



Juul Settlements and the Impact at the Point of Sale

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Description: In this episode, we're talking about the largest monetary settlements in the tobacco prevention and control field since the Master Settlement Agreement in 1998, which was 25 years ago. Starting in 2021, Juul, the company known for leading the way in addicting an entire generation of youth to nicotine through its targeted marketing and wide array of flavors, began settling with states' Attorneys General, cities, counties, tribes, school districts, and individuals who brought personal injury claims after using Juul products, for intentionally and inaccurately marketing their highly addictive products to minors. In this episode, we walk you through these settlements involving Juul and Altria that totaled well over 1 billion dollars and the settlements' impact at the point of sale.

Transcription:

You're listening to the Counter Tobacco Podcast. I'm your host for today, Michael Kelly. On this podcast, we aim to highlight the role the tobacco industry's influence at the point of sale plays in tobacco use and tobacco-related harm and what's being done to reduce that influence and to improve community health and health equity. In this episode, we're talking about the largest monetary settlements in the tobacco prevention and control field since the Master Settlement Agreement in 1998, which was 25 years ago. Starting in 2021, Juul, the company known for leading the way in addicting an entire generation of youth to nicotine through its targeted marketing and wide array of flavors, began settling with states' Attorneys General, cities, counties, tribes, school districts, and users of Juul products who brought personal injury claims after using Juul products, for intentionally and inaccurately marketing their highly addictive products to minors. In this episode, we walk you through these settlements involving Juul and Altria that totaled well over 1 billion dollars and the settlements' impact at the point of sale.

We'll highlight the rise of Juul, its leading role in creating the youth e-cigarette epidemic, how Juul and its parent company, Altria, were held liable through settlements totaling well over 1 billion dollars, what interesting facets exist in these Settlement Agreements, and what these settlements mean for Juul, the point of sale, and the commercial tobacco prevention and control field.

Hi everyone. To start today's podcast, I want you to think about the amount of Juul product marketing you have seen plastered in and at point-of-sale outlets on gas pumps, door exteriors, and next to youth-oriented products throughout the years. Synonymous with the proliferation of youth vaping rates in high schools, middle schools, and even elementary schools across the country, Juul is responsible for driving the youth e-cigarette epidemic we are still addressing in public health to this day. For those listening to this podcast, this may not be news to you. And perhaps you have learned about Juul's insidious marketing and sales practices after reading Jamie Ducharme's book, *Big Vape*, or watching the Netflix documentary called, *Big Vape: The Rise and Fall of Juul*? No matter if or where you have learned about Juul's practices, in today's podcast, we'll be talking about Juul's impact on public health and why the company is obligated to pay well over 1 billion dollars to entities across the country for the better part of the next decade.

So, what led to these settlements?

Founded in May 2015 and developed by Pax Labs, Juul's first e-cigarette was introduced shortly thereafter in June 2015. It didn't take long for the San Francisco-based company to become the most popular e-cigarette brand in the U.S. as by September 2018, Juul, which had become an independent company the year prior, had an overwhelming market share of 72%. But what made Juul into the name-brand e-cigarette? Through social media campaigns, most notably its Vaporized campaign, ad space in popular outlets such as Seventeen magazine and the Nick Jr. Channel TV network, along with copious amounts of marketing at point-of-sale establishments such as convenience stores and other retail spaces, Juul marketed numerous flavor options, including mint and mango, which target youth and masked high levels of addictive nicotine. As such, Juul became the e-cigarette of choice for youth across the country.

With Juul's rapid ascension in popularity, it didn't take long for Big Tobacco to enter the playing field. In December 2018, at a time when Juul had an annual revenue of \$2 billion dollars, Altria, formerly known as Phillip Morris Companies Inc., purchased a 35% stake in Juul Labs for \$12.8 billion dollars. However, concerns were quickly raised that Juul, which had attested to their efforts to stop teens from using its products, had a 35% share of its company held by a company with the largest share of the U.S. cigarette market that was also held liable for its long history of deceit only twenty years earlier in the largest ever Settlement Agreement in tobacco control. Soon after, investigations looking into Altria's acquisition of Juul, in addition to Juul's social media and advertising practices, and communications, began. Amidst the turmoil, around the same time the company laid off roughly 500 of its workers in October 2019, Juul and Altria continued its new strategy of supporting policy efforts in state legislatures across the country to increase the minimum legal sales age of tobacco products, including e-cigarettes, from 18 to 21.

Why did they do this, you may ask? With Tobacco 21 policies growing in rapid popularity around the same time as Juul's rise as the preeminent e-cigarette company, instead of combatting these policies which had previously been the case, Juul decided to publicly support Tobacco 21 policies being considered in state legislatures while actively weakening these bills by proposing the inclusion of preemption provisions to limit localities from enacting stronger local laws on smoking and vaping. While a federal Tobacco 21 policy was signed into law in December 2019 and took effect immediately, it did not reverse the damage caused by Juul's successful lobbying for weak and harmful policy at the state level.

In late 2019, after pressure against the company had been rising, Juul suspended sales of most of its flavored e-cigarette products except for mint menthol, and tobacco flavors. Not long after in January 2020, after thorough review and important findings from the 2018 Monitoring the Future survey which found youth use of Juul indicated lower youth preferences for menthol- and tobacco-flavored e-cigarettes than that for mint- and fruit-flavored e-cigarettes, the FDA prohibited all sales of cartridge-based e-cigarettes not flavored with tobacco and menthol flavors. As this decision was not comprehensive of all flavors and all e-cigarette types, and flavors are a key driver of youth e-cigarette use, youth began to shift away from Juul. An increase in youth disposable e-cigarette use soon followed but as a cartridge-based e-cigarette, this decision by the FDA was yet another heavy monetary and regulatory blow to Juul but most certainly not the last the company would face.

So, what are these settlements that I've brought up?

As Juul came under more scrutiny from the public for their leading role in addicting a new generation of youth to nicotine-containing products, results from a bipartisan investigation by over 40 state Attorneys General came to light, after they had looked into Juul's marketing and sales practices targeting youth, claims regarding nicotine content, and statements regarding risks, safety, and effectiveness as a smoking cessation device. The investigation reported on Juul's deceptive and misleading marketing practices, misrepresentations about nicotine content and product safety in their products, and Juul's negligence in preventing underage sales both in stores at the point of sale and online. As Attorneys General across the U.S. filed lawsuits against Juul based on their findings, the first domino to fall was from North Carolina, where the state Attorney General announced a \$40 million dollar Settlement Agreement with Juul in June 2021. Fast forward not even two years to May 2023 when Minnesota's Attorney General secured a \$60.5-million-dollar settlement with Juul making it the 46th U.S. state, along with Washington D.C., and Puerto Rico, to have entered into a Settlement Agreement with Juul. Now, I'd like to provide a quick timeline of the 48 Attorney General Settlement Agreements.

After North Carolina's Settlement Agreement with Juul, Arizona, Washington, and Louisiana followed with individual settlements of their own between November 2021 and April 2022. Then, in September 2022, a monumental 33-Multistate Attorney General Settlement Agreement, which included 32 states and Puerto Rico, was struck with Juul, and totaled \$438.5 million dollars that would be paid over a period of six to 10 years, with the amounts paid increasing the longer the company takes to make the payments. Not long after, In December

2022, Pennsylvania and Iowa followed with individual Settlement Agreements of their own with Juul. Then, in April 2023, yet another Multi-State Attorney General Settlement Agreement was entered into with Juul by six states and Washington D.C. In addition to D.C., the six states were California, Colorado, Illinois, Massachusetts, New Mexico, and New York. This 7-Multistate Attorney General Settlement Agreement differs slightly from the 33-Multistate Attorney General Settlement Agreement and totaled \$462 million dollars. West Virginia then entered its own individual Settlement Agreement with Juul in April 2023 and not long after, Minnesota became the 8th state to settle individually with Juul through a \$60.5 million dollar settlement after becoming the only state to take Juul to trial in May 2023.

As of the posting of this podcast, Juul may yet face investigations and future lawsuits by four states including Alaska, Florida, Maine, and Michigan.

What do the settlements mean for Juul at the point of sale? What do the settlements change for public health?

Well, each of the three Attorney General Settlement Agreement types differ from one another, but common limitations placed on Juul across each Settlement Agreement type include prohibiting Juul from engaging in any marketing that directly or indirectly targets youth, such as through the use of individuals under the age of 35 in promotional materials or funding, social media advertising with health claims of using Juul, operating youth education and prevention campaigns, sponsoring school-related activities, and using imagery or paid social media influencers in advertising. The settlements also restrict Juul from selling flavored e-cigarette products that are not authorized by the FDA, which would be illegal anyways, and the company must disclose the specific nicotine content of its products when making statements about nicotine content in marketing materials. Additional restrictions include the prohibition of billboard advertising, outdoor advertising near schools or playgrounds, and public transportation advertising. Additionally, Juul is required to make its marketing and advertising documents, produced over the course of litigation, available to the public. These industry documents are expected to be housed at the University of California-San Francisco (UCSF) and will be made freely and electronically accessible to the public. To find a comprehensive database tracking state settlements with Juul, including the language for each state's Attorney General Settlement Agreement entered into with Juul, visit the Public Health Law Center's interactive Juul settlement map, which will be linked in today's show notes.

Before diving into the monetary totals of the Attorney General Settlement Agreements, which are the most in the commercial tobacco prevention and control field since the 1998 Master Settlement Agreement, I want to note that these 48 Attorney General Settlement Agreements are a mere drop in the bucket compared to the Master Settlement Agreement's monetary totals. Juul settlement funds are also time-bound, with payouts among all settling states, Washington D.C., and Puerto Rico set to be complete by the end of 2031 while Master Settlement Agreement funds are in perpetuity, meaning for as long as tobacco manufacturers sell combustible cigarettes in the U.S., manufacturers must abide by the Master Settlement Agreement's terms.

Although there are numerous variables to consider regarding the monetary payments in the 48 Attorney General Settlement Agreements with Juul, I was interested in comparing the three types of Attorney General Settlement Agreements and analyzed key facets of each Settlement Agreement. Here are some of my findings.

To start, in 2027, Juul will be required to either make a final payment of roughly \$208 million dollars to the 32 states and Puerto Rico entered into the 33-Multistate Attorney General Settlement Agreement or extend this final payment of \$208 million dollars due in 2027 to the end of 2029 or to the end of 2031. If Juul were to extend this payment period due in 2027 to three years, or through 2029, Juul would pay close to an additional \$21 million dollars. If JUUL chooses to extend the payment period due in 2027 to five years, or through 2031, Juul would pay an additional \$46 million dollars.

Relatedly, each of the three types of Attorney General Settlement Agreements differ from one another in the number of years that annual payments will be received for. The average number of years that all states, Puerto Rico, and Washington D.C. will receive annual payments from Juul for is 6.17 years. Breaking that down a bit further, the average number of years that the 32 states and Puerto Rico involved in the 33-Multistate Attorney General Settlement Agreement will receive annual payments for is 6 years, assuming that Juul pays its final payment due to each of these 32 states and Puerto Rico only in 2027, and not spread across the three-year or five-year payment options I brought up earlier. Additionally, the average number of years that the eight states that settled individually with Juul will receive annual payments for is 5.25 years while the average number of years that the six states and Washington D.C. involved in the 7-Multistate Attorney General Settlement Agreement will receive annual payments for is 8 years.

Yet another difference between the three types of Attorney General Settlement Agreements is the number of compliance checks that Juul Labs will be required to administer through its retailer-compliance program of point-of-sale locations that sell Juul products, a provision found in nearly every Attorney General Settlement Agreement with Juul. The six states and Washington D.C. in the 7-Multistate Attorney General Settlement Agreement will require Juul to conduct compliance checks on an annual basis for four years while each of the 32 states and Puerto Rico involved in the 33-Multistate Attorney General Settlement Agreement require Juul to conduct compliance checks on an annual basis for two years. States that entered into individual Settlement Agreements with Juul have differing compliance check requirements from one another. For example, Louisiana's Juul settlement language does not mention a retailer compliance program, while North Carolina's retailer compliance program requires no fewer than 50 retail stores to receive a compliance check per month and at least 960 retail stores to receive a compliance check per year, while Minnesota is the only state outside the 7-Multistate Attorney General Settlement Agreement that requires Juul to conduct compliance checks across four years. Despite graduated penalty language for retailers selling Juul products that violate the terms of Juul's Retailer compliance program in addition to Juul compliance check results provided quarterly or biannually to designated public health or Attorneys General

offices, there is deservedly a great deal of skepticism and healthy dose of irony posed by Juul administering a retailer compliance check program.

Also, I decided to aggregate the monetary totals of each Settlement Agreement into its three types to see the differences between each type of Agreement. After aggregating the monetary totals of Washington D.C. and the six states involved in the 7-Multistate Attorney General Settlement Agreement, which include California, Colorado, Illinois, Massachusetts, New Mexico, and New York, I found that they would receive approximately five dollars and twenty-nine cents (\$5.29) per capita, using each state's and Washington D.C.'s estimated population in 2021. Further, when the monetary totals of the eight states that settled individually with Juul, which include North Carolina, Arizona, Washington, Louisiana, Pennsylvania, Iowa, West Virginia, and Minnesota, were aggregated together, I found that they would receive approximately three dollars and sixty-five cents (\$3.65) per capita, using each state's estimated population in 2021. Of note, however, are the monetary differences per capita between each of the states that settled individually with Juul. For example, Iowa will receive \$5 million dollars from their Juul settlement and with a population of roughly 3.2 million people in 2021, will receive approximately one dollar and fifty-seven cents (\$1.57) per capita. Minnesota, on the other hand, will receive \$60.5 million dollars, or over twelve times as much as Iowa, from their Juul settlement and with a population of over 5,700,000 in 2021, will receive approximately ten dollars and sixty cents (\$10.60) per capita. Lastly, when the monetary payments for the 32 states and Puerto Rico involved in the 33-Multistate Attorney General Settlement Agreement were aggregated together, I found that the average expected dollars per capita was two dollars and seventy-one cents (\$2.71), using each state's and Puerto Rico's estimated population in 2021. The one caveat to this, however, is the payment structure available for Juul to extend the final payment due in 2027 to these 32 states and Puerto Rico through 2029 or 2031. If Juul pays their final payment in 2027 due to these 32 states and Puerto Rico through 2031, the maximum amount these states and Puerto Rico can receive when aggregated together would be 2 dollars and 97 cents (\$2.97) per capita, using each state's and Puerto Rico's estimated population in 2021. As discussed, the amount of money each state, district, or territory is receiving per capita varies greatly, which affects the amount of funding dedicated to, if specifically earmarked for, education, prevention, and cessation programs for these states', districts', and territories' residents designed to abate the impact that Electronic Nicotine Delivery Systems, or ENDS products, and other nicotine products, have had.

Speaking of, now comes the question of what these monetary totals to each state will be used for in their limited time. After analyzing the 48 Attorney General Settlement Agreements with Juul, 25 states, Washington D.C., and Puerto Rico have settlement language that mentions the amounts paid may be used for any lawful purpose but to the maximum extent possible or solely to the maximum extent possible, to fund tobacco control efforts, such as cessation programs for residents exposed to ENDS while under the age of 21, education or prevention programs designed to prevent or reduce use of ENDS by residents who are under the age of 21, and programs or equipment designed to abate the impact that ENDS and other nicotine products have had on students, schools, school districts, among other programs and initiatives. Relatedly, 21 states have settlement language that solely states that the amounts paid shall be

used for any lawful purpose. There have also been legislative efforts to direct Juul settlement funding to support tobacco prevention & control programs with health groups also urging states to spend Juul settlement dollars to support tobacco prevention efforts. This is very encouraging to see as these states, Washington D.C., and Puerto Rico may look to invest these funds to support programs and education efforts aimed to combat the industry that addicted countless numbers of minors to one of the planet's most addictive substances in the first place. Organizations across the country, such as Campaign for Tobacco-Free Kids, American Cancer Society Cancer Action Network, American Heart Association, American Lung Association, Americans for Nonsmokers' Rights, and the Truth Initiative, have called for the use of Juul settlement funds to support tobacco prevention and control efforts for the decade to come. You may also find linked in today's show notes a document created by the Public Health Law Center that suggests how Juul settlement funds could be allocated and strategically used to help address the problems partially or fully created in the first place by Juul. And as we know, the point of sale is a crucial piece to supporting tobacco prevention efforts given that is where the tobacco industry focuses the vast majority of its marketing resources on.

In addition to the State Attorneys General Settlement Agreements, numerous other government entities, such as cities, counties, and Native American tribes, have also filed lawsuits against Juul. These cases were consolidated into the U.S. District Court for the Northern District of California in Multidistrict Litigation, or MDL, to streamline the legal claims against the company. The claims brought by these entities closely resembled those brought by the attorneys general, focusing on deceptive marketing practices, negligence, and misrepresentation regarding Juul's targeting, accessibility, and use of its products by underage persons. The settlement that was eventually reached was estimated to be roughly \$1.7 billion dollars. Diving further into the Multidistrict Litigation, the court oversaw class action lawsuits initiated by consumers against Juul, which alleged fraud, unfair conduct, unjust enrichment, warranty claims, and an organized scheme under the federal Racketeer Influenced and Corrupt Organizations Act, or RICO Act. These claims were also rooted in Juul's marketing campaigns, product flavors, and product labeling decisions aimed at enticing and addicting young people. School district lawsuits were also consolidated within the Multidistrict Litigation and the plaintiffs in these cases alleged violations of RICO, negligence, and public nuisance laws relating to Juul's youth-targeted marketing practices. The settlement funds for school districts are expected to be paid out over a period of four years and will be allocated proportionally based on the number of enrolled students in each district, with each district having the authority to determine how funds will be used. Numerous other government entities, such as cities, including Chicago which reached a \$23.8 million dollar Settlement Agreement with Juul, counties, such as King County, where Seattle is located, which reached a Settlement Agreement with Juul over \$23 million dollars, and Native American tribal entities were also part of the Multidistrict Litigation. These claims resembled those brought by the attorneys general, focusing on deceptive marketing practices, negligence, and misrepresentation specifically regarding Juul's targeting, accessibility, and use of its products by underage persons. In addition, the remaining plaintiffs involved in the Multidistrict Litigation brought individual personal injury claims resulting from EVALI cases, or e-cigarette or vaping use-associated lung

injury cases, and other addiction-related injuries totaling over 8,500 cases caused by using Juul e-cigarettes.

Amidst states' attorneys general across the country entering into Settlement Agreements with Juul and after seeing its initial investment fall by over 98% from \$12.8 billion dollars to \$250 million dollars in December 2022, Altria ended its noncompete deal with Juul and exchanged its investment for some of its heated tobacco intellectual property in March 2023. For its role in contributing to the youth vaping epidemic after purchasing a 35% stake in Juul in 2018, Altria then settled over 6,000 Juul-related lawsuits in a \$235 million dollar settlement in May 2023.

So, with all this said, what exactly is the future for Juul? Well, in June 2022, after reviewing Juul's premarket tobacco production application, the FDA ordered Juul Labs Inc. products to be removed from the U.S. market as the agency issued marketing denial orders for its vaping devices and pods. However, Juul appealed the FDA order, and the FDA then suspended the decision to conduct an internal review of "scientific issues" in the company's application. Juul continues to remain in the news with its controversial Juul 2 device which Juul claims can electronically track and verify a user's age, which is currently undergoing FDA pre-market approval. And we cannot forget that Juul remains one of the most popular e-cigarette brands among youth with 16.5% of current youth e-cigarette users reporting using Juul, making it the fourth most popular e-cigarette among youth as found in the 2023 National Youth Tobacco Survey data released by the FDA and the Centers for Disease Control and Prevention, or CDC.

It makes so much sense for Juul Settlement Agreement funds to support education, prevention, and cessation programs and initiatives created to reverse some of the harm that Juul caused by addicting a new generation of youth to nicotine. However, Juul paved the way for new waves of e-cigarette products to enter the market and plenty of brands have happily stepped in to fill the void left by Juul.

Speaking of, in August 2023, 33 state attorneys general urged the FDA and its Center for Tobacco Products to do more to protect youth from disposable e-cigarettes, including recommendations to prohibit all non-tobacco flavors, reduce nicotine levels to prevent addiction, and restrict marketing that attracts young people. Many state and local governments can also make these types of changes to prevent e-cigarette companies, such as Juul, from following Big Tobacco's playbook and continuing to hook young people on nicotine. To conclude today's podcast episode, Juul settlements and any future potential settlements against e-cigarette companies should be complements to, rather than replacements, for comprehensive regulation of e-cigarettes. We through countertobacco.org will continue shedding light on the commercial tobacco industry's malicious practices and educate our partners on how to create a healthier point of sale in our communities.

That's all for today. Thanks for listening, happy holiday folks, and I look forward to you joining us again next time! Check out our website at countertobacco.org, email us at info@countertobacco.org if you have any questions or would like to connect, and check out the

show notes if you'd like to see the transcript of this podcast episode. And make sure to rate, subscribe to, and share the Counter Tobacco podcast!

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Resources:

- More on Juul's rise and fall
 - Read Jamie Ducharme's book, [Big Vape](#)
 - Watch [Big Vape: The Rise and Fall of Juul documentary on Netflix](#)
- [Public Health Law Center's Juul Litigation Settlement Guide & Interactive Map](#)
- More on how public health organizations believe Juul Settlement Agreement funds should be used:
 - [Health groups urge states to spend Juul settlement dollars on tobacco prevention](#)
 - Public Health Law Center's document, [How to Spend Juul Settlement Funds: Champion Our Children, Target Commercial Tobacco](#)