The Tobacco Industry’s Abuse of Scientific Evidence and Activities to Recruit Scientists During Tobacco Litigation

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South Korea’s state health insurer, the National Health Insurance Service (NHIS), is in the process of a compensation suit against tobacco industry. The tobacco companies have habitually endeavored to ensure favorable outcomes in litigation by misusing scientific evidence or recruiting scientists to support its interests. This study analyzed strategies that tobacco companies have used during the NHIS litigation, which has been receiving world-wide attention. To understand the litigation strategies of tobacco companies, the present study reviewed the existing literature and carried out content analysis of petitions, preparatory documents, and supporting evidence submitted to the court by the NHIS and the tobacco companies during the suit. Tobacco companies misrepresented the World Health Organization (WHO) report’s argument and misused scientific evidence, and removed the word “deadly” from the title of the citation. Tobacco companies submitted the research results of scientists who had worked as a consultant for the tobacco industry as evidence. Such litigation strategies employed by the tobacco companies internationally were applied similarly in Korean lawsuits. Results of tobacco litigation have a huge influence on tobacco control policies. For desirable outcomes of the suits, healthcare professionals need to pay a great deal of attention to the enormous volume of written opinions and supporting evidence that tobacco companies submit. They also need to face the fact that the companies engage in recruitment of scientists. Healthcare professionals should refuse to partner with tobacco industry, as recommended by Article 5.3 of the WHO Framework Convention on Tobacco Control.

Key words: Tobacco, Tobacco industry, Tobacco litigation, Tobacco industry litigation tactics

INTRODUCTION

Litigation against tobacco companies plays an important role in reinforcing and advancing tobacco control policies. Through lawsuits, as hidden strategies of tobacco companies were revealed to the public, the truth about tobacco products, smoking behavior, and the industry was also exposed. In short, through this revelation, everyone can reach a consensus on the need to reinforce tobacco control policies. The history of US tobacco litigation shows that such lawsuits have been “public teaching programs.” Throughout the process, classified documents of tobacco companies have been disclosed to the public, and the immoral and unethical nature of the industry has become known to the world. This led the public to lose trust in the industry [1].

The importance of tobacco litigation has been emphasized in the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC) as well. Article 19 of the FCTC recommends that all parties need to strengthen municipal law and build litigation support systems for facilitating tobacco lawsuits [2]. For example, establishing municipal law, which enables
seeking compensation against tobacco industry for financial losses due to smoking through litigation, is recommended. Facilitating tobacco lawsuits is essential for strengthening and advancing tobacco control policies.

In Korea, several lawsuits have also been filed against the tobacco industry. In September 1999, a patient with lung cancer who had a long history of smoking and his family filed a compensation suit against the Korean government and Korea Tobacco & Ginseng Corp. (currently KT&G). In December of the same year, six lung cancer victims and their families also filed a suit against the Korean government and Korea Tobacco & Ginseng Corp. Furthermore, although different from disease-related compensation claims caused by smoking, in January 2009, Gyeonggi province sued KT&G for compensation for damages caused by a fire started from a cigarette butt [3].

Against this backdrop, the Korea National Health Insurance Service (NHIS), a state health insurer, filed 53.7 billion Korean won worth of compensation suits against three tobacco companies—KT&G, British American Tobacco Korea, and Philip Morris Korea Inc. on April 14, 2014. Unlike the previous cases where individuals sued tobacco companies, this time, the NHIS, a government organization, did, which is noteworthy and raises hopes for successful results. However, if the NHIS were to lose, the ramifications would include serious obstruction to the advancement of national tobacco control policies as well as fatal adverse effects to public health.

That is why careful attention by the government, academia, and the public is much needed in the current suit brought by the NHIS. It is worth asking what kind of attention should be paid. According to the cases of other countries, tobacco companies steer litigation toward outcomes favorable to themselves by adopting various strategies during suits. A case in point is misuse of scientific evidence submitted as supporting evidence on the issues of the lawsuit. The companies also win over scientists who can provide evidence or testimonies favorable to them, so as to secure an advantage in the suits.

In this present study, we aim to analyze strategies employed by tobacco companies during the NHIS’s ongoing litigation and to identify what activities the companies are carrying out in implementing the key strategies—misuse of scientific evidence and recruitment of scientists.

METHODS

In order to identify and analyze tobacco companies’ strategies in the litigation between the NHIS and three tobacco companies (2014 Gahap 525 054 Compensation claim), content analysis was performed on the petition submitted by the NHIS to the Seoul Central District Court and preparatory documents submitted by the three companies to the court against the petition. Documents submitted as supporting evidence by the Korea Tobacco & Ginseng Corp. to the court in the compensation claim lawsuit (99 Gahap 104 973 Compensation claim [miscellaneous]) brought by six lung cancer patients and their families against Korea Tobacco & Ginseng Corp. were also analyzed.

Content analysis is a quantitative method of information communicated mainly via documents, TV, or radio [4]. In content analysis, words, topics, or sentences can be a unit of analysis, and the subjects of the analysis are classified by frequency or category. In this present study, content analysis was performed in an attempt to identify the claims and intentions of the tobacco companies of the case, focusing on the words and topics of the petition and preparatory documents. The petition and preparatory documents of the NHIS litigation were obtained by the author in the process of consulting for the current litigation as a member of the NHIS Normalization Promotion Committee.

In addition, the list of the supporting evidence that the Korea Tobacco & Ginseng Corp. submitted to the court was obtained through the legal agent of the plaintiff of the case. Later, to access the original copies of the supporting evidence on the list, the Legacy Tobacco Documents Library (https://industrydocuments.library.ucsf.edu/tobacco/), where internal documents of multinational tobacco companies are kept, was searched. For research reports or academic papers among the supporting evidence submitted by the tobacco companies, the possibility of any conflicts of interest or connections among the authors, participating researchers, and the tobacco companies was investigated by checking “Science-for-sale” (www.sciencemag.org).

MISUSE OF SCIENTIFIC EVIDENCE BY TOBACCO COMPANIES

For the NHIS to win the current compensation claim suit, what is most needed is to prove that smoking causes diseases. The defendants, tobacco companies, are claiming that epidemiological approaches and results that the NHIS uses to prove the causality are far-fetched. Therefore, proving the causal link is the paramount issue in this case, as it has been in past cases. Besides demonstrating the causal relationship between
smoking and disease, another key issue in this case is product liability: Tobacco industry is responsible for their products. If they deliberately manipulate the product and harm their consumers, they, as manufacturers, become liable for the damage caused to the consumers.

With regard to product liability, the NHIS is aggressively making an issue of the tobacco companies’ use of various additives. The NHIS claims that additives included in tobacco reinforce the addictive nature of nicotine and encourage smoking behavior [5]. In other words, the NHIS points out that including additives itself generates new smokers and worsens nicotine’s addiction. About this issue, the defendants argue that the additives to tobacco are “harmless.” To back up their claim, Philip Morris Korea cited reports of the WHO and American Cancer Society (ACS) in opposition to the argument of the NHIS.

Below is how Kim & Chang, of the law firm representing Philip Morris Korea, cited the reports of the WHO and ACS (Figure 1).

For instance, the WHO stated that “…cigarettes claimed to be without additives and made of ‘organic’ tobacco have never been demonstrated to be less dangerous or addictive than conventional cigarettes” [Reference #13 of the preparatory document]. In addition, the ACS, on its website, stated that “Smoke from all cigarettes, natural or otherwise, has many chemicals that can cause cancer (carcinogens) and toxins that come from burning the tobacco itself, including tar and carbon monoxide.” [Reference #14 of the preparatory document]. The defendant has not used additives to increase the harmful or addictive nature of tobacco as the plaintiff argues [6].

In citing or explaining the reports of the WHO and ACS, the tobacco companies misused scientific evidence. The reason why both reports compared the danger of tobacco with and without additives was that tobacco companies such as American Spirit were being irresponsibly promoted as “additive-free tobacco” at the time (Figure 2). Therefore, the two organizations wrote and published the reports to inform the public that the tobacco products labeled as additive-free were no different from common tobacco products with additives, in terms of danger. Nonetheless, tobacco companies misinterpreted the reports to be communicating exactly the opposite idea in order to dodge the criticism by the NHIS.

In other words, the companies interpreted the reports warning of the danger of the tobacco advertised as additive-free in a way that tobacco products with additives were just as harm-

less as the ones without additives; thus, adding additives to tobacco is harmless. In fact, the WHO and ACS reports explained that tobacco products labeled as “additive-free” were also found to contain additives through component analysis. Therefore, tobacco products putatively with and without additives are both dangerous.
What is more interesting in Philip Morris Korea’s citation of the reports from the WHO and ACS can be found in the reference of the preparatory documents, marked in the footnotes. While the other international references are all in English, the report from the WHO was translated into Korean, although it was originally written in English. In other words, the ACS report was presented in English in the footnote, and the WHO report was presented in Korean in the footnote. The original title of the WHO report is “Tobacco: deadly in any form or disguise.” (Figure 3). However, in order to hide the word “deadly,” which means fatal, or leading to death, they translated the title into Korean and footnoted the reference as “Tobacco, harmful in any form.”

TOBACCO COMPANIES’ RECRUITMENT OF SCIENTISTS

The author reviewed the supporting evidence submitted by KT&G (the defendant of the current litigation and of other individual lawsuits that have been ongoing for more than ten years) to the court responsible for the individual lawsuits then, claiming that tobacco additives were harmless: Eulna Exhibit No.188, entitled “A safety assessment of ingredients added to tobacco in the manufacture of cigarettes” (March 1994), a research paper written by John Doull, John P. Frawley, William George, Ted Loomis, Robert A. Squire, and Stephen L. Taylor. The key message of the paper was that the ingredients of tobacco additives were not dangerous.

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Dr. John Doull, professor at the University of Kansas Medical School, was appointed by Senate Minority Leader Robert Dole (R-Kansas). Both Dole and Doull were long-term friends of the tobacco industry [8].

To examine how those researchers conducting such studies were linked with tobacco companies, the author performed investigations by accessing the “Science-for-sale” website (www.sciencedcorruption.com) and investigating John Doull, the lead author of the paper. The results revealed that he had worked as a consultant of tobacco companies for a long time. In short, a person who had long consulted for the tobacco industry published a research paper, and tobacco companies used it as evidence to support their claim that tobacco additives were safe. Science-for-sale introduces John Doull as follows:

…John Doull was a long-term consultant (mainly in the dangers of flavours) to tobacco companies.

Dr. John Doull, professor at the University of Kansas Medical School, who was appointed by Senate Minority Leader Robert Dole (R-Kansas). Both Dole and Doull were long-term friends of the tobacco industry [8].

DISCUSSION AND CONCLUSIONS

Tobacco industry has responded to the claims of plaintiffs, using various strategies during litigation. A key tactic is to provide scientific evidence to support their positions and to recruit scientists who can endorse the tobacco industry, by giving testimonies favorable to themselves in court. In addition, targeting the lack of expertise of the Department of Justice, they have sometimes submitted a vast number of expert research reports. In the process, the researchers selectively submitted the research reports that could be advantageous to tobacco
companies or they sometimes misused scientific evidence.

It is likely that the tobacco companies have been using or will use these two strategies in response to the current litigation that the NHIS has filed. The misuse of scientific evidence has already been attempted as we have reviewed in this study. The recruitment of scientists—although it was revealed through the analysis of the materials used in the prior individual lawsuits—is highly likely to be done in the present case.

When it comes to tobacco litigation, tobacco companies worldwide have allied among themselves as partners, not rivals. A prior study analyzing the internal documents of tobacco companies introduced a letter that Korea Tobacco & Ginneng Corp. sent to its rival Philip Morris Korea, asking for support for litigation at the point when a tobacco lawsuit was first filed [3]. This means that it is highly possible that materials or evidence to be used in litigation are shared inside the tobacco industry. To address such an issue, thorough examination of all supporting evidence submitted by tobacco companies in the current lawsuit brought by the NHIS is imperative: Experts on tobacco control should actively participate in reviewing the supporting evidence. For research reports or academic papers, in particular, investigations need to be performed on various aspects, including their research design, analysis methods, results, conflicts of interest among the researchers, and research funding sources.

The experts also need to be well aware of the litigation strategies that the tobacco industry has adopted and is likely to adopt in the future, such as asking researchers to conduct studies to gain supporting evidence or recruiting scientists across diverse disciplines to request testimonies in the suits [9-12].

Article 5.3 of the WHO FCTC has set various recommendations to protect tobacco control policies from the vested interests of the tobacco industry [13]. Among them, the recommendation to refuse to partner with tobacco companies is particularly noteworthy for healthcare professionals, a likely target of such recruitment. Acknowledging that working with the tobacco industry undermines tobacco control policies and negatively affects public health policies, health professionals and researchers should adamantly reject offers made by tobacco companies.

The current NHIS litigation is gaining worldwide attention. As the number of cases in which tobacco companies lose increases, more tobacco lawsuits will be filed globally. Furthermore, such a spread of tobacco lawsuits may lead to reinforcement of tobacco control policies, and ultimately, even the end of the tobacco industry. The NHIS’s position and strategies for preparing for the current tobacco lawsuit will be the key to determining the outcome of the suit. The key message of the present study to the NHIS is that the organization should make every effort to thoroughly review the supporting evidence that tobacco companies submit during the case, regardless of the time and budget required.

The history of tobacco lawsuits in the US dates back nearly 60 years. Even though the plaintiff lost in the first case, the experience provided the groundwork for developing strategies for the next cases. With more litigation experience, the chances of winning later cases grew gradually [14]. Korea should benchmark the progress of litigation in the US. The plaintiffs have lost in individual lawsuits. However, the NHIS and experts in tobacco control policy should be more proactive in informing the public of the hidden truth—the misuse of scientific evidence and recruitment of scientists by the tobacco industry—which was not carefully examined in prior lawsuits and yet was identified in the present study.

If the NHIS wins the current case, it would have a positive impact on not only the tobacco control policies in Korea, but also similar tobacco litigation in other parts of the world. Considering the implications of the suit, the NHIS and related experts should prepare for the case meticulously with a great sense of responsibility. Finally, the scope of this study was limited to the analysis of only a portion of the materials from all ongoing tobacco litigation. Therefore, further analysis of the documents that remain to be submitted by tobacco companies should also be performed promptly and comprehensively.

**CONFLICT OF INTEREST**

The author served as a member of the National Health Insurance Service’s Committee for Restoration of National Health Insurance. He has carried out consulting activities specifically on tobacco litigation.

**SUPPLEMENAL MATERIAL**

Supplemental material (Korean version) is available at http://www.jpmph.org/.

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담배소송 중 담배회사의 과학적 근거 오용과 과학자 포섭 활동

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국민건강보험공단이 담배회사를 상대로 손해배상 청구소송을 진행 중에 있다. 담배회사는 전통적으로 소송 진행 과정에서 과학적 근거를 오용하거나 과학자를 포섭하여 소송을 유리한 방향으로 이끌어가기 위한 노력을 해왔다. 본 연구는 전 세계적으로 주목 받고 있는 국민건강보험공단의 소송 과정 중 담배회사의 전략을 분석하였다. 선행연구를 통해 이미 밝혀진 담배회사의 담배소송 전략을 이해한다. 국민건강보험공단 소송 중 법원에 제출된 소장, 준비서면, 증거자료 등에 대한 내용분석을 통해 담배회사의 소송 전략을 파악한다. 국민건강보험공단의 소장 내역 중 첨부자료를 사용과 관련된 쟁점에 대해 담배회사는 세계보건기구의 "Tobacco: deadly in any form or disguise(2006)" 보고서 중 'American spirit' 같은 천연담배로 광고하는 담배제품에 대한 의견을 마치 첨부자료로 들어간 제품과 천연담배잎을 사용하는 담배제품 간 위험성이나 중독성에 차이가 없다는 내용으로 준비서면을 작성하였다. 하지만 원래 보고서 내용은 정반대의 해석으로 과학적 근거를 오용하였다. 또한 준비서면에 대한 해외자료들은 영문 정확한 내용을 참고문헌에 수록하였지만 세계보건기구 보고서는 한글로 번역하였고, 그 이유는 아마도 보고서 제목의 'deadly'가 부담스러웠던 것으로 해석된다. 또한 국민건강보험공단 소송 이전에 제기되었던 개인소송 중 담배회사가 법원에 제출한 증거자료의 일부를 분석한 결과 담배회사의 컨설턴트로 활동한 과학자의 연구결과를 증거자료로 제출한 것도 확인할 수 있었다. 국내 담배소송에서도 해외사례와 마찬가지로 담배회사의 소송전략은 유사하다. 담배소송 결과는 담배규제정책에 막대한 영향을 미친다. 성공적인 소송을 위해 보건의료분야 전문가들은 담배회사가 제출하는 복잡한 분량의 의료서와 증거자료에 대한 적극적인 관심을 가져야 한다. 또한 담배회사의 과학자 포섭활동을 인지하고 세계보건기구 담배규제기본협약(Framework Convention on Tobacco Control) 제5조3항의 권고사항처럼 담배업계와의 협력을 거절해야 할 것이다.

핵심어: 담배, 담배업계, 담배소송, 담배소송전략

연구배경

담배회사를 상대로 한 소송(litigation)은 담배규제 정책 강화 및 발전에 중대한 역할을 한다. 소송을 통해 담배회사의 감취 진 전략들이 세상에 공개될 때 담배업체, 흡연행위, 그리고 담배회사에 대한 진실이 대중에 공개되고 이를 통해 담배규제 정책 강화의 필요성을 모두가 공유할 수 있게 되는 것이다. 미국의 담배소송 역사들 보면 담배소송은 그야말로 "대국민 교육 프로그램(public teaching program)"이었다는 것을 확인할 수 있다. 담배소송 과정에서 담배회사의 내부기밀문건이 대중에 공개되고, 담배회사의 부도덕성과 비윤리성이 알려지면서 담배회사에 대한 신뢰가 바닥으로 떨어지는 계기가 되었던 것.
이러한 사회적, 경제적, 문화적 요인들이 한 사회에 걸쳐 발생하는 질병의 발병 원인으로 작용하게 된다. 이러한 현상은, 담배가 많은 사회에서의 경우, 더욱 강하게 나타난다. 

연구방법

이번 건강보증공단과 3개 담배회사 간의 소송(2014가호 325 054 손해배상 청구)은 담배회사의 전략을 확인하고 분석하기 위하여 건강보증공단이 서울중앙지방법원에 제출한 소장, 그리고 이 소장에 대응하여 3개 담배회사가 법원에 제출한 준비서면에 대한 내용분석을 실시하였다. 또한 과거 6개의 배상판결과 가족들이 국가와 한국담배인삼공사를 상대로 제기한 건강보장 청구소송(99가호 104 973 손해배상)에 대한 내용분석을 시행하였다. 

과거 6개의 법원에서의 배상판결과 가족들이 국가와 한국담배인삼공사를 상대로 제기한 건강보장 청구소송(99가호 104 973 손해배상)에 대한 내용분석을 시행하였다.
첫째, 3세대보건기구(WHO)는 "첨가제가 없는 담배와 '천연'(organic) 담배가(기존의 첨가제가 있는) 클린에 비하여 더 위험하거나 중독성이 높다고 밝히진 바 없다"고 입장을 밝혔습니다(준비서면 참고문헌 13번). 미국 암학회(The American Cancer Society) 역시 그 웹사이트에서 담배의 모든 연구에 는, 이것이 자연적인 것이든 아니든, 타르와 일산화탄소 등을 포함하여 담배를 태우는 그 자체에서 암(발암 물질)을 유발하는 많은 물질들이 독소가 함유되어 있다고 밝히고 있습니다(준비서면 참고문헌 14번). 피호회사의 입장을 반박하는 바와 같이 담배의 위험성이이나 중독성을 높이기 위하여 첨가제를 사용한 바 없습니다[6].

WHO 보고서와 미국암학회보고서 인용 및 설명에서 담배회사의 첨가제는 과학적 근거를 오용하였다고. WHO 보고서나 미국암학회 보고서에서 담배회사들이 첨가제가 포함된 담배, 그리고 첨가제가 포함되지 않은 담배의 위험성을 비교했던 이유는 당시 '첨가제가 들어가지 않은 담배(additives free tobacco)'라고 광고한 America Spirit와 같은 담배들이 무분별하게 홍보되고 있기를 때문입니다(그림2). 그래서 두 가지 보고서 모두 첨가제들이 들어가지 않았다고 광고하는 담배제품 역시 첨가제가 들어간 일반 담배제품과 위험성 측면에서 차이가 없다는 것을 알리기 위해서 해당 보고서를 작성해서 발표했던 것이다. 그럼에도 불구하고 담배회사는 이 내용을 정면대로 해석해 건보공단의 공격을 피해가려 한 것이다.

첨가물이 들어가지 않은 담배의 위험성을 강조하는 보고서를 거꾸로 첨가물이 들어가지 않은 담배와 위험성에 차이가 없는가에 봐다. 첨가물이 들어가지 않은 담배 역시 성분 분석을 통해 첨가물이 여전히 들어가 있음을 확인했기 때문에 첨가물이 들어간 담배제품이나 그렇지 않은 담배제품이 나 위험성에서는 차이가 없을 것이라고 설명했던 것이다.

Philip Morris Korea의 WHO와 미국암학회 보고서 인용 과정에서 더 흥미로운 점은 준비서면 첨가제를 표시한 담배에서 찾아 볼 수 있었다. 다른 해외 문헌의 경우 영어로 참고문헌을 표시한 것과 달리 WHO의 보고서는 영문으로 작성된 보고서 덕에 불구하고 한국에 참고문헌을 표기한 것이다. 다시 말

**Figure 1.** Philip Morris’s argument on tobacco additives. Philip Morris Korea cited the World Health Organization's report, entitled “Tobacco: deadly in any form” and the American Cancer Society’s report (website), entitled “Are any types of cigarettes safe to smoke?” in order to argue against the National Health Insurance Service’s argument that tobacco additives are harmful to tobacco users.

**Figure 2.** Image of a tobacco brand named “Natural American Spirit.” Natural American Spirit has been widely advertised as “100% additive-free natural tobacco” around the world. Source from: Clarey B. Cover story — 200,000 cigarettes; 2014[7].
지난한 연구를 진행하는 학자들은 담배회사와 어떤 관계가 있을지 확인해보고자 미국에서 운영되고 있는 "Science-for-sale (www.sciencecorruption.com)"에 접속한 1차 자인 John Doull에 대해 조사를 수행하였다. 그 결과 John Doull은 담배회사의 오랜 컨설팅을 통해 오랜 기간 활동하였던 사람이 연구보고서를 작성하고 담배회사는 이러한 보고서를 단순 첨가물이 안전하다는 주장을 뒷받침하기 위한 증거자료로 법원에 제출하였던 것이다. Science-for-sale은 John Doull에 대해 아래와 같이 소개하고 있다.

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Dr John Doull, professor at the Universityof Kansas Medical School, who was appointed by Senate Minority Leader Robert Dole (R-Kansas). Both Dole and Doull were long-term friends.

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고찰 및 결론

담배회사는 담배소송 중 다양한 전략을 활용해 원고들의 주장에 대응하였다. 그중 가장 대표적인 것이 담배회사의 입장은, 즉 드러내야 할 수 있는 과학적 근거를 제공하고 법원에서 담배회사에 유리한 증언을 해줄 수 있는 과학자를 포섭하는 일이었다. 또한 제판부의 비전문성을 파고들어, 많은 분량의 전문적인 연구보고서를 제출하기도 하였다. 이 과정에서 담배회사에 유리한 연구보고서만을 선별해서 제출하거나 이는 과학적 근거를 오용하는 전략을 사용하였다.

본 연구는 전 세계 담배회사들이 담배소송에서 반복적으로 경쟁사인 경쟁사의 전략에 대해 잘 알았던 것이며, 그 중에서도 John Doull의 경우에 있는 연구자에 대한 자료를 찾아보았다. 이 연구자는 여러 논문에서 담배회사의 조작에 대해 자세히 설명하였다. 

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Figure 3. The cover page of the World Health Organization's report, entitled "Tobacco: deadly in any form or disguise." Philip Morris Korea had translated the title of this report into Korean and had replaced the word "deadly" with "harmful" in their citation of the report.

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한국담배인삼공사가 담배에 전문성을 내세우며 "deadly"라는 단어 대신 한글로 풍미해 해당 문헌을 각주에 "담배, 어떤 형태로든 유해"라고 표기했던 것이다.

담배회사의 과학자 포섭활동

현재 건보공단소송의 피고이자 과거 10년 이상 진행되었던 개인소송에서의 피고인 KT&G가 담배 첨가물이 위해하지 않는다는 주장을 내세우며 당시 개인소송을 담당했던 재판부에 제출했던 증거자료를 검토하였다. 은마 제188호증, "A safety assessment of ingredients added to tobacco in the manufacture of cigarette (March 1994)"라는 제목의 증거자료는 John Doull, John P. Frawley, William George, Ted Loomis, Robert A. Squire, Stephen L. Taylor가 작성한 연구보고서였다. 주요 내용은 담배에 첨가되는 성분은 안전상에 문제가 되지 않는다는 내용이다. 과연 이 멋진 연구를 진행하는 학자들은 담배회사와 어떤 관계가 있을지 확인해보고자 미국에서 운영되고 있는 "Science-for-sale (www.sciencecorruption.com)"에 접속한 1차 자인 John Doull에 대해 조사를 수행하였다. 그 결과 John Doull은 담배회사의 오랜 컨설팅을 통해 오랜 기간 활동하였던 사람이 연구보고서를 작성하고 담배회사는 이러한 보고서를 단순 첨가물이 안전하다는 주장을 뒷받침하기 위한 증거자료로 법원에 제출하였던 것이다. Science-for-sale은 John Doull에 대해 아래와 같이 소개하고 있다.

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Dr John Doull, professor at the University of Kansas Medical School, who was appointed by Senate Minority Leader Robert Dole (R-Kansas). Both Dole and Doull were long-term friends of the tobacco industry [7].

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이미 전 세계 담배회사들은 담배소송에서 반복적으로 경쟁사에 대해 잘 알았던 것이며, 그 중에서도 John Doull의 경우에 있는 연구자에 대한 자료를 찾아보았다. 이 연구자는 여러 논문에서 담배회사의 조작에 대해 자세히 설명하였다.
특히 연구보고서 혹은 학술논문에 대해서는 연구결과, 분석방법, 결과해석, 저자의 이해상응관계, 연구비 지원 등에 대한 내용을 첨부할 필요가 있다.

또한 담배회사들이 증거자료는 담배회사에 분명히 요구하고, 정책적 관점에서입니다. [13] 이는 "담배업계와의 협력에 거절할 것"이라는 권고는 담배회사로부터 포섭대상이 될 가능성은 높은 보건의료분야 전문가 집단에서 그 의미를 다시 새길 필요가 있다. 전문가들이 담배회사와의 협력은 담배규제 정책을 약화시키고, 공중보건 정책에 악영향을 끼친다는 것을 인식하고, 담배회사의 접촉시도를 단호하게 거절할 수 있어야 할 것이다.

전 세계가 우리나라에서 진행되고 있는 건보공단 소송에 관심을 기울이고 있다. 담배소송에서 담배회사가 폐소하는 판례들이 많아 정부수록 담배소송은 일관되며 다른 국가들로 번져 나아가고 있다. 또한 이러한 담배소송의 확산은 국제 담배규제 정책 강화, 다 나라가 담배종말(Tobacco endgame)이라는 결과를 불러올 수 있기 때문이다. 건보공단의 담배소송에 이르는 점차와 전략은 이번 소송의 승패를 좌우하는 중요한 요소가 될 것이다. 본 연구의 결과가 건보공단에 덧입는 매시지는 소송 진행 중 담배회사가 제출하는 증거자료에 대해 시간과 예산이 들어갈지라도 면밀히 검토하는 필요를 보여주게 된다.

미국의 담배소송 역사에는 60년이 이른다. 비록 첫 번째 소송이 폐소했어도, 그 첫 번째 소송이 다음 새로운 소송에서 사용할 수 있는 전략을 고발시키는 밑바탕이 되었다. 소송정형이 들어받은 다음 소송에서의 승소 가능성은 점차 컷져 오던 것 이다[13]. 우리나라는 담배소송에 있어 미국의 소송 발전 과정을 따르는 필요가 있다. 비록 개인 소송에서는 폐소하였지만, 과거 소송에서 철저히 못하였던, 그리고 본 연구에서 확인한 담배회사의 과학적 근거 오용, 그리고 담배회사의 과학자 포섭활동 등에 대해서는 소송 과정에서 숨겨진 진실이 재판부와 대중에 알려질 수 있도록 건보공단과 전문가들은 적극적으로 노력해야 할 것이다. 이번 담배소송에서 승소한다면 이번 합당한 우리나라의 담배규제 정책뿐만 아님, 전 세계에로부터 벌어지고 있는 매시지는 소송과 담배회사의 집중적인 영향을 가질 것이다. 건보공단과 관련 전문가들은 이 같은 소송 결과의 엄중성을 고려하여 보다 큰 책임감을 가지고 철저히 소송을 준비할 필요가 있다. 끝으로 본 연구는 현재 진행되고 있는 소송 중 일부 소송관련 자료를 분석한 연구로 향후 담배회사측에서 제출한 문건에 대한 신속하고 포괄적인 분석이 추가적으로 이루어질 필요가 있다.

CONFLICT OF INTEREST

본 연구자는 국민건강보험공단 국민건강보험 정상화 추진위원단 위원으로 활동하였고, 특별히 담배소송에 대한 자문 활동을 수행하였음을 밝힙니다.

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