

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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|---------------------------|---|------------------|
| UNITED STATES OF AMERICA, | : | |
| | : | |
| Plaintiff, | : | |
| | : | Civil Action No. |
| v. | : | 99-2496 (GK) |
| | : | |
| PHILIP MORRIS USA, Inc., | : | |
| f/k/a Philip Morris, Inc. | : | |
| <u>et al.</u> | : | |
| Defendants. | : | |

ORDER #523

This matter is now before the Court on the Motion for Summary Judgment filed by Defendant Liggett Group Inc. ("Motion"). Upon consideration of the Motion, the Opposition, the Reply, and the entire record herein, and for the reasons set forth in the accompanying Memorandum Opinion, Defendant Liggett's Motion is **denied.**

April 7, 2004

_____/s/_____
Gladys Kessler
United States District Court Judge

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MEMORANDUM OPINION

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I. BACKGROUND

Plaintiff, the United States of America ("the Government") has brought this suit against the Defendants¹ pursuant to Sections 1962(c) and (d) of the Racketeer Influenced and Corrupt

¹ Defendants are Philip Morris USA Inc. (f/k/a Philip Morris Incorporated), R.J. Reynolds Tobacco Company, Brown & Williamson Tobacco Corporation (individually and as successor by merger to the American Tobacco Company), Lorillard Tobacco Company, Altria Group Inc. (f/k/a Philip Morris Companies, Inc.), British American Tobacco (Investments), Ltd., The Council for Tobacco Research-U.S.A., Inc., the Tobacco Institute, Inc., and The Liggett Group, Inc.

Organizations Act ("RICO"), 18 U.S.C. § 1961, et seq.² Defendants are manufacturers of cigarettes and other tobacco-related entities. The Government seeks injunctive relief and billions of dollars for what it alleges to be Defendants' unlawful conspiracy to deceive the American public. The Government's Amended Complaint describes a four-decade long conspiracy, dating from at least 1953, to intentionally and willfully deceive and mislead the American public about, among other things, the harmful nature of tobacco products, the addictive nature of nicotine, and the possibility of manufacturing safer and less addictive tobacco products. Amended Complaint ("Am. Compl.") at ¶ 3.

The Government seeks equitable relief under Section 1964(a) of RICO. In order to obtain the requested injunctive relief and disgorgement, the Government must demonstrate "a reasonable likelihood of future RICO violations." United States v. Philip Morris Inc., et al., 116 F. Supp.2d 131, 148 (D.D.C. 2000). Section 1964(a) is designed to prevent and restrain future conduct rather than to punish past conduct. See United States v. Carson, 52 F.3d 1173, 1182 (2d. Cir. 1995).

² The Complaint originally contained four claims under three statutes. On September 28, 2000, the Court dismissed Count One (pursuant to the Medical Care Recovery Act, 42 U.S.C. § 2651, et seq.) and Count Two (pursuant to the Medicare Secondary Payer provisions of the Social Security Act, 42 U.S.C. §§ 1395y(b)(2)(B)(ii) & (iii)). See United States v. Philip Morris, 116 F. Supp.2d 131 (D.D.C. 2000).

II. Analysis

In the present Motion, one of the Defendants, Liggett Group Inc. ("Liggett"), seeks summary judgment on the grounds that it affirmatively withdrew in the mid-1990s from any alleged conspiracy which might have existed. In light of this alleged withdrawal, Liggett asserts that the Government cannot meet its burden of demonstrating that Liggett poses a continuing threat of RICO violations in the future.

While the Government acknowledges that Liggett has been somewhat helpful and distinguishes Liggett's conduct from that of the other Defendants, the Government asserts that the evidence of withdrawal which Liggett claims is "undisputed" is in fact very much in dispute. According to the Government, Liggett has failed to "come clean" to authorities because it continues to assert that there never was a RICO conspiracy and that if there was, it never participated in it. See Govt's Opp'n at 20. In addition, the Government claims that Liggett's overall behavior falls far short of action to disavow or defeat the conspiracy, as required to establish withdrawal.

A. Summary Judgment Standard

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment is appropriate if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any

material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Material facts are those that "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In considering a summary judgment motion, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Id. at 255; see also Washington Post Co. v. United States Dep't of Health and Human Servs., 865 F.2d 320, 325 (D.C. Cir. 1989).

Additionally, "if the evidence presented on a dispositive issue is subject to conflicting interpretations, or reasonable persons might differ as to its significance, summary judgment is improper." Greenberg v. FDA, 803 F.2d 1213, 1216 (D.C. Cir. 1986). At the summary judgment stage, "the court is not to make credibility determinations or weigh the evidence." Dunway v. Int'l Brotherhood of Teamsters, 310 F.3d 758, 761 (D.C. Cir. 2002).

B. There Are Material Facts in Dispute About Whether Liggett Withdrew from the Alleged Conspiracy

In order to be awarded the equitable relief it seeks under Section 1964(a), the Government must prove a reasonable likelihood of future RICO violations on the part of Defendants. Liggett claims that the Government cannot as a matter of law meet this burden because it withdrew from the alleged conspiracy in the mid-1990s and thus cannot pose a risk of future RICO violations.

To establish withdrawal, a co-conspirator must prove either

