

November 14, 2016

Kelley/Uustal Team Wins \$27.5M Verdict for Smoker's Family



Eric Rosen, left, and Kimberly Wald of Kelley/Uustal in Fort Lauderdale.

Alan Konzelman's work kept him away from his wife for several months a year — but when they were together, they scuba dived, sailed and traveled the world.

When Elaine Konzelman died at age 79 of lung disease after smoking most of her life, her husband and four children lost a joyful, intelligent and adventurous woman, they said. A Broward jury decided R.J. Reynolds Tobacco Co. should pay \$27.5 million for its role in her death.

"I think the jury recognized a very, very significant loss for Alan, the loss of his wife's companionship, and recognized what he had to go through watching his wife suffer," said Eric Rosen of Kelley/Uustal in Fort Lauderdale, who represented Alan Konzelman.

The verdict included \$20 million in punitive damages, awarded after the jury heard evidence that the tobacco industry spent years downplaying nicotine's addictive properties while creating more addictive cigarettes. The jury found Elaine Konzelman had relied on the companies' conspiracy to conceal the health effects of smoking.

The jury found Konzelman was part of the Engle class, the group of Florida smokers whose cases were filed after the Florida Supreme Court disbanded the Engle tobacco class action in 2006. For class members, findings of product defect, negligence, fraudulent concealment and conspiracy to conceal are established as a matter of law.

But to benefit from those findings, plaintiffs must show their disease manifested itself between May 1990 and November 1996. For Rosen and his colleague Kimberly Wald, that was a big challenge at trial.

The defense argued Elaine Konzelman should have known she had chronic obstructive pulmonary disease before the Engle cutoff date. The jury heard from witnesses who knew Konzelman in the 1960s and '70s, including longtime friend Sue Sweeney, who remembered her pal having a "deep, chesty cough" back then, Rosen said. Konzelman's niece recalled her aunt becoming winded after climbing stairs in the '80s.

"There was no evidence that she knew that she had COPD, but their argument was that she should have known because she was coughing, she was short of breath, people were telling her to quit for health reasons," Rosen said.

The plaintiffs presented testimony from immediate family members, who said Konzelman's symptoms didn't start until the early 1990s.

The earliest medical record mentioning Konzelman's breathing troubles was in 1995, and it also noted that she had "no respiratory problems in the past," Rosen said. That record also indicated Konzelman had previously been treated for hypertension, meaning she had been seeing doctors before her COPD diagnosis.

"How could she have known when her own doctors didn't know?" Rosen said.

Defense counsel presented further testimony from Sweeney that Konzelman, who died in 2010, didn't want to quit smoking. When asked how she knew that, Sweeney responded, "Anyone who smokes every day, all day long, loves to smoke," according to Rosen.

"That's not someone who loves to smoke, that's someone who is addicted," Rosen said. Family members said Konzelman had tried to quit smoking but became depressed, anxious and irritable each time.

Defense counsel also "tried to diminish" the relationship between Alan and Elaine Konzelman, Rosen said, emphasizing that the husband spent three to six months every year away from home for his career as a chief marine engineer. Plaintiffs counsel countered that by telling the jury about the couple's adventures together, showing them photos of Elaine Konzelman dancing on a boat during a 1989 trip to the Bahamas and scuba diving in Maui in 1991.

Ultimately, the jury on Oct. 24 awarded about \$8.8 million in compensatory damages to Alan Konzelman, including \$8.5 million for his loss of companionship and pain and suffering and \$295,000 for her medical bills.

Elaine Konzelman was found 15 percent liable for her disease, and the compensatory damages award will therefore be reduced to about \$7.48 million. The reduction does not affect the \$20 million punitive damages award.

R.J. Reynolds attorney Kathryn Lehman of King & Spalding in Atlanta did not respond to a request for comment by deadline. Also representing the defense was Lehman's Atlanta colleague Austin Evans, her Charlotte, North Carolina, colleague Jeffrey Furr and Eric Lundt of Sedgwick in Miami.

Rosen, who along with Wald was assisted by Legal-eze President Baron Philipson in trial preparation, said he believes much of the jury's decision came down to Alan Konzelman's testimony.

"They got to hear about his family and the type of person he was: hardworking, dedicated and genuine," Rosen said. "I think that credibility was extremely important."

Case: Alan Konzelman v. R.J. Reynolds Tobacco Co.

Case no.: CACE08019620

Description: Tobacco

Filing date: May 2, 2008

Verdict date: Oct. 24, 2016

Judge: Broward Circuit Judge John Murphy

Plaintiffs attorneys: Eric Rosen and Kimberly Wald, Kelley/Uustal, Fort Lauderdale

Defense attorneys: Kathryn Lehman and Austin Evans, Atlanta, and Jeffrey Furr, Charlotte, North Carolina, King & Spalding; Eric Lundt, Sedgwick, Miami

Verdict amount: \$27.5 million