

# Legal Update

from the Tobacco Control Legal Consortium



July 2004

## Dear Tobacco Control Professional:

Welcome to the second issue of the Tobacco Control Legal Consortium's online newsletter! The Consortium is a national network of legal programs supporting tobacco control policy change by giving advocates better access to legal expertise. We invite you to visit our website at [www.tclconline.org](http://www.tclconline.org).

## Infiltration of Secondhand Smoke into Multi-Unit Dwellings



As evidence of the ill effects of secondhand smoke continues to mount, owners and residents of multi-unit dwellings have become increasingly concerned about the health threat of secondhand smoke infiltration. Tobacco smoke from one unit can seep through cracks, circulate by ventilation systems or otherwise enter the living space of others.

The Consortium's new publication, "Infiltration of Secondhand Smoke into Condominiums, Apartments and Other Multi-Unit Dwellings," summarizes the legal remedies for landlords, condominium associations and tenants of multi-unit dwellings concerned about secondhand smoke infiltration. The synopsis was written by Susan Schoenmarklin, a seasoned tobacco control attorney at the Smoke-Free Environments Law Project. To view a pdf version of the synopsis, click on the image above or go to [www.wmitchell.edu/tobaccolaw/resources/schoenmarklinweb.pdf](http://www.wmitchell.edu/tobaccolaw/resources/schoenmarklinweb.pdf).

## Tobacco Control Legal Consortium Honored

The Tobacco Control Legal Consortium was recently honored to receive the 2004 National/Regional Collaboration Award from the Centers for Disease Control and Prevention (CDC) and the Directors of Health Promotion and Education (DHPE). The award honors an organization that has helped strengthen relationships between state and local stakeholders, using innovative techniques to advance health education and promotion nationwide. According to the CDC and DHPE, "Since its inception, the consortium has worked with dozens of communities and nearly all of the leading tobacco-control organizations to defend existing policies, to improve proposed new laws in ways that discourage litigation, and to strengthen the resolve of decision-makers to stay the course when confronted with industry opposition."

## Landmark Punitive Damages Award Upheld

In a case with vast implications for tobacco control, the Oregon Court of Appeals recently upheld a \$79.5 million punitive damages award against Philip Morris in a wrongful death suit brought by the family of Jesse Williams, a Marlboro smoker who died of lung cancer. On March 30, 1999, a jury found Philip Morris guilty of fraud for fifty years of lies and deception. In addition to awarding the Williams family compensatory

## In This Issue:

- Infiltration of Secondhand Smoke into Multi-Unit Dwellings
- Consortium Honored
- Landmark Punitive Damages Award Upheld
- Consortium Joins as Amicus in Historic *Engle* Case

## Next Issue:

- The Americans with Disabilities Act: Effective Legal Protection Against Secondhand Smoke Exposure

## Affiliated Legal Resource Centers:

- **Arkansas**  
Arkansas Tobacco Legal Resource Center
- **California**  
Technical Assistance Legal Center (TALC)
- **Maryland**  
Legal Resource Center for Tobacco Regulation, Litigation & Advocacy (LRC)
- **Massachusetts**  
Tobacco Control Resource Center (TCRC)
- **Michigan**  
Smoke-Free Environments Law Project (SFELP)
- **Minnesota**  
Tobacco Law Center
- **New Jersey**  
Tobacco Control Policy and Legal Resource Center

Legal Update continues on the next page

damages of \$800,000, the jury awarded \$79.5 million in punitive damages. Much of this award, under state law, is directed to state funds to benefit victims of crime. The trial court reduced the jury's punitive damages award to \$32 million. Philip Morris appealed. In 2002, the Oregon Court of Appeals rejected the appeal and reinstated the \$79.5 million punitive damages award. After appealing in vain to the state supreme court, Philip Morris appealed to the U.S. Supreme Court, where many observers expected the award to be set aside or reduced sharply.

The Supreme Court sent the case back to the Oregon Court of Appeals to reconsider, in light of its decision in *State Farm Insurance Co. v. Campbell*. Instead of reducing the award, however, the Oregon Court of Appeals upheld the original punitive damages award. In a strongly worded opinion, the court summarized the evidentiary basis on which a jury could conclude a large punitive damages award was merited. It found that the "amount of the award is reasonable and proportionate to the wrong inflicted on decedent and the public of [Oregon]." "It is difficult," the court concluded, "to conceive of more reprehensible misconduct for a longer duration of time on the part of a supplier of consumer products to the Oregon public than what occurred in this case." Click here to view the opinion in *Williams v. Philip Morris Inc.*, 2004 WL 1259675 (Or. App. 2004).

### Consortium Joins as Amicus in Historic Engle Case .....

The Florida Supreme Court will hear oral arguments on October 6, 2004 to determine the fate of *Engle v. Liggett Group Inc.*, the landmark class action suit on behalf of 700,000 Florida smokers that produced a record \$145 billion punitive damages award against the principal domestic tobacco companies. The case includes allegations of fraud and conspiracy to conceal the damaging effects of smoking. After a year and a half at trial, the jury found for the plaintiffs in July 2000 and made its groundbreaking award — the largest punitive damages award in history. On appeal, however, the three-judge Third District Court of Appeals set aside the verdict and decertified the class, reversing its own earlier approval of certification. The court held that the claims of the plaintiffs were too individualized to be resolved in a single suit. The case now goes before the Florida Supreme Court.

The Tobacco Control Legal Consortium joined in an *amicus curiae* (friend-of-the-court) brief prepared by one of its affiliated legal centers, the Tobacco Control Resource Center in Boston. The brief refutes tobacco company arguments that individual smokers can no longer recover punitive damages and that the class should be decertified. The brief argues that the jury's punitive damages award should be upheld because the Court of Appeals incorrectly relied on the 1997 Florida Settlement Agreement and the 1998 Master Settlement Agreement in reversing the jury's award, when both agreements explicitly bar the use or consideration of them in any private lawsuit. The brief also argues that decertifying the class would create a de facto denial of remedies for almost all class members for two reasons: (1) the tobacco industry's litigation tactics purposely and needlessly increase litigation costs in ways that effectively prevent individual smokers from litigating their claims, and (2) even if class members could find counsel to represent them, decertifying the class would lead to a flood of cases retrying the same liability issues and undermining judicial efficiency and resources.

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