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# ILLINOIS SUPREME COURT DECLINES TO RECONSIDER DECISION OVERTURNING $10.1 BILLION PHILIP MORRIS VERDICT

**(*Price v. Philip Morris, Inc.*)**

The Illinois Supreme Court this week denied a petition to rehear a case in which, last December, it had overturned a massive class action award against Philip Morris, Inc. The decision denying the petition was a victory for the Washington Legal Foundation (WLF), which had filed a brief opposing the award. WLF filed its brief on behalf of itself and the Illinois Civil Justice League.

The court majority denied the rehearing petition without comment. Justice Charles E. Freeman wrote a lengthy dissent from the denial. He also dissented from the court's December 2005 ruling. The Illinois Supreme Court overturned the $10.1 billion trial court judgment on the ground that the conduct complained of by the plaintiffs – the labeling of some cigarette brands as "light" or "low tar" – was specifically authorized by the Federal Trade Commission.

In the case, a Madison County, Illinois trial judge had levied a $7.1005 billion award for compensatory damages against the tobacco company based on claims that the company had fraudulently implied that its low-tar cigarettes are safer than ordinary cigarettes. The trial judge held that the plaintiffs' attorneys who brought the suit were entitled to slightly more than $1.77 billion of that amount. The trial judge also awarded $3 billion in punitive damages, for a total award of slightly more than $10.1 billion.

On a direct appeal, the Illinois Supreme Court noted that Illinois consumer protection laws do not permit fraud claims based on conduct "specifically authorized by laws administered by any regulatory body or officer acting under statutory authority of this State or the United States." The Court held that the defendant's compliance with FTC labeling and advertising standards did not, by itself, necessarily mean the "light" and "low tar" descriptions were specifically authorized by the FTC. The Court determined, however, that in two consent orders the FTC had entered into with tobacco companies, the FTC had affirmatively permitted the use of those descriptions.

The Supreme Court declined to rule on the defendant's separate arguments that the trial court had ruled improperly in allowing a class action of 1.14 million plaintiffs who may have differed greatly in their understanding of "light" or "low tar" and the extent to

which they relied on those descriptions. The Supreme Court indicated, however, that it had "reservations about the existence of individual issues that might make class certification inappropriate."

Two dissenting Justices contended that the FTC consent decrees did not amount to specific authorization of the use of the terms in question.

Matthew J. Iverson, a partner in the Chicago office of the law firm Litchfield Cavo, represented WLF as local counsel in the case on a *pro bono* basis.

The Illinois Civil Justice League, which joined WLF's brief, is a coalition of Illinois citizens, small and large businesses, associations, professional societies, not-for-profit organizations, and local governments that have joined together to work for fairness in the Illinois civil justice system.

WLF is a public interest law and policy center with supporters in all 50 states. It has filed briefs in numerous cases in federal and state courts involving preemption of state tort actions, improper certification of large-scale class actions, and excessive punitive damages and attorneys' fee awards.

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