## The Expert's Corner

# Supreme Court Round-Up

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During the Term that just ended, the Supreme Court did not decide any cases involving class action fees law, or class action law or fee law more generally. However, the Court did decide several important cases involving state law preemption and pleading standards that will have sweeping implications for all cases, including class actions. The plaintiffs' bar won back some ground it lost last year in the preemption cases decided this Term, however the defense bar won a significant victory on the procedural front.

### State Law Preemption

In *Altria Group, Inc. v. Good,* No. 07-562, 555 U.S. ___ (2008), the Court held, 5-4, that the federal Cigarette Labeling and Advertising Act (Labeling Act) did not preempt claims of light cigarette smokers against tobacco companies brought under the Maine Unfair Trade Practices Act (MUTPA). The case was brought as a class action on behalf of smokers of light cigarettes in Maine, but the Court did not address any issues specific to class action law, focusing instead on the broader preemption question. The plaintiffs, longtime smokers of Marlboro Lights and Cambridge Lights cigarettes, alleged that defendants engaged in false advertising by conveying the message that their "light" cigarettes delivered less tar and nicotine than regular brands. Plaintiffs alleged that this advertising was false because the defendant manufacturers knew that smokers would engage in compensatory behavior when smoking lights, such as taking longer puffs or holding air longer in their lungs, resulting in smokers of light cigarettes inhaling just as much tar and nicotine as smokers of regular cigarettes.

The decision revisited the sixteen year old decision in *Cipollone v. Liggett Group, Inc.,* 505 U.S. 504 (1992). The Court in *Cipollone* drew a distinction between claims that would result in a new duty for cigarette companies to warn users of the health hazards of smoking (which the Labeling Act would preempt) and claims that relate to the general duty of manufacturers not to deceive consumers by misrepresenting key facts about their products (which the Labeling Act would not preempt). Unsurprisingly, the cigarette manufacturers attempted to characterize the plaintiffs' claims in *Altria* as falling into *Cipollone*'s first category, with the plaintiffs characterizing the claims as relating to false statements generally and hence falling in *Cipollone*'s second category.

The Court sided with the plaintiffs, reiterating that federal preemption clauses are to be interpreted narrowly and holding that MUTPA's "duty not to deceive" claims were not related to "smoking and health," under the Court's *Cipollone* test.

In its second state law preemption case of the Term, *Wyeth v. Levine,* No. 06-1249, 555 U.S. ___ (2009), the Court ruled, 6-3, that FDA approval of a drug labeling did not preempt the plaintiff's state law failure-to-warn claims. The plaintiff, Levine, sued Wyeth, the manufacturer of the antinausea drug Phenergan. She had been injected with the drug through the IV-push method and the drug had mistakenly entered her artery, causing her to develop gangrene which resulted in the amputation of her forearm. Levine claimed that Wyeth failed to adequately warn users of the drug about the risks posed by injection of the drug via IV-push method. Wyeth argued that the state law claims should be preempted either because it was impossible for Wyeth to comply with both the state law duties and the federal labeling duties as regulated by the FDA, or because requiring it

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