

[Products Liability Law Daily Wrap Up, TOP STORY—TOBACCO PRODUCTS—Fla. Dist. App.: \\$18.5M verdict against RJR for smoker's adult daughter vacated as excessive, \(Dec. 1, 2016\)](#)

Products Liability Law Daily Wrap Up

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By John W. Scanlan, J.D.

An \$18.5 million judgment against R.J. Reynolds in favor of the daughter of a smoker who died of lung cancer was vacated and remanded by a Florida appellate court to grant the company's motion for remittur or a new trial on damages only. The compensatory portion of the award was excessive for an adult child who was not dependent upon her deceased mother, and the punitive damages award was vacated because the compensatory damages award was vacated (*R.J. Reynolds Tobacco Co. v. Odom*, November 30, 2016, Damoorgian, D.).

After a smoker died from lung cancer, her daughter brought claims for strict liability, negligence, fraud by concealment, and conspiracy to commit fraud by concealment against RJR in Florida state court, alleging that her death was caused by her addiction to cigarettes. In the first phase of the trial, the jury determined that the smoker was a member of the *Engle* class and then found for the daughter, awarding her \$6 million in compensatory damages and deciding that the smoker was 25 percent at fault. It also concluded that punitive damages were justified. After the second phase of the trial, which was about the proper amount of punitive damages to be awarded, the jury awarded the daughter \$14 million in punitive damages. The trial court denied RJR's post-trial motions to set aside the verdict, for a new trial, and for remittur of the compensatory award, and entered judgment for \$18.5 million. RJR appealed.

Remittur. The compensatory damages award was vacated because it was excessive compared to other awards in comparable cases. Courts have distinguished between compensatory damages awards to spouses and to adult children. Florida courts have ruled that regardless of the strength of the emotional bond between an adult child and his or her decedent parent, an adult child who lives independent of the parent during the parent's smoking-related illness and death is not entitled to a multi-million dollar compensatory damages award, with one court finding a \$400,000 award to be "generous." Based on this line of precedent, the \$6 million award awarded to the daughter in this case for the loss of her mother was excessive. The daughter was financially independent of her mother, the daughter was married with her own children, and the mother had been living with her long-time partner.

Punitive damages. In the event of a new trial on damages, the daughter may pursue punitive damages on her product defect and negligence claims pursuant to the Florida Supreme Court's decision in *Soffer v. R.J. Reynolds Tobacco Co.* [see *Products Liability Law Daily's* March 17, 2016 [analysis](#)]. The court also noted that comments made by counsel for the daughter in closing arguments of the second phase stating that RJR deserved to be punished for the smoker's death and had not accepted responsibility or apologized for its actions did not improperly disparage RJR for defending itself. The challenged comments were made after the jury had determined the issue of compensatory damages, and the fact that RJR had not acknowledged that its conduct was wrongful was a legitimate topic for counsel to bring up at that point.

The case is No. [4D14-3867](#).

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Companies: R.J. Reynolds Tobacco Co.

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