

RECENT DEVELOPMENTS

- ◆ On March 24, a Florida appellate court upheld a \$300 million settlement between a nationwide class of nonsmoking flight attendants and four cigarette manufacturers for alleged health damage due to occupational exposure to secondhand tobacco smoke. *Ramos v. Philip Morris Cos.*, No. 98-389 (Fla. Cir.Ct. App. 3d Dist. March 24, 1999). The unanimous opinion also approved the agreement's provisions for \$46 million in attorneys' fees and \$3 million in costs for counsel representing the member class of 60,000. The settlement does not provide money to settling class members, but provides money for research on smoking-related diseases. In the opinion, Judge Robert Shevin noted the trial court's observation that the class would have had "less than a 50-50" chance of success at trial.
- ◆ On January 22, a Louisiana trial court approved a nationwide class action settlement in a suit alleging defects in "side-saddle" gas tanks in General Motors Corp. trucks. The agreement gives truck owners \$1,000 vouchers toward purchase of new GM vehicles. *White v. General Motors Corp.*, No. 42,865 (La. Dist. Ct., Iberville Parish January 22, 1999).
- ◆ On January 29, a class action was filed by black homeowners in Toledo, Ohio, alleging that Farmers Insurance and two of its agents engaged in redlining and discrimination against the class when it refused to write replacement cost policies to homeowners in predominately black neighborhoods and discouraged applications on the basis of race. *Toledo Fair Housing Center v. Farmers Insurance Group of Cos.*, No. CI0199901339 (Ohio Comm. Pls., Lucas County January 29, 1999).
- ◆ On February 26, the Louisiana Supreme Court denied a tobacco industry appeal of a trial court's certification of a class of state smokers, leaving it to the trial court to determine if medical monitoring is a viable claim under Louisiana law. *Scott v. The American Tobacco Co.*, No. 98-C-3016 (La. February 26, 1999).
- ◆ The law firms of Bernstein, Litowitz, Berger & Grossman and Sherman, Silverstein, Kohl, Rose & Podolsky entered into an agreement to settle a Y2K class action lawsuit they filed against Medical Manager Corporation, manufacturer of an integrated physicians' practice management system. The lawsuit alleged that Medical Manager violated various state consumer protection and unfair trade practice laws and breached implied and express warranties by selling software that was not Y2K compatible, failing to disclose this fact to purchasers, and then requiring users to expend significant sums of money to upgrade to a Y2K compatible version. This case represents only the second Y2K class action to reach a settlement. Source: http://biz.yahoo.com/bw/981217/bernstein_1.html.
- ◆ On July 12, a trial is scheduled to begin in New Jersey in a medical monitoring class action by New Jersey residents who used two popular diet drugs, Redux and Pondimin, but have yet to develop primary pulmonary hypertension or valvular heart disease, two conditions associated with use of the diet pills. The court, for the first time, certified a medical monitoring class under New Jersey's Consumer Fraud Act. *Vadino v. American Home Products Corp.*, No. MLD-L-425-98 (N.J. Super. Ct.). On March 12, a Pennsylvania court certified a nearly identical medical monitoring class, finding it satisfied the criteria for such a claim under *Redland Soccer v. Dep't of Army*, 696 A.2d 137 (N.J. 1997). *In re: Pennsylvania Diet Drugs Litigation*, No. 9709-3162 (Ct. Comm. Pls., Philadelphia County March 12, 1999). On February 11, a West Virginia court reversed its earlier dismissal of a medical monitoring class of diet pill users. *Burch v. American Home Products Corp.*, No. 97-C-204 (W. Va. Cir., Brooke Cty. February 11, 1999). Acting on a motion for reconsideration, Judge Fred Risovich found that a medical monitoring remedy would be a "far better remedy than the 'in retrospect' damages award urged by defendants in the name of judicial economy and 'reasonable certainty.'"

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- ◆ On February 5, a federal judge dismissed a shareholders' class action lawsuit alleging American Home Products Corp. and its officers made false and fraudulently misleading statements regarding Redux and Pondimin. The court said the company did not materially mislead the investing public by failing to come forward with reports of heart valve problems prior to July 8, 1997, when the problems were first publicized, or by failing to disclose all medical data behind that announcement. *Oran v. Stafford*, No. 97-4513 (D. N.J. February 5, 1999).
- ◆ Judge Martin L.C. Feldman, of the U.S. District Court for the Eastern District of Louisiana, recently dismissed on preliminary motions large class actions involving claims that the air bags used in every vehicle in the United States, through the 1997 model year, were defective because they might cause some future injury. None of the representative plaintiffs had suffered any present harm or injuries, or had any problems with the air bags, and the proposed class specifically excluded anyone who alleged injury as a result of air bag use. *See In re Air Bag Products Liability Litigation*, 1998 WL 279237 (E.D. La. 1998).
- ◆ On March 11, a participant in the Section 8 federal housing program filed a class action suit against the St. Louis Housing Authority in U.S. District court claiming the housing authority failed to comply with federal housing quality standards related to lead paint inspection regulations. The proposed class includes all current and former Section 8 tenants who have children who are or were under seven years old at the time of residency, a class estimated to have over 1,000 members. *Smith v. City of St. Louis Housing Authority* (E.D. Mo. March 11, 1999).
- ◆ In January of this year, a class action lawsuit was filed in California and Saipan against eighteen U.S. clothing manufacturers and retailers, including The Gap, Tommy Hilfiger, May Company, Sears, and Wal-Mart, for the alleged mistreatment of workers in foreign-owned factories operating on U.S. soil. The lawsuit accuses these companies of violating federal racketeering laws for using indentured labor to produce clothing on the island of Saipan (part of the Mariana islands which is a U.S. Commonwealth in the South Pacific), and for failing to pay overtime, or maintain appropriate working conditions. Source: <http://www.milberg.com>.
- ◆ The United States Court of Appeals for the Third Circuit has upheld a district court order decertifying a class of Pennsylvania smokers who sought medical monitoring expenses and entering summary judgment against the six individual class representatives. The court held that class treatment was inappropriate because the three significant issues—nicotine addiction, the need for medical monitoring, and the application of the statute of limitations—must be resolved for each member of the class. *See Barnes v. Tobacco Co.*, No. 97-1844 (3d Cir. Nov. 12, 1998).
- ◆ On March 16, the Judicial Conference of the United States voted to oppose bills pending in Congress that seek to discourage lawsuits related to "Y2K" millennium date conversion problems. The Conference, headed by Chief Justice William Rehnquist, opposed Senate Bills S. 96 and S. 461 and House Bill H.R. 755, because they would shift most such suits to already overburdened federal courts.
- ◆ Los Angeles trial lawyer has filed three class action lawsuits asserting that sport card companies are inducing children to gamble. Sport card companies print limited quantities of certain cards—usually with pictures of the most popular sports stars—and randomly insert them into packs. Plaintiffs' attorney, Henry Rossbacher, believes that card companies encourage speculation by printing the odds of getting one of these valuable cards in a pack. The lawsuit claims that card companies have been lured into buying the cards. Source: Valley Morning Star, August 11, 1998.
- ◆ The law firm of Milberg, Weiss, Bershad, Hynes & Lerach LLP reports that it is representing plaintiffs in

a series of cases demanding that companies that allegedly profited from the use of forced and slave labor during World War II be held accountable. Ford Motor Company, Volkswagen, Krupp, Siemens, and Heinkel have already been named in lawsuits, and similar suits against Daimler-Chrysler, AEG, Telefunken, General Motors, Continental, and BMW are likely to be filed shortly. Source: www.milberg.com.

◆ The Stanford Securities Class Action Clearinghouse reports that “at least 235 companies were named as defendants in federal class action securities fraud lawsuits filed in 1998. That volume breaks the prior record of 227 companies sued in 1994. It also indicates a litigation rate close to ‘one-a-day’ from every trading day that the stock market is open.” Source: <http://securities.stanford.edu>.

◆ On March 18, a federal jury found for the tobacco industry in a class action suit brought by 114 Ohio union health care trust funds seeking reimbursement for the costs associated with treating smoking-related diseases. *IABSOIW Insurance Fund v. Philip Morris*, No. 1L97CV1422 (N.D. Ohio March 18, 1999). It was the first action of its kind to go to trial. Along with finding that cigarette manufacturers did not conceal the hazards of smoking, the jury found they did not commit mail and wire fraud by allegedly targeting blue collar workers in cigarette

advertisements and promotional materials

◆ On March 16, a federal court in Illinois dismissed a software developer’s suit over a Microsoft Corp. FoxPro database program with alleged millennium date conversion defects. *Kaczmarek v. Microsoft Corp.*, No. 98-C-7921 (N.D. Ill. March 16, 1999). The judge concluded that plaintiff could not prove the program contained an inherent defect because users could reconfigure the program themselves to eliminate it. The putative class action was the first “Y2K”-related suit brought against Microsoft Corp.

◆ “The Chicago Tribune reported a couple of weeks ago on a class-action suit just filed in Cook County Circuit Court against Colgate-Palmolive, drug-store chain Walgreen Co., the American Dental Association, and assorted other defendants. The charge: failure to warn consumers of the risk that vigorous brushing might cause ‘toothpaste related injury’ to gums. The plaintiffs are seeking warning labels on toothpaste boxes. . . .” Source: *The Weekly Standard*, May 3, 1999.

◆ In a recent editorial on prominent class action plaintiff lawyer William Lerach of Milberg Weiss, the *Wall Street Journal* reported that Mr. Lerach once told a meeting of

corporate directors: “I have the greatest practice of law in the world. I have no clients.” *Wall Street Journal*, April 20, 1999, at A22.

◆ In the area of guns litigation, during an early April hearing in the Accu-Tek litigation before Judge Jack Weinstein of the U.S. District Court for the Eastern District of New York, plaintiffs’ counsel reported that a nationwide class action against various firearms manufacturers would be filed within three weeks. We will continue to monitor developments in this area.

Upcoming Events

(Class Action Related)

May 20 —
Civil Justice Lecture:
Gerald Walpin,
Rosenman & Colin
Hartford

June 2 —
Guns Litigation Program:
Congressman Robert Barr
Atlanta

June 22 —
The New Business of
Government-Sponsored
Litigation: State AGs
& Big City Lawsuits
Washington, D.C.

November 11-13 —
Class Actions Panel
National Lawyers
Convention
Washington, D.C.

For more information
about these events,
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