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| *September 10, 2004* | |

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**1. New Law Cracks Down on Underage Drinking**

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| http://a.abclocal.go.com/images/wjrt/wjrt_111303_da_booze.jpg  (ABC12 Image) |

By Matt Franklin – *ABC12 News*

August 31, 2004

**Young people may spend time behind bars**

Mid Michigan -- Starting Wednesday, underage drinkers will face tougher penalties if they are caught.

This comes after the state amended its Constitution, giving judges the option to put them behind bars. Matt Franklin had more.

Under the old law, minors would get ticketed or receive a fine if caught, but they didn't face any jail time. But that will all change.

It's been eight years since Connie Ayers lost her daughter in a drunk-driving accident. Hoping to make a difference in the lives of others, Ayers heads up the Genesee County Chapter of Mother's Against Drunk Driving.

It's a group that is supporting the change in Michigan's underage drinking law.

"It puts teeth into a lot that was there for underage drinkers," she said. "It gives judges a little bit more to work with in case the kids don't follow through with what they're supposed to do."

Under the new terms, after a first a offense, violators could face upwards of 30 days in jail if they do not comply with the terms of their probation. Three or more convictions could land them 60 days in jail.

Officials hope the change in laws will not only curb underage drinking, but also cut down on the number of drunk-driving related accidents.

Ayers hopes parents will warn their kids of the new law so they won't have to endure a tragedy like hers. "If a parent hears about this, they need to tell their kids, 'You could go jail. You could die and you could go to jail,'" she said.

In addition to jail time, violators could also face fines upward of $500.



**2. Last Call for Beer Ads?**

By Chris Isidore - *CNN/Money*

September 3, 2004

**There's a new push to ban tens of millions of dollars in beer money that flows to college sports.**

NEW YORK -- It might seem easier to get college fraternities to give up their beer than it is to get college athletics to give up their beer money.

Beer, and money from beer companies, have become integral parts of college sports.

The chances of watching alcohol-free bowl games and basketball tournaments are about the same as the odds of seeing MIT playing for a national championship. But that's not going to stop some dedicated activists from trying to wring the alcohol dollars out of sports.

Beer and other alcohol companies spent $50 million advertising on college sports broadcasts last year, according to the Sports Business Journal. That's about 5 percent of the $1 billion in advertising spent on those games overall.

Many schools and conferences get direct sponsorship dollars, too. One Big 12 school got as much as $450,000, according to the publication. The Journal found that 45 percent of the Division 1A football schools get direct sponsorship dollars from alcohol companies, and another 25 percent get indirect money through advertising.

The effort shut off the alcohol's ad and sponsorship dollar tap is being led by the Center for Science in the Public Interest, and backed by the Center on Alcohol Marketing and Youth. But it's not just modern day Carrie Nations getting into the game. Some of the highest profile leaders of the effort come from the inner sanctum of big time: big dollar college athletics.

Among those leading the charge are Ohio State athletic director Andy Geiger, Penn State football coach Joe Paterno and U.S. Rep. Tom Osborne, R-Neb., the former coach of the University of Nebraska football team.

"Alcohol abuse is the leading cause of death on college campuses," said Osborne, who has introduced a non-binding resolution in Congress urging schools and the NCAA to stop taking money from beer and booze concerns.

But Osborne is realistic about the chances for even his relatively mild resolution getting through Congress. He's had trouble getting co-sponsors, not surprising given the fact that about 85 percent of the House and two-thirds of the Senate have received campaign contributions from the beer, wine or spirits industry in the current election cycle.

"The alcohol industry has lobbied very hard on this issue. I've had people tell me they've been told to stay away from Tom Osborne on this issue," he said.

But Osborne, Geiger and others in the movement are more hopeful they can eventually convince the colleges that make up the NCAA to push for a ban through that body.

"I just think it's the right thing to do," says Osborne.

"The discussion has increased enormously within the schools of the NCAA in the last year," said George Hacker, director of the Alcohol Policies Project at the CSPI. "We're on the right track, but those few schools that really profit from the relationship have the toughest decision to make."

Ohio State is one of those schools. But after the Buckeyes' football victory over University of Michigan at the end of the 2002 set off a drunken riot on campus, Geiger decided things had to change.

He doesn't have control over the OSU's television contracts, but the school did negotiate with its radio rights holder to get it to stop selling ads to alcohol companies. That reduced the rights the school gets by about $85,000, money OSU hopes to recoup by selling the time itself to other advertisers.

Geiger says it's hard to project how much a ban would eventually cost college athletics.

"There are other product lines that would buy that time," he said. "People would have to roll up their sleeves and work hard."

Sports broadcasting consultant Neal Pilson said that if all beer and alcohol dollars were banned from college sports, the rights fees would eventually take a hit.

"The significant dollars paid by Bud and other beer companies could not be replaced," he said. "There's not other money that would automatically flow if there was a complete ban."

The Beer Institute, the industry trade group, did not have an immediate comment on the efforts. In the past, its executives have argued that fewer than 10 percent of the viewers of sporting events are under-age. Advertising their products on the games, then, is an appropriate way to reach their target older audience.

So far, broadcasters are not particularly concerned.

"Down the road, if someone else creates different rules of the game, we have to play by them," said Loren Matthews, ABC Sports senior vice president of programming. But for now, he doesn't think there's anything wrong with accepting alcohol ads on college sports.

Pilson said that it's impossible to imagine a ban on alcohol ads on pro sports, where far more ad and sponsor dollars are spent. And without a ban on pro sports alcohol ads, he argues, a college-sports ban would be ineffective.

Geiger says he's not arguing that a ban would reduce campus drinking. For him the issue is mainly a matter of principle. "We'd like very much to see a reduction in the interdependence of beer and football," he said.

It'd be nice to see that kind of principled stand triumph. But when it comes to the world of big dollar college sports, such a principled effort will be too much for the decision makers to swallow.



**3. Dispiriting Outlook for Diageo**

By David Jones  
September 2, 2004

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LONDON (Reuters) - Shares in Diageo have dipped after the world's biggest spirits firm said tough European markets and a weak dollar would continue to hold back growth and reported an expected 1 percent rise in annual earnings.

The maker of Smirnoff vodka and Guinness beer reiterated on Thursday it expected similar rises in sales and profits in its current financial year, and so disappointed investors by saying it saw no major changes in the trading environment it faces.

Many investor had looked forward to some view on improving trends in Diageo's market over the summer months, but as the group stuck to its financial guidance given back in July, its shares dipped 3.1 percent to 662-1/2 pence by 8:40 a.m.

The company behind Johnnie Walker scotch and Captain Morgan rum posted earnings per share of 48.2 pence for the year to June 30, largely in line with analyst and company forecasts of around 48p, and compared to the previous year's 47.7p.

Finance Director Nick Rose said Europe, especially France, Germany, Britain and Ireland, remained a challenging market with price rises difficult to implement with demand depressed.

"What we are saying is that overall nothing has changed over the last couple of months since we issued the July trading update," Rose said.

The group has suffered from tough trading in many European markets and has struggled to push through price increases while demand has stayed weak, but North America which accounts for nearly 40 percent of profits continued to see growth.

Analyst David Liston at Barclays Private Clients said the results were in line with expectations, but there was nothing in the statement to suggest trading was improving and there was better value to be had from rival drink stocks.

Diageo house broker Cazenove lowered its stance on the group's stock to "in-line" from "outperform" after the results.

Diageo [DGE.L](http://www.reuters.co.uk/financeQuoteLookup.jhtml?ticker=DGE.L&qtype=sym&infotype=info&qcat=news) reported underlying annual sales rose 6 percent and operating profits 7 percent, and said it expected similar trends in the current year in line with its July trading statement.

"As we begin the new financial year we reiterate the guidance we gave at the time of the July trading statement as we do not see any major changes in the trading environment we face," said group Chief Executive Paul Walsh in a statement.

The company warned in July that currency impacts, mainly the weaker U.S. dollar, steady profit margins and static underlying sales growth would hit growth in its annual earnings.

The company raised its full-year dividend by 7.8 percent to 27.6p a share.

Diageo shares trade on a higher 2005 price-earnings ratio than its two rivals Allied Domecq [ALLD.L](http://www.reuters.co.uk/financeQuoteLookup.jhtml?ticker=ALLD.L&qtype=sym&infotype=info&qcat=news) and Pernod Ricard [PERP.PA](http://www.reuters.co.uk/financeQuoteLookup.jhtml?ticker=PERP.PA&qtype=sym&infotype=info&qcat=news) , buoyed by its share buy-back programme, but some analysts prefer Pernod with its greater growth potential.

Diageo shares have outperformed Allied by 10 percent since the beginning of this year while beating the DJ Stoxx European food and beverage index [.SX3P](http://www.reuters.co.uk/financeQuoteLookup.jhtml?ticker=.SX3P&qtype=sym&infotype=info&qcat=news) by 7 percent.



**4. U.S. Wine Consumption Hits All-Time High**

Source: *Adams Beverage Group*  
September 8, 2004

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**Per Capita Consumption on the Rise as Wine Becomes Mainstream**

NORWALK, Conn./PRNewswire/ -- U.S. wine consumption climbed 5.2% in 2003 to 258.3 million 9-liter cases, the latest increase in a decade of steady growth and a new all-time high on a case basis, according to the 2004 edition of Adams Wine Handbook published by Adams Beverage Group.

"Wine today is a part of the very fabric of American life, as more and more people enjoy it when relaxing, at social occasions and routinely with meals," said Tiziana Mohorovic, spokesperson for Adams Beverage Group.

Per capita consumption of wine reached 2.98 gallons per adult in 2003 -- its highest level since 1989 when wine coolers reached the zenith of their popularity. "The difference now is that table wines -- specifically varietals of all kinds and from countries around the world -- are fueling the increase in total wine consumption," said Mohorovic.

Consumers are eating out more and enjoying wine as an accompaniment to their food. Wines by the glass and half bottles, along with a plethora of label choices from around the world, have made wine more accessible and affordable. Home entertaining also has been increasing and consumers are experimenting with a range of wine styles and price points. Wine continues to benefit from the airing of the French Paradox on 60 Minutes in 1991 and subsequent media attention that has focused on the apparent health benefits of moderate red wine consumption.

All wine categories except wine coolers gained ground last year. Consistent with recent trends, imported wine offerings -- regardless of category -- grew at faster rates than domestics. Imported wines overall climbed 11.3% in 2003, whereas domestics rose 3.4%. Double-digit gains among imported table wines drove overall growth in imports.

The Adams Wine Handbook 2004 contains wine consumption by category, state and metro market. Brand data, retail sales, consumer demographics, and industry statistics are included. The cost of the publication is $595. The Adams Beverage Group serves all aspects of the beverage alcohol industry through Cheers, Beverage Dynamics and StateWays magazines, Adams Beverage Handbooks and Adams Business Research.



**5. Anheuser-Busch Expects 11 Percent Earnings Per Share Growth in 2004**

Source: *Anheuser-Busch*  
September 8, 2004

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**Company Highlights New Product and Package Innovations in United States and Strategic Growth Position in China**

BOSTON, MA/PRNewswire-FirstCall/ -- Anheuser-Busch (NYSE: [BUD](http://finance.yahoo.com/q?s=bud&d=t) - [News](http://finance.yahoo.com/q/h?s=bud)) is enjoying another year of strong growth in earnings per share, cash flow and return on capital. This represents the sixth straight year of solid growth, company executives told investors at the Prudential Consumer Conference today. Despite the general slowdown in spending for consumer products this summer, Anheuser-Busch's earnings per share for the full year are expected to grow approximately 11 percent.(1) This includes dilution from the company's acquisition of Harbin and excludes the benefit of the commodity hedge gain in the first quarter.

August A. Busch IV, president of Anheuser-Busch, Inc., also announced a series of new initiatives aimed at increasing beer sales volume and market share growth.

In October, Anheuser-Busch will add another flavor to the Bacardi Silver family with the introduction of its newest offering, low-carb Bacardi Silver Green Apple.

In addition, the company is developing a variety of other new products it intends to test in the coming months, featuring unique flavors and varying degrees of carbohydrates, calories and alcohol content, in order to capture incremental volume opportunities.

The company will also continue to step up innovation with new packaging.

Anheuser-Busch has been rolling out new Bud Light applied plastic label bottles, which will be available nationwide over the next six to nine months. "Our new Bud Light applied plastic label bottle enhances the sophistication and image of the nation's number one beer brand," Busch said.

Next week, Anheuser-Busch will introduce a new 16-ounce aluminum bottle for Michelob, Michelob Light and Anheuser World Select, Busch said. This unique, high-end aluminum bottle will be offered in bars, clubs and convenience stores.

Busch also indicated that the Budweiser family is leveraging its freshness advantage by expanding communication of the fact that "Fresh Beer Tastes Better" through a new campaign that combines advertising, on-premise promotions and public relations initiatives. Three million on-premise consumers are expected to sample the freshest Budweiser and Bud Light available as a part of this program.

He also told investors that the domestic beer pricing environment remains very favorable. "Beer is an image-driven product and consumers are continuing to trade up," he said. Consistent with the company's practice of implementing moderate annual price increases in two phases, Anheuser-Busch will be initiating selective pricing actions in the fourth quarter of this year and first quarter of 2005.

Busch reported that, for the first half of this year, domestic beer industry shipments were on track for a solid recovery after a soft 2003. "From mid-June through August, however, consumer demand for beer slowed, as it did for many other consumer product categories," continued Busch. Abnormally cool or wet weather in some key markets has played a part, and higher gas prices have also dampened sales.

Although sales over the important Labor Day holiday were positive versus the comparable period last year, Anheuser-Busch's sales-to-retailers in the third quarter to date have declined 1.2 percent. Year-to-date, sales-to- retailers are up 0.8 percent. The company now expects its sales-to-wholesalers to increase approximately 1 percent for the full year.

W. Randolph Baker, vice president and chief financial officer, told investors at the conference about Anheuser-Busch's international strategy and emphasized the company's expanded participation in the Chinese beer market.

"China is the world's largest beer market in terms of volume and growth. Over the past five years, the Chinese beer industry has grown more than 5 percent annually. The country's relatively low per capita rate of consumption has been increasing and is supported by an expanding economy and rising disposable income," Baker reported.

Anheuser-Busch entered the Chinese beer market in 1995 with the purchase of a brewery in Wuhan for brewing and packaging the Budweiser brand. Baker commented that, unlike most foreign brewers' brands, the sales of the company's flagship brand in China have developed into a very profitable business.

"To expand our participation in this major growth market, we have made investments in two leading Chinese brewers," Baker continued. In 2002, Anheuser-Busch formed a strategic alliance with Tsingtao, the leading brewer in China with a 13 percent share. Anheuser-Busch will ultimately gain a 27 percent ownership interest in Tsingtao. In recent months, Anheuser-Busch has acquired ownership of Harbin Brewery Group, China's fourth largest brewer with a 5 percent share of the Chinese beer market. "With its strong market position in Northeast China, Harbin is a good complement to our successful Budweiser operations and Tsingtao partnership," Baker added.

Mexico is also an excellent market for Anheuser-Busch. It is the world's second largest beer market in operating profits, behind only the United States, and has experienced strong volume growth over the past five years, growing an average of 2-1/2 percent per year, Baker said. Anheuser-Busch has a 50 percent stake in Modelo, which has a 56 percent share of the Mexican beer market and its Corona brand is the No. 1 import in the United States.

"Our international beer segment is making a significant contribution to Anheuser-Busch's earnings growth, and we are strategically well positioned for long-term growth with our expanded position in China and our 50 percent ownership of Modelo," observed Baker.

"We remain confident in our ability to achieve double-digit earnings per share growth over the long-term, along with continued improvements in return on capital," concluded Baker.



**6. This Song Is Brought to You by...**

**By Evelyn Nussenbaum – *The* *New York Times***

September 6, 2004

Television is not the only fertile ground for product placement. Record executives, plagued by falling sales and online piracy, are trying to blend brands with music. For instance, Rémy Red, a fruit and cognac mix from Rémy Martin, is sponsoring Angie Stone's summer concert tour, where she has been performing her song "Rémy Red."

Last summer, Jewel performed her song "Intuition" at a concert sponsored by Schick - which had a new razor with the same name. And the rapper Ms. Jade drove a Hummer in her "Ching Ching" video; [General Motors](http://www.nytimes.com/redirect/marketwatch/redirect.ctx?MW=http://custom.marketwatch.com/custom/nyt-com/html-companyprofile.asp&symb=GBM) paid $300,000 for that placement. Jarrod Moses, the chief executive of Alliance (the product placement arm of the marketing firm [Grey Global](http://www.nytimes.com/redirect/marketwatch/redirect.ctx?MW=http://custom.marketwatch.com/custom/nyt-com/html-companyprofile.asp&symb=GREYB)), negotiated the razor deal. "The music business is looking at brands, they're looking at television, and they're saying, 'Help me,' " he said.

Next week, Mr. Moses will oblige, throwing a conference to match up music and brand executives. Jason Flom, the chairman of Atlantic Records, is attending, and Mr. Moses says executives from the other major labels will come as well. "The music executives are going to speak in front of 300 brand directors to show them their wares," he said. "What you'll see for the first time is brands planning integration with musicians."

Certainly, brands have benefited from being included in songs and videos. "Pass the Courvoisier" by Busta Rhymes bolstered sales of the cognac, according to [Allied Domecq](http://www.nytimes.com/redirect/marketwatch/redirect.ctx?MW=http://custom.marketwatch.com/custom/nyt-com/html-companyprofile.asp&symb=AED), but Mr. Rhymes swears the company did not pay him.

The biggest obstacle is MTV. The network has banned explicit product placement in videos, fearing that it would dilute the power of its advertisers. That restriction forces dealmakers to be more imaginative. Mark Humphrey, whose company, Band Ad, links musicians and advertisers, struck a deal between Sheryl Crow and [American Express](http://www.nytimes.com/redirect/marketwatch/redirect.ctx?MW=http://custom.marketwatch.com/custom/nyt-com/html-companyprofile.asp&symb=AXP): for Ms. Crow's song "Soak up the Sun," American Express licensed the music and created a 30-second commercial with content from the video.

Mr. Humphrey sees a future in branded music videos similar to the plans for TV. He wants advertisers to be more involved in the creative process. "Directors get scripts for movies, and they get storyboards for commercials," he said. "Why not give them creative briefs for videos, and then let them put their stamp on it?"



**7. '50 Years of Fraud': Washington Sues Big Tobacco for $280bn of Alleged Ill-gotten Gains**

Source: *London Financial Times*

September 8 2004

On December 15, 1953,presidents of several of America's largest tobacco companies gathered at New York's Plaza Hotel for an unusual meeting. Under discussion were growing health concerns about smoking's health risks. Five epidemiological studies had already suggested links between smoking and cancer - and the press was picking up the story.

In one of the hotel's baroque meeting rooms, the heads of American Tobacco, Benson & Hedges, Philip Morris and US Tobacco took the first step in creating what would become a unified strategy to reassure the public that there was no evidence that smoking was harmful.

Over the next 50 years, US tobacco companies would conspire to defraud consumers by denying the dangers of smoking and second-hand cigarette smoke. They would fund sympathetic scientists to carry out research to cloud the issue. They would manipulate nicotine levels to keep smokers hooked, and deliberately market cigarettes to youth. Much of that time, however, they knew there was a causal link between smoking and disease.

That, at least, is what the US Department of Justice will attempt to prove - in the face of vehement industry denials - in a court case due to begin on September 21. Testimony from the government's opening witnesses is due to be published next Monday. The case may be the biggest judicial assault ever launched by a government on a legal industry.

The essence of the case is similar to arguments heard in lawsuits brought by US states and in class actions and individual smokers' suits (see right). But this trial will differ from anything seen in the courtrooms of Mississippi or Alabama.

On one side is the US justice department, which - using incriminating documents leaked from inside the companies or uncovered in earlier cases or by its own investigations - has spent five years putting together the most comprehensive anti-tobacco industry case yet assembled. On the other are the combined resources of the industry's biggest companies and their phalanxes of top-flight lawyers.

The government says the defendants should "disgorge", or forfeit, $280bn of "ill-gotten gains" - more than enough to bankrupt them. To bring that about, however, it will have to prove - to a single judge, not a jury - not only that the cigarette companies were guilty of fraud in the past, but that they are likely to continue to offend in the future, a high barrier. The government will also have to justify the size of its $280bn demand.

The reason is that this is not the kind of product liability suit, alleging that its products injured a particular smoker or group of smokers, that the industry typically faces. It is being brought instead under the 1970 Racketeer-Influenced and Corrupt Organisations (RICO) Act, designed to fight organised crime.

"The government's primary allegation is that the US tobacco industry was essentially an illegal enterprise, just like the mafia," says Martin Feldman, tobacco analyst at Merrill Lynch.

The industry denies past wrongdoing and says it believes the government will never persuade the judge, Gladys Kessler, that it is likely to violate RICO laws in the future. Moreover, it says, restrictions on cigarette marketing that the government is demanding alongside its $280bn claim largely duplicate those put in place by the Master Settlement Agreement of 1998. That was the deal in which tobacco companies agreed to pay $246bn over 25 years to the 50 US states. It ended the states' litigation - and inspired the federal government to bring its own legal assault (see below).

"When [the federal government's] lawsuit was filed in 1999, we said we didn't think it was right on the law, on the facts or on the policy, and nothing has changed," says William Ohlemeyer, associate general counsel at Philip Morris, the biggest US tobacco maker.

Philip Morris, together with its parent group, Altria, is one of six corporate defendants. Others are RJ Reynolds, the US number two tobacco company; Brown & Williamson, the number three; Loews Corporation's Lorillard; Vector Group's Liggett; and British American Tobacco (Investments), a unit of the UK's British American Tobacco. Two now-defunct trade organisations are also on trial.

The allegations in the US government's latest proposed findings of fact, published in July, are damning:

\* Cigarette companies "have engaged in and executed - and continue to engage in and execute - a massive 50-year scheme to defraud the public".

\* Working with the two industry organisations, the Tobacco Institute and the Council for Tobacco Research, they waged a public relations campaign to deny the harms of smoking and generate controversy around the scientific research. The campaign kicked off shortly after the Plaza Hotel meeting with the "Frank Statement to Smokers", a signed full-page announcement by the companies in 448 US newspapers. "We believe the products we make are not injurious to health," it stated, but promised to conduct research to establish the truth.

\* The defendants, through the CTR, funded scientists willing to generate information that would bolster the industry's litigation defences, and cast doubt on evidence that smoking caused cancer - while acknowledging internally that it did.

\* They collectively agreed not to develop or market "safer" cigarettes, for fear it could undermine the claim that regular cigarettes were not harmful.

\* They "engaged in a global effort to fraudulently deny and distort the harms" of second-hand cigarette smoke.

\* They manipulated nicotine levels in cigarettes to "create and sustain nicotine addiction" in smokers, while denying nicotine or smoking was addictive.

\* They promoted the health benefits of "light" or low-tar cigarettes, knowing these were no safer than regular cigarettes (many smokers compensate for the lower tar content by inhaling more deeply, or smoking more).

\* The defendants "intentionally marketed cigarettes to youth under the legal smoking age while falsely denying they have done and continue to do so".

\* They destroyed and concealed documents to cover up these activities.

The industry rejects all those claims, saying there was no fraud. A central plank of its defence will be that from 1966 - two years after a US Surgeon General's report stated unequivocally that smoking caused cancer - cigarette packets carried a federally-mandated health warning that cigarettes could harm health. How could the companies have deceived anyone?

"When the cancer link was established, Congress had to decide whether to ban cigarettes, or provide warnings and information so people could make an informed decision," says William Ohlemeyer, associate general counsel at Philip Morris, the biggest US tobacco maker. "They decided not to ban them, but to provide warnings."

There was, the companies add, no conspiracy. The meeting in the Plaza Hotel said to have spawned the whole scheme was never even secret: it was notified to the Department of Justice to avoid violating an antitrust decree prohibiting meetings between the companies, and reported in several newspapers. The subsequent "Frank Statement to Smokers" reflected the scientific consensus at the time.

The shape of the industry has also changed radically in 50 years - which the companies say reflects dynamic competition inconsistent with the idea of a conspiracy. Philip Morris has gone from the number five player to number one; American Tobacco lost the number one slot it occupied in the 1950s and later became part of British American Tobacco's Brown & Williamson - which recently merged into RJ Reynolds.

The companies add that both the Tobacco Institute and Council for Tobacco Research were disbanded after the 1998 Master Settlement Agreement. The former, they add, was a legitimate trade organisation. The latter produced high-quality research on tobacco cited repeatedly in US Surgeon General's reports, and often funded research jointly with government organisations or bodies such as the American Cancer Society.

On safer and low-tar cigarettes, Bob McDermott, a lawyer with Jones Day who is lead trial counsel for RJ Reynolds, says there is an incongruity in the government's case. Why would the companies market low-tar cigarettes as safer, knowing they were not, but deliberately not develop cigarettes that were genuinely safer?

And companies did develop safer or "reduced-risk" cigarettes, he adds. RJ Reynolds developed two - Premier in 1988, and the "smokeless" Eclipse in 1994 - though neither was a hit with smokers. Low-tar cigarettes, on the other hand, were developed with the encouragement of the government, and it was the government, not the industry, that marketed them as safer. Claims of manipulating nicotine and youth marketing are also denied.

The industry may go on the offensive by highlighting the long ties between the US government and tobacco - and the billions the government makes in corporate and excise taxes from tobacco products. "The government makes more money when Philip Morris sells a pack of cigarettes than Philip Morris does," the company says.

Tobacco companies are confident the defence honed in dozens of cases will prevail. "It is the exact same evidence that juries look at in other cases, and for the most part, they return defence verdicts," says Mr Ohlemeyer.

But Dick Daynard, a long-time tobacco industry foe and chairman of Northeastern University's Tobacco Products Liability Project, which encourages tobacco litigation, says that claim is disingenuous. In some cases, he says, the most incriminating industry documents were not introduced into trials, because judges directed that they were not directly relevant to establishing whether smoking had caused a smoker's cancer. In others, Mr Daynard says, juries decided tobacco companies had engaged in wrongdoing but could not be held responsible for an individual's decision to smoke.

In this case, no such linkage needs to be found; it is all about the companies' conduct. And the most damaging documents will be presented.

Since the government has chosen to bring the case under civil rather than criminal RICO statutes, the case must be proven only on "a preponderance of the evidence" rather than beyond reasonable doubt.

"When a jury looks at this evidence, they say, 'These guys committed one humongous and extended fraud'," Mr Daynard says. "I think there is almost no chance that Judge Kessler isn't going to come to the same conclusion."

Even if she does, however, under the RICO statute the government will have to persuade her that this shows the companies will continue to commit fraud.

The tobacco industry argues that the restrictions put in place by the MSA already make future violations virtually impossible. These include bans on marketing to youth, most outdoor advertising, paid-for product placements in films or TV shows, and branded merchandise such as clothing, as well as a ban on any material misrepresentation of fact on smoking's health risks. The agreement is policed by the 50 states' attorneys-general.

Mr Daynard disagrees. "The MSA is a very mild restriction on what they do," he says. "There has been a long history of either outright violations of the MSA, or treating it as basically a marketing challenge."

But winning the argument that only "disgorging" $280bn will prevent the industry from offending again may be the government's biggest challenge. For a start, the industry says, the word disgorgement does not appear in the RICO statute.

An appeals court ruled in the so-called Carson case in 1995 that disgorgement could be used to "prevent or restrain" future fraud. But it had to be limited to ill-gotten gains that "are being used to fund or promote the illegal conduct, or constitute capital available for that purpose". That means the justice department must prove that all the $280bn it seeks is ill-gotten, and that the companies have it to hand.

The industry charges that the government has made no attempt to separate ill-gotten from fair gains. Its claim is based on an estimate that cigarette makers made $75bn from selling cigarettes between 1971 and 2000 to smokers who were smoking at least five cigarettes a day by age 21 - what it terms a "youth-addicted population". Having the use of that $75bn over nearly 30 years enabled the defendants to earn another $205bn.

"The government takes the position that if anyone began smoking before the age of 21, that is solely attributable to industry misconduct," says Mr McDermott, counsel for RJ Reynolds. He says it also ignores the fact that cigarette companies have paid out billions in taxes, and dividends to shareholders. "The government acts as if these so-called ill-gotten gains were all in a piggy bank," he says.

Mr Feldman of Merrill Lynch believes the government's case will ultimately fail, either at the trial stage or on appeal, not least because its disgorgement claim is poorly founded. A similar assumption among investors, he says, explains why the market is not panicking about the case - despite the potentially cataclysmic results if the government won its claim in full and the judgment was upheld by the appeals court and US Supreme Court.

Such an outcome, however remote a possibility, could potentially be double-edged. The companies say that, since they do not have $280bn, the government would in effect end up owning them - and would have to decide what to do with them. If the big manufacturers disappeared, thousands of jobs would be lost and the industry would be in the hands of hundreds of small, discount cigarette manufacturers that have sprung up since the MSA - many of whom are not regulated by it.

For long-time anti-tobacco campaigners such as Mr Daynard, the outcome is less important than the mere fact of seeing the companies on trial in such a high-profile case. "Whatever the result, I think it will be a very damning indictment of the behaviour of this industry over 50 years," he says.

Why is a Republican administration, the traditional friend of the tobacco industry, about to sue it for $280bn? Many on both sides of the case are surprised it has made it this far.

The case originated in the late 1990s when the Master Settlement Agreement was being negotiated between cigarette makers and the 50 US states who were attempting to recoup money they had spent through Medicaid, the healthcare programme for the poor, on treating sick smokers.

Some lawyers involved, such as Mike Moore, attorney-general of Mississippi, the first state to sue the tobacco companies, and Dick Scruggs, the lawyer who represented Mississippi, tried to persuade the federal government it should do likewise.

The government was not convinced. Janet Reno, then attorney general, told a Congressional hearing in 1997 that she thought the federal government "did not have an independent cause of action" against tobacco manufacturers.

Yet in January 1999, President Bill Clinton announced in his State of the Union address that the justice department would sue tobacco companies. The aim was to recoup some of the billions spent by the federally-funded Medicare programme, which provides healthcare for the elderly, military veterans and federal employees, on smoking-related illnesses.

Judge Gladys Kessler, assigned to handle the case, threw out its medical cost reimbursement elements in 2000. But she allowed an anti-racketeering element of the government's case, under the Racketeer-Influenced and Corrupt Organisations statute, to proceed.

When George W. Bush became president the case was widely expected to be dropped. He had criticised it during his campaign, and John Ashcroft, his attorney general, had been one of the senators most responsible for blocking legislation in 1998 that would have strengthened federal regulation of the industry.

Six months into Mr Bush's term, Mr Ashcroft said he had named a team of lawyers to explore a settlement of the suit. But no deal was reached, apparently because the two sides were so far apart.

John Coale, a lawyer who brought class action suits against tobacco companies in the 1990s, suspects the Bush administration concluded dropping the case would be unpopular with voters. "Maybe they polled focus groups and decided it was politically not advantageous for them to settle this, so the Democrats would not have an issue against them," he says.

The tobacco industry remained convinced it could get the case thrown out, or limit its scope. But Judge Kessler has ruled against a series of pre-trial motions from the defendants aimed at doing that.

Their best hope of defanging the case may be an appeal, due to be heard in November, over Judge Kessler's rejection of their motion challenging the size of the government's $280bn claim for "disgorgement" of ill-gotten gains. But that appeal is not due to be heard until November - when the main case will be two months old.

