

DAILY BUSINESS REVIEW

VERDICTS & SETTLEMENTS

South Florida Lawyers Win \$10.6M Verdict for Family of Late-Life Smoker

by Raychel Lean

Fort Lauderdale lawyers Eric S. Rosen and Kimberly L. Wald of Kelley Uustal landed a \$10.6 million jury verdict against R.J. Reynolds Tobacco Co. for the family of a smoker who died of small-cell lung cancer.

But it wasn't a typical *Engle* progeny case, because the smoker, Janice Hamilton, hadn't picked up her first pack of cigarettes until she was 31.

If, like some other smokers, Hamilton had become hooked on cigarettes as an adolescent, Rosen and Wald would have been able to show jurors a trove of historic records depicting how Big Tobacco targeted



If, like many smokers, Janice Hamilton had got hooked on cigarettes as an adolescent, Kimberly Wald, left, and Eric Rosen of Kelley Uustal would have been able to show jurors a trove of historic records depicting how tobacco companies targeted children and young people. But since Hamilton did not start smoking until she was 31, those documents were off-limits in this case.

children and young people. But those documents were off-limits in this case.

"That was a hurdle we had to face," Rosen said. "But the idea is that whether you're 15, or you're 31 or 40, and you pick up a cigarette, there's a very high potential for getting addicted."

The form of lung cancer Hamilton contracted was particularly aggres-

sive, according to Rosen, who said the chances of survival were slim from the moment Hamilton was diagnosed in August 1990.

"You can't operate on it. You can't remove it, because it spreads so fast," Rosen said. "You can use medicines to kind of prolong life, but even if it's caught at the early stages you're looking at 18 to 24 months of survival."

Case: Robert Hamilton v. R.J. Reynolds Tobacco

Case no.: CACE08019632

Description: Products liability/tobacco litigation

Filing date: May 2, 2008

Verdict date: July 9, 2019

Judge: Broward Circuit Judge Michael A. Robinson

Plaintiffs attorneys: Kimberly L. Wald and Eric S. Rosen, Kelley Uustal, Fort Lauderdale

Defense attorneys: Patrick Price, Spencer Diamond, Austin Evans, Cory Hohnbaum and Drew Bell, King & Spalding; Eric Lundt and Robert Weill, GrayRobinson, Fort Lauderdale

Verdict amount: \$10.6 million

Hamilton's health deteriorated rapidly, according to Wald, until the cancer spread to her brain and spine, causing paralysis from the waist down.

"The specific way that it formed in her body was even more aggressive, and was really difficult on the family," Wald said. "The last few months of her life were very difficult."

Hamilton died within two years of her diagnosis, in December 1992. She had two favorite brands—Winston and Old Gold—and had started smoking in 1955, after all three of her children had already been born. The youngest was a newborn suffering from colic, a digestive disorder that Hamilton's children said prompted her to take up smoking, as it helped her stay awake at odd hours.

Hamilton was in good shape before the cancer struck, according to Wald. She was a stay-at-home mother who'd spent most of her life in Massachusetts life taking care of her three children, until they moved to Florida in 1986. Her children brought the wrongful death suit on her behalf in May 2008.

Cory Hohnbaum, Patrick Price, Spencer Diamond, Austin Evans and Drew Bell of King & Spalding represented R.J. Reynolds with Fort Lauderdale attorneys Eric Lundt and Robert Weill of GrayRobinson. They did not respond to requests for comment by deadline.

The defendant denied liability, arguing lack of standing and failure to state a claim, and said its manufacturing processes conformed with industry standards at the time. At trial, Hohnbaum argued that Hamilton didn't start smoking as a result of industry advertings or claims about smoking, and had made no real attempts to quit, according to Rosen and Wald.

Plaintiff counsel not only had to prove that Hamilton's lung cancer was caused by cigarettes, but also that she was addicted to them, as

opposed to simply choosing to smoke because she enjoyed it.

They did this by arguing she was too addicted to put down the cigarettes. They argued Hamilton had made few attempts to quit in the 45 years she had smoked. And testimony from Hamilton's family revealed that she was a chain smoker, who had only tried to abruptly stop a couple of times, in the late 1950s and late 1980s.

"A lot of the times with *Engle* progeny cases, one of the ways that is helpful for us as the plaintiffs to prove addiction is to say they tried to quit smoking at all these different times in their life," Wald said. "But here with Janice, the undisputed testimony from all three kids was that there was never a period in her life, after she was 31 until she passed away, that she could refrain more than three hours from smoking."

Rosen and Wald forged ahead with an argument that the cigarette was used as a "perfect engine for addiction," using testimony from a Stanford University history professor who explained how cigarettes are designed, how tobacco and chemicals are added and how companies controlled the form and level of nicotine delivered in an effort to create and sustain addiction in customers.

The plaintiffs attorneys focused on formerly secret records that revealed a history of fraud and concealment by tobacco companies, most of which is usually news to jurors, in Rosen's experience.

"As time's gone by, most people just aren't aware of what this industry has done over the years," Rosen said.

What's shocking, in Wald's view, is that the most damning evidence came from the defendant's own documents.

"You hear about it, but when you actually see the physical documents, that's in their own words, it's unbelievable the amount of information that these jurors learn about during a trial," Wald said. "We always joke and say that they should receive college

credit for it, but they should, because it's learning this whole history of this whole industry."

One document that was particularly impactful, according to Rosen, was one dating back to the 1960s that said, "Nicotine is addictive. We are then in the business of selling nicotine, an addictive drug," and, "We can control precisely the levels of nicotine to any level management might desire," even though tobacco companies collectively denied nicotine was addictive until around 2000.

Jurors found Hamilton was addicted to the cigarettes that caused her cancer, for which she was 22.5% at fault. R.J. Reynolds bore the rest of the blame, as jurors saw it. They awarded \$2 million to each of Hamilton's adult children, just shy of the \$2.5 million Rosen and Wald had sought for each sibling. Jurors also awarded \$4.6 million in punitive damages, reserved for the punishment of outrageous conduct.

It's unusual for the children of a smoker to serve as a personal representative in *Engle* progeny cases, which are usually led by surviving spouses. But Hamilton's husband died in the 1980s, so Wald said the verdict meant a lot to Hamilton's children, who are now in their 40s and 50s.

"The fact that the jury could understand and appreciate the gravity of their loss, and still award that money to adult survivors who now have their own children, who have their own lives, is a little bit unusual," Wald said.

The defense has moved to vacate the verdict and asked for a new trial, but Broward Circuit Judge Michael A. Robinson denied that request.

The court also granted the plaintiffs' request for attorney fees, but is yet to rule on the amount.

Raychel Lean reports on South Florida litigation for the Daily Business Review. Send an email to rlean@alm.com, or follow her on Twitter via [@raychellean](https://twitter.com/raychellean).