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October 24, 2008

COURT URGED TO ADHERE TO FIRST-INJURY RULE IN COMPUTING LIMITATIONS PERIODS

(Pooshs v. Philip Morris USA Inc.)

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Ninth Circuit to affirm dismissal of a personal injury lawsuit that was filed more than 15 years after the plaintiff knew that she had suffered a serious injury and had reason to suspect that a product manufacturer was responsible.

In a brief filed in *Pooshs v. Philip Morris USA Inc.*, WLF argued that statutes of limitations begin to run from the date on which the plaintiff discovers that he has been injured by the defendant's alleged wrongdoing. The fact that the plaintiff may later discover that he has suffered a second injury caused by that same wrongdoing does not re-start the clock for statute of limitations purposes, WLF argued. Because California had a one-year limitations period for filing personal injury claims (later extended to two years by the state legislature), the plaintiff's claims are time barred, WLF argued.

“The ‘separate injury’ theory being pressed by the plaintiff would constitute a dramatic change in the law and would undermine the many salutary purposes served by statutes of limitations,” said WLF Chief Counsel Richard Samp after filing WLF's brief. “Such statutes are intended to give defendants reasonable repose, thereby protecting them from being forced to defend stale claims. The plaintiff's approach would create an open-ended time frame at odds with those statutory aims,” Samp said.

The plaintiff smoked cigarettes from 1953 to 1991. In 1989 and again in 1999, she was diagnosed with COPD, a serious lung condition generally associated with smoking. In 2003, she was diagnosed with lung cancer. She filed suit against several cigarette manufacturers in 2004, less than one year after her lung cancer diagnosis but more than 15 years after her COPD diagnosis. The district court dismissed the plaintiff's suit as time-barred, determining that under the first-injury rule her cause of action against the defendants had accrued in 1989. The plaintiff appealed that decision to the Ninth Circuit.

WLF argued that California law has long adhered to the single-injury rule, which holds that discovery of the first substantial personal injury caused by a defendant's

alleged wrongdoing starts the limitations period running with respect to all personal injury claims arising from that wrongdoing. WLF argued that the federal courts are required to apply California law in this instance and thus have no authority to act on their own to declare changes in that law.

WLF argued that the discovery rule (which delays accrual of a tort action until the plaintiff has discovered that he has suffered a substantial injury) already extends considerably the number of years following alleged misconduct during which a defendant is exposed to tort liability – particularly in cases involving latent diseases. WLF argued that if courts allow the clock to be re-started every time a plaintiff alleges that he has suffered a new injury, the limitations period will be extended indefinitely, and the defendant will have been deprived of the repose that statutes of limitations are intended to provide. WLF noted that under the first-injury rule, the plaintiff would still be permitted to sue for the considerable injuries she suffered in connection with her COPD.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 states. It devotes a considerable portion of its resources to defending and promoting free enterprise, individual rights, and a limited and accountable government.

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