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Case seeking cancer screenings for smokers heads to trial

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A decade after a group of smokers from Massachusetts sued Philip Morris USA to try to force the cigarette maker to pay for lung cancer screenings, the case will finally be heard by a jury.

Smokers in the class-action lawsuit allege Philip Morris manufactured a defective cigarette knowing it could have made a safer product with fewer carcinogens.

They are not seeking money, but instead want to compel Philip Morris to pay for highly detailed, three-dimensional chest scans that can detect signs of early-stage lung cancer that may be too small to show up on traditional X-rays.

The closely watched case heads to trial this week in federal court in Boston.

The jury will be asked to decide whether Philip Morris made Marlboro cigarettes that are unreasonably dangerous. If the jury finds in favor of the smokers, a second phase will be held to determine how a medical monitoring program will be administered.

No smokers are expected to testify during the first phase. Instead, it will be a trial of dueling experts.

The plaintiffs plan to call a former Philip Morris employee to testify that feasible alternative designs of Marlboros have existed for decades. They

also plan to call a psychologist who will testify that given a choice between Marlboros or a safer cigarette, a non-addicted, informed person would choose the safer alternative.

Philip Morris is expected to call experts in cigarette design and marketing who are likely to testify that the company's lower-tar and lower-nicotine cigarettes—on the market since the late 1970s —have failed to gain a significant market share among any group of smoker.

Richard Daynard, a law professor at Northeastern University and anti-smoking activist, said past lawsuits seeking to force tobacco companies to provide medical monitoring have failed. But Daynard said he believes the Massachusetts case has a stronger chance of succeeding because recent studies have found that the sophisticated screening can save lives.

"What's happened is you have better technology which captures the tumors at a much earlier stage where there's a very good chance that if you get them that the person ... is probably not going to die from it," Daynard said.

A Philip Morris spokesman declined to comment, and lawyers for the company did not respond to messages.

In court documents, the company denied that its cigarettes are defectively designed and argued that three-dimensional chest scans would not be effective or necessary for every person covered by the lawsuit.

The case covers Massachusetts smokers who, as of February 2013, were at least 50, had at least a 20 pack-year history of smoking Marlboros and have not been diagnosed with lung cancer. Pack-years are calculated by multiplying the average number of packs per day by the number of years a person has smoked.

The two sides agree that the chest scans are "reasonably and periodically necessary" for smokers 55 to 74 with at least a 30 pack-year history. They disagree on the rest of the smokers in the lawsuit.

Since the case was filed in 2006, insurers have begun to cover the screenings for certain smokers. Last year, Medicare announced it would pay for annual screenings for beneficiaries 55 to 77 with at least a 30 pack-year history.

U.S. District Judge Denise Casper rejected a request to exclude evidence about insurers agreeing to pay for three-dimensional chest scans, but said she'll instruct jurors that they are not allowed to consider whether any of the smokers have insurance coverage for screening.

"The fact that insurance now covers it and it's recognized for certain groups as being efficacious may have some evidentiary value in the case, but it does not change the fact that Philip Morris could be liable for the cost of the scans," said Christopher Weld, an attorney for the smokers.

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