

**Products Liability Law Daily Wrap Up, INDUSTRY NEWS—JURY VERDICT —TOBACCO PRODUCTS—Fla. Cir.: Florida jury finds cigarette makers liable for \$35 million to former smoker, (Nov. 18, 2014)**

Products Liability Law Daily

[Click to open document in a browser](#)

By Susan Lasser, J.D.

Another *Engle*-progeny case has resulted in a jury verdict for an ex-smoker who alleged injuries resulting from his smoking cigarettes manufactured by the tobacco companies, Philip Morris USA Inc. and Liggett Group LLC. A Florida jury awarded \$35 million in compensatory and punitive damages to the former smoker against the cigarette makers. Its findings included that the ex-smoker was addicted to Philip Morris cigarettes, that his addiction was a legal cause of his chronic obstructive pulmonary disease (COPD), and that Philip Morris's concealment or omission of material information about the health effects or addictive nature, or both, of smoking cigarettes was a legal cause of the former smoker's COPD ([Boatright v. Philip Morris USA Inc.](#), November 10 and 12, Radabaugh, J.).

**Background.** Richard Boatright (Boatright) and his wife, Deborah, filed their personal injury products liability action against a number of tobacco companies, pursuant to the Florida Supreme Court's ruling in [Engle v. Liggett Group, Inc.](#), 945 So. 2d 1246 (Fla. 2006), on December 31, 2007, as part of a multi-plaintiff complaint. The Florida high court had expressly reserved to *Engle* class members the right to bring individual actions against the tobacco companies for smoking-related injuries and damages. In his [second amended complaint](#), Boatright brought his claims against a number of defendant tobacco companies, including: Philip Morris USA Inc., Lorillard Tobacco Co., R.J. Reynolds Tobacco Co. (individually, and as successor by merger to Brown & Williamson Tobacco Corp., individually, and as successor by merger to the American Tobacco Co.), Liggett Group, LLC, and Vector Group Ltd. Inc. He listed the brands of cigarettes that he smoked—these included Marlboro, Viceroy, Camel, L&M, and Lucky Strike. The complaint also outlined the jury findings from the Phase I *Engle* trial that were given *res judicata* effect by the Florida Supreme Court. This included COPD and other injuries; that nicotine in cigarettes is addictive; that all of the defendant tobacco companies placed cigarettes on the market that were defective and unreasonably dangerous; and that all the companies concealed or omitted material information, knowing that the material was false or misleading, or failed to disclose a material fact concerning the health effects or addictive nature, or both, of smoking cigarettes.

Boatright began smoking at age 12, according to a law firm news [release](#), and his attorneys argued to the jury that he was the “victim of a marketing campaign that encouraged him to continue smoking after ... seeing a barrage of advertising that included the world-famous Marlboro Man.” They also contended that Philip Morris manufactured its Marlboro cigarette “to be more powerfully addictive by use of additives such as ammonia compounds.” Essentially, the chemical additives served to “freebase the nicotine molecule and increase the speed of its delivery directly to the brain, enhancing the addictive properties,” the release stated.

Boatright developed emphysema and underwent two lung transplants following decades of cigarette smoking.

The ex-smoker's legal team also argued that the tobacco companies manufactured and sold defective cigarettes which resulted in Boatright's health problems; that the cigarette makers knew that it was likely that their cigarettes would harm users; that the manufacturers concealed or omitted information about the defects, and in doing so, the tobacco companies acted in a reckless manner that constituted disregard or indifference to life.

**Verdict.** Following a four-week trial, the jury found for Boatright, concluding that the cigarette companies, Philip Morris and the Liggett Group bore most of the responsibilities for Boatright's health issues. According to the jury, the percentage of fault that was a legal cause of Boatright's COPD was 85 percent assigned to Philip Morris,

while 15 percent was assigned to Boatright. The jury also decided that both Philip Morris and the Liggett Group's agreement to conceal or omit information about the health effects or addictive nature, or both, of smoking cigarettes was a legal cause of Boatright's injuries.

The jury determined compensatory damages on November 10, finding that Philip Morris and the Liggett Group were liable for \$15 million for Boatright's pain and suffering: (1) \$2.5 million in damages for lost earnings in the past, loss of earnings capacity in the future, medical expenses incurred in the past, and medical expenses to be incurred in the future as a result of his COPD; (2) \$10 million as the total amount of all damages sustained by Boatright for pain and suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience, aggravation of a disease or physical defect, and loss of capacity for the enjoyment of life sustained in the past and to be sustained in the future as a result of COPD; and (3) \$2.5 million for Deborah Boatright as the damages she sustained in losing her husband's comfort, society, attention, and services sustained in the past and to be incurred in the future as a result of Boatright's COPD.

On the same day, the jury also found that punitive damages were warranted. Therefore, two days after rendering its decision on compensatory damages, the jury found that Boatright should receive \$20 million in [punitive damages](#). The jury assessed Philip Morris \$19.7 million in punitive damages and found the Liggett Group liable for \$300,000 in punitive damages.

The case number is [53-2011-CA-000158-0000-WH\(08\)](#).

Attorneys: Scott Schlesinger (Schlesinger Law Offices, PA) for Richard Boatright. Giselle Gonzalez Manseur (Kasowitz, Benson, Torres & Friedman LLP), Wayne Lee Thomas (Akerman LLP), and Dawn Giebler-Millner (Greenberg Traurig, LLP) for Liggett Group, LLC, Lorillard Tobacco Co., and Philip Morris U.S.A. Inc. Troy A. Fuhrman (Hill Ward Henderson) and Stephanie E. Parker (Jones Day) for R.J. Reynolds Tobacco Co. Kelly Anne Luther (Kasowitz, Benson, Torres & Friedman LLP) and Wayne Lee Thomas (Akerman LLP) for Vector Group Limited Inc.

Companies: Liggett Group, LLC; Lorillard Tobacco Co.; Philip Morris U.S.A. Inc.; R.J. Reynolds Tobacco Co.; Vector Group Limited Inc.

AllNews: IndustryNewsStory TobaccoProductsNews DesignManufacturingNews WarningsNews DamagesNews FloridaNews