



**PHILIP R. KIMBALL, as Administrator  
of the Estate of CARLA M. KIMBALL, Deceased,**

**Plaintiff,**

**vs.**

**R.J. REYNOLDS TOBACCO COMPANY,**

**Defendant.**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

**Case No. CV03-0664**

**Judge James L. Robart**

**May 1, 2006**

**BACKGROUNDER**

## **PURPOSE**

The purpose of this backgrounder is to provide a concise reference document on this case. It is not a court document.

## **THE PLAINTIFF**

Plaintiff Philip Kimball filed this lawsuit on January 7, 2003 in the Watcom County Superior Court for the State of Washington. R.J. Reynolds removed the case to the United States District Court for the Western District of Washington on March 14, 2003.

Mr. Kimball is the spouse of the late Carla Kimball. Mrs. Kimball smoked cigarettes from the 1960s until she quit smoking in 1990. During the time that she smoked, Mrs. Kimball smoked Winston and Winston Lights 100's, which are manufactured by R.J. Reynolds. Mrs. Kimball was diagnosed with cancer in 2000 and died on March 12, 2001 at the age of 54.

Plaintiff brought the lawsuit as the administrator of Mrs. Kimball's estate. He alleges that Mrs. Kimball died from lung cancer and claims that Mrs. Kimball's lung cancer was caused by smoking Winston and Winston Lights cigarettes manufactured by R.J. Reynolds.

Plaintiff originally brought claims for fraud, conspiracy, negligence and products liability. The Court dismissed plaintiff's fraud and conspiracy claims earlier in the case, and trial will concern only the negligence and products liability claims.

The plaintiff is represented by Jon Ferguson of The Jon Ferguson Law Group, PLLC, located on Bainbridge Island, Washington.

## **THE DEFENDANT**

### **R.J. Reynolds Tobacco Company**

R.J. Reynolds Tobacco Company is the nation's second largest manufacturer of

cigarettes. R.J. Reynolds is a wholly-owned subsidiary of Reynolds American Inc., and is headquartered in Winston-Salem, N.C. Its major brands include Winston, Camel, Kool, PALL MALL, Salem and Doral.

R.J. Reynolds is represented by Mark Belasic and Dennis Murphy of the Cleveland office of Jones Day, and by Brad Keller of Byrnes and Keller in Seattle, Washington.

### **TRIAL SITE**

The case will be tried in the United States District Court for the Western District of Washington, located at 700 Stewart Street, Seattle, Washington.

### **JUDGE**

The Honorable James L. Robart is the trial judge.

### **EXPECTED DURATION**

Jury selection is scheduled to begin on May 1, 2006. The Court has established the last day of trial as May 17, 2006.

### **JURY AND VERDICT**

The jury will initially consist of nine jurors. The number of jurors may not fall below six. For plaintiff to prevail, all remaining jurors must reach a unanimous decision.

### **PLAINTIFF'S CASE**

This is a tobacco product liability lawsuit. The plaintiff alleges that Carla Kimball developed lung cancer, and died as a result of smoking Winston and Winston Lights 100's cigarettes manufactured by R.J. Reynolds. The plaintiff filed his original complaint on January 7, 2003, and filed an amended complaint on May 29, 2003. The remaining causes of action are: negligence and product liability. The plaintiff seeks an unspecified amount of damages.

### **DEFENDANT'S CASE**

R.J. Reynolds contends that the plaintiff's remaining claims for negligence and product liability fail for several reasons. First, they are preempted in whole or in part by the Federal Cigarette Labeling and Advertising Act. Second, there is substantial evidence that Mrs. Kimball was long aware of the potential health risks of smoking, and in choosing to begin and continue smoking, Mrs. Kimball voluntarily assumed those risks. Evidence will also be presented that the potential health risks of smoking have been common knowledge in the communities in which Mrs. Kimball lived since long before she chose to smoke. Third, the plaintiff has no evidence that, at any time during the time that Mrs. Kimball smoked, there was a feasible, safer, alternative cigarette design that Mrs. Kimball would have used and that would have prevented her cancer. Fourth, evidence will be presented that Mrs. Kimball could and, in fact, did quit smoking approximately ten years prior to being diagnosed with cancer.

The plaintiff's claims also require that he prove that Mrs. Kimball had lung cancer, and that her lung cancer and death were caused by smoking R.J. Reynolds' cigarettes. R.J. Reynolds disputes whether the plaintiff will be able to prove these elements of his case. In fact, the evidence will show that even one of Mrs. Kimball's own doctors questioned whether her cancer was caused by smoking

## **PROCEDURAL HISTORY**

The plaintiff filed suit on January 7, 2003, but did not serve R.J. Reynolds until February 14, 2003. R.J. Reynolds timely removed this action to the United States District Court for the Western District of Washington on March 14, 2003, on the basis of diversity jurisdiction. The plaintiff did not challenge federal jurisdiction. The case originally was assigned to Judge Barbara J. Rothstein. R.J. Reynolds moved to dismiss the complaint in March of 2003. Judge Rothstein denied Reynolds' motion on May 14, 2003. Plaintiff filed an amended complaint on May 29, 2003, which R.J. Reynolds answered. In August 2003, the case was reassigned to Chief Judge John C. Coughenour.

The parties undertook discovery, and the case was transferred, in August 2004, to Judge James L. Robart. Discovery was completed and, in December 2004, R.J. Reynolds filed a motion for summary judgment seeking dismissal of all of the plaintiff's claims as a matter of law. On February 25, 2005, Judge Robart granted

R.J. Reynolds' motion in part and denied it in part. Judge Robart dismissed the plaintiff's fraud and civil conspiracy claims, finding that there was no evidence to support such claims. He allowed the plaintiff's negligence and product liability claims to proceed to trial.

A trial date of January 23, 2006, originally was set. At the request of the plaintiff's attorney, the Court changed the trial date to May 3, 2006. During the Final Pretrial Conference held on April 17, 2006, the Court changed the start of the trial to May 1, 2006. Jury selection begins on May 1, 2006 at 1:30 p.m. Opening statements are scheduled to begin on May 2, 2006.