

# Florida Jury Awards \$30 Million to Smoker With Lung Cancer in Engle-Progeny Case

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TAMPA, Fla.—A longtime smoker with lung cancer receives a jury award of \$30 million in compensatory and punitive damages March 27 and 28 in his “Engle-progeny” Florida state suit against R.J. Reynolds Tobacco Co. (Smith v. R.J. Reynolds Tobacco Co., Fla. Cir. Ct., No. 09-719-CA, verdicts 3/27/12, 3/28/12).

After the nearly three-week trial, the North Florida jury awarded 80-year-old Emmon Smith \$10 million in compensatory damages in his suit tried in Florida Circuit Court, 14th Judicial Circuit, Jackson County. The following day, March 28, the panel awarded Smith \$20 million in punitive damages.

## Reynolds Plans Appeal

A spokesman for R.J. Reynolds told BNA April 4 the company was “disappointed” with the verdict and planned to appeal.

The awards were the latest in a series of spin off cases following the Florida Supreme Court's 2006 decision in Engle v. Liggett Group Inc., 95 So. 2d. 1246 (Fla. 2006) (34 PSLR 678, 7/10/06).

In that ruling, the state's top court decertified a statewide class of tobacco smokers, but held that certain jury findings from the lower court trial—called Phase I findings—would have preclusive effect in future suits brought by individual class members seeking damages from the defendant tobacco companies.

The findings included determinations that cigarette smoking causes 20 diseases—among them lung cancer—suffered by smokers; that nicotine is addictive; that the defendants placed cigarettes on the market that were defective and unreasonably dangerous; and that the defendants agreed to misrepresent information relating to the health effects of cigarettes or their addictive nature.

On March 26, the day before the jury handed down the first of the two verdicts in Smith's case, the U.S. Supreme Court's declined to hear R.J. Reynolds's and two other tobacco companies' due process challenge to the use of the Engle findings in individual cases (40 PSLR 377).

After that certiorari denial came down, Edward L. Sweda Jr. of the Public Health Advocacy Institute's Tobacco Products Liability Project (PHAI), based at

Northeastern University School of Law, estimated at potentially “billions” of dollars the tobacco industry's total liability for all the thousands of Engle progeny suits decided, and still pending, in federal and state courts in Florida (40 PSLR 376). R.J. Reynolds “lawyers [were] predicting, basically, a calamity if the cert. petition were not allowed and the ruling not overturned on appeal,” Sweda said March 27. On March 6, a jury in Miami awarded the widow of a cigarette smoker who died from lung cancer \$25 million in punitive damages, bringing her total award to \$45 million. The case was *Alexander v. Lorillard Tobacco Co.*, Fla. Cir. Ct., No. 07-46830-CA-4, verdicts 2/29/12, 3/6/12 (40 PSLR 296, 3/12/12).

### **Smith Also to Appeal**

Stuart Ratzan, who helped represent Emmon Smith and is with Miami's Ratzan Law Group, told BNA April 4 that Smith will challenge the 30-percent comparative negligence verdict because only two of the jury's four liability findings on which the award was based were negligence-based. The other two findings related to fraud and civil conspiracy claims.

“Comparative fault only applies to negligence,” Ratzan told BNA in a telephone interview. “The judgment is not simply a negligence judgment. We have two intentional tort judgments.”

When Smith sued in 2009, he named as defendants R.J. Reynolds and several other tobacco companies. All but R.J. Reynolds were dropped over the course of the litigation and it was the only defendant at trial, Ratzan said.

Counts in the Smith's original complaint included strict liability, negligence, fraud and fraudulent concealment, civil conspiracy, and counts of breach of express and implied warranties.

Smith, a minister, started smoking in 1944 at age 13. Most of the cigarette brands he smoked were R.J. Reynolds products, Ratzan said.

“He tried numerous times to quit but was unsuccessful until 1992 when he was diagnosed with lung cancer, had his left lung removed and was advised by his doctors that smoking had caused his disease,” Smith's attorneys said in a written statement.

### **Internal Documents Cited**

Ratzan said he believed that the size of the awards hinged partly on internal corporate documents that, he said, showed that the tobacco industry long concealed health dangers associated with long-term smoking.

“The dynamic is that this jury received this history in the way many other juries have. The things that tobacco did to cover up and conspire are appalling, and, in the light of day, this jury found it appalling,” Ratzan said.

Richard J. Diaz, Coral Gables, J.B. Harris, Miami, and Robert Trammell, of the Saunders Law Firm, Marianna, and others represented Smith at trial.

Stephanie E. Parker and John M. Walker, of Jones Day, Atlanta, and Charles Franklin Beall Jr., of Moore Hill & Westmoreland, Pensacola, Fla., represented R.J. Reynolds.