

PRODUCT LIABILITY

Family of smoker who died at age 60 awarded \$28 million

by John Pacenti
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A Miami-Dade Circuit Court jury handed down a \$28 million verdict against R.J. Reynolds Tobacco Co. in a lawsuit brought on behalf of a smoker who died of lung cancer after smoking cigarettes since he was 11.

The awards included \$25 million in punitive damages and \$3 million in compensatory damages for the estate of David Ellsworth, who died in 1994 at 60. The jury split the fault evenly between Ellsworth and RJR, but the amount of the award was not affected because the jury found the company acted intentionally, plaintiffs attorney Allan B. Kaiser said.

The case is among the so-called Engle progeny from a decertified class action brought by Miami Beach Dr. Howard Engle on behalf of sick Florida cigarette smokers.

The Florida Supreme Court ruled in 2006 that class members could file individual lawsuits and preserve damaging findings against tobacco companies, such as the cigarettes are addictive and health hazards. A record \$145 billion class award was erased.

The Ellsworth estate and its executor, stepdaughter Sherri Hubbard, were represented by Kaiser, a partner at the Ferraro Law Firm in Miami,

and associate Christopher Gottfried.

“Once they found out that their products could kill people, it was incumbent upon them to warn their customers,” Kaiser said. “Why didn’t they warn them in the 1950s?”

Kaiser said the jury was told RJR and other cigarette makers conspired to conceal the dangers of cigarettes since 1953, long before the government required warnings on packaging. Ellsworth’s lung cancer invaded the chest wall. He underwent surgery to remove half of one lung and ribs and underwent radiation treatment as well, Kaiser said.

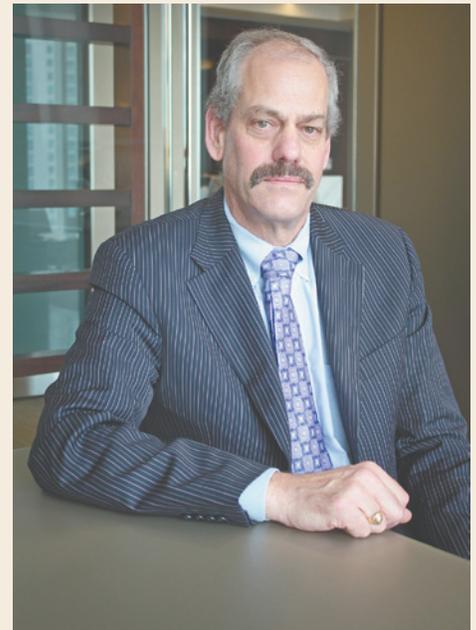
He died about a year after his diagnosis at 60. Ellsworth, a construction plasterer by trade, smoked Lucky Strike, Viceroy and Winston brands.

R.J. Reynolds was represented by a legal team led by W. Ray Persons, Todd Davis and Jennifer Kane of King & Spalding in Atlanta. Attorney Chris Kriener, a partner at Womble Carlyle in Winston Salem, N.C., also represented the company.

Persons had no comment. Reynolds did not return a phone call for comment.

Kaiser said he has been victorious as plaintiffs attorney in eight Engle progeny cases, but all but one remain on appeal.

It was a good week for the Ferraro firm. In Hillsborough Circuit Court in Tampa, partner David A. Jagolinzer



J. ALBERT DIAZ

Allan B. Kaiser persuaded the jury that R.J. Reynolds acted intentionally in concealing the dangers of tobacco.

secured a \$37 million verdict on Aug. 27 for Gary Hampton and his family in a lawsuit against brake manufacturer Pneumo Abex Corp.

Hampton, who was an auto mechanic, had been diagnosed with mesothelioma and sued the company for failing to warn him about the dangers of asbestos in their brake linings.

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