

Philip Morris Beats \$19M Engle Progeny Suit At Trial

By **Brandon Lowrey**

Law360, Los Angeles (September 23, 2016, 4:52 PM EDT) -- Philip Morris USA Inc. is not liable in a \$19 million Engle progeny trial brought by the widow and daughter of a chain-smoking clothing store owner who died of lung cancer, a Miami jury decided on Thursday.

The verdict came after emotional closing arguments, during which the plaintiff's attorneys detailed the pain and sorrow suffered by the survivors of Robiel Chacon.

Plaintiff's attorney Charles Baumberger of Rossman Baumberger Rebozo Spier & Connolly PA told jurors that Chacon's widow, Elsa, and daughter, Charity, suffered deeply during his illness and after his death. He said that Elsa deserves \$12 million for having the love of her life taken from her, and that Charity is owed \$7 million for the loss of her father.

"Elsa told us how seeing older couples walking hand in hand, arm in arm in an affectionate way affects her," he said. "She told us that was something that she looked forward to. That is a dream that will never come true for her."

However, Philip Morris attorney Frank Kelly of Shook Hardy & Bacon LLP said that information about smoking's dangers came out earlier than the plaintiff had made it sound, and said that Chacon could have easily quit if he had wanted to. In addition, he cast doubt on Chacon's Florida residency and citizenship, which are required for Engle class membership.

Robiel Chacon began smoking at age 11 in Cuba, the plaintiffs' attorneys said during the trial. Chacon took American cigarettes from his grandfather's store in Cuba and quickly became addicted, maintaining a habit of three to four packs per day after immigrating to New York in 1958 and continuing to smoke, helplessly addicted, after his lung cancer diagnosis in 1994.

He died in 1996.

Chacon never would have taken such a deadly risk if the cigarette industry hadn't lied about its products, said one of the family's attorneys, Alex Alvarez of The Alvarez Law Firm. During opening arguments, Alvarez noted that the CEOs of the six major tobacco companies appeared before Congress and each said under oath that they didn't believe nicotine was addictive just months before Chacon's lung cancer diagnosis.

The public finally began to see the industry's internal documents in the 1990s, ones that indicated long-

term knowledge of smoking's risks. But it was too late for Chacon, his attorney said.

Chacon ran a chain of clothing stores in New York and moved to Miami in 1988, the attorney said.

The case is one of the thousands stemming from the landmark Engle class action against tobacco companies.

The Florida Supreme Court decertified the Engle class in 2006 and overturned a \$145 billion verdict, but 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 smoking's dangers.

During closing arguments on Thursday, Kelly repeated his earlier arguments that Chacon hadn't shown any true desire to quit until his diagnosis, after which he quit without relapsing. He pointed to Elsa's testimony that her husband had never previously told her that he wanted to quit.

In addition, he said that Chacon wasn't a citizen and resident of Florida when his lung cancer was diagnosed on June 3, 1994, making him ineligible for Engle class membership. Kelly said that Chacon had never registered to vote in Miami and didn't receive his Florida driver's license until July 21, 1994.

For more coverage of this trial, visit [Courtroom View Network](#).

The plaintiffs are represented by Alex Alvarez of the Alvarez Law Firm, and Charles Baumberger of Rossman Baumberger Rebozo Spier & Connolly.

Philip Morris is represented by Frank Kelly of Shook Hardy & Bacon LLP, and Robert Vaughan of Kim Vaughan Lerner LLP.

The case is Elsa Chacon v. Philip Morris USA Inc., case number 08-102-CA-09, in the Eleventh Judicial Circuit of Florida, Dade County Courthouse.

--Additional reporting by Cara Salvatore. Editing by Stephen Berg.