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**COURT URGED TO BAR UNTIMELY CLAIMS
BASED ON ADDICTION TO TOBACCO**
(Grisham v. Philip Morris USA, Inc.)

The Washington Legal Foundation (WLF) this week urged the California Supreme Court to uphold the dismissal of tort claims filed against cigarette companies based on allegations that the companies wrongfully addicted the plaintiffs to tobacco.

In a brief filed in *Grisham v. Philip Morris USA, Inc.*, 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. WLF urged the court to reject 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 filing WLF's brief. "In light of that knowledge, individuals who sue based on claims that they were wrongfully addicted 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 (which is either one year or three years) 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 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?). The California Supreme Court agreed to decide the question, and directed the parties to file briefs.

In its brief, WLF urged the court to affirm 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. WLF argued that in light of the Surgeon General's 1988 report, long-term smokers had reason to suspect no later than 1988 that they were addicted to cigarettes and that cigarette manufacturers might be responsible for that addiction. Accordingly, the limitations period for filing suit began to run no later than 1988, and the statute of limitations expired on Grisham's and Cannata's wrongful addiction claims many years before they filed suit in 2002, WLF argued.

WLF argued that, contrary to the plaintiffs' assertions, tobacco companies' denial of liability should not serve to stop the clock from running. WLF argued that the theory being pressed by the plaintiffs would constitute a dramatic change in the law and would undermine the many salutary purposes served by statutes of limitations. Such statutes are intended to give defendants reasonable repose, thereby protecting them from being forced to defend stale claims. WLF said that the plaintiffs' theory essentially argues that any company that issues a statement denying wrongdoing loses all rights to invoke a statute of limitations defense; they assert that potential plaintiffs can avoid statute of limitations defenses by alleging that they believed the defendant's denial until just before deciding to file suit.

Under that theory, any company's potential exposure to tort liability could linger for many years beyond the limitations periods established by the California legislature, WLF argued. Petitioners have failed to explain why such a dramatic contraction of statute of limitations defenses is warranted, WLF argued. Such a contraction would reverberate far beyond the tobacco industry and would undermine the numerous interests served by statutes of limitations.

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.