

Philip Morris Cleared In \$29M Engle Trial

By **Nathan Hale**

Law360, Miami (January 23, 2015, 1:54 PM ET) -- A Florida state court jury cleared Philip Morris USA Inc. on Friday of liability in one of the year's first Engle progeny trials, rejecting a former smoker's claims seeking upward of \$29 million on allegations the cigarette maker's product and actions caused his laryngeal cancer.

Plaintiff Jose Vila Jr.'s case is among 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.

Vila sued the tobacco giant, which is a subsidiary of Altria Group Inc., for monetary damages on the premise that his years of heavy cigarette smoking made him sick and that he had no idea 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.

He sought damages in a range of \$13 million to \$29 million. Plaintiff's counsel Allan B. Kaiser of The Ferraro Law Firm PA compared his current condition — Vila had to have his larynx removed and now breathes through a stoma in his throat — to a job that no one wants and that he must live with constantly. His complaint also called for punitive damages.

The jury found that smoking and addiction to cigarettes caused Vila's cancer, but answered no to the question of whether cigarettes made by Philip Morris were the cause of his cancer.

Philip Morris contested Vila's fraud and concealment claims on the grounds that the Engle findings do not extend to smoking activity that occurred outside of the United States. Vila was born in Cuba in 1954 and moved to Spain in 1969 and then the Dominican Republic in 1974 before settling in Miami in 1989.

In his closing arguments Thursday, defense counsel Robert A. McCarter of Shook Hardy & Bacon LLP also attempted to raise doubts about whether Vila really smoked the company's Marlboro cigarettes when he took up the habit at age 15, saying they were expensive and unpopular in Spain at the time.

McCarter also said the Marlboro cigarettes Vila consumed in the Dominican Republic, during his heaviest period of smoking, were manufactured by another company under a license agreement, leaving only three-and-a-half years of definite exposure to Philip Morris-made products before his cancer appeared.

Kaiser's main piece of evidence for the concealment and fraud claims was that Vila had seen Marlboro advertisements in Spain. He also held that Vila could afford Marlboro cigarettes in Spain because of a family allowance and later bank job.

Regarding the Marlboro cigarettes sold in the Dominican Republic, he argued that company documents showed Philip Morris held a financial interest in the manufacturer, but McCarter said that was not the same as making the product itself.

Much of the trial testimony, which stretched over two weeks following a lengthy jury selection process, had focused on the medical cause of Vila's laryngeal cancer.

The defense contended the illness was caused not by Vila's smoking but by human papillomavirus, pointing to certain factors in his personal background, characteristics of his illness, and medical evidence and expert testimony. McCarter argued that while a defense expert said he was 100 percent certain HPV was the cause, a doctor who testified for the plaintiff as a rebuttal witness ultimately acknowledged that she could not rule out the sexually transmitted disease as the cause.

The parties also provided contrasting expert witness opinions on whether Vila was actually addicted to cigarettes. The defense held that when he finally decided to quit, he was able to do so without significant difficulty.

Despite the defense's considerable focus on those points, the jury affirmatively answered the first verdict question by concluding that smoking was the cause of Vila's cancer, that he was addicted to cigarettes and that his addiction amounted to a legal cause for the cancer.

Yet the jurors apparently found the evidence fell short of proving Philip Morris was to blame.

Counsel for both sides declined comment Friday.

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 Rebecca Flanagan.