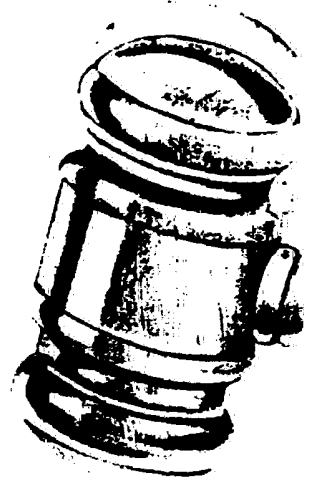


HIGH COURT HEARS TOBACCO CASE



AHA, OTHERS SUBMIT BRIEF

New arguments were scheduled this month before the U.S. Supreme Court in a precedent-setting case that should decide whether cigarette makers can be held liable for smokers' illnesses relating to tobacco use.

The case, which has been of interest to the American Heart Association, involves a suit against several tobacco companies by the family of a woman who died of lung cancer after a lifetime of smoking.

The high court will be asked to decide if warning labels, which first appeared in 1966 on cigarette packages, absolve tobacco companies of all liability linked to the use of their products. A decision is expected by July.

Should the tobacco companies lose the case, they face the potential of many similar personal-injury claims by people who say they have been physically harmed by smoking. Dozens of such suits are already pending.

Thomas Cipollone, individually and as executor of the

estate of his wife, Rose D. Cipollone, filed the original suit. The respondents were the Liggett Group Inc., Philip Morris Cos.' Philip Morris Inc., and Lorillard, a subsidiary of Loews Theatres Inc.

Rose Cipollone, a New Jersey woman who smoked for 40 years, died in 1984 of lung cancer. Several companies are named in the suit because she reportedly smoked different brands over the years.

The Cipollone family won an award of \$400,000 in a state district court based on the fact that no warning labels were in effect prior to 1966. However, a federal appeals court overruled the verdict in 1990 and ordered a new trial. That order was appealed to the Supreme Court.

The appeal centers on a technicality of the relationship between federal and state laws. The tobacco companies say that the health warnings, first imposed by Congress in 1966, pre-empt any suits brought under state personal-injury law. The plaintiffs claim that despite providing the warning labels, the cigarette companies should have warned about the hazards of smoking.

The Supreme Court heard arguments on the case last October but made no decision. Court observers speculated that the new hearing was needed because the court was split 4-4 on the issue at that time. By waiting until January after Justice Clarence Thomas had taken his seat, the court would have nine members and be able to offer a majority decision.

"We don't know if a split on the court was the reason for ordering a second hearing," said Scott Ballin, AHA vice president for public affairs. "But it seems a reasonable guess. However, we have no way of knowing how Thomas will vote on the issue."

The AHA joined several health-related organizations in presenting a brief *amicus curiae* to the Supreme Court supporting the complaint against the cigarette manufacturers. The American Cancer Society, the American College of Cardiology, the American Lung

Association, the American Public Health Association and the Public Citizen also signed the brief. Attorney Alan B. Morrison of the Public Citizen was the brief's principal author.

"When you consider that tobacco use kills about 435,000 Americans each year, it is certainly fitting that the American Heart Association and other concerned organizations take a stand in this case," said AHA President W. Virgil Brown, M.D. "Fortunately, people are learning that cigarette smoking is the most important preventable cause of premature death in the United States. And as we pointed out in our brief, these non-profit organizations are working to reduce the deadly toll that cigarettes have taken on the American people."

The brief filed by the health organizations argues that there is no evidence to suggest that Congress or the cigarette companies were interested in preventing liability suits in state courts by agreeing in the 1960s on the warning labels.

Further, the brief points out that the Cipollone claims are based in part on what the tobacco companies

chose to say or not say in their advertisements—, promoting the positive side of smoking and failing to disclose or warn consumers about the risk.

"Until late 1984," the brief says, "after Ms. Cipollone had died, Congress itself ... imposed no requirement that cigarette advertisements contain a health warning nor has it provided an alternative damages remedy to replace the state law claims that respondents (tobacco companies) assert have been pre-empted by the Act. Under these circumstances it would be startling indeed if Congress intended to entirely deny the states their ability to assure that their citizens are adequately informed about the health hazards from smoking."

"This case could be relevant to other possible regulatory issues relating to smoking hazards not covered by any current warning label requirements," Brown said.

"It points out the critical need for tobacco products to be regulated like other legal products, such as foods and

drugs. No federal agency has any specific authority to regulate the manufacture, distribution, sale, labeling, advertising or promotion of cigarettes. It's ironic that while the FDA regulates nicotine as a drug, in all other circumstances it is powerless to do so with respect to cigarettes. The same is true of the thousands of chemical additives used in tobacco products."

"The AHA and other health agencies believe the time has come for Congress to treat tobacco as it has every other legal, hazardous product and bring it under the jurisdiction of a regulatory agency such as the U.S. Food and Drug Administration," Brown said. □

FLIGHT ATTENDANTS SUE TOBACCO FIRMS

Six tobacco companies are facing one of the first lawsuits involving the health effects of passive smoking on non-smokers.

A group of non-smoking flight attendants filed suit last fall in Miami against Philip Morris Inc., RJR Nabisco Inc., Loews Corp., American Brands Inc., Brooke Group Ltd. and Dosal Tobacco Corp.

Plaintiffs seek class-action status on behalf of 60,000 non-smoking attendants. They claim they are suffering from cancer and other diseases or face increased risk of disease by inhaling tobacco smoke on airplanes. They are asking for \$5 billion in

damages or, according to their attorney, "enough money to put the cigarette makers out of business."

Legal experts say the case filed in Florida state court could result in similar suits and pose new challenges for cigarette companies.

The 1985 Report of the U.S. Surgeon General and other studies by the National Academy of Sciences and the Environmental Protection Agency have documented the health hazards posed by passive smoking. Cigarette smoking was recently banned on all domestic flights by a federal law supported by the American Heart Association. □