



Master Settlement Agreement Overview 2024

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The MSA is 25!!

In 1998, the Master Settlement Agreement was reached between 52 states and territories and the 4 largest tobacco companies in the United States

25 years later, the MSA is still alive and well!



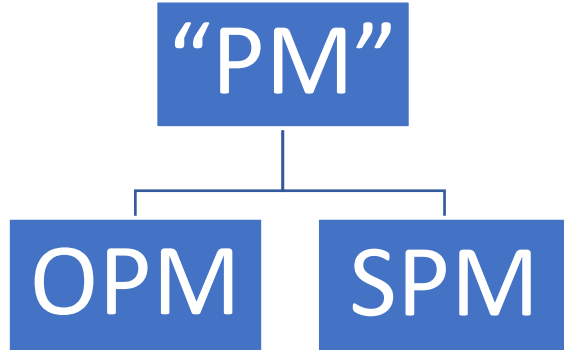
The MSA is a CONTRACT

- The MSA is a CONTRACT in PERPETUITY
- The main goals of the MSA are to:
 - **reduce smoking in the U.S., particularly among youth**
 - **compensate states for smoking-related healthcare costs incurred under Medicaid or other state assistance programs**
- PMs' Payments to States are not free money – **there are strings attached!**

OPMs, SPMs, and NPMs... What's the difference?

- PM: Participating Manufacturer
- OPM: Original Participating Manufacturer
- SPM: Subsequent Participating Manufacturer

NPM: Nonparticipating Manufacturer



NPM



Major Contractual Obligations of PMs

Health-Related Obligations:

- No Youth Targeting
- No Use of Cartoons
- Limited Tobacco Brand Name Sponsorships
- No Outdoor Ads or Transit Ads
- No Payments for Product Placement in Media
- No Tobacco Brand Name Merchandise
- No Youth Access to Free Samples
- No Non-Tobacco Brand Names
- Minimum Pack Size of Twenty Cigarettes

Monetary Obligations:

- Make annual payments to Settling States based on national sales volumes



Total Payments to all Settling States over 25 years

- Since 1999, the PMs have paid the states a total of
\$165,033,108,145.17
- Each state receives its “allocable share” of the PMs’ annual payment each April (MSA Ex. A)

Total Payments to all Settling States over 25 years continued..

Big State, Middling State, Small State

State	Allocable Share	Total Amount Received as of 2024
California	12.7639554%	\$20,849,880,663.69
Connecticut	1.8565373%	\$ 3,215,242,716.40
Wyoming	0.2483449%	\$ 454,227,859.29

What about NPMs?

- Are NPMs off the hook?
 - Contractual Obligations?
NO
 - Statutory Obligations?
YES



Connecticut's Qualifying Statute: Section 4-28i

- **Follows MSA Model Qualifying Statute** (MSA Exhibit T)
- **An NPM must escrow a specified amount for each cigarette sold in Connecticut**
 - CT is the beneficiary of NPM escrow accounts
 - The required escrow deposits roughly equal the amount PMs must pay under the MSA.
 - An NPM's escrow deposits provide a source of recovery if CT obtains a judgment against that NPM
 - If an NPM's escrow deposits are not used to pay a judgment in favor of CT, the funds will be returned to the NPM 25 years after deposit.
 - No Settling State, including CT, has ever obtained a judgment against an NPM.
 - CT will begin returning escrow deposits to NPMs in 2026.
- **What is the purpose of the Qualifying Statute?**
 - Escrow deposits prevent NPMs from becoming judgment proof.
 - Escrow deposits promote the MSA's public health gains by preventing NPMs from selling their cigarettes cheaply.
 - Escrow deposits promote economic parity between NPMs and PMs, which have voluntarily assumed payment obligations and advertising restrictions not borne by NPMs.

Settling States' Major MSA Obligations

- Settling States agreed to release PMs from certain past and future legal claims

But that's not all...

To receive full MSA payments, Settling States must diligently enforce their escrow statutes.

Diligent
Enforcement
Secures MSA
Payments

Diligent Enforcement

What does “diligent enforcement” mean?

- The MSA does not define it.
- It has been defined and applied through arbitration proceedings between the PMs and the Settling States.

Why should a Settling State diligently enforce its Qualifying Statute?

- Without enforcement, the public health purposes of the Qualifying Statute remain unfulfilled, and NPMs may unfairly gain market share over PMs.
- Under the MSA, a Settling State found non-diligent in a specific year could lose up to its entire MSA payment for that year!

The MSA allows PMs to challenge a Settling State’s diligence in enforcing its Qualifying Statute through an arbitration proceeding.

Arbitration Process



The MSA defines the process for resolving payment disputes between the PMs and Settling States
Diligent Enforcement is a payment dispute.



Payment disputes must be arbitrated before a panel of three retired federal judges.



Arbitration rulings may be challenged in the state's MSA Court (trial court) and appealed through the state court system

Lessons from Arbitration Rulings

Whose responsibility is Diligent Enforcement?

- “The 2004 Panels Agree with the ruling of the 2003 Panel that **both the legislative and executive branches of a State are bound by its MSA Obligations**”
 - **Legislature & Governor:** Provide adequate funding to Revenue and AGO for enforcement and enact statutory enhancements to facilitate enforcement
 - **Revenue Department:** Collect sales data, audit, inspect, investigate, conduct administrative enforcement, refer for civil and criminal judicial enforcement, formulate legislative proposals, collaborate with AGO
 - **Attorney General:** May perform some functions listed above, as well as collect escrow, bring lawsuits, formulate legislative proposals, advise and support Revenue
- “Iowa exemplified a Settling State where all the State actors worked together to enforce and improve its Qualifying Statute, from the Legislature to the Attorney General's Office to the Department of Revenue’ consistently and persistently, within the parameters of Iowa's law.”

Lessons from Arbitration Rulings continued..

Factors Considered by 2003 Panel in the Determination of Diligent Enforcement:

- Escrow collection rate
- Number of lawsuits filed against NPMs
- Ability to obtain reliable data from manufacturers and distributors
- State funding for enforcement
- Prevention of non-compliant NPMs from making future sales
- Legislation enacted to enhance escrow enforcement
- Pursuit of administrative actions against manufacturers, importers and distributors
- Coordination of efforts between state agencies and executive and legislative branches

Lessons from states who lost millions of MSA dollars

- “New Mexico has classified the SET (State Excise Tax) as a "minor tax" and therefore the Legislature did not dedicate as many resources to it as it would a more significant tax program. This had unfortunate consequences for enforcement.”
- “Both the [Tax and Revenue Department] and the AGO requested another full-time employee to enforce the new escrow measures contained in the 2004 Amendment but neither were funded by the Legislature. ... [T]he limited personnel earmarked for NPM escrow enforcement had an adverse impact on the MSA enforcement results in 2004.”
- “Missouri's escrow enforcement personnel recognized the need for more resources, and they requested more resources. For budgetary reasons, however, the state denied the requests.”
- “The Panel finds that Missouri's recordkeeping and audit efforts were haphazard and ineffective due to the state's failure to devote sufficient resources to escrow enforcement.”

How much money is REALLY at stake?

- **For Connecticut, tens of millions of dollars can be at stake each year**
- Examples of contested states' payments before and after 2004 Arbitration Rulings:

State	2021	2022	2023	Percentage Increase/Decrease between '22 and '23
Iowa	\$52,929,532.39	\$53,183,117.14	\$55,290,765.18	+3.96%
Ohio	\$306,287,762.79	\$308,060,985.95	\$320,269,146.22	+3.96%
Wisconsin	\$126,017,467.87	\$126,712,284.98	\$131,733,805.13	+3.96%
Missouri**	\$138,305,908.01	\$139,099,651.50	\$93,965,615.43	-32.45%
New Mexico**	\$36,276,972.13	\$36,471,273.88	\$24,637,355.90	-32.45%
Washington**	\$124,949,604.48	\$125,563,774.72	\$84,821,862.64	-32.45%

**Found to be non-diligent

What does the Settlement Agreement Do?

- **Resolves diligent enforcement disputes through 2024 (longer for some states)**
- **Expands the states' diligent enforcement obligation to include contraband cigarettes**

Why Should Signatory States Care About the Arbitration Rulings?



NPM Adjustment Settlement Agreement, unlike MSA, is not a contract in perpetuity



NPM Adjustment Settlement Agreement can only be extended by Parties' agreement



Arbitration Rulings highlight “best practices” for enforcement of state escrow statutes

Should we be concerned about the future of CT's MSA payments?

YES!



YES!

- MSA payments require diligence to maintain- they are not like settlement payments from ordinary court cases
- PMs may not agree to extend the diligent enforcement settlement agreement past 2024
- Legislators and state budget managers are generally not aware that MSA's diligent enforcement obligations extend to the Executive and Legislative branches
- The return of escrow funds to NPMs, starting in 2026, will likely result in NPMs capturing increasingly greater market share by using their returned funds to finance future escrow payments. NPM market share has already risen from ~2% of the nationwide cigarette market in 1999 to ~25% in 2023. When NPM market share increases, annual MSA payments decrease and diligent enforcement exposure increases.

Questions?

Discussion Question:

How can we best educate decision makers about the state's diligent enforcement obligations and the future risks of losing MSA money?

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