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COURT RULING SHOULD BRING AN END TO HAZARDOUS FEDERAL TOBACCO SUIT

The Washington Legal Foundation (WLF) today praised the U.S. Court of Appeals for the D.C. Circuit's ruling in *U.S. v. Philip Morris USA Inc., et. al.* and called on the Department of Justice (DOJ) to drop what remains of its misguided suit. In its ruling, the court rejected the federal government's five-year effort to judicially impose a \$280 billion tax on tobacco consumers. After analyzing the decision, WLF's lawyers also concluded that the D.C. Circuit panel's reasoning is firmly consistent with long-settled principles of law, and thus any attempt to appeal is unlikely to succeed.

"DOJ's suit was never about public health. Unfortunately the lawsuit's goal has been to raise revenue and impose controls on a legal consumer product through unaccountable litigation, rather than by legislative means," said Daniel J. Popeo, WLF's Chairman and General Counsel. "It's time for federal officials to stop sending the public mixed messages. While the Bush Administration is pursuing policies to bring fairness and balance to our civil justice system, its Justice Department is endorsing the very demonize-and-sue trial lawyer tactics that have left that system in disrepair," Popeo added. "The court's ruling is a strong signal to DOJ that it should drop this suit. Hopefully other responsible policy makers will be echoing that message in the coming weeks."

The legal theory the D.C. Circuit rejected, which the government had to pursue after the trial judge dismissed equally ambitious claims under Medicare laws, represented a highly novel interpretation of the federal racketeering law, RICO. "The government's claim that RICO could force companies to forfeit past profits as a remedy for alleged fraud may be popular in academic circles, but a fair reading of the statute makes it clear no such remedy is available, and that's how the court ruled," said Glenn G. Lammi, Chief Counsel of WLF's Legal Studies Division. "It is highly unlikely that DOJ's theory, or the expansion of judicial authority it would engender, will find favor from the entire D.C. Circuit or the U.S. Supreme Court – something that should weigh against the Solicitor General's office pursuing an appeal," Lammi added.

"All that remains of this case," WLF Chairman Popeo concluded, "is an opportunity for the Department of Justice to seek relief measures which the industry has *already* agreed to, and is already following, as part of the 1998 settlement of state attorneys general lawsuits. With the threat of terrorism still looming, the federal government can't afford to waste any more time or resources on a copycat lawsuit."

Washington Legal Foundation, a national, non-profit public interest law and policy center, has opposed government abuse of the legal system for over 28 years. WLF's Litigation and Legal Studies Divisions have played an integral role in explaining the pitfalls of activist government litigation to policy makers and the public. For more information and WLF materials on DOJ's tobacco lawsuit and related topics, visit our website at <http://www.wlf.org>.