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COURT LIMITS UNTIMELY CLAIMS BASED ON ADDICTION TO TOBACCO

(Grisham v. Philip Morris USA, Inc.)

The California Supreme Court ruled today that tort claims filed against cigarette companies generally are time-barred when based on allegations that many years ago the companies wrongfully addicted the plaintiffs to tobacco. At the same time, the court held that a personal injury claim filed in conjunction with a wrongful addiction claim is not time-barred simply because the latter claim is barred; rather, the court ruled, personal injury claims accrue only after the plaintiff knew or should have known that she had contracted a smoking-related disease -- not when she first knew that she was addicted.

The decision was a partial victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Grisham v. Philip Morris USA, Inc.*, urging dismissal of wrongful addiction claims. WLF argued that such claims by long-time smokers are barred by the statute of limitations because the plaintiffs knew (or should have known) for decades that they were addicted to cigarettes, yet they waited until 2002 to file suit.

The court agreed with WLF that there is a general presumption that an individual addicted to tobacco knows of his addiction and its causes. The court held that a cause of action accrues as soon as the plaintiff knew (or should have known) of the addiction, and it is time-barred unless the plaintiff files suit within the limitations period (either one year or three years). The court rejected the plaintiffs' contentions that their addiction to tobacco rendered them incapable of recognizing their addiction.

"The general public has known for decades that tobacco is addictive. If there was any doubt on that score, it was eliminated in 1988 when the Surgeon General officially reported that tobacco is addictive," said WLF Chief Counsel Richard Samp after reviewing the court decision. "In light of that knowledge, individuals who sue based on wrongful addiction claims should not be permitted to wait for decades before filing suit. Statutes of limitations exist to prevent the filing of such stale claims," Samp said.

The case involves two women, Leslie Grisham and Maria Cannata, who each has been smoking for four decades and who each filed suit in 2002 against several cigarette manufacturers, claiming that the manufacturers are responsible for their addiction. They seek damages for their addiction, including the cost of smoking cessation programs and the cost of the cigarettes they purchased over the years. The federal district court hearing

their cases dismissed both, finding that the suits were time-barred because the limitations period expired many years ago. They appealed to the U.S. Court of Appeals for the Ninth Circuit in San Francisco, a court that several years ago issued a decision (*Soliman*) that dismissed a wrongful addiction suit as untimely under very similar circumstances. Had the appeals court simply followed its *Soliman* decision, it would have dismissed the latest wrongful addiction cases out of hand, as untimely. Instead, the Ninth Circuit decided to hand the ball to the California Supreme Court: it asked the California high court to provide advice on California law regarding when a cause of action accrues (*i.e.*, when does the limitations period begin to run?). Today's decision was the California Supreme Court's answer to the Ninth Circuit's question.

In its decision, the California Supreme Court affirmed traditional rules regarding accrual of causes of action: a cause of action accrues as soon as the plaintiff suspects, or has reason to suspect, that he or she has been wrongfully injured. The court held that in light of wide-spread public awareness of tobacco's addictive nature, there is a general presumption that smokers are aware of the nature and causes of their addiction. While the court said that individual plaintiffs are entitled to attempt to rebut that presumption, neither Grisham nor Cannata carried her burden of doing so in this case. Accordingly, the limitations period for filing "wrongful addiction" suits began to run many years ago, and the statute of limitations expired on those claims well before they filed suit in 2002, the court held.

The court went on to state that other plaintiffs might be able to demonstrate that their discovery of addiction was delayed until a date falling within the limitations period - - such as delay caused by their reasonable reliance on allegedly misleading statements by tobacco companies. But the court noted that that evidentiary burden cannot be met by making "conclusory allegations," and that the plaintiff must "show diligence" in attempting to uncover the fact of his or her addiction. The court also ruled on other issues in which WLF was not involved, including whether the untimeliness of claims for economic injury caused by wrongful addiction should prejudice a plaintiff's right to bring personal injury claims.

WLF is a public interest law and policy center with supporters in all 50 states, including many in California. WLF devotes a substantial portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government. In particular, WLF has appeared before numerous state and federal courts in cases raising tort reform issues, and has regularly urged courts to protect defendants against excessive tort liability by fully enforcing the terms of statutes of limitations.

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For further information, contact WLF Chief Counsel Richard A. Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.