

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



UCSF LIBRARY
and Center for Knowledge Management

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

The screenshot shows the website for the Legacy Tobacco Documents Library (LTDL) at the University of California, San Francisco. The header includes the university name and the library title. A navigation bar contains links for HOME, SEARCH, LINKS & RESOURCES, POPULAR DOCUMENTS, ABOUT THE LIBRARY, and HELP. The main content area is divided into several sections: 'News & Announcements' with links for postdoctoral fellowships, new articles, and more news, along with RSS, email, and Twitter options; a search bar with a 'Search' button and links for search help, advanced search, and expert search; and a 'Getting Started' section with icons and links for Popular Documents (listing marketing to youth, women, and secondhand smoke), Collection Highlights, Tobacco Documents Bibliography, and Research Examples. A video player is also visible at the bottom left of the main content area.



<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)

UNIVERSITY OF CALIFORNIA, SAN FRANCISCO
DRUG INDUSTRY DOCUMENT ARCHIVE

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A Digital Library of Pharmaceutical Company Documents

The Drug Industry Document Archive (DIDA) contains internal corporate documents from large pharmaceutical companies including Merck, Parke-Davis, Wyeth, and Pfizer. These documents reveal questionable drug industry practices concerning clinical trials, publication of study results, pricing, marketing, relations with physicians and involvement in continuing medical education.

Search the Documents

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<http://dida.library.ucsf.edu>

- UCSF professors (expert witnesses) donated documents – 2005 went online
- Contains 3,160 documents
- Minimal functionality
- <20 articles published
- 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

