

Products Liability Law Daily Wrap Up, INDUSTRY NEWS—JURY VERDICT —TOBACCO PRODUCTS—M.D. Fla.: R.J. Reynolds ordered to pay over \$2.1 million to widow in Engle-progeny suit, (Feb. 13, 2015)

Products Liability Law Daily Wrap Up

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By Susan Lasser, J.D.

Cigarette manufacturer, R.J. Reynolds Tobacco Company, has been ordered to pay \$2.125 million in damages to the widow of a deceased smoker after a federal jury in Florida found the company partially liable for the decedent's smoking-related illnesses and death. The case is another of many so-called *Engle*-progeny suits following the Florida Supreme Court's class action decision in [*Engle v. Liggett Group, Inc.*](#), 945 So.2d 1246 (Fla. 2006) ([*Sowers v. R.J. Reynolds Tobacco Co.*](#), Case No. 3:09-cv-11829-J-WGY-HTS, February 12, 2015).

Background. Charles Sowers (Sowers), a Florida resident, was addicted to cigarettes, and as a consequence developed a number of illnesses, including lung cancer, and chronic obstructive pulmonary disease (COPD). He died on July 30, 1995, and his widow, Mary Sowers, who also was the personal representative of his estate, brought suit against a number of tobacco companies/cigarette manufacturers, including R.J. Reynolds Tobacco Company and Philip Morris USA, Inc. Mary Sowers's [complaint](#) alleged that her husband was addicted to cigarettes manufactured by the defendant tobacco companies; relied to his detriment on their "lies and omissions about the health effects and addictive nature of smoking"; and, in spite of his efforts to quit smoking, developed COPD and lung cancer, as well as other smoking-related illnesses, caused by the defendants' "wrongful conduct." The complaint sought compensatory and punitive damages in accordance with the Florida Wrongful Death Act, the Florida Survival Statute, and with *Engle*.

In addition to general allegations about cigarettes and allegedly misleading statements by the defendant manufacturers, the widow relied on the Florida Supreme Court's decision in *Engle*, which allowed certain jury findings (specified liability and general causation) against tobacco companies to have *res judicata* effect in subsequent lawsuits. As such, the widow's action was brought on the remaining issues of specific causation, apportionment of damages, comparative fault, compensatory damages, entitlement to punitive damages, and punitive damages. She claimed that as a "direct and proximate result" of her husband's addiction to (and smoking) the defendant companies' cigarettes, he "suffered *Engle* diseases which caused mental and emotional pain, medical and financial expenses, shortened life expectancy, and death." The complaint alleged the following claims: strict liability, civil conspiracy to fraudulently conceal, fraudulent concealment, negligence/gross negligence, breach of express warranty, and breach of implied warranty.

Jury findings. The [jury](#) first found that Charles Sowers was addicted to "cigarettes containing nicotine," and that his addiction to cigarettes containing nicotine was a legal cause of his death. The claims before the jury were for negligence, strict liability, fraudulent concealment, and conspiracy to fraudulently conceal.

On the negligence and strict liability counts, the jury decided that smoking cigarettes manufactured by R.J. Reynolds was a legal cause of Sowers's lung cancer and death. In apportioning fault, the jury determined that R.J. Reynolds and Sowers were equally at fault, finding the cigarette maker 50 percent liable for the decedent's lung cancer and death and Sowers responsible for the other 50 percent, as "legal cause" of his illness and death.

On the fraudulent concealment claim, the jury found that Sowers reasonably relied to his detriment on statements made by R.J. Reynolds that concealed or omitted material information concerning the health effects and/or addictive nature of cigarette smoking. However, on the question of whether Sowers's reliance on those statements was a legal cause of his lung cancer and death, the jury said, no. As for the question of conspiracy to fraudulently conceal, the jury was asked whether Sowers reasonably relied to his detriment on statements made

in furtherance of the agreement, by two of the defending companies, considered separately, "to conceal or omit material information concerning the health effects and/or addictive nature of smoking." The jury answered, yes, as to both R.J. Reynolds and Philip Morris. However, again, on the question of whether the decedent's reliance on those statements was a legal cause of his lung cancer and death, the jury answered, no, for both companies.

Damages. The jury determined that Mary Sowers should receive \$4,250,000 in compensatory damages for the loss of her husband's companionship and protection, and her mental pain and suffering resulting from his lung cancer and death. However, because the jury answered in the negative on the questions of whether the decedent's reliance on statements/omissions made by the tobacco companies were a legal cause of his lung cancer and death, the jury did not have to address the issue of punitive damages.

In the court's judgment following the verdict, the court ordered R.J. Reynolds to pay \$2,125,000—half the amount of the jury award—because the jury had found the decedent 50 percent at fault for his injuries.

The case is [No. 3:09 C 11829](#).

Attorneys: Charlie Easa Farah, Jr. (Farah & Farah, PA) for Mary Sowers. Dana G. Bradford, II (Smith, Gambrell & Russell, LLP), David Clifford Reeves (Moseley, Prichard, Parrish, Knight & Jones), and Edward M. Carter (Jones Day) for R.J. Reynolds Tobacco Co. Bonnie C. Daboll (Shook, Hardy & Bacon, LLP) for Philip Morris U.S.A., Inc. Kelly Anne Luther (Kasowitz, Benson, Torres & Friedman, LLP) for Liggett Group, LLC.

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

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