

# EXHIBIT 5

The New York Times

## Juul to Pay \$40 Million to Settle N.C. Vaping Case

The settlement is the first in a stream of lawsuits against the company, which has been accused of deceptive marketing practices that contributed to a wave of nicotine addiction in teenagers.



Jeenah Moon for The New York Times

By Sheila Kaplan  
June 28, 2021

[Juul](#) Labs has agreed to pay North Carolina \$40 million to settle the first of a spate of lawsuits brought by states and localities claiming the e-cigarette company's marketing practices fueled widespread addiction to nicotine among young people and created a new public health problem.

The settlement, which was [announced on Monday morning](#), allows the company to avoid a jury trial this summer as the Food and Drug Administration is deciding whether its vaping products can stay on the market.

The company had urgently sought the settlement, but the deal removes just one of numerous legal actions pending against it. Thirteen other states, including California, Massachusetts and New York, as well as the District of Columbia, have filed similar lawsuits. The central claim in each case is that Juul knew, or should have known, that it was hooking teenagers on pods that contained high levels of nicotine.

Nearly 2,000 other cases filed by cities, counties, school districts and other plaintiffs in federal courts have been combined into multi-district litigation overseen by a single federal judge, similar to what's been done with cases against prescription opioid makers, distributors and retailers.

Beyond the litigation, a group of 39 attorneys general from both Republican- and Democratic-led states, led by Ken Paxton, the attorney general of Texas, have been investigating Juul's marketing and sales practices for over a year.

"For years, Juul targeted young people, including teens, with highly addictive e-cigarettes," Josh Stein, the North Carolina attorney general, who sued the company in May 2019, said in a statement announcing the settlement. "It lit the spark and fanned the flames of a vaping epidemic among our children — one that you can see in any high school in North Carolina."

But the company was able to reach the settlement deal without admitting to the allegations, one of its chief goals in the face of the other lawsuits and the F.D.A. review.

In Juul's statement, Joshua Raffel, a company spokesman, said: "This settlement is consistent with our ongoing effort to reset our company and its relationship with our stakeholders, as we continue to combat underage usage and advance the opportunity for harm reduction for adult smokers."

E-cigarettes and other vaping products were initially conceived to be a less harmful alternative to combustible cigarettes, which are linked to the deaths of about 480,000 people in the United States each year. But Juul's sleek high-tech-looking device, advertised in its 2015 launch with young, hip-looking people on billboards and in social media, quickly caught on with teenagers and young adults who had never smoked.

Over the next few years, e-cigarette use among high-school students began to soar, and in 2018, the F.D.A. commissioner declared an epidemic of teen vaping in the United States.

Although e-cigarettes do not contain the carcinogens that burning tobacco creates, scientists and public health officials worry about their potential health effects on young people. Some research shows nicotine could impair the developing brain, for example, and addiction to it could lead users to move to regular cigarettes, some people fear.

Juul had urgently sought a settlement in the North Carolina trial, which was set for July 12 and would have put Juul in court, dealing with testimony from parents and children, while the F.D.A. was deciding its fate, which must be done by early September.

The money, which will be paid out over six years, will be used to fund programs that will help people quit e-cigarettes, prevent e-cigarette addiction and research e-cigarettes.

The settlement also requires Juul to sell its products from behind the counter in North Carolina stores, and to use third-party age verification systems for online sales. The order commits Juul to sending young “mystery shoppers” to 1,000 stores each year, to check whether they are selling to minors. It also bans the company from using models younger than 35 in advertisements and states that no advertisements should be posted near schools.

Carl Tobias, a law professor at the University of Richmond, who teaches product liability, said the settlement bodes well for the other states suing Juul.

“This opens a similar possibility to every state going forward,” he said. “North Carolina has been in the vanguard and deserves some credit. I think this has huge financial and other implications.”

Mr. Tobias said he was not surprised that Juul did not admit to wrongdoing.

“That almost always happens in these kinds of settlements — that’s a standard clause,” he said.

Juul has not begun other serious settlement talks, however, because none of the other 2,600 lawsuits against the company have been scheduled to begin during 2021. The company is waiting for the F.D.A. ruling before deciding how to move forward. If the F.D.A. will permit Juul’s products to stay on the market to help adult smokers quit, industry executives believe the company’s negotiating stance will be strengthened.

But settling with numerous plaintiffs would be expensive. Juul has seen sales plummet during the past year, analysts say. The company is private so does not disclose its financial data.

Marc Scheineson, a lawyer with Alston & Bird, whose practice includes small tobacco companies, called the \$40 million in the North Carolina settlement “a relatively small sum to pay to avoid mounting legal fees and the plaintiff pile-on syndrome.”

He also noted that most of the steps Juul agreed to take in the consent decree, such as not advertising near schools and behind-the-counter sales, are actions that it has already taken in an effort to gain public favor. Mr. Scheineson also said that electronic nicotine delivery products, such as Juul, “still have an important public health use by adults as a proven effective tool to quit smoking more harmful cigarettes.”

Juul faces other legal threats, too. The Federal Trade Commission is suing Juul, along with the big tobacco company Altria and related parties, seeking to unwind the 2018 deal that gave Altria 35 percent of Juul. Altria, the maker of Marlboro cigarettes, paid \$12.8 billion for that stake, but it has since written down the value of the investment to \$1.5 billion.

The commission says that the two companies entered into a series of agreements, including Altria's investment, that eliminated competition in violation of federal antitrust laws. The F.T.C. also claims that Altria and Juul started as competitors in the e-cigarette market, but that as Juul became more popular, Altria dealt with the threat by taking its own Mark Ten e-cigarette off the market in exchange for a share of Juul's profits. Both Altria and Juul have denied the charges.

The multi-district federal litigation in U.S. District Court for the Northern District of California consolidates cases on three tracks: personal injury, which includes plaintiffs claiming addiction, lung injuries and other health problems; a consumer class action track, claiming that individuals paid too much for a product that addicted them; and a government entity track, consisting of school districts and counties seeking monetary reimbursement for vaping-relating damages. Investors in Juul, like Altria and other entities, are also involved. Depositions have begun, and the first case is scheduled to go to trial in February 2022.

Matthew L. Myers, president of the Campaign for Tobacco-Free Kids, called the North Carolina settlement a positive step that puts Juul under the same marketing restrictions that already apply to other tobacco companies, with some added sales restrictions and protection against the use of social influencers.

"But," he added, "these measures will not solve the youth e-cigarette crisis. Nothing short of F.D.A. action will reverse the youth e-cigarette epidemic."

Sheila Kaplan is a prize-winning investigative reporter who covers the Food and Drug Administration, the tobacco industry and the intersection of money, medicine and politics. [@bySheilaKaplan](#)

A version of this article appears in print on June 29, 2021, Section A, Page 1 of the New York edition with the headline: Juul Will Settle 1st Vaping Suit For \$40 Million

<https://www.nytimes.com/2021/06/28/health/juul-vaping-settlement-north-carolina.html>