



## The Master Settlement Agreement: An Overview

In the 1990s, several states sued the major cigarette manufacturers, including Philip Morris USA, R. J. Reynolds, Brown & Williamson, and Lorillard, to recover Medicaid and other costs the states incurred in treating sick and dying cigarette smokers. On November 23, 1998, the cigarette manufacturers, along with forty-six states and six other U.S. jurisdictions (the “Settling States”), entered into what is called the Master Settlement Agreement (MSA), the largest civil litigation settlement in U.S. history.

As outlined in the MSA, each of the Settling States gave up any future legal claims they might have based on the cigarette companies’ actions at issue in the settled lawsuits. This did not include the individual claims of their residents. In exchange, the companies signing the MSA (the “Participating Manufacturers”) agreed to make annual payments in perpetuity to the Settling States to compensate them for taxpayer money spent for health-care costs connected to tobacco-related illness. The MSA also sets standards, and imposes restrictions on, the sale and marketing of cigarettes by participating cigarette manufacturers, and includes other requirements and restrictions regarding tobacco company conduct.



This publication provides answers to several common questions about the MSA.<sup>1</sup> For more information about the MSA, check out the publications and resources on the Public Health Law Center’s [website](#) or the National Association of Attorneys General’s [website](#).

### **Q: What was the focus of the litigation?**

**A:** In the mid-1950s through 1994, individuals brought over 800 claims against cigarette manufacturers for damages related to the effects of smoking.<sup>2</sup> However, the manufacturers, raising defenses such as contributory negligence and the individual responsibility of smokers, generally prevailed in these lawsuits. In 1994, a number of states, beginning with Mississippi,<sup>3</sup> sued the largest cigarette manufacturers under a variety of legal theories, including state consumer protection and antitrust laws, arguing that cigarettes contributed to health problems that triggered significant costs to state health-care systems. In 1997, four states (Mississippi,<sup>4</sup> Minnesota,<sup>5</sup> Florida, and Texas), reached settlements to recover for Medicaid and other health expenses resulting from smoking-caused illnesses. After these settlements, the major manufacturers, facing a growing number of suits by other states,<sup>6</sup> joined with those states and petitioned Congress for a global resolution in June 1997. Congress failed to pass the global settlement agreement, but the manufacturers and the Settling States were still able to reach a settlement in November of the following year: the Master Settlement Agreement.<sup>7</sup>

**Q: Who is party to the MSA?**

**A:** The MSA is a private agreement between forty-six states, four U.S. territories, the Commonwealth of Puerto Rico, the District of Columbia, and the four largest tobacco manufacturers – Philip Morris USA, R.J. Reynolds, Brown & Williamson, and Lorillard, known collectively as the Original Participating Manufacturers. (Since the MSA became effective, mergers and acquisitions have left R.J Reynolds as the successor in interest in Brown & Williamson and Lorillard, leaving two Original Participating Manufacturers remaining.) Several other tobacco companies, known as Subsequent Participating Manufacturers, have also signed the agreement since 1998. (Original and Subsequent Participating Manufacturers are referred to collectively as Participating Manufacturers.) The number of Participating Manufacturers remains fluid as, over the years, some additional manufacturers have signed and others have gone out of business. Since the MSA was signed in November 1998, approximately 40 other cigarette manufacturers have signed the agreement and are bound by its terms.

**Q: Why did the parties agree to settle?**

**A:** According to the first section of the MSA, the parties settled “to avoid the further expense, delay, inconvenience, burden and uncertainty of continued litigation (including appeals from any verdicts).”<sup>8</sup> The MSA was intended “to further the Settling States’ policies designed to reduce Youth smoking, to promote public health, and to secure monetary payment to the settling states.”<sup>9</sup> The MSA only settles state and local government lawsuits; the tobacco industry gains no protection from class-action lawsuits and claims brought by individuals, labor unions, and private health-care insurers.<sup>10</sup>

**Q: How much does the MSA require tobacco companies to pay the Settling States?**

**A:** Each year, an independent auditor calculates the settlement payment to be made by each Participating Manufacturer and the amount to be received by each Settling State.<sup>11</sup> If parties disagree with the auditor’s calculations, the matter is submitted to binding arbitration by three neutral arbitrators who must be former federal judges.<sup>12</sup> The MSA sets up initial, annual, and “strategic contribution” payments for states.

- **Initial payments.** In addition to annual payments beginning on April 15, 2000, the MSA required Participating Manufacturers to make upfront payments in each of the first five years after the MSA’s execution, or a total of about \$12.75 billion, adjusted for the volume of cigarette shipments in those years compared to the volume in 1997.<sup>13</sup>
- **Annual payments (made in perpetuity).** Just as the Settling States’ Medicaid and other health-care costs due to their citizens’ smoking-related illnesses will likely continue indefinitely, the MSA provides that the Participating Manufacturers’ payments to the Settling States will continue in perpetuity.<sup>14</sup> The “base amounts” of these annual payments gradually increase, beginning at \$4.5 billion in 2000, \$6.5 billion from 2002–

2003, \$8.14 billion from 2008–2017, and \$9 billion in 2018 and each subsequent year in perpetuity.<sup>15</sup> Importantly, calculations of annual payments are complex and are subject to a variety of potential adjustments and offsets, including an inflation adjustment and a volume adjustment.<sup>16</sup> Most significantly, percentage reductions in cigarette shipment volumes have been greater than inflation adjustments since 1997, so actual annual payments have been lower than those set forth as base amounts in the MSA and can be expected to continue to be. Participating Manufacturers are required to make annual payments based on their shares of national cigarette sales and shipments. In addition, Participating Manufacturers have routinely withheld payments or made them into an escrow account pending resolution of disputes relating to certain of the above-mentioned adjustments. Settling States receive an allocation of these payments based on a percentage set forth in Exhibit A to the MSA.

- **Strategic Contribution Payments.** These payments serve as “bonus payments” for states that invested time and finances into the litigation that led to the MSA. The payments are allocated according to the percentages set forth in Exhibit U to the MSA, which were based on “each Settling State’s contribution to the litigation or resolution of the state tobacco litigation.”<sup>17</sup> The Participating Manufacturers’ base Strategic Contribution Payment amount is \$861 million each year from 2008 to 2017,<sup>18</sup> subject to the same adjustments as the annual payments.<sup>19</sup>

**Q: What else does the MSA do?**

**A:** The MSA restricts specific cigarette manufacturer conduct, including certain tobacco lobbying, creates a national tobacco control foundation, and dismantles several tobacco industry initiatives:

- **It imposes significant prohibitions and restrictions on tobacco advertising, marketing and promotional programs or activities.**<sup>20</sup> For example, it prohibits or restricts –
  - Direct and indirect targeting of youth
  - Use of cartoon characters
  - Billboards, transit ads, and other outdoor advertising not in direct proximity to a retail establishment that sells tobacco products
  - Product placements in entertainment media
  - Free tobacco product samples (except in adult-only facilities)
  - Gifts to youth in exchange for proofs of purchase
  - Branded merchandise
  - Brand name sponsorships
- **It prohibits certain practices that seek to hide negative information about smoking, such as:**
  - Lobbying against particular kinds of tobacco control legislation and administrative rules<sup>21</sup>
  - Agreements to suppress health-related research
  - Material misrepresentations about health consequences of using tobacco<sup>22</sup>

- **It creates a tobacco prevention foundation and disbands tobacco-industry initiatives**
  - The MSA created the American Legacy Foundation, a research and educational organization that focuses its efforts on preventing teen smoking and encouraging smokers to quit. The foundation is responsible for “The Truth” advertisement campaign,<sup>23</sup> which has had success in reducing youth smoking.<sup>24</sup>
  - The MSA dismantled key tobacco industry initiatives, including The Center for Indoor Air Research,<sup>25</sup> The Tobacco Institute,<sup>26</sup> and The Council for Tobacco Research.<sup>27</sup> In addition to disbanding these specific centers, the MSA prohibits Participating Manufacturers from creating other industry-wide groups unless such groups agree to act consistently with the MSA’s provisions.<sup>28</sup>
- **It requires the Participating Manufacturers to make available online the non-privileged documents they disclosed during the discovery phase of the tobacco litigation**, as well as any such documents produced in discovery in any federal or state civil action concerning smoking and health.<sup>29</sup>

**Q: How are the restrictions on the cigarette companies enforced?**

**A:** In 1999, the National Association of Attorneys General (NAAG), which under the MSA is responsible for coordinating and facilitating its implementation and enforcement on behalf of the attorneys general of the Settling States, formed the Tobacco Enforcement Committee, the Enforcement Working Group, which consists of attorney general office staff working on tobacco issues, and the Tobacco Project, which is comprised of staff attorneys within NAAG who support state enforcement efforts. (The NAAG Tobacco Project is now known as the NAAG Center for Tobacco and Public Health.) Enforcement typically begins when a state attorney general office or NAAG observes a potential violation of the MSA, or a member of the public or a public organization complains about a Participating Manufacturer’s marketing practices to a state attorney general or NAAG.<sup>30</sup> Once a violation has been noted or a complaint has been filed, the process proceeds as follows:

- A state or NAAG asks a company for information about the practice in question. If the practice is deemed a potential violation, it is referred to the Enforcement Committee.
- The Enforcement Committee generally then sends a letter to the company stating the violation and asking for a specified action or response. Letters may be followed by discussion and may also include negotiating a formal, written settlement agreement.
- If discussion fails, the Enforcement Committee decides whether to recommend enforcement actions by states, which then decide whether or not to initiate such actions.<sup>31</sup>
- A state must give a thirty-day notice to sue to enforce the MSA.<sup>32</sup> Ten days’ notice is required to enforce the Consent Decree (the settlement contained in a court order).<sup>33</sup>

**Q: What remedies do states have for violations of the MSA?**

**A:** The Settling States have several remedies for addressing MSA violations:

- **Voluntary cessation.** Often a desire to avoid litigation can induce companies to abandon challenged marketing campaigns. The U.S. Smokeless Tobacco Company, for instance, withdrew a false statement about product safety after the Rhode Island Attorney General

ordered the company to desist in 1999.<sup>34</sup> Brown and Williamson discontinued its “B-Kool” campaign in 2000 after being investigated jointly by a number of states.<sup>35</sup>

- **Litigation.** Some of the MSA’s provisions contain ambiguities or gaps that have led to litigation. These have included, for example, the issues of whether free matchbooks are “merchandise” under the MSA,<sup>36</sup> whether magazine advertisements are intended to target youth,<sup>37</sup> and whether the prohibition on brand-name sponsored events has been violated.<sup>38</sup> If the plaintiff state prevails, it can seek:
  - *Injunctive relief.* Though several Participating Manufacturers amended their advertising practices in the wake of the multi-state backlash against the B-Kool campaign, R.J. Reynolds did not make similar substantial changes. As a result, California sued the company and the court ordered Reynolds, among other things, to take reasonable measures to reduce youth exposure to its advertising.<sup>39</sup>
  - *Monetary remedies.* These could range from investigative costs<sup>40</sup> to funds that must be earmarked for tobacco prevention efforts<sup>41</sup> to punitive penalties.<sup>42</sup> Monetary remedies are unavailable under the MSA alone.
  - *Attorney’s fees.* Courts in every MSA state have approved a Consent Decree to facilitate enforcement of the MSA.<sup>43</sup> The availability of monetary penalties and attorney’s fees as remedies for violations of a Consent Decree is a key difference between its enforcement and enforcement of the MSA.<sup>44</sup>

**Q: Are there restrictions on how states use MSA funds?**

**A:** While the MSA states that its primary purpose is to decrease youth smoking and promote public health,<sup>45</sup> it does not contain any provisions requiring states to allocate settlement revenues to tobacco prevention and cessation.<sup>46</sup> As a result of decisions by state legislatures, which are responsible for deciding how the money is spent, state coffers lined with this money, coupled with billions in tobacco taxes and other substantial funds from tobacco companies, have not been used for tobacco control and prevention programs. In 2015, states will receive \$25.6 billion in revenue from the MSA settlement and tobacco taxes, but only 1.9% of these funds have been earmarked for tobacco control programs.<sup>47</sup>

In times of economic belt-tightening, state legislatures have used funds from tobacco settlement payments to cover budget shortfalls and address fiscal priorities in areas other than tobacco prevention and cessation. In fact, few states have allocated more than a nominal amount of their tobacco settlement revenue to fund tobacco prevention and cessation programs.<sup>48</sup> Instead, they often use MSA payments to fund general programming in a variety of areas such as budget financing, tax credits, and health-care programs.<sup>49</sup> At 3.5% of total MSA revenues, tobacco control programs receive the *least* MSA funds of any of the categories of government spending recorded in the Government Accountability Office’s report.<sup>50</sup> As of 2014, only North Dakota and Alaska funded their programs at the minimum level the Centers of Disease Control and Prevention recommends as necessary for an effective tobacco prevention and cessation program.<sup>51</sup>

**Q: What is securitization and why have some state and local governments securitized MSA payments?**



**A:** As noted above, the MSA does not limit the purposes for which the Settling States may use their funds. Some state and local governments have securitized their future MSA payments to generate short-term cash to cover budget shortfalls. Securing bonds allows governments to finance capital improvements, fund health-care projects, and receive an upfront lump sum of cash rather than waiting each year for the MSA payments.<sup>52</sup> By 2010, eighteen states, the District of Columbia, and three U.S. territories securitized some or all of their revenue entitlements from the MSA payment schedule into bonds.<sup>53</sup> The issued bonds totaled \$40 billion and are backed by expected future MSA payments.<sup>54</sup>

Many state and local governments' tobacco bond ratings have been downgraded in recent years, reflecting the difficulty they now face in meeting interest and maturity requirements.<sup>55</sup> The downgrade was the result of several factors, including downward MSA payment adjustments based on the declining volume of cigarette sales by Participating Manufacturers, unanticipated by the financial industry. The declining sales were caused in turn by declining cigarette consumption, the increased sale of products by cigarette manufacturers not signatories to the MSA, and tax increases.<sup>56</sup>

Participating Manufacturers have also made it a standard practice to dispute payments to the Settling States, allowing them to withhold portions of settlement payments or to place the payments in an escrow account pending resolution of the dispute.<sup>57</sup> Both of these actions prevent states from using the payments for current tobacco bond obligations.

The reduced MSA payments and the tobacco bond obligations are each connected to a state's ability to repay the tobacco bonds.<sup>58</sup> Depending on the terms of the bond instruments, a state that no longer receives adequate MSA payments to fund its bond obligations has the choice to either default on the bonds or find money to make the required payments, which could be taken from elsewhere in the state's budget or generated through a tax increase. With the exception of a tax increase, none of these are appealing options for states experiencing revenue problems. Moreover, the political support for a tax increase simply may not exist in some states.

### **Q: How much money have the Settling States received as a result of the MSA?**

**A:** As part of the agreement enshrined in the MSA, Participating Manufacturers will have paid states about \$106 billion in settlement funds through 2015,<sup>59</sup> and will pay billions more in perpetuity.<sup>60</sup> All MSA states receive settlement funds in amounts well above both the minimum and ideal funding levels recommended by the CDC for tobacco cessation or prevention. California and New York, for example, receive the largest percent of total MSA funds (approximately 12% each) at over \$700 million each<sup>61</sup>; the CDC's *ideal* funding level for these states, respectively, is \$347.9 million and \$203 million.<sup>62</sup> Neither state has come close even to the minimum CDC levels.

### **Contact Us**

Please feel free to contact the Tobacco Control Legal Consortium at [publichealthlawcenter@wmitchell.edu](mailto:publichealthlawcenter@wmitchell.edu) with any questions about the information included in this fact sheet or other questions regarding tobacco control policies.

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## Notes

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<sup>1</sup> The information contained in this document is not intended to constitute or replace legal advice.

<sup>2</sup> Robin Miller, Annotation, *Validity, Construction, Application, and Effect of Master Settlement Agreement (MSA) Between Tobacco Companies and Various States, and State Statutes Implementing Agreement, Use and Distribution of MSA Proceeds*, 25 A.L.R. 6th 435 (2007).

<sup>3</sup> *In re Mike Moore, Attorney General, ex rel., State of Mississippi Tobacco Litigation*, Cause No. 94-1429 (Chancery Ct., Jackson, Miss., 1996).

<sup>4</sup> Barry Meier, *Acting Alone, Mississippi Settles Suit with 4 Tobacco Companies*, N.Y. TIMES, July 4, 1997, <http://www.nytimes.com/1997/07/04/us/acting-alone-mississippi-settles-suit-with-4-tobacco-companies.html>.

<sup>5</sup> See Minnesota Tobacco Settlement Agreement (publications and resources on the Public Health Law Center website), <http://www.publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/minnesota-litigation-and-settlement>.

<sup>6</sup> As of October 1996, sixteen states had brought suit. See *Utah Sues Tobacco Companies*, WASH. POST, Oct. 1, 1996, at A9 (reporting that Utah joined fifteen other states, along with many counties and cities, in filing lawsuits against major tobacco companies).

<sup>7</sup> Master Settlement Agreement (1998), <http://www.naag.org/assets/redesign/files/msa-tobacco/MSA.pdf>.

<sup>8</sup> *Id.* at § I.

<sup>9</sup> *Id.*

<sup>10</sup> C. Stephen Redhead, *Tobacco Master Settlement Agreement (1998): Overview, Implementation by States, and Congressional Issues*, CONG. RES. SERV. 2 (Nov. 5, 1999).

<sup>11</sup> See generally Master Settlement Agreement, *supra* note 7, § XI.

<sup>12</sup> *Id.*, § XI(c).

<sup>13</sup> *Id.*, § IX(b). After applying the volume adjustment, the initial payments for the first five years were somewhat lower.

<sup>14</sup> See *Symposium—Tobacco Regulation: The Convergence of Law, Medicine & Public Health Essays*, 25 WM. MITCHELL L. REV. 373, 693 (1999). The states uncovered evidence that the tobacco companies had known for years about the damage caused by their products, but had conspired to suppress the information and mislead smokers, the general public, and public officials, and the states invoked Racketeer-Influenced Corrupt Organization statutes and sought sweeping injunctive and equitable relief (demands for future restrictions on tobacco industry behavior) and historic monetary recoveries. Peter Pringle, *The Chronicles of Tobacco: An Account of the Forces that Brought the Tobacco Industry to the Negotiating Table*, 25 WM. MITCHELL L. REV. 387 (1999), [http://heinonline.org/HOL/Page?handle=hein.journals/wmitch25&div=37&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/wmitch25&div=37&g_sent=1&collection=journals).

<sup>15</sup> Master Settlement Agreement, *supra* note 7, § IX(c)(1).

<sup>16</sup> *Id.* Other adjustments include previously settled states reduction, non-settling states reduction, the non-participating manufacturer adjustment, the federal tobacco legislation offset, the litigating releasing parties offset, and offsets described in MSA subsections XI(i), XII(a)(4)(B), and XII(a)(8).

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<sup>17</sup> Master Settlement Agreement, *supra* note 7, § IX(c)(2), Exhibit U.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* § IX(c)(1).

<sup>20</sup> *See generally id.*, § III.

<sup>21</sup> *See id.*, § III(m); *see also* Master Settlement Agreement Restrictions on Tobacco Company Lobbying Efforts, Campaign for Tobacco-Free Kids, <http://www.tobaccofreekids.org/research/factsheets/pdf/0064.pdf>. For instance, the MSA bars any efforts by the tobacco companies or their lobbyists to oppose proposals to restrict youth access to vending machines; include cigars in the definition of tobacco products; enhance enforcement of laws forbidding sales of tobacco products to youth; support the use of new technology to enforce age-of-purchase laws; limit promotions of non-tobacco products that use tobacco products as prizes or giveaways; enforce access restrictions through penalties on youth possession or use; limit tobacco product advertising or the wearing of tobacco logo merchandise in or on school properties; and limit non-tobacco products designed to look like tobacco products (e.g., candy cigarettes).

<sup>22</sup> *See* Master Settlement Agreement, *supra* note 7, § III(r).

<sup>23</sup> THE TRUTH, <http://www.thetruth.com> (last visited July 8, 2015).

<sup>24</sup> Cheryl Heaton, *Who's Afraid of the Truth?*. AM. J. PUB. HEALTH 91, 554–58 (2001).

<sup>25</sup> This initiative was initially formed and funded by Lorillard, Philip Morris, and R.J. Reynolds. Among other purposes, the center sought to call into question reports linking environmental tobacco smoke (second-hand smoke) to lung cancer. Unlike the Tobacco Institute, the industry aimed to cast this center as a completely separate non-profit entity. Anne Landman, *Daily Doc: The Center for Indoor Air Research (CIAR)*, TOBACCO.ORG, TOBACCO NEWS & INFORMATION (Mar. 12, 2000), <http://archive.tobacco.org/Documents/dd/ddciar.html>.

<sup>26</sup> After it forced the institute to disband, the MSA required all of its internal documents to be placed online. The tobacco industry used The Tobacco Institute as its main arm in challenging anti-tobacco studies and initiatives. “[T]he bulk of public relations activity concerning industry response to the smoking and health controversy emanates from The Tobacco Institute . . . . [T]he Institute acts as official spokesman for the industry, always reflecting the official strategy positions agreed upon by all members.” *Status Report and Update: Public Relations Strategy of U.S. Tobacco Manufacturers re Smoking & Health Controversy*, TOBACCO INST. (May 1, 1976), <http://industrydocuments.library.ucsf.edu/tobacco/docs/ptpk0146>.

<sup>27</sup> This was the name given in 1964 to the Tobacco Industry Research Committee, which was formed in 1953. The council primarily functioned as a public relations wing of the tobacco industry, calling into question accusations linking cigarettes to ill health and promoting cigarette consumption. The council’s efforts, along with those of the Center for Indoor Air Research, played a central role in the fraud and misinformation charges brought against tobacco companies in the 1990s. *See* Tobacco Industry Research Committee, Sourcewatch.org, [http://www.sourcewatch.org/index.php/Tobacco\\_Industry\\_Research\\_Committee](http://www.sourcewatch.org/index.php/Tobacco_Industry_Research_Committee).

<sup>28</sup> Companies are still permitted to fund independent research efforts, such as the Philip Morris External Research Program. From 2000 to 2007, researchers under the auspices of this program published 1,200 articles in peer-reviewed journals ranging from *Science* and *Nature* to the *Journal of Clinical Investigation*. *External Scientific Research*, ALTRIA, <http://www.altria.com/our-companies/philipmorrisusa/smoking-and-health-issues/external-scientific-research/Pages/default.aspx> (Jul. 7, 2015).



<sup>29</sup> Master Settlement Agreement, *supra* note 7, § IV. This requirement expired on June 30, 2010, but has been continued until September 1, 2021, under the judgment entered in the federal government’s RICO action against the major cigarette manufacturers. *United States v. Philip Morris USA, Inc.*, 449 F.Supp.2d 1, 941-44 (D.D.C. 2006). The documents are also still available in the Legacy Tobacco Documents Library at <https://industrydocuments.library.ucsf.edu/tobacco>.

<sup>30</sup> Dennis Eckhart, *The Tobacco Master Settlement Agreement: Enforcement of Market Restrictions*, TOBACCO CONTROL LEGAL CONSORTIUM 3–4 (2004).

<sup>31</sup> *Id.*

<sup>32</sup> Master Settlement Agreement, *supra* note 7, § VII(c)(2).

<sup>33</sup> *Id.*, § XIII(a).

<sup>34</sup> Eckhart, *supra* note 30, at 4.

<sup>35</sup> This multi-state investigation was pivotal in prompting other companies to reduce youth exposure to their ads in national magazines. *See id.* at 5.

<sup>36</sup> *State ex rel. Jim Petro v. R.J. Reynolds Tobacco Co.*, 820 N.E.2d 910 (Ohio 2004) (finding that R.J. Reynolds’ matchbooks bearing brand names are brand name merchandise prohibited by MSA § III(f)).

<sup>37</sup> *People of the State of California ex rel. Bill Lockyer v. R.J. Reynolds Tobacco Co.*, 11 Cal.Rptr.3d 317 (Cal. Ct. App. 2004) (2004) (ruling that R.J. Reynolds intended to target youth in violation of Section III(a) because of the degree to which youth were exposed to its magazine ads).

<sup>38</sup> *The People ex rel. Bill Lockyer v. R.J. Reynolds*, 132 Cal.Rptr.2d 151 (Cal. Ct. App. 2003) (ruling that R.J. Reynolds placed billboards at sites of brand name sponsorships for a longer time than permitted by MSA); *State of Arizona ex rel. Terry Goddard v. R.J. Reynolds Tobacco Co.*, 75 P.3d 1075 (Ariz. Ct. App. 2003) (same). *But see State ex rel. Spitzer v. R.J. Reynolds Tobacco Co.*, No. 401561/01, at \*6, 8 (N.Y. Sup. Ct. Jan 30, 2002), <http://legacy-dc.ucsf.edu/tid/xky10d00/pdf;jsessionid=29D952D117B6F0579CA49CFC25964199.tobacco03> (ruling in favor of R.J. Reynolds on same issue and finding New York’s proffered interpretation of the MSA to be “unreasonable” and “a disingenuous effort to confuse”).

<sup>39</sup> Eckhart, *supra* note 30, at 6.

<sup>40</sup> *Id.* at 7.

<sup>41</sup> *Id.* at 4.

<sup>42</sup> *State of California v. R.J. Reynolds Tobacco Co.*, No. GIC 764118 (San Diego Cnty. Super. Ct., 2002). *But see* CA Sup Court case *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 124 P.3d 408 (Cal. 2005).

<sup>43</sup> All states have such Consent Decrees except for Mississippi, Florida, Texas, and Minnesota, since these states pursued individual settlements with four tobacco companies, settlements that preceded the MSA.

<sup>44</sup> Eckhart, *supra* note 30, at 2.

<sup>45</sup> Master Settlement Agreement, *supra* note 7, § I.

<sup>46</sup> *Id.* at Sec. III (m, n).

<sup>47</sup> *Broken Promises to Our Children: A State-by-State Look at the 1998 State Tobacco Settlement 16 Years Later*, CAMPAIGN FOR TOBACCO FREE KIDS 1 (2014), [http://www.tobaccofreekids.org/content/what\\_we\\_do/state\\_local\\_issues/settlement/FY2015/2014\\_12\\_11\\_brokenpromises\\_report.pdf](http://www.tobaccofreekids.org/content/what_we_do/state_local_issues/settlement/FY2015/2014_12_11_brokenpromises_report.pdf).

<sup>48</sup> Ctrs. for Disease Control & Prevention, *State Tobacco Revenues Compared with Tobacco Control Appropriations – U.S., 1998-2010*, 61 MORBIDITY & MORTALITY WKLY REP'T 20, 370 (2012).

<sup>49</sup> For example, rather than using MSA revenues to discourage tobacco use, New York used \$700,000 of MSA funds for golf carts and a sprinkler system at a public golf course, Virginia spent \$12 million of MSA funds to lay fiber-optic lines for broadband cable, and Alabama spent \$1 million of MSA funds to improve juvenile offender boot camps, alternative schools, metal detectors, and surveillance cameras in public schools.<sup>49</sup> During that time, Michigan spent 75% of MSA funds on college and high-school scholarships, using *none* of the settlement funds for tobacco cessation or prevention programs. Howard Markel, *Burning Money*, N.Y. TIMES, Aug. 22, 2005, <http://www.nytimes.com/2005/08/22/opinion/22markel.html>.

<sup>50</sup> Lisa Shames, *Tobacco Settlement: States' Allocations of Payments from Tobacco Companies for Fiscal Years from 2000 to 2007*, U.S. GAO 6 tbl.2 (Feb. 27, 2007), <http://www.gao.gov/assets/120/115580.pdf>.

<sup>51</sup> Am. Lung Ass'n, *State Funding for Tobacco Prevention and Cessation Programs* 1, 2 (last updated July 2014), <http://www.lungusa2.org/slati/reports/funding-tobacco-prevention-cessation-programs-factsheet-fy2014.pdf>.

<sup>52</sup> See, e.g., Cal. Debt & Inv. Advisory Comm'n, *Issue Brief: Tobacco Securitization Bond Issuance in California* (2009), <http://www.treasurer.ca.gov/cdiac/reports/tobacco.pdf>.

<sup>53</sup> *Tobacco Bonds: Janney Fixed Income Strategy*, Janney Montgomery Scott (Dec. 6, 2010), <http://www.janney.com/File%20Library/Fixed%20Income/Tobacco-Bonds-12-6-10.pdf>.

<sup>54</sup> *Tobacco Bonds to See Reduced Payments Next Year*, REUTERS (Sept. 19, 2013), <http://www.reuters.com/article/2013/09/19/municipals-tobaccobonds-idUSL2N0HF1AP20130919>.

<sup>55</sup> See *Moody's Places 31 Tobacco Settlement Bonds Under Review*, MOODY'S INVESTOR SERV. (Jan. 22, 2013), [https://www.moody.com/research/Moodys-places-31-tobacco-settlement-bonds-under-review--PR\\_264367](https://www.moody.com/research/Moodys-places-31-tobacco-settlement-bonds-under-review--PR_264367); *More Concern Over Tobacco Bonds*, FMSBONDS, INC. (Jan. 29, 2013), [http://www.fmsbonds.com/news/bond\\_article.asp?id=434](http://www.fmsbonds.com/news/bond_article.asp?id=434).

<sup>56</sup> See *Janney Fixed Income Strategy*, *supra* note 53. Many local governments not only receive a share of their state's tobacco payments, but have securitized those payments. For example, in California approximately half of the state's MSA payment is allocated to the cities of Los Angeles, San Diego, San Francisco, and San Jose (these cities filed their own lawsuits against the tobacco companies), and the 58 counties. Between 2001 and 2009, twenty-eight local California agencies issued \$3.6 billion in tobacco securitization bonds. See, e.g., Cal. Debt & Inv. Advisory Comm'n, *Tobacco Securitization Bond Issuance in California* (Issue Brief) (2009), <http://www.treasurer.ca.gov/cdiac/reports/tobacco.pdf>.

<sup>57</sup> *Tobacco Bonds to See Reduced Payments Next Year*, *supra* note 54.

<sup>58</sup> *Janney Fixed Income Strategy*, *supra* note 53.

<sup>59</sup> Nat'l Ass'n Att'ys Gen., *Payments to Date as of May 13, 2015*, [http://www.naag.org/assets/redesign/files/Tabacco/2015-06-02-Payments to States Inception thru May 13 2015.pdf](http://www.naag.org/assets/redesign/files/Tabacco/2015-06-02-Payments%20to%20States%20Inception%20thru%20May%2013%202015.pdf)

<sup>60</sup> *NAAG Tobacco Project: 11 Years of MSA Coordination*, 4 NAAGAZETTE 1 (2009), <http://www.naag.org/publications/naagazette/volume-3-number-4/naag-tobacco-project-11-years-of-msa-coordination.php>.

<sup>61</sup> *Actual Tobacco Settlement Payments Received by the States (in Millions)*, HENRY J. KAISER FAMILY FOUNDATION, <http://kff.org/other/state-indicator/tobacco-settlement-payments/#map> (last visited Aug. 10, 2015).

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<sup>62</sup> Ctrs. for Disease Control & Prevention, *Best Practices for Comprehensive Tobacco Control Programs—2014 Fact Sheet* (2014),  
[http://www.cdc.gov/tobacco/stateandcommunity/best\\_practices/pdfs/2007/BestPracticesFactSheet.pdf](http://www.cdc.gov/tobacco/stateandcommunity/best_practices/pdfs/2007/BestPracticesFactSheet.pdf).