

accurately determine their level of exposure by measuring the amount of nicotine in their urine.

There is a vast disparity between health professionals' judgment of the hazards attached to smoking and the view taken by the Tobacco Institute, a national lobbying organization for the tobacco industry, based in Washington, D.C. According to Anne Browder, assistant to the president of the Tobacco Institute, the institute rejects the view that smoking is universally harmful even to smokers themselves.

"We're saying that cigarette smoking may or may not be harmful to an individual," said Browder. She also rejects the statements

by Surgeon General Koop that smoking is the country's largest single avoidable cause of cancer.

Another issue gaining more prominence as public fears about the expense of health care grow is taxpayers' costs caused by cigarettes. According to a study released in September by the U.S. Office of Technology Assessment, disease and lost productivity due to smoking are costing the United States between \$38 billion and \$95 billion a year. The middle estimate of \$65 billion represents more than \$2 for every pack of cigarettes consumed. Meanwhile, tax on cigarettes yields only 16 cents per pack, or \$4.6 billion a year.

R.J. Reynolds Not Liable for Smoker's Death

by Miles Corwin

Santa Barbara (December 24, 1985)—A Superior Court jury here Monday rejected the claims of the family of a man who died after 54 years of smoking, voting 9 to 3 that the R.J. Reynolds Tobacco Co. is not liable for the man's death.

The verdict came on the second day of deliberations in a case that was closely watched by the \$60-billion tobacco industry and by many personal injury lawyers. It was the first of about 45 product liability lawsuits filed against tobacco companies to reach a jury.

The 12-member jury, which included one smoker, deliberated about nine hours before deciding against the family of John Galbraith, a Santa Barbara man who died in 1982 at age 69 of heart disease, lung cancer and other ailments. He had smoked up to three packs a day of Camels, Winstons and other cigarettes produced by Reynolds.

According to jury forewoman Stacie Proft, the jury majority simply was not convinced that Galbraith died of smoking-related causes or that he was addicted to smoking.

However, juror Toni McCarty, who voted in the minority, said she believed that smoking was a "substantial contributing factor" to Galbraith's death.

"The defect in cigarettes, besides causing cancer, is their addictive quality," she said. "I feel that the evidence in the courtroom showed scientifically that cigarettes are highly addictive drugs...and the tobacco companies don't take responsibility or warn you of that."

A Victory of Sorts

The jury verdict left both sides claiming victories of sorts.

John Strauch, an attorney who is coordinating all of Reynolds' product liability cases, said the company "takes a lot of comfort" in the verdict.

"People said we're in a new era, a new ballgame, and somehow, things have changed," Strauch said. "But we said personal responsibility is still the issue."

Paul Monziona, who represented the plaintiffs, along with Melvin Belli, said the split vote—only nine jurors are required to agree on a verdict in a civil case—and the length of the jury's deliberation were "encouraging." They had asked the jury for \$300,000 in damages.

"A lot of people thought this was a ridiculous case," Monziona said. "But the actions of the jury showed this kind of case is not an alien concept any longer."

Monziona said he plans to appeal the case.

The tobacco companies have never lost a product liability case or paid any damages, in or out of court. Earlier this month [December 1985] a federal judge in Knoxville, Tenn., threw out a \$55-million liability suit against Reynolds, because, he said, the plaintiff failed to show the jury that "the defendant's product was defective and unreasonably dangerous."

Still, Reynolds left little to chance, marshaling enormous resources for the Santa Barbara trial. During closing arguments, for example, Reynolds had eight attorneys sitting at the defense table or directly

Along with this general perception of smoking as an expensive and dangerous habit comes less willingness in the professional world to tolerate the smoker. More and more firms, in response to non-smokers who find their smoking co-workers' habit irritating or disgusting, are moving to ban smoking in the workplace. A study commissioned by the Tobacco Institute itself disclosed that a handful of firms are not willing to hire people who smoke, citing complaints from non-smokers about irritating smoke, higher health policy costs for an employee who smokes, the tarnished public image caused by smoking on the job, as well as higher cleaning costs and strain on ventila-

tion systems as reasons to severely limit or prohibit smoking on the job.

Litigation Against Tobacco Companies

Although tobacco manufacturers can't be pleased with the firms or municipalities that ban smoking or the growing public disgust with the habit, the greatest threat to the industry is current litigation against cigarette companies. In a series of cases, lawyers are trying to prove in court that cigarette companies willfully withheld information—such as the

behind it and several public relations representatives in Santa Barbara, along with a troop of paralegal aides, secretaries and office assistants.

Even one successful lawsuit against a tobacco company might have had a far-reaching impact on the tobacco industry, perhaps triggering millions of dollars in claims against it, as well as liability suits against producers of a variety of products that are linked to health problems.

After the jury verdict was announced, a representative from a New York investment firm raced out of the court to telephone the results to brokers concerned about the verdict's effect on tobacco stocks.

As a result of the publicity about the various lawsuits, tobacco stocks had suffered during the past few months, although they have rebounded in recent weeks.

Belli had emphasized in his closing statement that the case was like any product liability suit. The cigarette companies make a dangerous product, he said, and do not adequately warn consumers of the dangers.

Galbraith started smoking, Belli said, before there were any warnings on cigarette packages and by the time he was aware of the health hazards, he was too addicted to quit. To show Galbraith was addicted, Belli's witnesses testified that even after he suffered from severe emphysema and lung cancer, he occasionally removed oxygen tubes from his nose to sneak a smoke.

Belli also attempted to prove that smoking causes lung cancer and that cigarettes are lethal. About 90

percent of all people who have lung cancer, Belli said, are heavy smokers.

Reynolds attorneys offered another statistic, however, to show that there is no definitive link between lung cancer and smoking. About 95 percent of all smokers never contract lung cancer, said Thomas Workman, Reynolds' lead attorney in the case.

Galbraith smoked, Workman said, because he "liked the taste and he loved to smoke." About 35 million Americans have already quit smoking, Workman said, which proves it is not addictive. If it was dangerous for Galbraith to smoke, he should have known, because several doctors suggested that he quit and he was well-educated and well-read, Workman added.

Reynolds attorneys attempted to show that Galbraith had a disastrous health history, was genetically predisposed to heart disease and that his health problems had nothing to do with smoking.

Monziona acknowledged Monday [December 24] in an interview that Galbraith was not the best test case of the pending lawsuits against tobacco companies. However, he said, if the jury deliberated for two days and could not come to a unanimous verdict in a case that "wasn't as strong as some other cases," others who plan to bring suit against tobacco companies should be encouraged.

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strong addictive power of nicotine—which prevented smokers from knowing how truly dangerous cigarette smoking can be. Thus, the cases charge, the cigarette companies willfully promote a dangerous product without sufficient warning.

Although cigarette manufacturers state in court that cigarette packages have carried warnings since 1965, Richard L. Rabin, a lawyer at Stanford Law School and specialist in liability law, says that plaintiff lawyers will also doubtless point out that heavy advertising by cigarette companies (a record \$2.7 billion in 1983, according to Federal Trade Commission estimates) offsets the warnings and wrongly promotes smoking as a healthful activity.

This type of litigation against cigarette companies has been unsuccessful in the past. So far, no cigarette manufacturer has ever had to pay damages to a cigarette smoker, although litigants have come close to victory. According to Rabin, these cases may be more successful today for two reasons: evidence has piled up linking cigarette smoking to disease, and consumer protection has expanded (spurred by cases brought against manufacturers of the chemical DES and asbestos), making it easier to sue manufacturers of dangerous products.

Several consumer liability cases against

Lawyers are trying to prove that cigarette companies purposefully withheld information about their product, willfully promoting a dangerous product without sufficient warning.

cigarette manufacturers are currently underway. The stories of the plaintiffs are grim, since prosecuting lawyers know that they have the best chance with a plaintiff who has at least one serious illness that can be linked with a long-term cigarette smoking habit.

Rose Cipollone started smoking when she was 16 and died 42 years later of lung cancer. Her estate's case is pending in New Jersey court; meanwhile the lawyer representing her estate won a victory when the presiding judge ruled that the documents presented by the cigarette company defendants be made public. Another case in Santa Barbara, California, involves the death of a 68-year-old man who smoked three packs a day and eventually died from cancer and emphysema. According to the lawyer for his estate, in the final days of his life the man would occasionally remove his oxygen mask to sneak cigarettes.

A Knoxville, Tennessee, man unsuccessfully sued R. J. Reynolds for \$55 million because cardiovascular disease, which he attributes to his 38-year smoking habit, caused him to have one of his legs amputated. His lawyer argued that his client was never warned that a loss of limb could result from smoking.

Rabin cites the willingness of lawyers to take on these cases as evidence that there is a possibility now of successfully suing a cigarette manufacturer for damages. In September, litigation took an even more ominous turn for the tobacco companies. GAF Corp., a former manufacturer of asbestos products and the defendant in thousands of asbestos liability suits, filed cross-complaints against cigarette manufacturers in 170 cases in which the plaintiff also smoked. These cross-complaints are an effort to force the cigarette companies to share in the liability of an asbestos worker and smoker who contracted cancer and then sued the asbestos manufacturer. Studies have shown that smoking intensifies the already high cancer risk of asbestos exposure. If more suits are filed by the beleaguered asbestos manufacturers against cigarette companies, the tobacco industry could find itself facing staggering legal costs.

And there are many more plaintiffs. According to Richard Daynard, who teaches law at Northeastern University in Boston,

240 product liability cases are currently pending against cigarette manufacturers, about 200 of which were filed in early October alone. Daynard is also co-chairman of the Tobacco Products Liability Group, a Boston legal organization that seeks to make the cigarette industry liable for the health costs that smoking adds to the health care system. According to Daynard, that would drive the cost of cigarettes to about \$3 a pack.

"I'd like to keep the cigarette industry from affecting—or infecting—another generation," says Daynard. In addition to Daynard's group, five Texas law firms have formed a cooperative legal venture called Cig-Lit to aid plaintiffs who want to bring suit against the cigarette companies.

The tobacco industry, which, according to the FTC, sold 584 billion cigarettes in 1983, is pursuing a vigorous line of defense. With the ability to pay high fees and a full-time Washington-based lobbying organization, cigarette manufacturers are pouring money into the fight to prove that they do not sell a dangerous product. According to an October 15 *Dallas Times Herald* article, cigarette manufacturers have retained indefinitely the services of John Scanlon, a New York public relations man who is skilled in boosting the public image of companies suffering the painful process of litigation. The article said that experts estimate Scanlon's fees could easily be more than \$100,000 a year, plus expenses. However, tobacco manufacturers consider it money well spent. Should one plaintiff succeed in collecting from a cigarette manufacturer, the powerful tobacco industry could face a huge avalanche of lawsuits.

Millions of Americans smoke and suffer a deep physical and emotional dependency on tobacco products. Still, Americans have cut their cigarette consumption since the days when Lauren Bacall slunk into Humphrey Bogart's hotel room in "To Have and Have Not" and ignited her cigarette with his lighter. Since the U.S. surgeon general's report

in 1964 identified smoking as a health hazard, the percentage of American adults who smoke has declined from about 50 percent down to 30 percent, according to the Federal Trade Commission. The FTC also noted that individual consumption of cigarettes dropped from 4,112 per individual in 1973 to 3,447 in 1983, which is less than half a pack per day.

Should one plaintiff succeed in collecting from a cigarette manufacturer, the powerful tobacco industry could face a huge avalanche of lawsuits.

Today, most people believe that even passive smoke is dangerous, according to a recent Gallup poll conducted for the American Lung Association. The survey found that 84 percent of non-smokers—and 64 percent of smokers—believe that passive smoke is hazardous to the health of the non-smoker. Eighty-two percent of the non-smokers, and even 55 percent of the smokers, believe that smokers should not smoke in the presence of non-smokers.

As more concrete evidence mounts substantiating the ill effects from passive smoking, the limitations on smoking by the non-smoking majority could balloon at a rapid pace, potentially cutting the number of cigarettes consumed as smokers would find fewer and fewer places where they could smoke.

But the real war against cigarette smoking is being waged in the courtroom. If tobacco manufacturers lose the battle in court over product safety, consumption could be cut still further if cigarettes double or even triple in price. While smoking was once an accepted, even chic, ritual, it may eventually become more a relic of the past than a habit of the masses.