

PUFFING PRECEDENTS: THE IMPACT OF THE WHO FCTC ON TOBACCO PRODUCT LIABILITY LITIGATION IN JAPAN

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ABSTRACT

This paper investigates the contours of tobacco control-related product liability litigation in Japan. While there have been several dozen smoking-related lawsuits in Japan to date, few of these have focused directly on the tobacco industry and the nation's liability for the harms caused by tobacco consumption and exposure to tobacco smoke. Review of litigation documents in these cases reveals that the WHO FCTC has been affirmatively integrated into the civil justice discourse relating to tobacco product liability since the Treaty's coming-into-force in February 2005. Not surprisingly, the Treaty has been primarily employed by plaintiffs' lawyers while its significance has been downplayed or ignored by defense counsel and the courts in the proceedings. Nevertheless, the FCTC's value in empowering plaintiffs, their legal counsel, and surrounding litigation support groups is obvious. Moreover, the Treaty's implicit impact on judicial perceptions seems evident.

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These points suggest there being some room for optimism, though real justice is waiting.

KEYWORDS: *Japan, Japanese law, smoking, passive smoking, tobacco control, Framework Convention on Tobacco Control, FCTC, FCTC Article 19, tobacco products liability litigation, Japan Tobacco Inc., JT, public health law*