A smoker who developed Chronic Obstructive Pulmonary Disease (COPD) was awarded $20.76 million in punitive damages against Philip Morris by a federal jury in Florida. The jury also awarded her $6.25 million in compensatory damages, but found the smoker to be 40 percent liable for the development of her COPD (Berger v. Philip Morris USA Inc., September 16, 2014, Carr, J.).

**Background.** Judith Berger, a Florida resident, developed Chronic Obstructive Pulmonary Disease (COPD). Asserting that she was addicted to cigarettes due to lies and omissions by cigarette companies, she filed claims for strict liability, civil conspiracy to fraudulently conceal, fraudulent concealment, negligence and gross negligence, and breach of express and implied warranties against several tobacco companies, including Philip Morris USA, Inc. Philip Morris moved for judgment as a matter of law on all her claims, and a second motion on the fraudulent concealment and conspiracy claims.

**Damages.** A jury awarded her $20.76 million in punitive damages, as well as $6.25 million in compensatory damages. The jury found that (1) the smoker’s COPD manifested itself before November 21, 1996; (2) she was addicted to nicotine-containing cigarettes; and (3) this addiction was a legal cause of her COPD. The jury assigned 60 percent of the legal cause of the smoker’s COPD to Philip Morris and the remaining 40 percent to the smoker.

**Tobacco maker’s objections.** Philip Morris had argued in its motion for summary judgment on all her claims that even if the jury could use the Phase I findings from the Engle litigation to prove compensatory damages, which it had argued against, those findings could not be used to prove punitive damages. The tobacco company also argued that independent evidence could not be used by the smoker to prove the appropriateness of punitive damages, and even if it could be, she still had not proved them to be appropriate. However, the judge denied Philip Morris’ motions.

The case number is 3:09-cv-14157.

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Companies: Philip Morris U.S.A., Inc.; Liggett Group, LLC

MainStory: TopStory DamagesNews WarningsNews TobaccoProductsNews FloridaNews