

Legal Update



Tobacco Control
Legal Consortium



Dear Tobacco Control Professional:

Welcome to the latest issue of the *Legal Update*, the newsletter of the Tobacco Control Legal Consortium. The Consortium is a national network of legal programs supporting tobacco control policy change across the United States. We invite you to visit our website at www.tclconline.org.

Regulating Cigarettes for Fire Safety

Each year in the United States, fires caused by cigarettes result in 700 to 900 deaths, approximately \$400 million in property damage, and \$4 billion in total economic loss. Despite these costs, cigarette manufacturers have not significantly reduced the ignition propensity of their products. In response, a growing number of states have enacted legislation to reduce the fire safety hazard.



The Tobacco Control Legal Consortium's new law synopsis, entitled *Regulating Cigarettes for Fire Safety*, was written as a resource for you, as a tobacco control professional, as well as for others concerned about the risk of fires caused by cigarettes. It was written by Hillel R. Alpert, an applied policy research scientist with the Tobacco Control Research Program at the Harvard School of Public Health.

The synopsis reviews the immense public harm resulting from cigarette-caused fires. It describes the regulatory structure, feasibility, compliance and implementation of legislation to reduce these fires, and it examines the issues involved in fire-related litigation. Finally, it discusses the tobacco industry's resistance to improved fire safety standards and the movement toward a national ignition propensity performance standard for all cigarettes sold in the U.S.

To view a PDF version of the synopsis, click [here](#), or contact the Tobacco Control Legal Consortium to request a printed copy. We hope you find this publication a useful and informative resource in your work.

New Laws Address Cigarette Fire Hazards

This May, while the attached publication was in press, several states passed laws requiring cigarettes sold in state to meet a "reduced ignition propensity" or "RIP" standard, bringing the number of state laws to fourteen. The latest states to enact these laws are Iowa, Maryland, Minnesota, Montana, and New Jersey. Earlier this year, Kentucky, Oregon and Utah passed similar legislation. For more information on these laws, click [here](#).

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[Tobacco Advocacy Resource Partnership](#)

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New Jersey
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Ohio
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Smoker's Family Awarded \$2.75 Million in Punitive Damages

On May 9, a San Francisco Superior Court jury awarded \$2.75 million in punitive damages to the family of Leslie Whiteley, who died of lung cancer in 2000 at the age of 40 after smoking Marlboro and Camel Light cigarettes for 26 years. The punitive damages award was far less than the \$20 million in punitive damages that an earlier jury awarded the Whiteleys in March 2000, finding the R.J. Reynolds and Philip Morris tobacco companies liable for fraud and negligence contributing to Whiteley's cancer. The earlier jury awarded Whiteley and her husband a total of \$21.7 million in compensation, including \$10 million in punitive damages against each company, four months before Leslie Whiteley died. (*Leonard Whiteley v. R.J. Reynolds*)

In 2004, the First District California Court of Appeal reversed the judgment and ordered a new trial. The court said the trial court erred in refusing to instruct the jury that it could not base liability on conduct occurring from 1988 to 1998, a 10-year period during which a state law was in effect that protected tobacco firms from suits by individual smokers. At the *Whiteley* retrial, a second jury again found that both tobacco companies had made false statements on which Whiteley relied. The jury voted to allow punitive damages against R.J. Reynolds alone, finding that the company had knowingly made false promises to its customers. The jury rejected a similar claim against Philip Morris, precluding punitive damages against that company. For additional background information on the *Whiteley* case and links to decisions, click [here](#).

Latest Statewide Smoke-free Laws

During May, two more states enacted comprehensive statewide smoke-free laws.

- On May 16, Minnesota Governor Tim Pawlenty signed into law the state's Freedom to Breathe Act of 2007, which will protect the health of workers and the public by eliminating smoking in indoor public places, places of employment and public transportation. The law, which will replace Minnesota's thirty-two year old Clean Indoor Air Act, will go into effect on October 1, 2007. For an overview of the law, click [here](#). To read the law, click [here](#).
- The next day, May 17, Maryland Governor Martin O'Malley signed into law new comprehensive legislation for that state. The law requires bars and restaurants to be smoke-free by February 1, 2008, and also extends to private clubs such as American Legion and Veterans of Foreign Wars halls. Some businesses eligible for financial hardship waivers from the state would get a three-year extension, but they must be smoke-free by 2011. With the law signed, tobacco shops are virtually the only public indoor places where smoking will be allowed in Maryland. To read the law, click [here](#).

Meanwhile, three additional states passed smoke-free legislation that awaits governors' signatures. The Smoke-Free Illinois Act would make almost all indoor public places 100% smoke-free, including bars, restaurants and private clubs, beginning January 1, 2008. New Hampshire's governor has been presented with legislation that will make restaurants and cocktail lounges smoke-free. Finally, Tennessee legislation, if signed, will make restaurants and most other indoor workplaces—but not bars—smoke-free. For additional information on these new laws, click [here](#).

Court Blocks Allegheny County, Pennsylvania Smoke-free Law

A Pennsylvania court has ruled that local governments in that state are preempted from regulating secondhand smoke. On May 22, the Pennsylvania Commonwealth Court decided an appeal of the Allegheny County Court of Common Pleas' earlier decision that Allegheny County's smoke-free law was not preempted by state law. In the most recent decision, the court found that the General Assembly had repealed an earlier, ineffective repeal of its preemptive language. The court said that, as a result, the original preemptive terms remained in effect. This case is important not only because it affects the status of the smoke-free law in Allegheny County, which includes Pittsburgh, but also because the plaintiffs admitted to the Court of Common Pleas in December 2006 that R.J. Reynolds was paying their legal fees. To view the Commonwealth Court's May 22 decision, click [here](#).

Most U.S. Homes Ban Smoking

New data from the Centers for Disease Control and Prevention show that nearly three-quarters of U.S. families now forbid smoking in their homes. Even among families with members who smoke, the prevalence of no-smoking-in-the-house rules has trebled since the early 1990s, with 32 percent of smokers' homes now smoke-free. Click [here](#) for the CDC's smoke-free home study.

If you have a question about a tobacco law-related issue that you'd like us to address in this column, or a topic you'd like us to cover in future publications, please send us an e-mail at tobaccolaw@wmitchell.edu. Thank you!

Q “A bar in my city is unhappy with an exemption in our smoke-free law and sued the city. The city filed a motion for summary judgment. What is a summary judgment? Is it a type of trial?”



Maggie Mahoney, J.D., Tobacco Control Legal Consortium, answers this month's question.

A After a lawsuit is filed, either party can file motions to ask the court to make specific rulings concerning the case. Before a trial, a party might file a motion (or “move”) for summary judgment. This party (referred to as either the moving party or “movant”) will argue that there are no genuine issues of material fact concerning the legal claims and that the movant is entitled to judgment as a matter of law.

In a summary judgment motion, the court gets a preview of the evidence that would be submitted at trial. If there is no real dispute about – and, therefore, no need to have the court review – the sort of facts that would make a difference in the outcome of the case, judges can decide, based on the law and the information before them, whether a movant should win. Generally, the nonmoving party can defeat a summary judgment motion (and go to trial) by showing that there is a real dispute regarding a fact that would make a difference in the outcome of the case.

Motions like these are used to make the court system more efficient. Summary judgment motions let judges decide whether they can make a final ruling on a case without holding a trial.

Last year's federal court ruling on the constitutionality of Colorado's new smoke-free law, *Coalition for Equal Rights, Inc. v. Owens*, is an example of a court deciding a case by granting summary judgment. In that case, the plaintiffs (an association of restaurants, bars, and other businesses) and the defendants (the State of Colorado, the governor, and state district attorneys) both moved for summary judgment. Because there were no factual issues for the trial court to decide, it could just decide the legal arguments without holding a trial. The court granted summary judgment for the defendants, holding that the state-wide smoke-free law was constitutional. The plaintiffs appealed the case to the U.S. Tenth Circuit Court of Appeals, but no decision has been issued yet.

— Maggie Mahoney



The Global Perspective

Smoke-Free Laws Going Global

On May 31, as the World Health Organization's World No Tobacco Day focused on the importance of smoke-free environments, a series of converging developments highlighted the gathering global momentum for effective protection from secondhand smoke.

Pointing out that half of the world's children are exposed to secondhand smoke, the WHO itself

released strong new [policy recommendations](#), and Director-General Dr. Margaret Chan urged all countries to act immediately to make all indoor workplaces and public places 100% smoke-free. Meanwhile, the Global Smokefree Partnership, released its own compelling status report, [Global Voices for a SmokefreeWorld](#), documenting the amazing pace of worldwide change. The report finds that more than 200 million people are already protected by stringent smoke-free laws, with fully comprehensive legislation in place in Ireland, Uruguay, New Zealand, Bermuda, Iran, Scotland, Wales and Northern Ireland, and with many countries, from France to South Africa to Hong Kong, covering most workplaces. Next month, Vietnam is scheduled to join the ranks of smoke-free nations.

To sustain this momentum, the [Global Smokefree Partnership](#) and the [Framework Convention Alliance](#), leading networks of nongovernmental organizations, called on the world's governments to adopt the strong world guidelines for smoking regulation proposed for adoption in late June in Bangkok, Thailand, as part of the implementation of the world tobacco control treaty, the Framework Convention on Tobacco Control. To read the proposed guidelines, click [here](#). To read the joint briefing paper of the Global Smokefree Partnership and the Framework Convention Alliance, click [here](#).

Advocates can help support the adoption of strong treaty guidelines by joining the "[Global Voices for a Smokefree World](#)" campaign.

Nigeria Tobacco Litigation

In a landmark tobacco control case, Nigeria's two largest states – Lagos and Kano – joined by one other state, Gombe, and a nonprofit organization, recently sued British American Tobacco International, Philip Morris International and other defendants in Lagos High Court. The plaintiffs allege consumer fraud, negligence and a local and international conspiracy among the tobacco companies to target young and underage smokers through a misleading marketing campaign and efforts to conceal the negative health effects of smoking. The plaintiffs are seeking damages of \$38.6 billion (£19.4 billion), in an attempt to recover the health care costs incurred in treating smoking-related diseases. To read the claim (complaint), click [here](#).

Resource Roundup

- **Ending the Tobacco Problem: A Blueprint for the Nation.** On May 24, the Institute of Medicine of the National Academy of Sciences released a report entitled [Ending the Tobacco Problem: A Blueprint for the Nation](#), which details steps needed to reduce smoking in the U.S., which is now around 21 percent of the adult population. The recommendations include passing a combination of increased excise taxes, enacting nationwide indoor smoke-free laws, and granting the Food and Drug Administration the authority to regulate tobacco products, as well as the power to restrict how the products can be marketed. The report also recommends that the FDA develop a long-term plan to gradually reduce the nicotine content of cigarettes and thereby decrease their addictive power. The report was sponsored by the American Legacy Foundation.
- **American Lung Association's 2006 SLATI.** On May 29, ALA released the 2006 edition of State Legislated Actions on Tobacco Issues (SLATI), an annual compendium of state tobacco control laws. The 2006 edition tracks key state tobacco control laws as they stood on January 2, 2007. A PDF copy of the report is available for download on the [SLATI website](#).

Upcoming Events

- Reduced-rate, early bird registration for the 2007 National Conference on Tobacco or Health ends on May 31. Starting on June 1, the rates will increase from \$380 to \$575. For more information about the conference or to register online, click [here](#). If you have any questions about the conference, click [here](#).

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Note: While we make every effort to ensure the information in this newsletter is accurate and complete, the Tobacco Control Legal Consortium is unable to guarantee this information. Material is provided for informational purposes and is not intended as legal advice. We encourage readers with questions to consult an attorney familiar with the laws of their jurisdictions.

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