

**FOR IMMEDIATE RELEASE****June 11, 2012**

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

(Evans v. Lorillard Tobacco Co.)

The Washington Legal Foundation (WLF) today urged the Massachusetts Supreme Judicial Court to overturn a \$112 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.

In a brief filed in *Evans v. Lorillard Tobacco Co.*, 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 argued. Because Massachusetts has a three-year limitations period for filing personal injury claims, 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 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. 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 \$112 million. The Massachusetts Supreme Judicial Court later accepted a direct appeal from the trial court.

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.

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.

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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.