

[Products Liability Law Daily Wrap Up, JURY VERDICTS—TOBACCO PRODUCTS—Fla. Cir.: Florida jury tells R.J. Reynolds, Philip Morris to pay \\$35 million in smoker's death, \(Dec. 29, 2015\)](#)

Products Liability Law Daily Wrap Up

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By Susan Lasser, J.D.

A Florida jury rendered a \$35 million decision in an *Engle* progeny case for the spouse of a deceased smoker against both Philip Morris USA Inc. and R.J. Reynolds Tobacco Company. The first phase of the trial resulted in a finding of \$10 million in compensatory damages for the decedent's husband. Four days later, in the trial's second phase, the jury determined that the cigarette makers should pay \$25 million in punitive damages ([Ledoux v. R.J. Reynolds Tobacco Co.](#), December 18 and 22, 2015).

The decedent began smoking when she was young and became addicted to cigarettes. After many years of trying to quit, the smoker died at age 55 in 1996. Her husband (who is the representative of her estate) is a member of the class of persons described in [Engle v. Liggett Group, Inc.](#), 945 So.2d 1246 (Fla. 2006). He filed suit against a number of tobacco companies, including Philip Morris and R.J. Reynolds, alleging that the smoker's lung cancer and death were caused by her smoking cigarettes manufactured and sold by one or more of the defendants named in the suit, as well as by her addiction to cigarettes containing nicotine. The [complaint](#) admitted that the smoker bore some measure of fault, but incorporating the findings in *Engle*, it asserted that the defendant cigarette makers engaged in wrongful conduct which caused or substantially contributed to the decedent's starting to smoke as a minor and then becoming "a long time addict to nicotine," all of which was a legal cause of her death, for which the complaint asserted the defendant companies were solely responsible. The complaint alleged claims for strict liability, fraud by concealment, conspiracy to commit fraud by concealment, and negligence.

Jury findings. According to a statement by [Gordon & Doner, P.A.](#) the law firm representing the decedent's spouse, the defendant cigarette manufacturers, Philip Morris and R.J. Reynolds, argued that the smoker's death was the result of her choice to smoke and that she was never addicted to the nicotine in cigarettes. The jury, however, found that the smoker was addicted to cigarettes containing nicotine, and that the addiction was a legal cause of her lung cancer and death. Further, it was determined that smoking cigarettes manufactured by both Philip Morris and R.J. Reynolds was a legal cause of the decedent's lung cancer and death.

The jury allocated fault for the cause of the smoker's lung cancer and death as follows: 47 percent to R.J. Reynolds, 47 percent to Philip Morris, and 6 percent to the decedent. According to the jury, the decedent reasonably relied to her detriment on statements made by the two cigarette makers that concealed or omitted material information not otherwise known or available to her concerning the health effects or addictive nature of smoking cigarettes. That reliance, in the case of each defendant, was found to be a legal cause of the smoker's cancer and death. Moreover, the jury also found that the decedent reasonably relied to her detriment on a statement in furtherance of the cigarette makers' agreement to conceal or omit material information not otherwise known or available to the decedent concerning the health effects or addictive nature of smoking cigarettes, and that that reliance was a legal cause of her lung cancer and death.

Damages. The jury's verdict on the total damages sustained by the decedent's spouse for the loss of his wife's companionship and protection and for his mental pain and suffering as a result of his wife's death was \$10 million. It also found, in this first phase, that by clear and convincing evidence punitive damages were warranted against both defendants. According to the spouse's law firm, there would be no reduction in fault as a matter of law because the jury found that the concealment and agreement to conceal were a legal cause of the decedent's injury and death.

In the punitive damages phase, the defense argued that they were a changed company and each cigarette manufacturer brought corporate representatives. Nonetheless, the jury determined that \$25 million in punitive damages were warranted—\$12.5 million against Philip Morris and \$12.5 million against R.J. Reynolds. Gary Paige, the lead attorney for the plaintiff, commented that the verdict “proves that corporations must be held accountable for their lies and deceit no matter how long they are able to conceal them.” The plaintiff’s attorneys expect the tobacco companies to appeal.

The case is [No. 07-43991 CA \(06\)](#).

Attorneys: Gary Paige (Gordon & Doner), Adam Trop (Trop Law Group), and David J. Sales (David J. Sales PA) for Roland Ledoux. Jonathan Stern (Arnold & Porter LLP) for Philip Morris Tobacco Co. Ursula Henninger (King & Spalding LLC) for R.J. Reynolds Tobacco Co.

Companies: Philip Morris Tobacco Co.; R.J. Reynolds Tobacco Co.

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