

Products Liability Law Daily Wrap Up, TOP STORY—JURY VERDICTS
—Fla. Cir.: Florida jury awards \$6 million to deceased smoker's
widower, (Nov. 22, 2016)

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

A \$5.3 million verdict against cigarette manufacturers, R.J. Reynolds Tobacco Company and Philip Morris USA Inc. in an *Engle* progeny case brought by the widower of a smoker who died from lung cancer was entered by a Broward County, Florida jury. In reaching this verdict, the jury held that a legal cause of the decedent's illness and death was her addiction to "cigarettes containing nicotine" and, in particular, her addiction to the two manufacturers' tobacco products. The jury added punitive damages in the amount of \$650,000 in the second phase of the trial as well (*Martin v. R.J. Reynolds Tobacco Co.*, [November 16](#) and [November 18](#), 2016).

The surviving husband of a deceased smoker, acting as representative of his wife's estate, sought damages following his wife's death from lung cancer which he alleged was caused by her addiction to cigarettes containing nicotine, particularly cigarettes manufactured by R.J. Reynolds and Philip Morris. According to the husband's [complaint](#), his wife was an *Engle* class member (pursuant to *Engle v. Liggett Group., Inc.*, 945 So. 2d 1246 (Fla. 2006), which established the common liability of tobacco company defendants and gave certain *Engle* jury findings *res judicata* effect in individual cases following the decertification of the *Engle* class) and as a proximate result of smoking cigarettes manufactured and sold by the defendants, suffered from heart disease, COPD, and lung cancer and died. He asserted claims for strict liability, negligence, fraud by concealment, conspiracy to commit fraud by concealment, breach of express and implied warranties, punitive damages for intentional torts, and punitive damages for willful, wanton and reckless misconduct.

Jury findings. The jury was asked whether the decedent was addicted to cigarettes containing nicotine and, if so, whether her addiction was a legal cause of her coronary heart disease and lung cancer. The jury's affirmative answer confirmed the plaintiff's *Engle* status. Next, the jury was asked whether the decedent reasonably relied to her detriment on concealments or omissions of material information not otherwise known or available concerning the health effects or addictive nature of smoking cigarettes made by the manufacturers; and, if that were the case, was that reliance a legal cause of the decedent smoker's lung cancer. The jury answered yes as to both manufacturers. It also answered yes to the question of whether the decedent reasonably relied to her detriment on any act or omission taken by the manufacturers in furtherance of an agreement with other tobacco companies or organizations to conceal or omit material information not otherwise known or available concerning the health effects or addictive nature of smoking cigarettes; and, if so, was her reliance a legal cause of her lung cancer. The jury then assigned percentages of fault that was the legal cause of her lung cancer, finding R.J. Reynolds 22 percent at fault, Philip Morris 46 percent at fault and the decedent 32 percent at fault.

Damages. The jury awarded \$111,120.47 to the decedent's husband as the total amount of medical expenses resulting from the decedent's lung cancer and death. It then stepped up its damages award by finding that \$5.3 million was the total amount of damages sustained by the decedent's husband for the loss of his wife's companionship and protection and for his pain and suffering as a result of her injury and death.

As part of the verdict, the jury was asked whether it found under the circumstances of the case, by clear and convincing evidence, that punitive damages were warranted against R.J. Reynolds and Philip Morris USA for any conduct that was a legal cause of the decedent's lung cancer and death. The jury found this to be the case and assessed punitive damages in the amount of \$200,000 against R.J. Reynolds and \$450,000 against Philip Morris.

The case is No. 07-36440 (19) ([Verdict Phase I](#); [Verdict Phase II](#)).

Attorneys: Eric Scott Rosen (Kelley Uustal PLC) for Stanley Martin. Rebeca M. Ojeda (King & Spalding) for Lorillard Tobacco Co. Philip Green (King & Spalding) for R.J. Reynolds Tobacco Co. William Geraghty (Shook, Hardy & Bacon) for Philip Morris USA Inc. Thomas Sherouse (Shook, Hardy & Bacon) for Lorillard, Inc.

Companies: Lorillard Tobacco Co.; R.J. Reynolds Tobacco Co.; Philip Morris USA Inc.; Lorillard, Inc.

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