

## Trial Opens In First Engle Case Of The Year

By **Carolina Bolado**

*Law360, Miami (January 08, 2015, 7:14 PM ET)* -- Attorneys for a smoker who suffered from laryngeal cancer opened his trial against Philip Morris USA Inc. — the first Engle progeny trial of the new year — by detailing the tobacco companies' long-running scheme to cover up adverse health effects of smoking.

Allan Kaiser of The Ferraro Law Firm PA, who represents plaintiff Jose Vila, said that his client had no idea that cigarettes could cause cancer, thanks to the cover-up perpetrated by the big tobacco companies beginning in the 1950s.

“Nowadays everyone knows cigarettes are bad for you,” Kaiser said. “It’s a lot different today climate-wise than it was back then. It lasted for many years, and people thought that cigarettes were fine because tobacco companies weren’t saying any different.”

Vila is a member of 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 was first diagnosed with laryngeal cancer in 1994, according to Kaiser. When the cancer returned two years later, Vila, who at one point smoked up to two packs of cigarettes per day, had to have his larynx removed. He now breathes through a stoma in his throat.

His attorney told jurors that they would hear from a medical expert who specializes in cancers of the head and neck who will explain that Vila’s laryngeal cancer was caused by smoking, and not by the human papillomavirus, a sexually transmitted virus that can, in rare instances, cause cancer in the head and neck region, usually in the tonsils, according to Kaiser.

Kaiser said that the way the disease manifested itself makes it clear that it was caused by smoking and not by HPV.

But Robert McCarter of Shook Hardy & Bacon LLP, who is representing Philip Morris, told jurors that his expert would show that the disease could have been caused by HPV and not by Vila’s cigarette habit.

McCarter also pointed out that Vila, in sworn testimony taken before the trial, was asked if his decision to smoke would have changed if tobacco companies had acted differently. McCarter said Vila told them that it would not have affected his smoking habits.

McCarter also pointed out that Vila, who did not move to the United States until 1989, for almost all of his smoking years lived in countries where the statements and actions from the tobacco companies' alleged cover-up of smoking's health risks never were circulated.

Vila was born in Cuba in 1954 and moved to Spain in 1969, where he took up smoking at age 15 when he was offered a Marlboro by a friend. He moved to the Dominican Republic in 1974, lived for a year in Costa Rica, and finally ended up in Miami in 1989, according to his attorney.

None of the advertisements and statements that came out of the alleged conspiracy by Big Tobacco ever reached these countries where Vila was living when he did the bulk of his smoking, McCarter said.

“It's about whether Philip Morris ever said anything about the health risks of smoking that impacted Mr. Vila,” McCarter said. “This is Mr. Vila's case, and it's a case about his smoking. These tobacco company documents and statements have absolutely nothing to do with Mr. Vila's smoking.”

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.

— Editing by Ben Guilfoy.