

JUL 14 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NIKKI POOSHS,

Plaintiff - Appellant,

v.

PHILLIP MORRIS USA, INC.; PHILIP MORRIS COMPANIES, INC.; R.J. REYNOLDS TOBACCO HOLDINGS, INC.; R.J. REYNOLDS TOBACCO COMPANY; NABISCO GROUP HOLDINGS CORP.; NABISCO INC.; BROWN AND WILLIAMSON TOBACCO CORPORATION, individually and as successor by merger to The American Tobacco Company and its predecessors in interest; BRITISH AMERICAN TOBACCO COMPANY PLC; LORILLARD TOBACCO COMPANY; LORILLARD INC.; LIGGETT GROUP INCORPORATED; LIGGETT & MYERS INC.; LIGGETT AND MYERS TOBACCO COMPANY; VECTOR GROUP LTD.; HILL & KNOWLTON INC; TOBACCO INSTITUTE, INC.; COUNCIL FOR TOBACCO RESEARCH USA

No. 08-16338

D.C. No. 3:04-cv-01221-PJH

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

INCORPORATED; DNA PLANT
TECHNOLOGY, CORPORATION;
SAFEWAY INC.,

Defendants - Appellees.

Appeal from the United States District Court
Northern District of California
Phyllis J. Hamilton, District Judge, Presiding

Argued and Submitted December 12, 2008
San Francisco, California

Before: B. FLETCHER and McKEOWN, Circuit Judges, and HART, District
Judge.**

Following certification of certain questions by this court, the California
Supreme Court clarified the state law limitations period applicable to plaintiff's
claims. Based on that decision, the judgment of the district court is vacated and the
case is remanded for further proceedings consistent with the decision. *See Poosh*
v. Phillip Morris USA, Inc., 51 Cal. 4th 788, 250 P. 3d 181 (2011). Also, the
pending related mandamus petition is moot and will be dismissed .

Because of plaintiff's illness, the district court is urged to resolve the
remaining issues in this case as soon as possible.

** The Honorable William T. Hart, Senior District Judge for
the Northern District of Illinois, sitting by designation.

VACATED AND REMANDED.