



NHIS^{GLOBAL FORUM} 2025

A Critical Review of the Rulings by the Courts of South Korea in Tobacco Litigation

Jong-Sun, Choi

Partner, DR & AJU CCA, LLC.



CONTENTS

01 Decisions subject to review

02 Defect in indication

03 Causal relationship



01 Decisions subject to review

02 Defect in indication

03 Causal relationship

Decisions subject to review

- **Supreme Court Decision 2011Da22092, Decided April 10, 2014**

(Plaintiff: Smokers; Defendants: Republic of Korea, KT&G)

The court dismissed all of the plaintiffs' claims.

- **Seoul Central District Court Decision 2014GaHap525054, Decided November 20, 2020**

(Plaintiff: National Health Insurance Service; Defendants: KT&G, Philip Morris Korea, British American Tobacco Korea, British American Tobacco Korea Manufacturing)

- **The plaintiff sued the defendants, claiming compensation for insurance benefits paid to 3,465 smokers (the subjects of this case) who had smoked for more than 30 years and more than 20 pack-years and developed lung cancer (squamous cell carcinoma, small cell carcinoma) or laryngeal cancer (squamous cell carcinoma). The court dismissed all of the plaintiff's claims.**
- **Appeal of the above case: Seoul High Court 2020Na2047374**
Appeal on December 10, 2020, 12th oral argument conducted;
May 22, 2025: Closing arguments concluded; Date of judgment to be determined.
(The plaintiff filed a motion for disclosure of documents against the defendant KT&G's research documents, but the motion was dismissed. An appeal against the dismissal decision is currently pending before the Supreme Court.)

- **Reviewing the two decisions in question for defects in indication and causal relationship**



01 Decisions subject to review

02 Defect in indication

03 Causal relationship

2 Defect in indication – Contents of the Decisions

[Related Law]

Article 2 of the Product Liability Act (Definitions) The definitions of terms used in this Act shall be as follows:

2. The term "defect" means any of the following defects of a product with regard to manufacturing, design or indication or lack of safety ordinarily expected of a product:

(c) The term "defect in indication" refers to cases where damages or risks caused by a product could have been reduced or avoided if a manufacturer had given reasonable explanation, instructions, warnings or other indications on the product but he/she fails to do so;

[Related court cases]

If a manufacturer or other party had provided reasonable explanations, instructions, warnings, or other indications that could have reduced or prevented damage or danger that could have been caused by the product, but failed to do so, liability for such defects in the indications (defects in instructions or warnings) may also be recognized as liability arising from an act of tort. In determining whether such a defect exists, various factors such as the characteristics of the product, the typical manner of use, the user's expectations of the product, the expected risk, the user's perception of the risk, and the possibility of the user's avoidance of the risk must be comprehensively considered and judged in light of social norms (Supreme Court Decision 2002Da17333, Decided September 5, 2003, etc.)

2 Defect in indication – Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court decision

The defendants, in manufacturing and selling cigarettes that are harmful and addictive, were required to provide clear and strong warning labels regarding the harmful and addictive nature of cigarettes. However, they failed to do so. Specifically:

- ① Failure to include specific information on the harmful effects of tobacco, instead merely stating that tobacco is harmful to health
- ② Only in 2008 did warning labels regarding the addictive nature of tobacco begin to be affixed
- ③ Even then, advertising copy was used in a manner that failed to adequately convey the seriousness of the harmful effects or addictive nature of tobacco, thereby failing to comply with the reasonable warning label requirements established under the Product Liability Act.

Therefore, the defendants are liable for damages under the Product Liability Act due to defects in indication.

2 Defect in indication – Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court decision

- ① Tobacco was introduced to Korea in the early 1600s and has been consumed by burning dried tobacco leaves and inhaling the smoke since that time. This method of consuming tobacco was practiced even before the defendants began manufacturing tobacco.
- ② Since the introduction of tobacco, there has been ongoing controversy over its harmful effects and benefits, including the aspect that smoking can be harmful to health and the aspect that it can perform certain useful mental and physical functions.
- ③ In other countries, numerous epidemiological research results on the relationship between smoking and lung cancer have been published since the 1950s. In 1962, the Royal Society of Medicine in the UK published an official government report on the dangers of smoking, and in 1964, the U.S. Surgeon General's report published research results showing that smoking was the main cause of lung cancer.
- ④ Around that time, reports from the UK and the US were published in Korean newspapers, and from then until the 1990s, dozens of articles appeared in newspapers and other media stating that cigarettes are harmful to health, cause various diseases including lung cancer, increase mortality rates, and contain harmful substances such as nicotine, carbon monoxide, benzopyrene, nitrogen oxides, and residual pesticides.

2 Defect in indication – Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court decision

- ⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act.
- ⑥ Through such media reports and legal regulations, it appears that the general public, including tobacco consumers, has become widely aware that smoking can cause various diseases, including cancer, in the respiratory system, including the lungs.
- ⑦ Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking, and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.
- ⑧ Although it appears that the defendants added a warning label on the addictive nature of cigarettes in addition to the harmful effects of cigarettes around 2008 while importing, manufacturing, and selling cigarettes, it is difficult to conclude that their failure to include labels that were not required by law at that time constitutes a violation of the law in relation to smokers since the defendants had already fulfilled the labeling requirements mandated by the relevant laws and regulations at that time.

2 Defect in indication – Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court decision

- ⑨ Even if the defendants used phrases such as 'natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification' for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers' free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)

Considering the above matters comprehensively, it is difficult to conclude that the cigarettes manufactured and sold by the defendants have a defect in indication simply because the defendants, as tobacco manufacturers, did not provide additional explanations, warnings, or other labels beyond the warning labels required by law on cigarette packs.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>① Tobacco was introduced to Korea in the early 1600s and has been consumed by burning dried tobacco leaves and inhaling the smoke since that time. This method of consuming tobacco was practiced even before the defendants began manufacturing tobacco.</p> <p>② Since the introduction of tobacco, there has been ongoing controversy over its harmful effects and benefits, including the aspect that smoking can be harmful to health and the aspect that it can perform certain useful mental and physical functions.</p> <p>③ In other countries, numerous epidemiological research results on the relationship between smoking and lung cancer have been published since the 1950s. In 1962, the Royal Society of Medicine in the UK published an official government report on the dangers of smoking, and in 1964, the U.S. Surgeon General's report published research results showing that smoking was the main cause of lung cancer.</p>	<p>① is unrelated to the defect in indication.</p> <p>② is merely controversial.</p> <p>③ In the past, when transportation and communication were not well developed, it is unlikely that the subjects of this case were aware of foreign epidemiological research results or official reports from the British government, and there is also no evidence that they were aware of such information.</p>

2 Defect in indication – Review of the Decision

Contents of the Decisions

④ Around that time, reports from the UK and the US were published in Korean newspapers, and from then until the 1990s, dozens of articles appeared in newspapers and other media stating that cigarettes are harmful to health, cause various diseases including lung cancer, increase mortality rates, and contain harmful substances such as nicotine, carbon monoxide, benzopyrene, nitrogen oxides, and residual pesticides.

Review

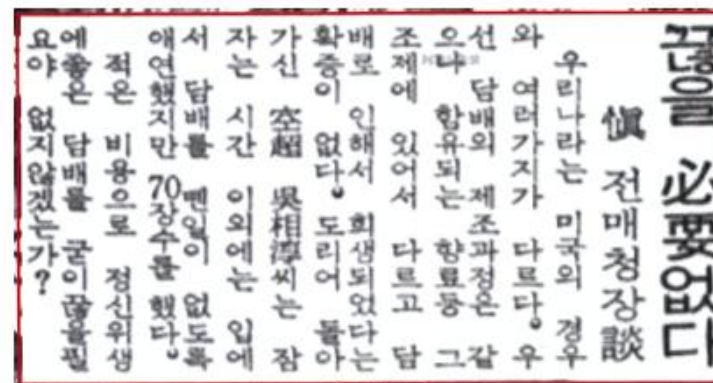
- There were also reports that debated or contradicted the harmful effects of smoking

Exhibit 1 of Gap No. 256, Kyunghyang Shinmun article dated January 13, 1964]



Tobacco debate: There is controversy over whether cigarettes cause lung cancer, more research is needed, and no definitive evidence has been presented.

Exhibit 1 of Gap No. 256, Kyunghyang Shinmun article dated January 13, 1964]



Why bother quitting smoking when it is good for your mental health at a low cost?

► Reports were published stating that there is **no need to quit smoking**.

2 Defect in indication – Review of the Decision

Contents of the Decisions

④ Around that time, reports from the UK and the US were published in Korean newspapers, and from then until the 1990s, dozens of articles appeared in newspapers and other media stating that cigarettes are harmful to health, cause various diseases including lung cancer, increase mortality rates, and contain harmful substances such as nicotine, carbon monoxide, benzopyrene, nitrogen oxides, and residual pesticides.

Review

- There were also reports that debated or contradicted the harmful effects of smoking

吸煙과질병은무관
美煙草연구소장답
【뉴욕6일UPI=東洋】미국
연초연구소장「리틀」박사
는 5일 과학자들은 흡
연과 질병사이의 아무런
연관성도 발견하지못했다
고말했다. 즉 쥘피부에담
배연기를 응축한것을 칠
해본결과 인간의질병과흡
연과의연관성을 연구하는
협회에서나온 통계학적자
료와는 전혀일치점이 없
었다고.

[Exhibit 11 of Gap No. 282, Maeil Business Newspaper article dated February 7, 1969]

Scientists said they found no link between smoking and disease.

「肺癌原因 안된다」
美담배工業界서 반박
미국담배공업계의 대
변인은 담배피우는것이
폐암의 주원인이 된다는
영국의학계의 연구보고
는 모순된점이 많다고 말
하였다.

[Exhibit 2 of Gap No. 282, Kyunghyang Shinmun article dated March 8, 1962]

The British medical community's research report that smoking is the main cause of lung cancer has many contradictions.

성 노인질환과의 기 위해 50년초부터 실험중 에서도 주박사는
「담배피우면 치매-파킨슨병發病 준다」
인삼연초연구팀 “동물실험후 확인” 주장
한시 신재영 기자 보도 시금희 기자 보도 노인질환과의 기 위해 50년초부터 실험중 에서도 주박사는

[Exhibit 10 of Gap No. 282, Dong-A Ilbo article dated October 20, 1994]

Animal experiment results: Smoking reduces the risk of dementia and Parkinson's disease.

► Articles emphasizing that smoking is not linked to diseases such as lung cancer and highlighting the benefits of smoking were published.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act.</p>	<ul style="list-style-type: none">• Under the Product Liability Act, the content and method of reasonable instructions and warnings must be clear and strong enough to convey the existence and scope of the risk.• Warnings must be clear, specific, and sufficiently alarming to alert users to the potential risks associated with the product. They must be affixed in a location easily visible to users, be unambiguous and clear, provide a comprehensive and unrestricted description of the scope of the risk, and not be diluted in any way.• Furthermore, the defendants have enhanced the risk of cigarettes as manufactured products through the addition of additives and filter design, and therefore have an obligation to provide clear and specific warnings regarding the risks they themselves have enhanced.• The phrase “Sale to minors under the age of 19 is prohibited” does not constitute a warning regarding the harmfulness or addictiveness of tobacco.

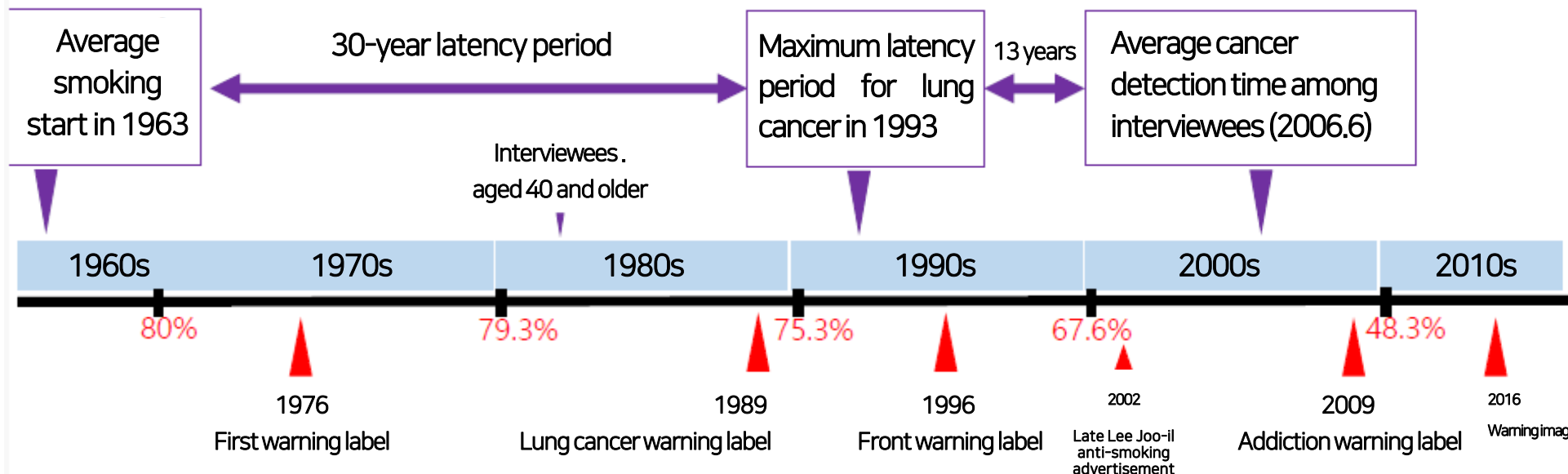
2 Defect in indication – Review of the Decision

Contents of the Decisions

⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act

Review

- The warning labels that the defendants belatedly displayed are merely the minimum labeling required by relevant laws and regulations, including the Tobacco Business Act, the National Health Promotion Act, and the Ministry of Health and Welfare Notification
- The defendants did not include specific information the harmful effects of cigarettes on their cigarette products, but only displayed abstract warning labels stating that cigarettes are harmful to health.



2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act</p>	<ul style="list-style-type: none">• Cigarette warning labels must specifically state the diseases that may occur due to smoking, and must clearly express the likelihood of such risks in definitive terms.• <u>However, the defendants, as manufacturers and sellers, failed to express the risks they were aware of in concrete and definitive terms, resorting instead to hypothetical and abstract warnings.</u><ul style="list-style-type: none">➤ “Let’s refrain from excessive smoking for the sake of our health”:<ul style="list-style-type: none">- This message gives rise to the misconception that smoking in general is not harmful to health.- It is evaluated that it fails to convey information on specific diseases caused by smoking and instills the perception that small amounts of cigarettes are not harmful to health (Survey on awareness of tobacco product warnings among family medicine specialists)➤ “Smoking can cause lung cancer, etc., and is especially harmful to the health of pregnant women and adolescents.”<ul style="list-style-type: none">- This statement appears to imply that smoking has no significant harmful effects on the general adult population and merely states the possibility in hypothetical terms..- It is evaluated as failing to adequately convey warnings about chronic obstructive respiratory diseases, arteriosclerosis, stroke, heart disease, etc. (Survey on awareness of tobacco product warnings among family medicine specialists)

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act

Review

- Survey on awareness of tobacco product warnings among the general public (2006)



표 3. 담배에 대한 태도 및 흡연여부에 따른 현행 흡연경고문구에 대한 평가.

구분	계	담배에 대한 태도			흡연여부		
		건강에 도움	건강에 악영향	P값	흡연	비흡연	P값
현행 경고문구의 효과	긍정	256 (21.3)	34 (38.6)	.000	71 (22.9)	185 (20.8)	.482
	부정	944 (78.7)	54 (61.4)		239 (77.1)	705 (79.2)	
현행 경고문구 강화 필요성*	긍정	1,046 (87.2)	63 (71.6)	.000	217 (70.0)	829 (93.1)	.000
	부정	154 (12.8)	25 (28.4)		93 (30.0)	61 (6.1)	
합계	1,200 (100.0)	88 (100.0)	1,112 (100.0)		310 (100.0)	890 (100.0)	

- “Cigarettes are harmful to your health, but would you still smoke them?”
- 78.7% of all respondents thought that warning labels were not effective at all, and 87.2% thought that warning labels needed to be strengthened.

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act

Review

- Contrary to the defendants' warning statements, **overseas cigarette manufacturers specifically list diseases caused by smoking**, clearly indicate that smoking causes harm, and **warn against starting to smoke**.

Europe

Smoking causes lung cancer, which can lead to death.



Smoking is highly addictive. Do not start smoking.



2 Defect in indication – Review of the Decision

Contents of the Decisions



⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act

Review

- Contrary to the defendants' warning statements, **overseas cigarette manufacturers specifically list diseases caused by smoking**, clearly indicate that smoking causes harm, and **warn against starting to smoke**.

Canada	Smoking causes lung cancer.	85% of lung cancers are caused by smoking. 80% of lung cancer victims die within 3 years.	
Australia	Smoking causes lung cancer.	9 out of 10 lung cancers are caused by smoking. Every cigarette you smoke increases your risk of getting lung cancer. Most people who get lung cancer die.	

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review		
<p>⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act</p>	Europe	<p>Cigarette smoke contains benzene, nitrosamines, formaldehyde, and hydrogen cyanide.</p>	
	Canada	<p>Smoking slowly brings death.</p>	<p>Cigarette smoke contains toxic substances such as hydrogen cyanide, formaldehyde, and benzene. Secondhand smoke causes death from lung cancer and other diseases.</p> 

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑤ Furthermore, the defendants displayed warning labels on cigarette packs stating that smoking is harmful to health and that sales to minors under the age of 19 are prohibited, in accordance with relevant laws and regulations such as the National Health Promotion Act and the Juvenile Protection Act

Review

- Overseas tobacco manufacturers are specifying the harmful substances in cigarette smoke and warning of their dangers.

Australia

Cigarette smoke is toxic.

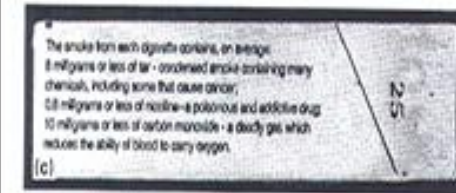
Cigarette smoke is a complex mixture of toxic substances such as nitrosamines and benzopyrene, which directly cause cancer. Carbon monoxide reduces the ability of blood to carry oxygen. These harmful substances reach the brain, heart, and other organs within 10 seconds of the first inhalation.



Substances contained in tobacco (side of cigarette pack)

The average cigarette smoke contains the following substances.

- Tar less than 8 mg: a concentrated smoke containing numerous chemicals that can cause cancer and other diseases
- Nicotine less than 0.8 mg: a highly toxic and addictive drug
- Carbon dioxide less than 10 mg: a deadly smoke that reduces the blood's ability to carry oxygen



2 Defect in indication – Review of the Decision

Contents of the Decisions

⑥ Through such media reports and legal regulations, it appears that the general public, including tobacco consumers, has become widely aware that smoking can cause various diseases, including cancer, in the respiratory system, including the lungs.

Review

- January 10, 2004, KT&G's preparatory statement, page 10

되고 있습니다. 그렇다면 담배에 심지어 천연물질에도 포함되어 있는 발암성분이 일부 포함되어 있다고 하여, 그 때문에 담배 자체가 유해한 제품이라고 단정할 수는 없다고 할 것입니다.

- December 12, 2006, KT&G's preparatory statement, page 13

는 점을 입증해 준다고 할 것입니다. 그렇다면 정량적인 측면에서 인체에 유해한 지 여부조차 증명되지 않았고, 심지어는 천연물질에도 포함되어 있는 미량의 유해 성분 또는 발암성분이 담배의 소비시 일부 발생한다고 하더라도, 이를 이유로 담배 자체가 유해한 제품이라고 주장하는 것은 타당하다고 할 수 없다고 할 것입니다.

- January 5, 2011, KT&G's preparatory statement, page 21

결국 정량적인 측면에서 담배가 인체에 유해한지 여부가 전혀 증명되지 않은 상황에서, 흡연시 천연물질에도 포함되어 있는 미량의 유해성분 또는 발암성분이 일부 발생한다는 이유만으로 담배 자체가 유해한 제품이라고 할 수는 없습니다(담배

- KT&G, a manufacturer that accurately recognizes the harmful effects of tobacco products, consistently denied the harmful effects of tobacco products in prior lawsuits.
- While the manufacturer claims that it has not been determined whether tobacco products are harmful to the human body, the claim that consumers are specifically and clearly aware of the harmfulness is against the principle of good faith and justice.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑥ Through such media reports and legal regulations, it appears that the general public, including tobacco consumers, has become widely aware that smoking can cause various diseases, including cancer, in the respiratory system, including the lungs.</p>	<ul style="list-style-type: none">• When the subjects of this case began smoking in the 1960s and 1970s, smoking was commonplace.<ul style="list-style-type: none">- Among adults (especially men), 90% smoked, or smoked “almost” or “much more” than they do now.- Indoor smoking was common, and people even smoked at children's 100-day celebrations, indicating a low awareness of the harmful effects of smoking.• In a survey conducted in 2005 on smokers in Korea, a significant number of smokers thought that ‘smoking is not more dangerous than other things’ (54.2%) and ‘medical information about the harmful effects of smoking is exaggerated’ (25.9%).• Even though there was awareness of the harmful effects of tobacco products in society as a whole, this awareness remained at an abstract level, and the specific risks of smoking, such as causing lung cancer or laryngeal cancer and being highly addictive, were not widely known.• According to the results of an in-depth analysis of the smoking experiences of heavy smokers conducted by the Korean Association on Smoking or Health, 87% of the 30 survey respondents were unaware of the harmful effects of smoking when they started smoking.• Even though the dangers of smoking are widely known in society, it cannot be assumed that individual smokers are fully aware of the specific risks to themselves.• Even if the abstract risk of a product is known to consumers or users, if the risk is significant, there is a need or obligation to provide a warning.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑦ <u>Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking,</u> and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.</p>	<ul style="list-style-type: none">• Nicotine addiction is characterized by a strong internal desire to use nicotine, impaired ability to control use, increased priority given to nicotine use over other activities, and continued use despite harmful or negative consequences.• The symptoms of nicotine addiction include ‘loss or limitation of autonomy regarding whether or not to smoke cigarettes or the extent of smoking due to fundamental changes in brain circuits’, ‘difficulty in voluntary control of compulsion’, ‘inability or difficulty in controlling behavior despite clear risks’, and ‘altered judgment and impaired ability to act rationally or according to free will.’• It is unfair to view nicotine addiction as an extreme concept such as the ‘impossibility’ of quitting smoking or the ‘complete loss’ of free will, as it corresponds to a standard created arbitrarily by the defendants.• Even in the U.S. tobacco lawsuit where plaintiffs prevailed, the court did not require that addiction render quitting “impossible” or that plaintiffs had “lost” their free will.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑦ <u>Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking,</u> and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.</p>	<ul style="list-style-type: none">• According to the American Psychiatric Association, 80% of smokers attempt to quit smoking, but 60% of them start smoking again within a week, and only 5% remain smoke-free for life.• The National Institute on Drug Abuse in the United States also emphasizes the difficulty of quitting smoking, stating that only 6% of people who attempt to quit smoking in a given year remain smoke-free.• The UK government also emphasizes the need for smoking cessation treatment programs, emphasizing that only 3-4% of people who quit smoking on their own will be able to stay abstinent after a year.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑦ <u>Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking,</u> and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.</p>	<ul style="list-style-type: none">• According to the “Integrated Report on the Harmful Effects of Tobacco” published by the Korea Disease Control and Prevention Agency, ‘The percentage of smokers who successfully quit smoking through personal willpower alone is very low.’• According to the expert opinion paper on tobacco addiction by the Korean Academy of Addiction Psychiatry, as the addictive nature of tobacco intensifies, it becomes increasingly difficult to control through willpower alone. In fact, the one-year smoking cessation success rate is less than 5% when relying solely on personal willpower, and even with counseling and medication, it is limited to approximately 30%.• As mentioned above, quitting smoking is extremely difficult in cases of nicotine addiction, so defendants have a duty to clearly warn about the addictive nature of nicotine in advance.• Even if quitting smoking is possible through free will, defendants' duty to warn about the addictive nature of nicotine cannot be waived.

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑦ Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking, and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.

Review

- Media reports continue to deny the addictive nature of tobacco products or to suggest that the debate is ongoing. [Kyunghyang Shinmun article dated April 30, 1985]



**Doctor: "The nicotine in cigarettes is not an addictive substance."
"Smoking is just a form of self-indulgence in the pursuit of style."**

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑦ Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking, and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.

Review

- From the 1960s to the 1990s, there were very few articles dealing with the addictiveness of tobacco products.
- Media reports continue to deny the addictive nature of tobacco products or to suggest that the debate is ongoing.

[Kyunghyang Shinmun article dated September 18, 1979]



Psychiatrist: "If you don't smoke too much, there won't be much of an impact."

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑦ Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking, and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.

- Media reports continue to deny the addictive nature of tobacco products or to suggest that the debate is ongoing.

본문에 새로운 발견을 생기고 있다

학박철거를 사용 밝혀지

이런 가운데 이 회원의 건강 관련 소위원회가 지난 14일 주요 담배회사 사장들을 모두 불러놓고 4시간 동안 담배 청문회를 열었다. 여기서는 담배 제조에 일관된 규제를 가해야 한다고 주장하는 의원들과 이를 반대하는 담배회사 사장들 사이에 격렬한 진영과 학대갈파의 경도는 뜨거운 열띤 싸움이 벌어졌다.

청문회가 열리기 전 의원들은 의원(민주당)은 "담배 광고가 우리의 아이들을 내세워도록 만들려고 시도하고 있다"고 포문을 연 뒤, 중언부언을 하지 않자 있는 담배회사 사장들을 노려보면서 "도대체 어떻게 당신네들은 사장을 속이는 기복을 가수에 지난 채 살아갈 수 있는지 오늘 이 자리에서 말해 주기를 바란다"고 비장한 어조로 말했다. "그런가 하면 건강 관련 소위원회가 위원장인 헐리 워싱턴 의원(민주당)과 미키의 사촌인 의원(민주당)은 담배회사 사장들이 의원들의 질문에 답을 피하면서 무효적인 설명을 할지라도, 중언부언을 하고 담배를 "에, 아니오만 분명하게 말하십시오"라고 위압적 자세를 보이기도 했다. 마치 갑자기 피의자를 다루듯하는 이러한 자세는 이 의원 청문회에서 보기 힘든 풍경인데, 같은 소위원회 소속이면서 한 담배회사 정했던 에드워드 호러의 의원(공화)은 "담배회사 사장들이 청문회의 제도에 제물이 되어서는 안된다"며 위압적 분위기를 비관하기도 했다.

이날 청문회는 유산발표를 통해 전국에 상충을하였는데, 의원들 모두가 앉아 있던 의원 보호관을 가운데 일부는 "담배 때문에 80%이나 한 사람의 미국인이 죽어가고 있다"는 플래카드를 앞세워 카세트를 내리치기도 했다.

질문공제 "피워지 다투듯"

청문회에서 의원들은 그동안 있어온 온갖 담배유해론과 관련된 질문들을 담배회사 사장들에게 던졌다. 스담배회사들이 나열한 항변을 조작하고 있다는데 사실인가 스담배가 건강에 해롭다는 연구결과를 발표되지 못하도록 입회를 통해서만 반대하는 사실인가 스담배를 흡연연구로 끌어들이기 위해 10대들 상대로 광고를 해왔다는데 사실인가 스담배가 유해한가 담배를 사용하는 대에는 사실인가

담배 청문회에 처음으로 증인으로 등장한 **담배회사 사장들**도 이런 학대적 질문에 호박호라 답하지는 않았다. 이들의 한결같은 대답은 "담배가 중독성이 아니다"는 것이었다.

결국 "폐암 등 유발" 사실

원스키, 샤프, 제일 등을 생산하는 레이놀즈사와 제임스 존슨 사장은 이렇게 말했다. "담배가 중독성이 있다고 말한다면 커피, 콜라, 차를 마시는 사람들도 중독자라 불러야 할 것이다. 담배 피우는 것은 단 음식물 먹거나 커피를 마시는 것과 마찬가지로 습관일 뿐이다."

그러자 워싱턴 의원이 이를 반박이 했다. "만약 1년에 단 한 사람도 죽음으로 이끌지 않는다는 사실을 당신도 나도 잘 알고 있다. 담배와 연관이 다른 것은 바로 죽음을 불고오는 나쁜 습관이라는 것이다."

이날 청문회의 또 다른 뜨거운 쟁점은 담배유해론을 담배회사 사장들이 인정하는가 하는 것이었다. 의원들은 "담배가 죽음을 불고오는

직접적 원인이 되고 있다는 점을 믿는다"고 말했다(미국내에서 흡연과 관련 사망자 수는 1년에 대략 40만명 정도로 추정되고 있다.) 이 질문에 대해 담배회사 사장들은 "우리는 그 점을 확실하게 알지 못한다"며 모호한 답을 했다.

그러자 워싱턴 의원은 "모든다고 무책임하게 이야기할 게 아니라 무엇인가를 이야기하는 책임감이 있어야 한다"고 꾸짖었다. 그리고는 "자물쇠를 식물, 동물 등의 제조업자를 위한 담배 내용도 담배들이 만드는 제품이 가지고 있는 위험성을 이해하고 설명할 수 있는 입장이 되어야 한다. 그렇게 하는 것이 바로 당신들의 의무"라고 말했다.

그런데 담배유해론을 확실하게 알지 못한다며 말뼉을 하던 담배회사 사장들도 의원들이 끈질기게 물고 늘어지자 결국 "담배가 폐암과 심장병, 그밖의 건강문제의 원인이 될 수도 있다"는 선으로 후퇴했으며, 특히 그들의 자녀들이 담배를 피우지 않는 것을 대원한다고 "고백"하기에 이르렀다.

[최정석/서울시 보라매병원 교수]

"100명이 금연을 시도하면 2~3만명이 의지로 성공을 하는 것이고, 계속 흡연을 하게 되기 때문에 양이 생긴다는 말이지."

중독성이 알코올이나 대마초보다 높고, 마약과 비슷하다는 학계의 판단도 함께 근거로 제시됐습니다.

담배제조업체들은 담배의 중독성이 높지 않다는 입장이고, 그동안 우리 법원 역시 금연 실패를 개인의 '의지부족' 정도로 판단해왔습니다.

Review

[The Hankyoreh article dated April 19, 1994]

It has been reported that tobacco companies are publicly denying the addictive nature of tobacco.

[MBC News dated April 23, 2016]

Tobacco manufacturers maintain that cigarettes are not highly addictive, and Korean courts have also ruled that smoking cessation failures are due to a lack of personal willpower.

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑦ Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking, and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.

Review

- KT&G, January 10, 2004, Preparatory statement, Page 35

이상의 사실로 보면, 담배에는 담배연기 속에 들어 있는 니코틴의 작용에 의한 의존성이 있고, 흡연습관이 붙은 후의 금연에는 어려움이 따르긴 하나, 그 의존성의 정도는 신체의존에 대해서는 심리적 증상이 대부분으로 의존의 정도는 미약하고, 정신의존에 대해서도 어느 정도의 의존성이 있기는 하나, 그 정도는 금제품이나 알코올보다 현격하게 낮아, 흡연자 자신의 의사 및 노력에 따른 금연이 불가능한 정도의 것은 아니라고 인정된다.

- KT&G, December 21, 2006, Preparatory statement, Page 28

금연은 애초부터 불가능한 것입니다. 이처럼 흡연은 자발적 행동이며, 스스로 판단하여 행하는 행동으로서, 흡연자는 여전히 자신의 행동의 통제력을 상실하지 않으며(감정보완서 57면), 니코틴의 의존성은 흡연자들 자신의 의지나 노력에 의한 금연을 불가능하게 하지 않습니다.

- Defendant KT&G, the manufacturer of tobacco products, which accurately recognizes the harmful effects of tobacco products, does not accurately acknowledge the addictive risk of tobacco products, viewing it as a matter of choice based on free will.
- In the prior tobacco lawsuit, it argued that the degree of nicotine dependence was minor and therefore not an issue, and that the continuation of smoking was a voluntary act.
- Since manufacturers themselves do not properly acknowledge the addictive nature of tobacco, it cannot be regarded as a widely known and obvious risk.

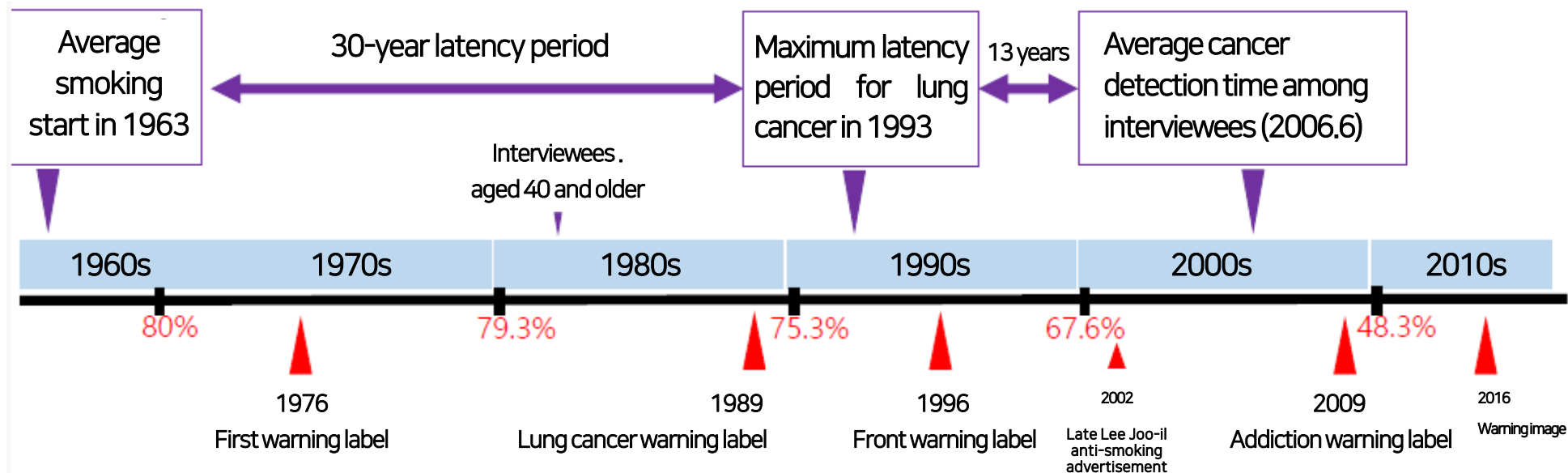
2 Defect in indication – Review of the Decision

Contents of the Decisions

⑧ Although it appears that the defendants added a warning label on the addictive nature of cigarettes in addition to the harmful effects of cigarettes around 2008 while importing, manufacturing, and selling cigarettes, it is difficult to conclude that their failure to include labels that were not required by law at that time constitutes a violation of the law in relation to smokers since the defendants had already fulfilled the labeling requirements mandated by the relevant laws and regulations at that time.

Review

- The defendants did not display warning labels regarding addictiveness until 2008, and only began doing so in 2009 in compliance with legal requirements.
- Consumers who began smoking in the 1960s and 1970s, prior to the implementation of warning labels, could not have known that quitting smoking would be difficult.
- Given that the defendants failed to include warnings about “addictiveness,” it cannot be considered that they provided reasonable warnings.



2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑧ Although it appears that the defendants added a warning label on the addictive nature of cigarettes in addition to the harmful effects of cigarettes around 2008 while importing, manufacturing, and selling cigarettes, it is difficult to conclude that their failure to include labels that were not required by law at that time constitutes a violation of the law in relation to smokers since the defendants had already fulfilled the labeling requirements mandated by the relevant laws and regulations at that time.</p>	<ul style="list-style-type: none">• As seen above, the subjects of this case, who began smoking in the 1960s and 1970s, were not clearly aware of the harmful effects and addictive nature of smoking. Furthermore, contrary to the court's assumption, the harmful effects and addictive nature of smoking were not widely known at the time and were treated as a controversial issue depending on the defendants' strategy.• On the other hand, the defendants were well aware of the harmful effects and addictiveness of smoking, and therefore should have provided clear and explicit warnings about the harmful effects and addictiveness of smoking as early as the early 1960s, regardless of the relevant laws and regulations regarding indication. However, they failed to do so and only provided abstract warnings about the harmful effects in 1976 and about addictiveness in 2009, in accordance with the relevant laws and regulations regarding indication.• Therefore, it is clear that the defendants committed an illegal act by failing to properly fulfilling their duty of indication in their relationship with the subjects of this case.

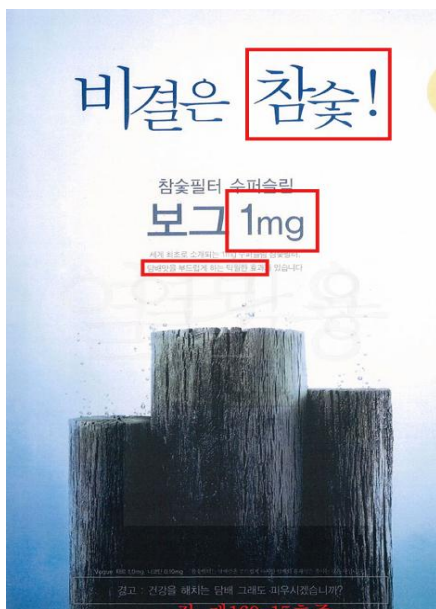
2 Defect in indication – Review of the Decision

Contents of the Decisions

⑨ Even if the defendants used phrases such as ‘natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification’ for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers’ free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)

Review

(Published in Shindonga in September 2005)



- Warning statements **must be consistent and clear** in order to effectively warn consumers of product hazards.
 - Warning statements that **contradict themselves** by warning of hazards while denying them will confuse consumers and render the warning statements ineffective.
 - When determining whether there are defects in indication, not only the instructions and warnings displayed on the product but also any related advertisements and promotions must be considered comprehensively.
 - The defendants failed to provide sufficient labeling by including only the minimum warning statements required by relevant laws and regulations, while rendering the warning statements ineffective through misleading statements in product advertisements.
- Misleading statements such as “natural, pure, well-being, clean, 1mg, light, soft, cool, ability to filter out harmful ingredients, detoxification effect”, along with the emphasis on health-related images such as blue and green colors.

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑨ Even if the defendants used phrases such as ‘natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification’ for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers’ free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)

Review

[Defendant KT&G's ESSE SOON Advertisement]
(Published in Friday Comma in April 2006)

The advertisement for KT&G's ESSE SOON cigarettes features a green bamboo background. Key text elements include:

- Top right: "대나무활성숯은 일반 참숯의 최대 10배 흡착력을 가진 귀한 숯입니다" (Bamboo activated charcoal has 10 times the adsorption power of ordinary bamboo charcoal, a precious charcoal).
- Center: "우리 자연의 힘!" (The power of our nature!) with "ESSE 순" below it.
- Right: A cigarette pack with "1mg" highlighted.
- Bottom left: "대나무숯 필터가 들어간 웰빙 담배" (Well-being cigarette with bamboo charcoal filter) and "KT&G, 'ESSE 순(純)' 출시" (KT&G, 'ESSE SOON' launch).
- Bottom: Detailed text about the bamboo charcoal filter's benefits, including its ability to filter out harmful substances and its natural flavor.

- Using green bamboo as a background image
- Using misleading phrases such as well-being, pure, natural, clean, 1mg, etc.
- Contents of promotional article
- The bamboo activated charcoal filter, applied for the first time in the world, has excellent ability to filter out harmful substances.
- It has the effects of calming the mind and body, activating body energy, and is also excellent for blocking electromagnetic waves, improving odor, and detoxifying... By coating cigarette packaging with yellow clay, it is now possible to expect odor removal and detoxification effects.

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑨ Even if the defendants used phrases such as 'natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification' for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers' free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)

Review

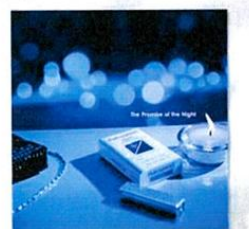
[Philip Morris Korea's Parliament Advertisement]
(Published in Newsweek in December 1995, Film 2.0 in November 2005, GQ in September 2006, GQ in August 2012, and GQ in October 2013)



1995.12월 뉴스위크



2005.11월 필름2.0



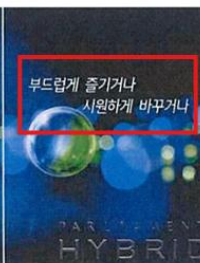
2006.09월 GQ



2012.08월 GQ



2013.10월 GQ



- Use of misleading phrases such as light, soft, cool, 1mg
- Use of blue as the main color with a clear sky and sea as the background to emphasize the image of health

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑨ Even if the defendants used phrases such as ‘natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification’ for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers’ free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)

Review

[British American Tobacco Korea’s Sky Advertisement]
(Published in Newsweek in April 1995)



- Use of phrases such as mild and soft
- Use of blue as the main color against a clear sky to emphasize the healthy image

2 Defect in indication – Review of the Decision

Contents of the Decisions

⑨ Even if the defendants used phrases such as ‘natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification’ for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers’ free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)

Review

RICO Case

In the so-called RICO case, which began in 1999, the U.S. federal court ruled in 2006 that tobacco companies had illegally misled consumers for many years into believing that low-tar and light cigarettes were less harmful.

Greene v. Philip Morris USA Inc.

On May 9, 2023, the Massachusetts Supreme Judicial Court ruled that Philip Morris USA had acted unlawfully by failing to disclose that Marlboro Lights contained no lower levels of tar and nicotine than Marlboro Reds, despite knowing this fact, and by failing to disclose that Marlboro Lights smoke causes more mutations, despite knowing this fact, and that the company marketed Marlboro Lights as a lower-tar and lower-nicotine cigarette until 2003, thereby leading consumers to believe that Marlboro Lights were a healthier alternative to Marlboro Reds.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑨ Even if the defendants used phrases such as ‘natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification’ for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers’ free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)</p>	<ul style="list-style-type: none">• <u>The terms ‘light’ and ‘mild’ themselves are inaccurate health-related indications that misleads consumers about the risks associated with smoking.</u><ul style="list-style-type: none">- ‘Light’ and ‘mild’ cigarettes actually result in higher levels of tar and nicotine intake compared to the values indicated based on machine smoking, leading to deeper inhalation and increased cigarette consumption (‘compensation smoking’), thereby increasing the human body’s exposure to toxic substances.- ‘Light’ and ‘mild’ are misleading phrases that make people believe that the risks of the product are lower, and their use is currently prohibited under the Tobacco Business Act.• Even before the amendment of the Tobacco Business Act, the defendants, as tobacco manufacturers, should have refrained from using the terms “light” and “mild” on their products, as they were aware of the issues associated with such products. Furthermore, they should have clearly informed consumers that blocking the ventilation holes on tobacco products during smoking could expose users to significant amounts of toxic substances, regardless of the stated numerical values.• However, rather than accurately informing consumers of the dangers of tobacco products, the defendants intentionally used words, images, and colors that were far from the actual properties of the products in their advertisements, using them as promotional tools to create the perception that the products were safe.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑨ Even if the defendants used phrases such as 'natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification' for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers' free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)</p>	<ul style="list-style-type: none">• The defendants' insufficient warning statements were further rendered ineffective by advertisements that misled consumers about the risks, so it cannot be said that the defendants fulfilled their duty to provide instructions and warnings regarding tobacco products under the Product Liability Act.• Therefore, it is clear that the defendants' use of misleading statements was unlawful, even before the prohibition provisions were enacted under the Tobacco Business Act.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑦ <u>Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking, and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.</u></p> <p>⑨ Even if the defendants used phrases such as ‘natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification’ for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. <u>In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers’ free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)</u></p>	<ul style="list-style-type: none">• The serious error in the decision lies in the fact that, at the stage of determining whether the defendants' failure to properly fulfill their duty for indication was unlawful, the court suddenly used the fact that the subjects of this case were able to quit smoking of their own free will as grounds for concluding that the defendants' failure to properly fulfill their duty to disclose was not unlawful.• Whether the defendants’ failure to fulfill their duty for indication was unlawful should not be judged based on whether smokers could have taken measures such as quitting smoking even after learning of the harmfulness and addictiveness of smoking, but rather based on ⑩ whether the defendants had a duty to warn people about the harmfulness and addictiveness of smoking and ⑪ whether the defendants properly fulfilled their duty of warning.• As to whether smokers could quit smoking of their own free will, the issue is whether the smokers would not have suffered damages from lung cancer or laryngeal cancer if they had learned of the harmful effects of smoking, even if belatedly, and quit smoking of their own free will. In other words, the issue is whether there is a causal relationship between the defendants’ illegal act and the onset of lung cancer or laryngeal cancer of the subjects of this case.

2 Defect in indication – Review of the Decision

Contents of the Decisions	Review
<p>⑦ <u>Even though smoking can lead to some degree of nicotine dependence, it seems that the degree of dependence, the symptoms of the disorder caused, and their intensity are all a matter of free will to decide whether to start smoking or continue smoking, and it also seems to have been widely recognized among tobacco consumers that once they start smoking, it may be difficult to quit.</u></p> <p>⑨ Even if the defendants used phrases such as ‘natural, pure, well-being, 1mg, mild, light, smooth, cool, ability to filter out harmful ingredients, detoxification’ for the purpose of promoting cigarette sales, from the perspective of cigarette consumers, they were in a position to freely decide whether to smoke by considering the warning labels written by the defendants and the aforementioned advertising phrases together. <u>In addition, it is difficult to conclude that the above advertising phrases have a fundamental impact on smokers’ free will to decide whether to start or continue smoking. (There is no evidence to support the claim that smokers started or continued smoking despite warnings about the harmfulness or addictiveness of cigarettes due to the above advertising phrases without recognizing the harmfulness or addictiveness of cigarettes.)</u></p>	<ul style="list-style-type: none">• The unreasonable logic behind this decision appears to be based on the moral prejudice that “smokers started smoking because they wanted to, and even though they could quit, they chose not to, so it is not fair to hold others fully responsible for their actions.”• However, such moral prejudice is not only based on the erroneous premise that quitting smoking is possible through free will but also fails to properly grasp the essence of tobacco litigation, making them unjustified.• The tobacco lawsuit is not based on the premise that smokers like the subjects of this case are victims who bear no responsibility for developing lung cancer or laryngeal cancer. Rather, it holds the defendants liable for failing to adequately warn consumers about the dangers of smoking despite their knowledge of its harmful and addictive nature, and for deceiving consumers with misleading labels such as “light” and “mild” until such warnings were mandated by law.• The logic of the decision is equivalent to saying that since smokers are also at fault, the defendants are not at fault, which is unacceptable and should be overcome through this appeal.



01 Decisions subject to review

02 Defect in indication

03 Causal relationship

3 Causal relationship - Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court Decision (Same reason as Supreme Court Decision 2011Da22092)

- Relevant legal principles

Epidemiology is an academic discipline that analyzes the occurrence, distribution, and elimination of diseases as collective phenomena and the influences on them, and statistically identifies correlations with various natural and social factors, and thereby discovers methods to prevent and reduce the occurrence of diseases. Epidemiology investigates and identifies the causes of diseases as collective phenomena, and does not determine the cause of diseases suffered by individuals belonging to the group. Therefore, even if it is recognized that there is an epidemiological correlation between a certain risk factor and a certain disease, it does not determine the cause of the disease suffered by an individual belonging to that group. Rather, if the disease incidence rate of a group exposed to a certain risk factor is higher than that of a general group not exposed to that risk factor, it is only possible to infer how likely it is that the disease suffered by an individual belonging to that group was caused by that risk factor based on the degree of that higher rate.

3 Causal relationship - Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court Decision (Same reason as Supreme Court Decision 2011Da22092)

- Relevant legal principles

Meanwhile, unlike 'specific diseases' that are caused by a specific pathogen and whose cause and effect clearly correspond, so-called 'non-specific diseases' have complex causes and mechanisms and are caused by a combination of congenital factors such as genetics and constitution, and acquired factors such as alcohol consumption, smoking, age, dietary habits, occupational and environmental factors. In the case of such non-specific diseases, even if an epidemiological correlation between specific risk factors and non-specific diseases is recognized, as long as there is always the possibility that individuals or groups exposed to that risk factor may also be exposed to other risk factors, the epidemiological correlation merely indicates that exposure to the risk factor increases the risk of developing the disease, and does not lead to the conclusion that the risk factor is the cause of the disease..

3 Causal relationship - Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court Decision (Same reason as Supreme Court Decision 2011Da22092)

- Relevant legal principles

Therefore, even if an epidemiological correlation between specific risk factors and non-specific diseases is recognized in the case of non-specific diseases, it cannot be considered that the probability of acknowledging a causal relationship between the two has been proven simply by proving that an individual was exposed to the risk factor and contracted the non-specific disease. In such cases, ① it must be proven that an epidemiological study comparing a group exposed to the risk factor with another general group not exposed to the risk factor shows that the incidence rate of the non-specific disease in the group exposed to the risk factor significantly exceeds the incidence rate of the non-specific disease in the group not exposed to the risk factor; and ② the timing and extent of exposure to risk factors by individuals belonging to that group; ③ the onset of the disease; ④ the health status prior to exposure to the risk factors; ⑤ changes in lifestyle and disease status, family history, etc., to demonstrate that there is a likelihood that the non-specific condition was caused by the risk factor (Refer to Supreme Court Decision 2011Da22092 Decided April 10, 2014).

3 Causal relationship - Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court Decision

- Specific judgment

- 1) Since the diseases of this case is a non-specific disease, the plaintiff must prove that an epidemiological study comparing a group exposed to the risk factor with another general group not exposed to the risk factor shows that the incidence rate of the non-specific disease in the group exposed to the risk factor significantly exceeds the incidence rate of the non-specific disease in the group not exposed to the risk factor; and the timing and extent of exposure to risk factors by individuals belonging to that group; the onset of the disease; the health status prior to exposure to the risk factors; changes in lifestyle and disease status, family history, etc., to demonstrate that there is a likelihood that the non-specific condition was caused by the risk factor.
- 2) First, based on the facts acknowledged above, there is room to consider that the incidence rate of the disease in question among the group exposed to smoking significantly exceeds that among the group of non-smokers.

3 Causal relationship - Contents of the Decisions

[Seoul Central District Court Decision 2014GaHap525054]

- Court Decision

- Specific judgment

- 3) However, in order to establish a causal relationship between smoking and the disease in question, additional indirect evidence must be presented during the investigation process to demonstrate that there were no other risk factors other than smoking, such as the timing and extent of exposure to smoking, the onset of the disease, the health status prior to exposure to smoking, changes in lifestyle and disease status, family history, etc. However, based solely on the contents of Exhibits of Gap 80, 89, 143, and 215 submitted by the plaintiff, it is only possible to ascertain that the subjects of this case had a smoking history of 20 pack-years or more and were diagnosed with the disease in question.
- 4) According to the above facts, even if it is possible to acknowledge an epidemiological causal relationship between the risk factors, smoking, and the non-specific disease, as suggested by the research results examined above, it is difficult to conclude that the likelihood of a causal relationship between the two has been proven simply because the subjects of this case smoked and suffered from the disease in question, or that the plaintiff has fulfilled its burden of proof.
- 5) Therefore, the evidence submitted by the plaintiff alone is insufficient to establish a causal relationship between smoking cigarettes imported, manufactured, and sold by the defendants and the occurrence of the disease in question, and there is no other evidence to support such a finding.

3 Causal relationship - Review of the Decision

[Distinction between specific and non-specific diseases]

- Medically and epidemiologically, There is no concept of specific or non-specific diseases.
- The 'Special Committee on Tobacco and Lung Cancer Lawsuits of the Korean Society for Preventive Medicine and the Korean Society of Epidemiology', organized by the Korean Society for Preventive Medicine and the Korean Society of Epidemiology, criticized this dichotomous classification of diseases as having no academic basis and stated that it is not a term used in epidemiology, which deals with the causality of diseases, that the term is difficult to find even in the epidemiology dictionary published by the International Epidemiological Association or textbooks on epidemiology such as Modern Epidemiology, and that it is an unfamiliar term even to epidemiologists.
- The concept of highly specific diseases and low-specific diseases can only be assumed.
- In cases where the smoking history is 20 pack-years or more and the smoking period is 30 years or more, the attributable risk fractions for lung cancer (squamous cell carcinoma, small cell carcinoma) and laryngeal cancer (squamous cell carcinoma) are 91.5%, 95.4%, and 81.5%, respectively, indicating very high specificity.
- Even according to Supreme Court precedents distinguishing between specific and non-specific diseases, considering the very high specificity as described above, criteria equivalent to those for specific diseases should be applied in determining causal relationships.

3 Causal relationship - Review of the Decision

- In cases like the subjects of this case, where individuals have smoked for at least 30 years and have a smoking history of 20 pack-years or more, smoking can be considered a major risk factor for lung cancer (particularly squamous cell carcinoma and small cell carcinoma). Therefore, it can be presumed that there is a causal relationship between smoking and the development of lung cancer (logic of the appellate court decision in the previous Supreme Court case).
- According to epidemiological studies published to date, the risk of developing lung cancer and other diseases is 10 to 20 times higher in smokers than in non-smokers, and the attributable risk of smoking for lung cancer is also over 90%.
- In particular, in the case of smokers who have smoked for more than 30 years and have smoked for more than 20 pack-years, the risk of developing small cell lung cancer is a whopping 41.1 to 54.5 times higher than in non-smokers, with an attributable risk of 97.5% to 98.2%.
- If lung cancer or laryngeal cancer occurs in a non-smoker, it is meaningful to consider other factors (environment, family history, genetic predisposition, etc.). However, in individuals who have smoked for 20 pack-years or more, the carcinogenic exposure from smoking is the strongest factor, rendering the presence or influence of other factors insignificant.

3 Causal relationship - Review of the Decision

- ✓ Epidemiological causal relationship between smoking and lung cancer, etc.
 - Using the lung cancer occurrence prediction model of the Liverpool Lung Project (LLP) in the UK, the influence of each risk factor on the occurrence of lung cancer was compared for the subjects of this case. As a result, when smoking history was excluded, the probability of lung cancer occurrence was reduced by 86.5%, i.e., indicating that smoking increases the risk of lung cancer by 7.4 times.

Classification	Mean	Standard deviation	Difference from default probability		
			%p	$\Delta(\%)$	Times
Dafault	2.52	2.46	—	—	—
Excluding smoking history	0.34	0.23	2.18	86.5	7.4
Excluding history of lung disease	2.06	1.85	0.46	18.3	1.2
Excluding history of cancer	2.40	2.29	0.12	4.8	1.1
Excluding history of asbestos exposure	2.38	2.34	0.14	5.6	1.1
Excluding family history of lung cancer	2.50	2.45	0.02	0.8	1.0

3 Causal relationship - Review of the Decision

Contents of the Decisions	Review
<p>However, based solely on the contents of Exhibits of Gap 80, 89, 143, and 215 submitted by the plaintiff, it is only possible to ascertain that the subjects of this case had a smoking history of 20 pack-years or more and were diagnosed with the disease in question. It is difficult to conclude that the likelihood of a causal relationship between the two has been proven simply because the subjects of this case smoked and suffered from the disease in question, or that the plaintiff has fulfilled its burden of proof.</p>	<ul style="list-style-type: none">• The court did not even properly judge the large amount of evidence that the plaintiff submitted individually regarding the 3,465 subjects of this case, and merely made a vague and formal determination that the evidence submitted was insufficient to establish the causal relationship, without providing even the slightest explanation as to why the evidence was insufficient.• The Supreme Court stated that the plaintiff must prove the “probability” that the lung cancer (squamous cell carcinoma, small cell carcinoma) and laryngeal cancer (squamous cell carcinoma) diagnosed in each subject were caused by smoking by demonstrating the following matters:<ul style="list-style-type: none">① An epidemiological study comparing a group exposed to the risk factor with another general group not exposed to the risk factor shows that the incidence rate of the non-specific disease in the group exposed to the risk factor significantly exceeds the incidence rate of the non-specific disease in the group not exposed to the risk factor② The timing and extent of exposure to risk factors by individuals belonging to that group③ The onset of the disease④ Health status prior to exposure to the risk factors⑤ Changes in lifestyle and disease status, family history, etc.

3 Causal relationship - Review of the Decision

Contents of the Decisions	Review
<p>However, based solely on the contents of Exhibits of Gap 80, 89, 143, and 215 submitted by the plaintiff, it is only possible to ascertain that the subjects of this case had a smoking history of 20 pack-years or more and were diagnosed with the disease in question. It is difficult to conclude that the likelihood of a causal relationship between the two has been proven simply because the subjects of this case smoked and suffered from the disease in question, or that the plaintiff has fulfilled its burden of proof.</p>	<ul style="list-style-type: none">① Epidemiological survey results show that the rate of lung cancer (squamous cell carcinoma/small cell carcinoma) and laryngeal cancer (squamous cell carcinoma) diagnosed in groups exposed to smoking significantly exceeded the rate of these cancers diagnosed in groups not exposed to smoking.The following is proven through the Exhibit of Gap No. 45 (Smoking History and Medical Expense Details of Each Subject), Exhibit of Gap No. 82 (Confirmation Certificate), Exhibit of Gap No. 143 (Medical Records), Exhibit of Gap No. 215 (Confirmation Certificate), and Exhibit of Gap No. 325 (Basic Fact Investigation Report):<ul style="list-style-type: none">② The timing and extent of exposure to smoking for the subjects of this case,③ The onset of lung cancer (squamous cell carcinoma, small cell carcinoma) and laryngeal cancer (squamous cell carcinoma) of each subject,④ The fact that most subjects began smoking at a young age when they were in good health without any special illnesses, smoked for over 30 years, and have a smoking history of over 20 pack-years.⑤ Regarding matters related to changes in lifestyle and disease status, family history, etc., the plaintiff reviewed each subject's ① occupational history, ① past medical history, ② family medical history, and ③ drinking history based on the Exhibit of Gap No. 45 (Smoking History and Medical Expense Details of Each Subject), Exhibit of Gap No. 82 (Confirmation Certificate), Exhibit of Gap No. 143 (Medical Records), Exhibit of Gap No. 215 (Confirmation Certificate), and Exhibit of Gap No. 325 (Basic Fact Investigation Report), and classified them as follows:<ul style="list-style-type: none">✓ ④ 1,467 subjects with no risk factors✓ ⑤ 1,246 subjects with one risk factor✓ ⑥ 297 subjects with two risk factors✓ ⑦ 32 subjects with three risk factors✓ ⑧ 2 subjects with all four risk factors

3 Causal relationship - Review of the Decision

Contents of the Decisions

However, based solely on the contents of Exhibits of Gap 80, 89, 143, and 215 submitted by the plaintiff, it is only possible to ascertain that the subjects of this case had a smoking history of 20 pack-years or more and were diagnosed with the disease in question. It is difficult to conclude that the likelihood of a causal relationship between the two has been proven simply because the subjects of this case smoked and suffered from the disease in question, or that the plaintiff has fulfilled its burden of proof.

Review

Classification of all subjects (3,465 people)

Details of risk factors possessed	Number of subjects (people)
N/A	1,467
Occupational history	138
Past medical history	436
Family medical history	41
Drinking history	631
Occupational history + Past medical history	47
Occupational history + Family medical history	1
Occupational history + Drinking history	91
Past medical history + Family medical history	14
Past medical history + Drinking history	123
Family medical history + Drinking history	21
Occupational history + Past medical history + Family medical history	0
Occupational history + Past medical history + Drinking history	22
Occupational history + Family medical history + Drinking history	5
Past medical history + Family medical history + Drinking history	5
Occupational history + Past medical history + Family medical history + Drinking history	2
Difficulty in calculation	421

3 Causal relationship - Review of the Decision

Contents of the Decisions

However, based solely on the contents of Exhibits of Gap 80, 89, 143, and 215 submitted by the plaintiff, it is only possible to ascertain that the subjects of this case had a smoking history of 20 pack-years or more and were diagnosed with the disease in question. It is difficult to conclude that the likelihood of a causal relationship between the two has been proven simply because the subjects of this case smoked and suffered from the disease in question, or that the plaintiff has fulfilled its burden of proof.

Review

Classification of lung cancer subjects (2,980 people)

Details of risk factors possessed	Number of subjects (people)
N/A	1,244
Occupational history	124
Past medical history	436
Family medical history	40
Drinking history	454
Occupational history + Past medical history	47
Occupational history + Family medical history	1
Occupational history + Drinking history	74
Past medical history + Family medical history	14
Past medical history + Drinking history	123
Family medical history + Drinking history	21
Occupational history + Past medical history + Family medical history	0
Occupational history + Past medical history + Drinking history	22
Occupational history + Family medical history + Drinking history	5
Past medical history + Family medical history + Drinking history	5
Occupational history + Past medical history + Family medical history + Drinking history	2
Difficulty in calculation	368

Classification of laryngeal cancer subjects (465 people)

Details of risk factors possessed	Number of subjects (people)
N/A	211
Occupational history	14
Past medical history	-
Family medical history	1
Drinking history	169
Occupational history + Past medical history	-
Occupational history + Family medical history	-
Occupational history + Drinking history	17
Past medical history + Family medical history	-
Past medical history + Drinking history	-
Family medical history + Drinking history	-
Occupational history + Past medical history + Family medical history	-
Occupational history + Past medical history + Drinking history	-
Occupational history + Family medical history + Drinking history	-
Past medical history + Family medical history + Drinking history	-
Occupational history + Past medical history + Family medical history + Drinking history	-
Difficulty in calculation	53

3 Causal relationship - Review of the Decision

Contents of the Decisions

However, based solely on the contents of Exhibits of Gap 80, 89, 143, and 215 submitted by the plaintiff, it is only possible to ascertain that the subjects of this case had a smoking history of 20 pack-years or more and were diagnosed with the disease in question. It is difficult to conclude that the likelihood of a causal relationship between the two has been proven simply because the subjects of this case smoked and suffered from the disease in question, or that the plaintiff has fulfilled its burden of proof.

Review

Classification of lung cancer&laryngeal cancer subjects (20 people)

Details of risk factors possessed	Number of subjects (people)
N/A	12
Occupational history	-
Past medical history	-
Family medical history	-
Drinking history	8
Occupational history + Past medical history	-
Occupational history + Family medical history	-
Occupational history + Drinking history	-
Past medical history + Family medical history	-
Past medical history + Drinking history	-
Family medical history + Drinking history	-
Occupational history + Past medical history + Family medical history	-
Occupational history + Past medical history + Drinking history	-
Occupational history + Family medical history + Drinking history	-
Past medical history + Family medical history + Drinking history	-
Occupational history + Past medical history + Family medical history + Drinking history	-
Difficulty in calculation	-

3 Causal relationship - Review of the Decision

Contents of the Decisions	Review
<p>However, based solely on the contents of Exhibits of Gap 80, 89, 143, and 215 submitted by the plaintiff, it is only possible to ascertain that the subjects of this case had a smoking history of 20 pack-years or more and were diagnosed with the disease in question. It is difficult to conclude that the likelihood of a causal relationship between the two has been proven simply because the subjects of this case smoked and suffered from the disease in question, or that the plaintiff has fulfilled its burden of proof.</p>	<ul style="list-style-type: none">• The presence of other risk factors does not mean that the causal relationship between smoking and lung cancer is broken or cannot be inferred.<ul style="list-style-type: none">✓ There are no factors that contribute to the development of lung cancer (squamous cell carcinoma/small cell carcinoma) and laryngeal cancer (squamous cell carcinoma) as much as smoking.✓ While numerous studies have definitively identified smoking as a risk factor for lung cancer, alcohol consumption has either been reported to have no association with lung cancer or to be a minor risk factor compared to smoking.✓ In particular, regardless of the presence or absence of other risk factors, the subjects of this case: ① among people diagnosed with lung cancer (squamous cell carcinoma/small cell carcinoma) and laryngeal cancer (squamous cell carcinoma) presumed to be caused by smoking②③④ were selected through medical records and confirmations, and were diagnosed with lung cancer, etc. after smoking for more than 30 years and 20 pack-years, starting at a young age, and had no specific diseases before smoking, making the results even more significant.• Rather, the defendants should prove that the subjects of this case developed the disease due to risk factors other than smoking, but the defendants have failed to provide any such evidence.• The court should not evade the issue with abstract and formalistic judgments, but should directly and thoroughly examine whether a causal relationship can be established for each of the 3,465 subjects who have made detailed claims and submitted evidence.



Thank You.

DR & AJU CCA, LLC.

T : +82-02-563-2900 | E : draju@draju.com

www.draju.com