

[Products Liability Law Daily Wrap Up, DAMAGES—TOBACCO PRODUCTS—Fla. Dist. App.: \\$12.3 million punitive award against Big Tobacco for fraudulent concealment reinstated, \(Nov. 13, 2015\)](#)

Products Liability Law Daily Wrap Up

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By Pamela C. Maloney, J.D.

A jury verdict awarding \$12,360,042 in punitive damages on claims for fraud by concealment and conspiracy to commit fraud by concealment brought by a smoker's estate against a number of tobacco companies was reinstated by a Florida court of appeal. In overturning the trial court's directed verdict in favor of the tobacco companies, the court concluded that there was sufficient circumstantial evidence from which the jury could have concluded that the smoker had relied on the misleading advertising campaigns conducted by these companies (*Evers v. R.J. Reynolds Tobacco Co.*, November 6, 2015, Kelly, P.).

Background. In the underlying lawsuit, the smoker's estate alleged claims for strict liability, negligence, fraudulent concealment, and conspiracy to fraudulently conceal. After the trial, the court directed a verdict on the fraud and conspiracy claims, concluding that the estate had failed to introduce any evidence that the smoker had seen, heard, or read any statement that "omitted material information or that she relied on such a statement when she chose to begin smoking or to continue smoking." The estate appealed. One of the tobacco companies, R.J. Reynolds, cross-appealed, challenging the order denying its motion for a new trial.

While the appeal was pending, the Second District Court of Appeal decided *Philip Morris USA, Inc. v. Hallgren* [see *Products Liability Law Daily's* October 21, 2013 [analysis](#)], in which it approved the First District's opinion in *R.J. Reynolds Tobacco Co. v. Martin*, 53 So. 3d 1060 (Fla. 1st DCA 2010) which held that a jury could infer reliance based on what the First District described as evidence of "pervasive" cigarette advertising and "the false controversy created by the tobacco industry" about the health risks of smoking.

Inference of reliance. The tobacco companies defended the directed verdict, arguing that there was evidence that the smoker was aware of the health risks that the tobacco companies had concealed and, thus, she could not have relied on the misleading advertising. However, the court found that R.J. Reynolds pointed to no evidence showing that the smoker had been aware that the nicotine in cigarettes was addiction, nor did the company conclusively demonstrate that despite some awareness on the smoker's part that smoking could cause health problems, that "she was not reassured by the controversy the tobacco companies generated to keep people smoking." Thus, the court reinstated the jury's verdict on these two claims along with the punitive damages award associated with those claims.

The case is No. [2D13-2553](#).

Attorneys: Steven L. Brannock (Brannock & Humphries) and Hendrik Uiterwyk (Abrahamson & Uiterwyk) for Cindy Evers. Troy A. Fuhrman (Ward & Henderson, PA), Elliot H. Scherker (Greenberg Traurig, PA) and Gregory G. Katsas (Jones Day) for R.J. Reynolds Tobacco Co.

Companies: R.J. Reynolds Tobacco Co.

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