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March 5, 2015

Plaintiffs Team Wins \$17.4 Million Verdict for Smoker's Widow

Case: Vicki McKeever v. Philip Morris USA Inc.

Case no: 0-037561(19)

Description: Liability, fraud by concealment, negligence and conspiracy to commit fraud

Filing date: June 29, 2007

Judge: Broward Circuit Judge Jack Tuter

Plaintiffs attorneys: Todd McPharlin, Robert Kelley, Eric Rosen and Kimberly Wald, Kelley/Uustal, Fort Lauderdale; and Alex Alvarez, Phillip Holden, Michael Alvarez and Lisa Cabrera, Alvarez Law Firm, Coral Gables

Defense attorney: Jonathan Stern, Arnold & Porter, Washington, and Hildy Sastre, Shook, Hardy & Bacon, Miami

Trial dates: Feb. 9-20, 2015

Verdict amount: \$17.4 million

Details: Theodore McKeever smoked Philip Morris cigarettes for 63 years beginning in 1943 at 13. The Davie man was diagnosed with emphysema and lung cancer. He died in 2013 about eight years after doctors detected a large mass in his left lung and removed the diseased section of lung. He never returned to work and received daily oxygen treatment to fight advanced chronic obstructive pulmonary disease in his right lung. McKeever's health continued to deteriorate. In 2012, part of his colon was removed after his doctors found cancer. The next year, he fell at home and broke his hip, requiring another surgery.

Plaintiffs case: When his widow took up a survival claim against cigarette manufacturer Philip Morris USA, her attorneys argued the tobacco company



MELANIE BELL

Eric Rosen, Alex Alvarez, Kimberly Wald and Todd McPharlin were part of a team to win \$11.6 million in punitive damages against Philip Morris.

knowingly pedaled a deadly product.

Vicki McKeever's attorneys successfully argued Philip Morris executives knew their filtered and light products delivered just as much tar and nicotine as regular cigarettes. During trial, the attorneys presented internal company documents to show executives conspired for years in a cover-up to boost sales.

"The evidence of what Philip Morris knew about how dangerous their product was—and how addictive it was—was a compelling aspect of the trial, especially when you consider

they were targeting children to replace customers who died," McPharlin said. "That's what they called them in their documents. They called these teenagers replacement smokers."

Attorneys say McKeever had a pack-a-day habit by high school and tried unsuccessfully for decades to quit. In the 1980s, he switched to Marlboro Lights after tobacco executives marketed the product as a safer alternative to traditional cigarettes.

"He grew up in the Bronx and used his allowance to buy cigarettes for a penny at the local candy store," McPharlin said.

The litigators introduced once-secret memos between tobacco executives in the early 1950s discussing a public relations campaign to counter emerging scientific research linking cigarette smoking to lung disease.

"They created the Tobacco Industry Research Committee, a fake scientific organization which was principally involved in executing their strategy to mislead consumers," McPharlin said. "It was a front organization created and secretly run by the tobacco industry. But it took the position that it was a neutral scientific organization that

was created to help health officials determine whether there was any truth in the claims that cigarettes caused lung cancer."

Defense case: Philip Morris' parent company Altria Group Inc. declined comment Wednesday.

Outcome: Jurors found Philip Morris 60 percent responsible and assigned 40 percent of the blame to McKeever.

They found his addiction to cigarettes led to lung disease, and he relied on false information from the tobacco company. They also held Philip Morris responsible for intentional misconduct and a conspiracy with other tobacco manufacturers to deceive consumers about potential health effects from smoking.

The jury awarded punitive damages of about \$11.6 million to McKeever's wife and estate; \$2 million in damages to McKeever's wife for the loss of her husband's comfort, society and attention; and \$3.5 million in compensatory damages to McKeever for COPD, lung cancer, pain, suffering, disability, physical impairment, disfigurement, mental anguish, inconvenience or loss of capacity for the enjoyment of life.

Comments: "Ted fought for six years since we filed and unfortunately did not make it for the trial," McPharlin said. "Vicki put up a long fight."

Post-verdict: Philip Morris attorneys had filed no post-trial motions by deadline but are expected to appeal the verdict.

—Samantha Joseph