

Fla. Judge Keeps Philip Morris Suit On Jury Track

By **Nathan Hale**

Law360, Miami (January 20, 2015, 5:43 PM ET) -- A Florida state judge on Tuesday rejected Philip Morris USA Inc.'s play for a directed verdict in an ongoing Engle progeny trial, finding the plaintiff met the class requirements and his claims of concealment and fraud should continue on to be decided by a jury.

Miami-Dade Circuit Judge Jose M. Rodriguez ruled that the case would proceed after hearing brief oral arguments from both sides on the defense's four motions, entered Friday after plaintiff Jose Vila Jr. had rested his case.

Philip Morris, a subsidiary of Altria Group Inc., brought its motions for directed verdict on the grounds that Vila failed to prove his case on fraud and concealment claims, on his punitive damages claim, on Vila's class membership status and on the company's standing position that the Engle findings cannot be used in the progeny cases.

The company specifically argued that Vila, who was born in Cuba and lived in Spain and the Dominican Republic before moving to Florida in 1989, needed to be both a Florida resident and U.S. citizen to qualify for the Engle class, a position the plaintiffs argued has been rejected by other state courts, and also that the Engle findings do not extend to smoking activity that occurred outside of the United States.

"Hook, line and sinker, he's exactly who they wanted to target," plaintiff's counsel Eric M. Tinstman of The Ferraro Law Firm PA said, with co-counsel Allan B. Kaiser citing Marlboro advertising in Spain when Vila lived there.

Vila's case is the first to go on trial in 2015 stemming from the landmark Engle v. Liggett Group class that won a \$145 billion verdict against the tobacco companies. In 2006, the Florida Supreme Court overturned the verdict and decertified the class but allowed up to 700,000 individuals to rely on the jury's liability findings in their own suits.

He sued the tobacco giant for monetary damages on the premise that his years of heavy cigarette smoking made him sick and his claim that he had no idea that cigarettes could cause cancer thanks to the marketing cover-up of smoking's adverse health effects perpetrated by the big tobacco companies beginning in the 1950s.

The defense aimed at knocking out the basis of those claims as it called its first expert witness. Dr. Juan C. Felix, an expert on human papillomavirus, testified that he is convinced from his microscopic review of slides taken of 1996 tissue samples from Vila's laryngectomy that the sexually transmitted disease, and

not cigarettes, caused Vila's cancer.

Felix, who is a professor of clinical pathology and obstetrics and gynecology at the Keck School of Medicine at the University of Southern California and has been researching HPV since 1988, cited several factors that he said made him certain that the virus was the source of Vila's cancer, most notably the presence of koilocyte cells in the squamous epithelial tissue, which only occur in HPV-infected tissue.

"The infection started in normal tissue and caused the cancer," Felix said, explaining that HPV cannot infect an already cancerous cell. "I know it caused the cancer because in the cancer, the cells are expressing HPV changes."

Other elements, including Vila's cancer emerging at age 39, his sexual history of 30-40 partners, and the fact that he survived the cancer, are also indicators that HPV was the most likely cause of his illness.

Felix said he was not surprised there was no mention of the presence of koilocytes in the 1994 and 1996 pathology reports he reviewed because at the time, HPV's connection to head and neck cancers had not been extensively considered by the medical community.

On cross-examination, Kaiser questioned Felix's expertise of head and neck cancers and smoking-related health risks, noting that his research has focused almost exclusively on obstetrics and gynecological work.

Kaiser also asked about the rarity of HPV-infected cells appearing on the larynx, which Felix acknowledged does not happen often, but the doctor said he has never been mistaken in his identification of koilocytes in the larynx.

Vila is represented by Allan B. Kaiser and Eric M. Tinstman of The Ferraro Law Firm PA.

Philip Morris is represented by Robert A. McCarter, Miranda L. Soto and Michael L. Walden of Shook Hardy & Bacon LLP.

The case is Vila v. Philip Morris USA Inc., case number 2013-12833-CA, in the Eleventh Judicial Circuit Court of Florida.

—Additional reporting by Carolina Bolado. Editing by Kelly Duncan.