

[Attorney Fee Award Overturned in Tobacco Litigation](#)

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In a significant case captioned [In re Tobacco Cases I](#), 2011 DJDAR 4896 (2011), the [California Fourth District Court of Appeal](#) overturned an award of attorney fees.

The case arose from a [consent decree](#) which was entered into between most states, including California and several tobacco manufacturers. The consent decree was finalized in 1998.

A key section of the consent decree permanently enjoined [R.J. Reynolds Tobacco Company](#) (“Reynolds”) from using cartoons in tobacco advertising. The plaintiffs alleged that the use of the cartoons was inappropriate as it made the product appealing to children.

In 2007, Reynolds placed tobacco ads in [Rolling Stone Magazine](#). The ads were placed by the editor of *Rolling Stone*, next to editorial content which contained cartoon images.

A plaintiff in the case, the State of California, brought proceedings to enforce the decree prohibiting the use of cartoons in advertising. After a hearing, the court concluded that only a part of the advertisement violated the cartoon prohibition, and that Reynolds was not responsible for the placement of its ad in the magazine. On those grounds, the court refused to issue further relief.

Despite the court’s ruling, the State of California submitted a petition for attorney fees under the provisions contained in the consent decree. Part of those provisions allowed for attorney fees in any proceedings resulting in a finding that the defendant was in violation of the injunction.

The court awarded attorney fees to the State pursuant to [Civil Code Section 1717](#). Reynolds asserted that Section 1717 was inapplicable, that the State was not a successful litigant and filed an appeal.

The court of appeal reversed and remanded the award of fees. The court noted that Section 1717 set forth the grounds for a fee award in a contract action. It provides for attorney fees to the prevailing party. A prevailing party is one who recovers “**greater relief**” in the litigation. The trial court has discretion to find that no prevailing party exists when the results of the litigation are mixed.

The court of appeal concluded that Section 1717 applied as the injunction was in the nature of a contract. It was entered into with mutual agreement between the State and Reynolds. Thus, Section 1717 applied.

However, the fee award was improper as the State did not recover the “**greater relief**” it had sought. The People were not a “prevailing party” and the fee award was reversed.

