



PHILIP MORRIS USA'S ABILITY TO POST LAWSUIT APPEAL BONDS

Parties that have been found liable for damages by courts of law must post appeal bonds in amounts determined by the court prior to appealing the rulings against them. These appeal bonds are designed to ensure that funds will be available to pay all court-ordered damages still owed to the plaintiffs once the appeal process has been exhausted. Faced with numerous lawsuits and several rulings against them, Philip Morris USA and other major cigarette companies have been urging states to pass special laws to limit the appeal bond amounts they have to post. While these appeal bond limits would make things easier for the cigarette companies, there is no evidence that the companies need (or deserve) such special protection.

According to its annual report and its filings with the U.S. Securities and Exchange Commission, in 2003 the parent company of Philip Morris USA, Altria Group, Inc. (the new name for Philip Morris Companies, Inc.) had total assets of \$96.1 billion, total net revenues for the year of \$81.8 billion with net operating income (i.e., operating profit after taxes) of \$15.9 billion. Clearly, Altria and its subsidiary Philip Morris USA have sufficient capital assets and revenue streams to enable them to borrow massive amounts of money. Not surprisingly, tobacco industry analysts estimated that Philip Morris USA and the other cigarette company defendants in the *Engle* class-action lawsuit in Florida could have posted an appeal bond of roughly \$10 to \$20 billion.¹

ALTRIA/PHILLIP MORRIS FINANCIAL INFORMATION²

<i>2003 Total Assets</i>	\$96.1 Billion
<i>2003 Net Revenues</i>	\$81.8 Billion
<i>2003 U.S. Tobacco (i.e., Philip Morris USA) Revenues</i>	\$17.0 Billion
<i>2003 Total Net Operating Income</i>	\$15.9 Billion
<i>Credit Line with Lending Institutions 12/31/2002</i>	\$6.3 Billion*
<i>Estimated Annual Cigarette Marketing Expenditures</i>	\$6.0 Billion
<i>2003 Dividends Paid to Stockholders</i>	\$5.4 Billion
<i>U.S. Tobacco (i.e., Philip Morris USA) Net Operating Income</i>	\$3.9 Billion
<i>Estimated Revenues from Youth Smoking</i>	\$1.0 Billion
<i>2003 Repurchases of Stock Shares</i>	\$0.7 Billion**

*Does not include the separate additional credit line totaling \$4.5 billion of Altria's Kraft subsidiary.

**Stock buybacks from shareholders totaled \$6.2 billion in 2002 and \$4.0 billion in 2001.

In the ruling against Philip Morris USA in the Illinois *Miles* case, the court initially set the appeal bond amount at \$12 billion, and then lowered it substantially. While Altria is not a party to that lawsuit, its resources are readily available to Philip Morris USA for posting the appeal bond.

Even if Philip Morris USA did not have adequate resources to post an appeal bond, a Second U.S. Circuit Court of Appeals ruling suggests that there is no need for states to pass special protection legislation. The Circuit Court ruled that requiring a defendant company to post an appeal bond equal to the full amount of a multi-million dollar damage award was an unconstitutional violation of the right to due process if it made any appeal financially impossible, threatening to put the company into bankruptcy.³

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¹ Meier & Yellin, "Big Tobacco Is Lobbying the States for Protection," *The New York Times*, March 20, 2000.

² Altria Group, Inc., 2003 10-K report to the U.S. Securities & Exchange Commission, March 27, 2003, <http://www.sec.gov/Archives/edgar/data/764180/000119312504040664/0001193125-04-040664-index.htm>. U.S. Federal Trade Commission (FTC), *Cigarette Report for 2002, 2004* [data for top six manufacturers only], <http://www.ftc.gov/reports/cigarette/041022cigaretterpt.pdf>. DiFranza & Librett, "State and Federal Revenues from Tobacco Consumed by Minors," *American Journal of Public Health*, July 1999.

³ *Pennzoil v. Texaco*, 481 U.S. 1 (1987), <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=481&invol=1>, [overruling 2nd Circuit on jurisdictional grounds but not reaching the 2nd Circuit due process ruling on appeal bonds].