



## RJ Reynolds Hit With Punitive Damages For Smoker's Death

By **Brandon Lowrey**

Law360, Los Angeles (August 7, 2015, 8:25 PM ET) -- A Florida jury on Friday found that R.J. Reynolds must pay \$800,000 in punitive damages in a wrongful death trial brought by relatives of a woman who died of lung cancer after decades of smoking cigarettes, adding to a \$1 million compensatory verdict reached a day earlier.

The verdict in Fort Lauderdale, Florida, followed the trial's brief second phase focusing on punitive damages, during which attorneys for the family of Lillian Kaplan urged jurors to award another \$5 million.

During arguments over punitive damages, plaintiffs' attorney Eric Rosen of [Kelley Uustal PLC](#) told jurors that R.J. Reynolds made \$4.4 million in net profits every day in 2013. He told jurors it would make sense to slap the tobacco giant with a \$5 million verdict.

"That's a little more than one day of their profit," he said. "You've been here for about a day for the punitive damages phase. One day of your time, one day of their profit."

R.J. Reynolds attorney, Stephen Kaczynski of [Jones Day](#), said the jurors should award \$200,000, or, at most, \$500,000.

"If you do choose to award punitive damages ... remember that any award you make will be paid by the Reynolds of the 21st century, and not the 20th," he said.

Thursday's [compensatory verdict](#) included \$228,000 in medical expenses, \$400,000 in past harm to her family and \$400,000 in future harm, and named Kaplan and R.J. Reynolds each 50 percent responsible for her injury.

Kaplan began smoking at 12, and smoked heavily since she was 17. She tried to quit smoking several times since the 1960s, but never made it more than a week and a half until after her 1994 chronic obstructive pulmonary disease diagnosis, her attorney, Todd McPharlin of Kelley Uustal PLC, told jurors.

Kaplan suffered a stroke and was diagnosed with lung cancer in 2012. She died later that year.

Earlier this week, R.J. Reynolds had argued that Kaplan's claims were barred by the statute of limitations because she should have known that she had COPD before May 1990 because she had symptoms similar to those of her husband, who died of COPD.

Kaczynski told jurors during closing arguments this week that the evidence didn't clearly

show that she was misled by tobacco companies. He added that she had outlived her siblings and lived a long life of 84 years.

The last remark drew a retort from McPharlin.

"The fact that she was 84 means she lived long enough and it doesn't matter that [R.J. Reynolds] took her life?" McPharlin said.

The case is one of the thousands stemming from the landmark Engle class action against tobacco companies, which the Florida Supreme Court decertified in 2006.

Though the state high court decertified the class and overturned a \$145 billion verdict, the court allowed up to 700,000 people who could have won judgments to rely on the jury's findings to file suits of their own. These findings include conclusions that smoking causes certain diseases and that tobacco companies hid smoking's dangers.

Earlier this week in another Engle-related case, a different Florida jury slapped [Philip Morris USA Inc.](#) with \$3.2 million in punitive damages, awarding **[a total of \\$11 million](#)** to the family of an ex-smoker who had two lung transplants after decades of smoking.

Kaplan is represented by Todd McPharlin and Eric Rosen of Kelley Uustal.

R.J. Reynolds is represented by Stephen Kaczynski of Jones Day.

The case is Kaplan v. [R.J. Reynolds Tobacco Co.](#), case number 08-19469, in the 17th Judicial Circuit of Florida.

--Editing by Emily Kokoll.