

Products Liability Law Daily Wrap Up, JURY VERDICTS—TOBACCO PRODUCTS—M.D. Fla.: Failure to meet addiction threshold dooms recovery on behalf of deceased smoker, (Nov. 9, 2018)

Products Liability Law Daily Wrap Up

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By Georgia D. Koutouzos, J.D.

A Florida federal jury's determination that a lung cancer patient was not addicted to cigarettes containing nicotine obviated their response to the verdict form's remaining questions in an *Engle* progeny case. The smoker's widow had sued Big Tobacco, asserting that her husband's addiction to cigarettes had caused his illness/death and alleging claims for strict liability, negligence/gross negligence, civil conspiracy to fraudulently conceal, fraudulent concealment, and breach of warranties (*Starbuck v. R.J. Reynolds Tobacco Co.*, November 7, 2018, Young, Y.).

After a Florida resident developed and eventually died from lung cancer and chronic obstructive pulmonary disease (COPD), his widow filed suit against R.J. Reynolds Tobacco Co., Philip Morris USA, Inc., and Lorillard Tobacco Co., seeking compensatory and punitive damages in accordance with the Florida Wrongful Death Act, the Florida Survival Statute, and with the Florida Supreme Court's class action decision and mandate in *Engle v. Liggett Group, Inc.*, 945 So.2d 1246 (Fla. 2006).

Allegations. The [complaint](#) in the action asserted that the decedent suffered from the above-mentioned diseases and/or other smoking-related illness within the time frames defined by the *Engle* court. The deceased smoker was addicted to cigarettes manufactured by the tobacco manufacturers, having relied to his detriment on the companies' lies and omissions about the health effects and addictive nature of smoking, the widow contended.

Generally, the complaint alleged that: (1) the defendants' cigarettes manufactured during the relevant period were needlessly and powerfully addictive; (2) the scientific evidence incontrovertibly establishes that inhaling cigarette smoke is deadly; (3) the cigarette-smoking epidemic has caused an avoidable public health catastrophe in the United States; (4) the tobacco companies deliberately misled the public about the risks of smoking cigarettes; (5) the companies developed filtered and low-yield cigarettes as health "reassurance" products while knowing that those products were no more safe than regular cigarettes; (6) the companies' misleading "reassurance" products have sustained the cigarette epidemic and have devastating implications for public health; (7) cigarettes have become more dangerous over the past 50 years despite the manufacturers' claims that design changes have reduced health risks; and (8) the companies have marketed cigarettes to children and young adults for years in order to secure new smokers and maintain the demand for their products.

Demanding a jury trial, the complaint included causes of action for strict liability, negligence/gross negligence, civil conspiracy to fraudulently conceal, and fraudulent concealment, as well as breach of express warranty and breach of implied warranty. With respect to smoking and health, and the manufacture, marketing, and sale of their cigarettes, the *Engle* Phase I findings conclusively establish that the cigarettes sold and placed on the market by the tobacco manufacturers were defective and unreasonably dangerous, the widow maintained, arguing that the companies had actual knowledge of the wrongfulness of such conduct and of the high probability that injury or damage to the decedent would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in his injury.

Furthermore, the companies' conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of individuals exposed to that conduct—including the decedent—thereby warranting punitive damages, she stated.

Jury verdict. The case was tried to a jury, and the verdict form's initial question (related to the decedent's qualification as an *Engle* class member) asked whether he was addicted to cigarettes containing nicotine. The jury responded in the negative, which the instructions specified resulted in a verdict for the tobacco manufacturers, thereby eliminating the necessity for answers on the verdicts remaining questions regarding the companies' liability for the alleged tort claims.

The case is No. [3:09-cv-13250-WGY-HTS](#).

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

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