

NEW YORK CITY LAW DEPARTMENT  
OFFICE OF THE CORPORATION COUNSEL

Michael A. Cardozo, *Corporation Counsel*

Press Release

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## FEDERAL APPEALS COURT DECLINES TO STOP INJUNCTION AGAINST ILLEGAL CIGARETTE SALES

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New York, Oct. 14, 2009 – A federal appeals court today declined to prevent the shut-down of a group of Long Island Indian smoke shops found to have been illegally selling cigarettes.

In late August, Judge Carol B. Amon of the Federal District Court in Brooklyn granted the City's motion for a preliminary injunction against owners and operators of cigarette businesses located on the Poospatuck Indian reservation in Mastic, Long Island. The injunction bars the sale of tax-free cigarettes to non-tribe members, which the City contends is illegal, and allows sales only to tribe members for personal use.

The defendant smoke shops and their owners then sought an emergency stay of the injunction that would have prevented the injunction from going into effect and allowed them to continue their sales until their appeal from the District Court's injunction is heard. The emergency stay was denied, and the defendants' motion for a stay was then heard by a full panel of the appeals court, which today denied the motion to lift the injunction. (A preliminary injunction is a remedy that directs a party refrain from a certain activity, until the court rules on the underlying legal matter.)

"Today's ruling means that the affected stores and individuals and all persons 'in active concert and participation' with them cannot sell unstamped cigarettes to the public during this appeal," noted Corporation Counsel Michael A. Cardozo of the New York City Law Department, which is litigating the case for the City. "It is a victory in our continuing efforts to stamp out illegal cigarettes."

A number of the stores had already closed in compliance with the injunction prior to today's ruling, although certain stores and individuals have reportedly continued to do business in defiance of the federal court order, and face possible court sanction.

The federal District Court issued the injunction after concluding that "the City has established a clear or substantial likelihood of success on the merits of its claim" that the defendant businesses' "receipt, possession, sale, distribution and purchase of quantities far in excess of 10,000 cigarettes, which do not bear New York tax stamps, under circumstances where such stamps are required" violates the Federal Contraband Cigarette Trafficking Act.

The defendants to whom the preliminary injunction applies, all located on the Poospatuck Indian Reservation (also called the Unkechaugue Indian Reservation), are:

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| • Monique's Smoke Shop               | Mastic, NY                             |
| • Jessey Watkins                     | Owner/operator of Monique's Smoke Shop |
| • Ernestine Watkins                  | Owner/operator of Monique's Smoke Shop |
| • Wayne Harris                       | Owner/operator of Monique's Smoke Shop |
| • Peace Pipe Smoke Shop              | Mastic, NY                             |
| • Rodney Morrison, Sr.               | Owner/Operator of Peace Pipe           |
| • Charlotte Morrison                 | Owner/Operator of Peace Pipe           |
| • Red Dot & Feather Smoke Shop, Inc. | Mastic, NY                             |

- Raymond Hart Owner/Operator of Red Dot
- Smoking Arrow Smoke Shop Mastic, NY
- Denise Paschall Owner/Operator of Smoking Arrow
- Tony D. Phillips Operator of Smoking Arrow
- TDM, Inc. Mastic, NY
- Thomasina Mack Owner/Operator of TDM

Law Department attorneys Eric Proshansky, Gail Rubin and William Miller are leading the litigation.

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