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Court Partially Overturns Massive Product Liability Award

(*Evans v. Lorillard Tobacco Co.*)

Massachusetts Supreme Judicial Court

The Massachusetts Supreme Judicial Court this week partially overturned a \$116 million judgment issued to a smoker who filed a personal injury lawsuit nearly 20 years after she suffered a heart attack that she knew was related to her smoking. The court threw out an \$81 million punitive damages award but upheld a \$35 million award for compensatory damages.

The decision in *Evans v. Lorillard Tobacco Co.* was a partial victory for WLF, which filed a brief urging the court to throw out the entire damages award. The Court rejected defense claims regarding the issue on which WLF principally focused: the statute of limitations. WLF argued that statutes of limitations begin to run from the date on which the plaintiff discovers that she has been injured by the defendant's alleged wrongdoing. The fact that the plaintiff may later discover that she has suffered a second injury caused by that same wrongdoing does not restart the clock for statute of limitations purposes, WLF asserted. The court disagreed, finding that the limitations period starts anew with respect to each separate disease suffered by a plaintiff, even if the diseases have a common cause.

The lawsuit sought damages for the lung cancer that the plaintiff developed due to her long-time habit of smoking cigarettes manufactured by the defendant. The court overturned many of the theories of liability upon which the trial court had rested its verdict. But it upheld one theory of liability: that the defendant breached its implied warranty of merchantability of the cigarettes it sold. Although the court deemed that theory of liability sufficient to uphold the \$35 million compensatory damages award, it vacated the \$81 million punitive damages award because the numerous errors committed by the trial judge likely influenced the large size of the punitive damages award.

WLF attorneys expressed disappointment regarding the court's ruling on the statute of limitations issue. "The 'separate injury' theory adopted by the court constitutes a dramatic change in the law and undermines the many salutary purposes served by statutes of limitations," said WLF Chief Counsel Richard Samp in response to the court decision. "Such statutes are intended to give defendants reasonable repose, thereby protecting them from being forced to defend stale claims. The court's approach creates an open-ended time frame at odds with those statutory aims," Samp said.

The plaintiff smoked cigarettes from 1960 until her death in 2002. In 1985 (at age 38) she suffered a serious heart attack that her doctor told her was related to her smoking. She did not file suit at that time. She was diagnosed with lung cancer in 2001. The limitations period in

Massachusetts is three years for claims of this sort. Her lawsuit against the cigarette manufacturer was filed within three years of her lung cancer diagnosis but 19 years after her heart attack. The trial court denied the manufacturer's statute-of-limitations defense and entered judgment for the plaintiff's estate in the amount of \$116 million. The Massachusetts Supreme Judicial Court later accepted a direct appeal from the trial court. Its decision this week reduced the damages award from \$116 million to \$35 million.

In its brief, WLF argued that Massachusetts 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. The court's decision abandoned the single-injury rule without providing any explanation for its decision to do so.

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 faces potential tort liability – particularly in cases involving latent diseases. WLF argued that if courts allow the clock to be restarted 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 could have been fully compensated for her injuries had she filed suit by 1988, three years after her heart attack. Because no lawsuit was filed until 2004, the defendant's ability to mount an effective defense was compromised considerably, WLF argued.

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.

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