urge that those remedies alone fail to take account of some of the most pernicious consequences of Defendants' conduct, and by themselves would not suffice to "prevent and restrain" further violations of the statute, 18 U.S.C. 1964(a).

The United States has alleged, offered voluminous evidence on, and we believe now proven a teeming half-century of fraud on the part of the Defendants, including their

denials of the severe harms to health associated with smoking long after they themselves were aware of these harms; their elaborate and lavishly funded efforts to distort and conceal in the interest of continued profits the science of smoking and health; and their repeated bad-faith denials even in recent years of the addictiveness of cigarettes and their concomitant marketing of cigarette smoking as an unfettered consumer “choice.”

As an entity with a specific interest in lung cancer, LCA seeks to provide the Court with its perspective on the enormously significant consequences of this long history of misconduct for lung cancer victims and for lung cancer’s stigmatized status in our society. Defendants’ conduct had had a profound effect on the social meaning of lung cancer and of the experience of its victims (the vast majority of them smokers or former smokers). It is, we argue, largely as a result of the remarkable success of Defendants’ massive public-relations success at portraying smoking as a mere consumer choice -- rather than the tenacious addiction Defendants well knew it to be -- that lung cancer sufferers stand alone among cancer victims in being routinely blamed for their own disease. As a result of the unique stigma that defines lung cancer as the “smoker’s disease,” lung cancer research has lagged far behind other major cancers in research funding and early detection programs, thereby contributing to extremely low survival rates and the fatal lack of broadly available early detection programs that are now routine for other cancers. The stigmatization of lung cancer and its attendant consequences represents the direct consequence of Defendant’s massive public-relations success at selling cigarette smoking as a personal choice, rather than an addiction.

We believe that the remedy imposed by this Court must take account of Defendants’ central role in shaping the very meaning of lung cancer as a disease in the

United States and the imposing gratuitous hardships of its victims. Therefore, our brief proposes that, in addition to smoking-cessation and smoking prevention efforts, the Court should require Defendants to contribute to a fund to support independent lung cancer research and to support the development of a nationwide lung cancer early-detection program. We believe that prospective remedy is both consistent with the Court of Appeals' reading of Section 1964(a), *Philip Morris USA Inc. v. United States*, 396 F.3d 1190 (D.C. Cir. 2005), and vital to ensure that the cruel stigmatization of lung cancer and its victims attributable to Defendants' misconduct does not dampen the prospects of future lung cancer victims. No other participant in these proceedings has pressed this vital point, and we therefore request leave to raise it for the Court's consideration.

Undersigned counsel has met and conferred with counsel for the parties. Plaintiff the United States and the Public Health Intervenors will not oppose this motion; the Joint Defendants other than Liggett will oppose this motion, as will Defendant Liggett.

Respectfully submitted,

Dated: Sept. 9, 2005

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