

Fla. Jury Sides With Tobacco Cos. In Ex-Smoker's \$14M Suit

By **Brandon Lowrey**

Law360, Los Angeles (April 23, 2015, 4:47 PM ET) -- A Florida jury found Philip Morris USA and R.J. Reynolds Tobacco Co. not liable on Thursday in a \$14 million Engle progeny suit brought by the daughters of a woman who died of a smoking-related disease.

Jurors found that although the woman was addicted to cigarettes, her addiction did not legally cause her death. The verdict came after a weeklong trial in Miami, the day after closing arguments concluded.

The plaintiff's attorney, Philip Gerson of Gerson & Schwartz PA, told jurors during closing arguments that Phyllis Frazier's daughters deserve \$14 million for having to endure watching their mother waste away more than 20 years with chronic obstructive pulmonary disease, a progressive disease that ends in death.

However, Philip Morris attorney William Geraghty of Shook Hardy & Bacon contended that only Frazier bore the responsibility for her illness and death because she continued to smoke despite knowing the risks, thinking it would never happen to her.

"This case was about two words: control and responsibility," he said. "Who was in control of Phyllis Frazier's lifestyle choices? Who was in control of her efforts to quit smoking? Who controlled her motivation to quit?"

The case was one of the thousands stemming from the landmark Engle class action against tobacco companies. The Florida Supreme Court decertified the class in 2006 and overturned a \$145 billion verdict, but it allowed up to 700,000 people who could have won judgments to rely on the jury's findings to file suits of their own. Those findings include conclusions that smoking causes certain diseases and that tobacco companies hid the dangers of smoking.

In a separate Engle progeny trial decided this week, a jury awarded a total of \$46.5 million to another ex-smoker with COPD, including \$21.5 million in compensatory damages and \$25 million in punitive damages.

During Wednesday's closing arguments, Gerson said Frazier's daughters, Tina Russo and Cherie Westgate, argued that Russo deserves \$10 million, and Westgate deserves \$4 million. He said that Frazier bought into the idea that filters and "low-tar" brands made cigarette smoking less risky.

He proposed that jurors should allocate 20 percent of the liability to Frazier and that R.J. Reynolds and Philip Morris should split the remaining 80 percent.

On Thursday, Gerson told Law360 he was disappointed with the verdict. Attorneys for the tobacco companies did not immediately respond to requests for comment.

For more coverage of this trial, visit Courtroom View Network.

The plaintiffs are represented by Philip Gerson of Gerson and Schwartz PA.

Philip Morris is represented by William Geraghty of Shook Hardy & Bacon LLP.

R.J. Reynolds is represented by Geoffrey Beach of Womble Carlyle Sandridge & Rice LLP.

The case is Russo v. Philip Morris et al., case number 2007-44469-CA-01, in the 11th Judicial Circuit of Florida.

--Editing by Christine Chun.

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