

BostonHerald.com

Experts: SJC's tobacco ruling could pave way for suits

June 13, 2013

By Gary J. Remal

A first-in-the-nation Massachusetts Supreme Judicial Court finding that tobacco companies cannot claim special protection under the law simply because their products are addictive could open the door to a slew of product liability suits, experts said.

The finding is tucked into the 82-page decision written by Justice Ralph Gants, but may be its most significant element, experts said.

"That paragraph jumped out at us as significant," said Edward Sweda of the Tobacco Products Liability Project at Northeastern University.

The 2004 lawsuit was filed by the son of Marie R. Evans, 54, who died of lung cancer. The court affirmed a \$35 million judgment.

"It's groundbreaking," said Ilana Knopf of the Center for Public Health and Tobacco Policy at New England Law-Boston.

Lorillard Tobacco Co. contended that smokers are addicted to strong cigarettes and would not be satisfied with anything else, so the company should not have to alter its product to offer safer, lower levels of nicotine. But the court found a product's addictive qualities don't give it special protection under the law.

"We decline to place addictive chemicals outside the reach of product liability and give them special protection akin to immunity based solely on the strength of their addictive qualities," the court wrote. "To do so would eliminate any incentive for cigarette manufacturers to make safer perhaps the most dangerous product lawfully sold in the market through reasonable alternative designs."

Experts say no other court has examined this issue in depth or found in this way, although similar cases have been heard in Florida and New York.

"Few courts appear to have addressed this question, perhaps because the only legally sold product so addictive to raise the question is nicotine," Gants wrote. The Bay State decision is important because it "could be applicable in other courts," said Karen Blumenfeld of New Jersey's Global Advisors on Smokefree Policy.

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