

# DAILY BUSINESS REVIEW

## VERDICTS & SETTLEMENTS

### \$2.5M Miami Verdict—With No Punitive Damages—Hints at Tricky Tobacco Case

by Raychel Lean

Randy Rosenblum of Dolan Dobrinsky Rosenblum in Miami teamed with Jacksonville lawyers Richard Lantinberg and Allen Jay Plotkin of The Wilner Firm to hit tobacco corporation Philip Morris USA Inc. with a \$2.5 million verdict for the daughter of a smoker who died in 1994.



J. ALBERT DIAZ

**Case:** Guy Cuddihee v. Philip Morris

**Case No.:** 2008CA000398

**Description:** Engle progeny

**Filing date:** Sept. 1, 2008

**Verdict date:** Jan. 17, 2020

**Judge:** Duval Circuit Judge Katie Dearing

**Plaintiffs attorneys:** Randy Rosenblum, Dolan Dobrinsky Rosenblum, Miami; Richard Lantinberg and Allen Jay Plotkin, The Wilner Firm, Jacksonville

**Defense attorneys:** Hassia Diomlobi, Shook, Hardy & Bacon, Miami; Keri Arnold, Arnold & Porter Kaye Scholer, New York

**Verdict amount:** \$2.5 million

As with any tobacco case, Randy Rosenblum found it wasn't easy to overcome the general prejudice jurors tend to have against smokers.

But despite the victory, the case demonstrates what some attorneys say is jurors' prejudice against smokers. With no punitive damages awarded, it shows plaintiffs lawyers face an uphill battle in front of jurors.

The litigation centered on single father Guy Cuddihee, who was 41 when he died of lung cancer, leaving his

13-year-old daughter Sabrina heartbroken.

But the plaintiff's team had their work cut out for them, as Cuddihee had smoked heavily, made few attempts to quit and, in a shocking twist, jurors decided against punitive damages.

Cuddihee, born in the 1950s, picked up his first cigarette as a teen and

ultimately blew through almost three packs a day. After starting off with filtered cigarettes, Cuddihee switched to a Philip Morris brand called Merit, which was marketed as a low-tar, enriched with a tobacco-flavor that tasted the same as or better than high-tar products.

The Merit brand piqued Cuddihee's interest in the 1980s—so much so that he enrolled in a promotion called “the Merit challenge” after picking up a Philip Morris postcard from a retail store. And sure enough, Philip Morris' records showed that Cuddihee got in touch to take part in the challenge, which asked smokers to switch from their current brand to Merit, an allegedly healthier alternative.

“This is a guy who bought in, who completely believed it,” Rosenblum said. “We know that he actually believed that the Merit cigarettes he was smoking were better for him because he told multiple people that. He told his daughter, he told his brother, he told his ex-wife and he also reached out directly to Philip Morris.”

Cuddihee also filled out a survey shortly before his

death, giving Philip Morris his name, personal information, favorite brand.

It's unusual to have that sort of evidence in a tobacco case, according to Rosenblum.

“That evidence is very powerful because it really shows the extent to which the smoker really was interested in what the manufacturer had to say, was interested in what the manufacturer was doing and really relied, to his detriment, on the statements that were being made in this case by Philip Morris about its products.”

While Philip Morris conceded that smoking had caused Cuddihee's death, it claimed he enjoyed smoking and had no intention of quitting, even after his father died of lung cancer. Rosenblum countered that by pointing to the team of psychologists, scientists and marketers Philip Morris had hired amid an industrywide conspiracy to prevent consumers from learning about the dangers of smoking.

Expert Michael Cummings testified that Cuddihee was addicted to nicotine and showed jurors internal documents depicting Philip Morris studying the habits of Merit smokers.

“They commented internally about the fact that Merit smokers were people who were more health-conscious, so this is something they knew,” Rosenblum said. “Switching to light cigarettes is a method of quitting, because when a person switches to lights they also believe that it will help them stop, which is something he expressed to his brother.”

Rosenblum encouraged jurors to look beyond health warnings on cigarette packs, to words like “filter,” “low tar” and “lights.” An internal Philip Morris video bolstered that point, as it featured a researcher who said consumers can become numb once exposed to many different packaging warnings.

“Even Philip Morris knew that smokers didn't always pay attention to the warnings,” Rosenblum said. “And you can't discount the fact that, while the warnings are on the packs, there are other words on the packs themselves which smokers are exposed to, which can shape their thinking.”

Defense attorneys Hassia Diolombi of Shook, Hardy & Bacon in Miami and Keri Arnold of Arnold & Porter

Kaye Scholer in New York did not respond to a request for comment by deadline, but they have moved to throw out the verdict.

## **NO PUNISHMENT**

Though jurors agreed to sit through a punitive damages phase, they ultimately awarded none, and Rosenblum can only speculate as to why.

“It’s possible they were persuaded by the presentation by Philip Morris in the second phase. It’s possible that this was a jury that was never really going to award punitive damages,” Rosenblum said. “Maybe they were just interested to sort of hear what was going to be said but they didn’t really have much of an intention. But it’s impossible to know.”

As with any tobacco case, Rosenblum found it wasn’t easy to overcome the general prejudice jurors tend to have against smokers.

“A lot of people feel like, ‘Hey, you make a decision to smoke, you should know it’s

bad for you, and if you get sick it’s your fault,’” he said.

## **BEST FRIENDS**

Cuddihee and his wife had divorced by the 1990s, so the only survivor able to bring a lawsuit on his behalf was his daughter, who, Rosenblum argued, was severely impacted by his death.

“He really raised her, and I don’t think there was any dispute in the case that they had an incredibly close relationship,” Rosenblum said. “She described him as her best friend, and we were able to show the jury a lot of photographs of the two of them together.”

It’s unusual for a personal representative to be so young, in Rosenblum’s experience, as parents tend to die of smoking-related illnesses when their children are adults.

“In this case, I don’t think Sabrina had even reached her 40th birthday by the time of the trial,” Rosenblum said.

Sabrina Cuddihee’s testimony was particularly impactful, in Rosenblum’s view,

as she told jurors how her father used to sing the song, “You Are My Sunshine” to her.

“After she became a parent, which, of course, he never lived to see, she would sing that same song to her kids to calm them down,” Rosenblum said.

Sabrina Cuddihee also recalled how, toward the end of her father’s life, they went to the Walt Disney World Resort with the help of the Make-A-Wish Foundation. And there, Cuddihee arranged a special surprise.

“All she (Sabrina) wanted was a Mickey Mouse watch,” Rosenblum said. “And while she was out doing something else or wasn’t paying attention, he went in and bought her a Mickey Mouse watch, had it engraved from him and it was given to her after he died.”

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