Unintended consequences:

How litigation exposed tobacco industry secrets & how it can do it with Big Pharma

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Selling Sickness, February 22, 2013



Litigation can result in

- Money for plaintiffs
- Deterrent to others
- Negative PR
- Public education on industry practices
- Industry reforms
- Release of internal industry documents



Tobacco Litigation

- Millions of documents from industry files now public
- Government cases against industry
 - State Attorneys General Master Settlement Agreement, 1998
 - US Department of Justice (RICO case) Judge Kessler's ruling, 2006
- Documents from all health-related lawsuits until 2021 to be made available



Tobacco Litigation

Judge Kessler's rationale for ordering continuation of public document disclosure:

Defendants tried to protect themselves from litigation and regulation by

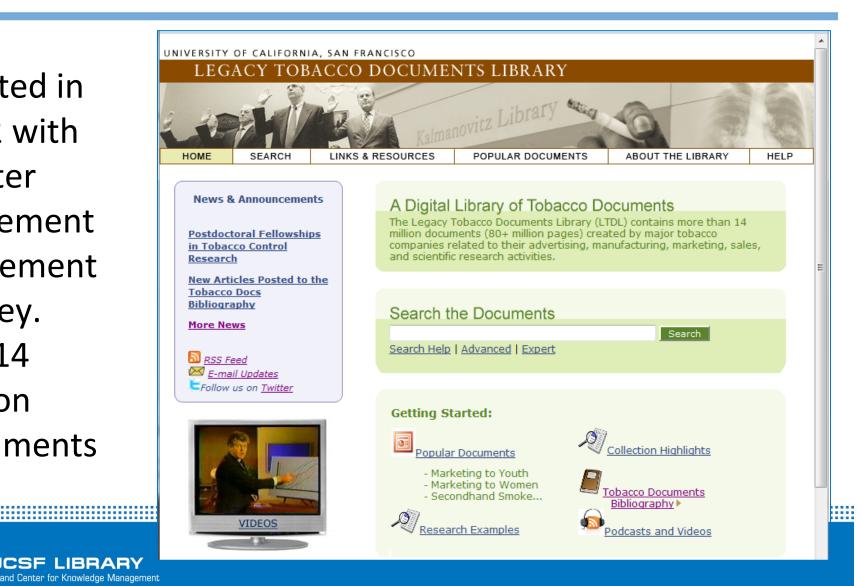
- suppressing and concealing scientific research,
- destroying documents, and
- shielding other documents from public view by asserting that they were "privileged" and protected by law.



Legacy Tobacco Documents Library (LTDL)

Created in 2002 with Master Settlement Agreement money. **Has 14** million documents

JCSF LIBRA



http://legacy.library.ucsf.edu

- One website for many companies' documents
- Permanently available to the public
- Letters, scientific research, marketing campaigns, political activities & more
- Robust search and retrieval software
- Used by academic researchers, journalists, advocates, policy makers, students, attorneys, bloggers, etc.
 - 790 publications, most peer reviewed



Tobacco Industry Documents

- Expose industry activities and practices
- Denormalize industry
- Evidence for reform campaigns
- Energize activists
- Resource for attorneys



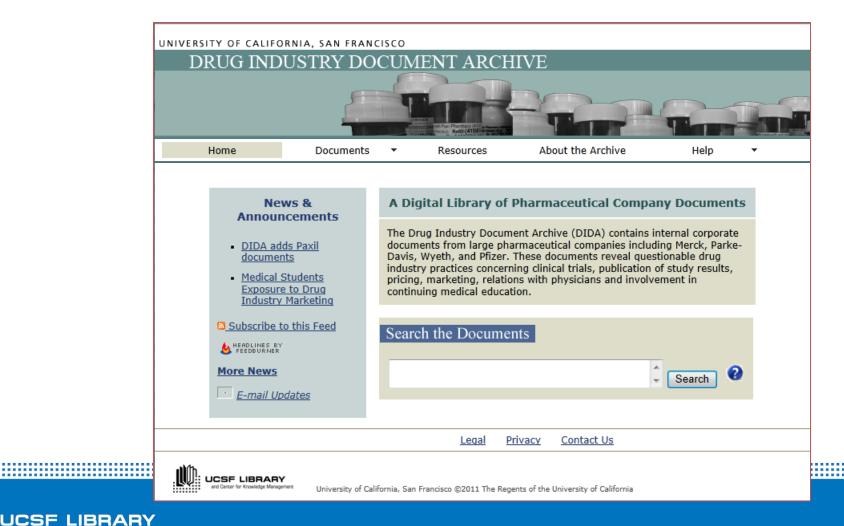
Pharma Litigation

- Litigation from injured parties, insurers, whistle blowers, states/Feds
- No industry-wide litigation
- Not many documents are publically available
- Many cases, some large awards
- Expert witnesses have access to documents



Drug Industry Document Archive (DIDA)

and Center for Knowledge Management



http://dida.library.ucsf.edu

- UCSF professors (expert witnesses) donated documents – 2005 went online
- Contains 3,160 documents
- Minimal functionality
- <20 articles published</p>
- 11,500 visits annually 60% from US
- Academic researchers, journalists, lawyers, bloggers, policy makers



Pharma and Tobacco Similarities

- Large multinational corporations
- Lobbyists -- many
- Junk science
- Not deterred by adverse judgments/penalties
- Expert witnesses have access to documents
- "Regulated" by FDA
- Supported by influential industries, astroturf groups
- First Amendment issues



Pharma and Tobacco Differences

Pharma

- Sells "good" products
- No industry-wide lawsuits
- Alliance with academia, publishing, gov't, healthcare
- Diffuse aims of pharma reform

Tobacco

- Sells "bad" product
- MSA/RICO documents & money
- Local/state reforms possible



Conclusions

- Expose industry tactics and operations
- Documents from litigation, hearings useful
- Lawyers must include request to judge for document disclosure
- DIDA is a good place for documents
- DIDA needs further funding

