

The Online Journal
GET 2 WEEKS FREE
SUBSCRIBE NOW

The Print Journal
GET 2 WEEKS FREE
SUBSCRIBE NOW

User Name: Password: Remember Me
Forgot your username or password? [Log In](#) Subscribe

As of Saturday, January 19, 2008

Set My Home Page | Customer Service

News Today's Newspaper My Online Journal Multimedia & Online Extras Markets Data & Tools Classifieds

OTHER FREE CONTENT FROM THE WALL STREET JOURNAL

EDITORS' PICKS

- [Energy-Tuning Your Home](#)
- [Recession Review](#)
- [Sundance Sightings](#)
- [Video: Sharp Deal](#)
- [Hot Potatoes](#)
- [Rural Gentry](#)
- [Video: Mill town turns to tourism](#)
- [Author Q&A](#)
- [Golf Wrestles with Race](#)
- [Spitzer's Nemesis](#)
- [MORE EDITORS' PICKS](#)

BLOGS

- Most Popular Posts
1. [Recession Q&A: What it Could Mean to You](#)
 2. [States Most Likely to See Declines in Home Prices](#)
 3. [Surgeons Hone Skills on Nintendo Wii](#)
 4. [Rock Star Bono Grabs Spotlight From De Niro](#)
- [SEE ALL BLOGS](#)

MORE FREE CONTENT

- [Personal Journal](#)
- [Personal Finance](#)
- [Leisure](#)
- [Markets Data Center](#)
- [Video](#)
- [Blogs](#)
- [Forums](#)
- [Interactives](#)
- [Autos](#)
- [CareerJournal](#)
- [RealEstateJournal](#)
- [StartUpJournal](#)
- [OpinionJournal](#)
- [MarketWatch](#)
- [AllThingsDigital](#)

Justices to Hear Cigarette Case

Justices Deny Kucinich's Bid To Get on Texas Primary Ballot

By MARK H. ANDERSON
January 19, 2008; Page A6

WASHINGTON -- **Altria Group** Inc.'s Philip Morris USA unit Friday won the chance to overturn a federal ruling allowing a Maine light cigarettes marketing lawsuit to proceed.

The class-action lawsuit, filed under a Maine trade law, is like several other cases filed around the country alleging Philip Morris was deceptive in marketing Marlboro Lights and other cigarette brands as "light" with lower tar and nicotine content than other cigarette products.

MORE

- High Court Appears Willing to Limit Licensing Fees for Patent Owners
- Top Court Limits Shareholder Fraud Suits
- 01/16/08
- **Split Decisions:** Cases That Have Divided the Court



The lawsuit, filed on behalf of smokers, seeks to recover financial damages for fraudulent marketing. Besides the various pending state law class-actions, the advertising of light cigarettes is an issue addressed in a federal lawsuit

against the tobacco industry that is on appeal in a Washington-based appeals court.

Philip Morris, the largest U.S. tobacco maker, tried to stop the lawsuit, arguing the Federal Trade Commission's regulation of cigarette advertising bars claims under a state law. A federal trial judge agreed with Philip Morris. In August 2007, the 1st U.S. Circuit Court of Appeals in Boston reversed the lower court decision, ruling the Maine lawsuit could proceed.

That decision conflicts with a similar light cigarettes lawsuit that was barred by the Fifth U.S. Circuit Court of Appeals in New Orleans. Several more light cigarette cases are pending around the country.

Philip Morris, in its appeal, urged the high court to grant the case and clear up confusion over whether the state law cases can proceed against tobacco companies. "A definitive answer to this question will significantly impact the outcome of dozens of pending lawsuits in which the plaintiffs are alleging billions of dollars in potential liability," Philip Morris said.

Attorneys for the plaintiffs argued the FTC has not set specific rules on tar and nicotine advertising for cigarettes that would preclude a case based on a state law.

"Philip Morris's own statements to the FTC in 1998 acknowledged that there was no FTC regulation of these terms and it lobbied against the creation of any such official guidance," the attorneys said.

Arguments will be held in the spring or fall of 2008. (*Philip Morris USA v. Good*)

Court Accepts Wyeth Amputation Lawsuit

The Supreme Court also said Friday it will hear **Wyeth's** challenge to a \$6.8 million judgment awarded to a Vermont woman who lost part of her arm after being injected with an anti-nausea drug the company sells.

The appeal is the latest in a series of cases it has agreed to hear regarding state lawsuits and Food and Drug Administration regulation of various

SEARCH QUOTES & RESEARCH

Advanced Search Symbol(s) Name

Mutual Funds | ETFs

Determine the movement of
Consumer Staples Sector SPDR Fund

MACD

MACD (12,26) EMA (9) Divergence

The MACD is below both its signal line, a 9day moving average, and 0. This bearish condition implies that the trend is lower.

[Learn More](#) **Scottrade Smart Text**

THE WALL STREET JOURNAL

GET THE ONLINE JOURNAL TODAY [Subscribe Now](#)

MORE FROM TODAY'S JOURNAL

Subscription may be required | [Subscribe Now](#)

PEOPLE WHO READ THIS...

Also read these stories:

- [Merck's Prospects Brighten](#)
- [Golden Leaves International Herald Tribune Helm](#)
- [Two Chefs Cross the Border](#)
- [Spain's Obsession With Patatas Bravas](#)
- [U.S. Moves to Aid Sock Makers](#)

Recommendations by [loomia](#) [What's This?](#)

WHAT'S NEWS

- [Democrats Turn to South Carolina](#)
- [As Woes Mount, Recession Looms](#)
- [Write-Down May Hit Bank of China](#)
- [Los Angeles Times Editor Is Fired](#)
- [NASA Competition Sparks Rivalry](#)

MORE

WHAT'S POPULAR

1. [Overcoming the Worry Gene](#)
2. [McCain Looks to Florida](#)
3. [Democrats Turn to South Carolina](#)
4. [As Woes Mount, Recession Looms](#)
5. [Churches Expose Sinners](#)

MORE

ADVERTISERS LINKS [What's This?](#) | [Get Listed](#)

The Vanguard®
Prime Money
Market Fund.
Keep more of
what's yours



Check current
yield or
learn more »



Obtain Prospectus
All investments are subject to
risk. Vanguard Marketing
Corp., Distributor. © 2007 The
Vanguard Group, Inc.

areas of the prescription-drug and medical-devices markets. Two cases -- one involving [Medtronic Inc.](#) and the other involving [Pfizer Inc.](#)'s Warner-Lambert unit -- are pending in the 2007-2008 term.

The Wyeth case will be heard either in April or held over until October when the next court term begins. In taking up the case, the high court ignored comments from the U.S. Solicitor General's office, which suggested the Wyeth case be held pending the outcome of both the Medtronic and Pfizer cases.

Wyeth's Supreme Court appeal centers on the labeling information it provided for Phenergan, an anti-nausea drug. At issue is whether the company can be sued under state product-liability laws over label information even though it met federal labeling requirements by the FDA.

In 2000, Diana Levine lost a hand and forearm to gangrene after Phenergan was inadvertently injected into an artery during a push IV injection, which is more potent and puts injected drugs into the body faster than a normal injection. Ms. Levine had gone to a medical facility in central Vermont for treatment of nausea.

The drug's labeling, approved by the FDA, included the injection method as an option but warned of risks like gangrene if the drug were injected into an artery.

Ms. Levine sued, arguing Phenergan's labeling was unsafe, and a Vermont jury awarded her \$6.8 million in damages. On appeal, the Vermont Supreme Court upheld the award, ruling that FDA drug regulations don't prevent a company from being sued under state law over drug labeling.

Wyeth's high-court appeal urged the justices to review the case and rule that the FDA's federal drug regulation authority bars lawsuits alleging problems with drug company labeling.

"This conflict is currently at issue in tens of thousands of cases in our nation's courts, in which plaintiffs claim that manufacturers should have modified FDA-approved prescription drug labeling," Wyeth said. (*Wyeth v. Levine*)

Court Denies Kucinich Ballot Bid

The Supreme Court allowed Texas to print presidential primary ballots without Democratic candidate Dennis Kucinich's name. The court refused to step into a dispute between Rep. Kucinich (D., Ohio) and the Texas Democratic Party over a loyalty oath all candidates must sign to make the ballot.

Mr. Kucinich and singer-supporter Willie Nelson objected to the party oath that a presidential candidate must "fully support" the party's eventual nominee. Kucinich crossed out the oath when he filed for a spot on the primary ballot.

A federal judge in Austin ruled against Mr. Kucinich last week. U.S. District Judge Lee Yeakel ruled the state party has the right to require the oath. Messrs. Kucinich and Nelson argued it violated Mr. Kucinich's First Amendment right to free speech.

Texas said its deadline is Saturday to print absentee ballots so that they can reach overseas voters in time for the March 4 primary. (*Kucinich et al v. Texas Democratic Party et al*)

Court Broadens Review of Employment Disputes

The high court broadened its review of employment disputes in the work place by adding three new appeals to an already busy employment-law docket.

One of the cases accepted turns on whether federal law prevents an employer from firing someone after they participate in an internal sexual-harassment investigation. That case, *Crawford v. Nashville*, involves a Nashville school district payroll coordinator who was fired after she told an internal investigator the district's employee-relations director harassed her.

So far in this term, the justices have agreed to hear more than 10 cases that center on disputes between employers and workers. Among other issues, the Supreme Court will settle legal questions about age discrimination, pension benefits, workplace retaliation and disability rights.

In the Nashville case, Vicki Crawford was fired following a 2002 internal investigation of sexual-harassment allegations against Gene Hughes, the employee-relations director. According to legal filings, the investigation followed several reports of misconduct but didn't result in disciplinary action against Mr. Hughes. But Ms. Crawford and two other employees who participated in the harassment investigation were fired.

Ms. Crawford turned to the Equal Employment Opportunity Commission and brought a lawsuit under Title VII of the Civil Rights act. A U.S. District Court ruled her participation in the internal investigation of Hughes wasn't covered by retaliation provisions in the federal discrimination law. The Sixth U.S. Circuit Court of Appeals in Cincinnati agreed.

U.S. Solicitor General Paul Clement, in a brief filed by the federal government, urged the Supreme Court to review the appeal. "Internal investigations are an integral aspect of Title VII and there is no reason to leave cooperating witnesses

Practice Forex Trading

Trade Forex directly online. Free practice account. Start Forex now!

www.ac-markets.com

Online Stock Trading

Trade free for 30 days and get \$100. No maintenance fees. Sign up now.

www.TDAMERITRADE.com

Buy Bonds For Less

Our Bonds Cost Less. Period. Wholesale Prices and \$10.95 per Trade.

www.zionsdirect.com

unprotected," Mr. Clement said.

Justices will hear arguments in the spring or fall of 2008. Two other employment law matters were granted Friday:

- The high court will decide whether a rating scale used by the Knolls Atomic Power Laboratory, operated by [Lockheed Martin Corp.](#), discriminated against older workers in violation of the Age Discrimination in Employment Act. The laboratory, which operates under an Energy Department contract, fired employees in a staff reduction after scoring them on performance, flexibility and the criticality of their skills, plus points for years of service. Of 31 people laid off under the system, 30 were over the age of 40. At issue in the case are legal questions on how "reasonable factors other than age" are determined when deciding whether the federal age discrimination law was violated. (*Meacham v. Knolls Atomic Power Laboratory*)
- The court will also decide whether [MetLife Inc.](#) can both determine disability benefits and pay the claims of a [Sears Holdings Corp.](#) employee on long-term leave from the retailer. A federal appeals court ruled this dual role was improper. The Supreme Court will decide how courts should take such conflicts into account when reviewing disability cases under the Employee Retirement Income Security Act. (*MetLife v. Glenn*)

--The Associated Press contributed to this article.

Write to Mark H. Anderson at mark.anderson@dowjones.com

RELATED ARTICLES AND BLOGS

Related Content may require a subscription | [Subscribe Now](#) -- Get 2 Weeks FREE

Related Articles from the Online Journal

- [High Court to Rule On Wal-Mart Transfer Of Disabled Worker](#)
- [Court Hears Lethal-Injection Case](#)
- [Gitmo Goes to Court](#)

[More related content](#) Powered by [Sphere](#)

[EMAIL THIS](#) [FORMAT FOR PRINTING](#) [MOST POPULAR](#) [ORDER REPRINTS](#)

Sponsored by

[DIGG THIS](#)

[GET RSS FEEDS](#)



[Return To Top](#)

WSJ Digital Network:

[MarketWatch](#) | [Barrons.com](#) | [RealEstateJournal](#)
[AllThingsDigital](#) | [Dow Jones News Alerts](#) | [MORE](#)

[Subscribe](#) [Log In](#) [Take a Tour](#) [Contact Us](#) [Help](#) [Email Setup](#) [Customer Service: Online](#) | [Print](#)
[Privacy Policy](#) [Subscriber Agreement & Terms of Use](#) [Copyright Policy](#) [Mobile Devices](#) [RSS Feeds](#)

[News Licensing](#) [Advertising](#) [About Dow Jones](#)

Copyright © 2008 Dow Jones & Company, Inc. All Rights Reserved

DOW JONES