

Press Release

Washington Legal Foundation

Advocate for freedom and justice®

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FOR IMMEDIATE RELEASE

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ILLINOIS SUPREME COURT URGED TO OVERTURN \$1.8 BILLION FEE AWARD

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

The Washington Legal Foundation (WLF) today asked the Illinois Supreme Court to reverse an oversized attorneys' fee award in a class action. In the case, *Price v. Phillip Morris, Inc.*, a Madison County, Illinois judge hit the tobacco company with a \$7.1005 billion award for compensatory damages based on claims that the company had fraudulently implied that its low-tar cigarettes are safer than ordinary cigarettes, and held that the plaintiffs' attorneys who brought the suit were entitled slightly more than \$1.77 billion of that amount.

WLF is concerned that this award, if upheld, may be used to finance abusive tort litigation nationwide. In its brief, WLF argued that meaningful appellate review of this award from the plaintiffs' damages fund is vital in light of the fact that the plaintiff class had no separate representation with respect to the award and no opportunity to contest it. WLF noted that the fee award amounts to an hourly rate for the attorneys of \$31,981 per hour. Assuming a conservative work effort of 1,800 billable hours per year per attorney, the award thus translates to a valuation of the attorneys' time at an annual compensation level per attorney of \$57,565,800. WLF further noted that the fee award is greater than the entire 2003 budget for all United States Attorneys' offices combined. WLF contended that the award violates Rule 1.5(a) of the Illinois Rules of Professional Conduct, which mandates that attorneys fees must be reasonable.

WLF also argued that the trial court erred by ordering that any unclaimed funds from the damages award would go to a specified list of institutions. The recipients include eleven law schools or enhancing studies concerned with the protection of the consumer and with other socio-economic areas of law or for providing financial assistance to needy law students, legal Court programs, and several legal services programs. WLF noted that such a distribution in the class action context is also known as a liquid class

recovery? ? must either be distributed through the market, usually in the form of reduced charges, or used to fund a project for the benefit of class members. The only apparent connection among the institutions in the trial court's order was that the trial judge considered them to be worthy causes. WLF argued that any fluid class recovery in the case must be fashioned to benefit the plaintiff class, not unrelated segments of the population or the population at large.

WLF filed the brief on behalf of itself and the Illinois Civil Justice League, 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.

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.

WLF is a public interest law and policy center with supporters in all 50 states. It has filed briefs in numerous cases involving excessive or improper attorneys' fee awards, recently including *Graham v. DaimlerChrysler Corp.* (Cal. Sup. Ct. No. S112862); *Philion v. Lonza* (Cal. Sup. Ct. No. S115762); and *In re Magazine Antitrust Litigation* (S.D.N.Y. No. 00-civ-4889).