



THE SOUTHEAST'S HIGHEST RANKING
VERDICTS AND SETTLEMENTS
REPORTED BY VERDICTSEARCH

CASE	Estate of Cuddihee v. Philip Morris
CASE TYPE	Products Liability
ATTORNEY	Randy Rosenblum
COURT	Florida
DATE	1/17/2020

January 17, 2020

An ALM Publication

FLORIDA

Lung cancer caused by smoker's addiction

AMOUNT: \$2,500,000**STATE:** Florida**JUDGE:** Katie L. Dearing

CASE NAME: *Sharon Kraft, as Personal Representative of the Estate of Craig Brown; Cristy Williams, as Personal Representative of the Estate of Gerald Wayne Carlee; James Caserta, as Personal Representative of the Estate of Bartholomew Caserta; Kitty Cook, as Personal Representative of the Estate of Thomas Cline; Sabrina Cuddihee on behalf of the Estate of Gil Cuddihee; Edna Deakin, as Personal Representative of the Estate of Johnny Deakin; Betty Dicks, as Personal Representative of the Estate of John Henry Dicks et al. v. R.J. Reynolds Tobacco Company, individually and as successor by merger to the Brown and Williamson Tobacco Corporation and the American Tobacco Company; Philip Morris USA, Inc.; Lorillard Tobacco Company; Liggett Group, LLC, f/k/a Liggett Group, Inc.; Dorsal Tobacco Corp.; Vector Group, Ltd., Inc., f/k/a Brooke Group Holding Inc., f/k/a Brooke Group Ltd., Inc.; Council for Tobacco Research -- USA, Inc.; the Tobacco Institute, Inc., No. 16-2008-CA-000398-EXXX-MA*

DATE: January 17, 2020**PLAINTIFF ATTORNEY(S):**

- Celene H. Humphries; Brannock & Humphries for Estate of Gil Cuddihee
- Randy Rosenblum; Dolan Dobrinsky Rosenblum Bluestein, LLP for Estate of Gil Cuddihee
- Richard J. Lantinberg; The Wilner Firm, P.A. for Estate of Gil Cuddihee
- A. Jay Plotkin; The Wilner Firm, P.A. for Estate of Gil Cuddihee
- None reported for Estate Of Craig Brown, Estate of Gerald Wayne Carlee, Estate of Bartholomew Caserta, Estate of Thomas Cline, Estate of Johnny Deakin, Estate of John Henry Dicks, Estate of Vernon Dixon, Estate of Julius Frailey, Estate of Ernest Helton, Estate of Juanita Jackson, Estate of Donald Isaman, Jr., Estate of Clyde Knowles, Estate of Thomas Leavitt, Estate of Charles Mackenney, Estate of Helen Marshall, Estate of James Merritt, Estate of Joe K. Mullis, Estate of Betty Ann Parker, Estate of James Patterson, Estate of Jerome Pinto, Estate of Robert Porter, Estate of Claud Powers, Estate of Sim Rome, Estate of Ronald Rose, Estate of Joanne Sasal, Estate of Jane H. Sigmon, Estate of James Carl Stewart, Estate of Langford Strunk, Estate of Curtis Warren

DEFENSE ATTORNEY(S):

- Keri L. Arnold; Arnold & Porter Kaye Scholer LLP; New York, NY for Philip Morris USA Inc.

- Scott A. Chesin; Mayer Brown LLP; New York, NY for Philip Morris USA Inc.
- Michael Rayfield; Mayer Brown LLP; New York, NY for Philip Morris USA Inc.
- Hassia Diolombi; Shook, Hardy & Bacon L.L.P.; Miami, FL for Philip Morris USA Inc.
- James D. Gardner; Shook, Hardy & Bacon L.L.P.; Miami, FL for Philip Morris USA Inc.
- None reported for R.J. Reynolds Tobacco Co., Lorillard Tobacco Co., Liggett Group LLC, Dorsal Tobacco Corp., Vector Group Ltd. Inc., Council For Tobacco Research -- USA Inc., The Tobacco Institute Inc.

FACTS: In 1993, plaintiff's decedent, Gil Cuddihee, 40, a pawn shop owner, was diagnosed with lung cancer. Cuddihee started smoking at age 15 and eventually smoked one to two packs per day. His preferred brands were Marlboro, Winston, Benson & Hedges, Merit and Marlboro Lights. Winston cigarettes are produced by R.J. Reynolds, while Marlboro, Benson & Hedges and Merit are manufactured by Philip Morris USA Inc. Cuddihee died of lung cancer in 1994. Cuddihee's mother, Dorothy Cuddihee, acting on behalf of her late son's estate, brought a wrongful death action against cigarette manufacturers Philip Morris; R.J. Reynolds Tobacco Co.; Lorillard Tobacco Co.; Liggett Group, LLC; Dorsal Tobacco Corp; and Vector Group, Ltd. Inc. She also sued Council for Tobacco Research - USA, Inc. and The Tobacco Institute Inc. The lawsuit alleged product liability claims, including negligence; strict liability-based design defect; fraudulent concealment and conspiracy to commit fraudulent concealment. This case stemmed from the Florida state court class-action *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246 (2006). In 2000, the jury in *Engle* rendered a \$145 billion punitive damages verdict in favor of a class of Florida smokers allegedly harmed by their addiction to nicotine. In 2006, the Florida Supreme Court reversed that award and decertified the class, but the court allowed thousands of potential class members to file individual lawsuits. The court ruled that the Phase I findings of the *Engle* jury would be res judicata for any plaintiff who proved his or her class membership. The Phase 1 findings included those against several major tobacco companies on issues of causation of certain diseases, such as chronic obstructive pulmonary disorder; addiction; and certain claims, such as strict liability; fraud; breach of warranties and other causes of action. To qualify for the *Engle* Phase I findings, plaintiffs must establish that they, or their deceased loved ones, were Florida citizens and residents who have suffered from, presently suffer from or have died of diseases and

medical conditions caused by their addiction to cigarettes that contain nicotine. The Florida Supreme Court ruled that to rely on these findings, the smokers' health problems had to have surfaced between May 5, 1990, and Nov. 21, 1996. Cuddihee's estate filed the lawsuit alongside other potential members of the Engle class. However, Cuddihee's estate was the only plaintiff at the trial. Philip Morris was the only defendant at the trial. R.J. Reynolds, which bought Lorillard during the lawsuit, resolved its claims during jury selection. Vector Group, which is now the parent of Liggett Group, was dropped from the case. Dorothy Cuddihee died during the pendency of litigation. Gil Cuddihee's daughter, Sabrina Cuddihee, was the personal representative of the estate at the time of trial. Cuddihee's counsel argued that the decedent was addicted to cigarettes. The counsel presented expert testimony to support this conclusion. The plaintiff's counsel further noted that Cuddihee had told people he wanted to quit smoking; however, he was unable to do so, even after being diagnosed with asthma and cancer. The estate's counsel further noted that Cuddihee tried many times to quit and used numerous methods but was unsuccessful. The plaintiff's counsel added that Philip Morris intentionally designed its cigarettes to be as addictive as possible. To support the claim of fraudulent concealment, Cuddihee's counsel called an expert historian who described the history of cigarette promotion and marketing in America. The expert said that tobacco companies conspired to hide the dangers of smoking cigarettes. The defense maintained that Gil Cuddihee was not addicted to cigarettes and that he was not a victim of any conspiracy by Philip Morris. The defense specifically claimed that Cuddihee knew the dangers of cigarettes. The defense argued that the cigarette packages Cuddihee purchased had warning labels on them. The defense further noted that Cuddihee's family repeatedly told Cuddihee that smoking was dangerous and that they urged him to quit. The defense claimed that Cuddihee ignored these pleas because he wanted to continue smoking. The plaintiff's counsel countered that Cuddihee's ignorance about these pleas from his family is a defense mechanism commonly seen in addicts. The estate's counsel also argued that Cuddihee switched to Merit cigarettes because he thought, based on Philip Morris' advertisements, that these cigarettes were less harmful and would help him quit. The counsel noted that Cuddihee actually contacted Philip Morris in the 1980s to be part of the brand's "Merit Challenge" marketing campaign.

INJURY:

- Cuddihee required oxygen shortly after his diagnosis. He died of lung cancer on April 15, 1994, at the age of 41. Sabrina Cuddihee was 13 years old at the time.
- The plaintiff's counsel sought recovery of damages for Sabrina Cuddihee's loss of parental companionship, instruction and guidance, and for her pain and suffering. The estate also sought punitive damages.
- Philip Morris stipulated that Gil Cuddihee had a primary lung cancer caused by his smoking of Philip Morris cigarettes, and that this primary lung cancer caused his death. However, the company claimed that even if Cuddihee was addicted to cigarettes, it was his failure to quit smoking, rather than an addiction, that led to his illness and death. The defense thus maintained that Cuddihee was not part of the Engle class.
- Philip Morris disputed the punitive damages claim by noting that the company is more regulated now than it was when the decedent began smoking. Defense counsel specifically argued that Philip Morris has marketing restrictions and must comply with Food and Drug Administration regulations. The plaintiff's counsel countered that Philip Morris agreed to these regulations only as a result of the Master Settlement Agreement, which resolved multiple lawsuits against tobacco companies brought by attorneys general of many states. The plaintiff's counsel thus maintained that such regulation was not voluntarily accepted by Philip Morris.

RESULT: The jury found that Gil Cuddihee was a member of the Engle class. The jury ruled that he was 35 percent responsible for his illness and death, and that Philip Morris was 65 percent responsible. The jury found that Philip Morris' concealment or omission of material information about the health risks or addictive nature of cigarettes was not a legal cause of Cuddihee's illness and death. However, the jury found that the company's agreement to conceal or omit material information about the health risks or addictive nature of cigarettes was a legal cause of Cuddihee's illness and death. The jury awarded \$2.5 million in compensatory damages. There was no reduction in the award for comparative negligence, because the jury found that Philip Morris was liable for the intentional tort of conspiracy. The jury initially determined that punitive damages were warranted, but it ultimately did not award punitive damages.

POST TRIAL: PM's motion to set aside the verdict, for judgment on plaintiff's claim for conspiracy to commit fraudulent concealment in accordance with the defense's motion for directed verdict and for judgment on plaintiff's claims for strict liability, negligence and conspiracy to commit fraudulent concealment were all denied. PM's motion for setoff is pending as is plaintiff's motion for fees and costs.

EDITOR'S COMMENT: This report is based on information that was provided by plaintiff's counsel for the estate of Cuddihee. Additional information was gleaned from court documents. Defense counsel for Philip Morris did not respond to the reporter's phone calls. The remaining parties' counsel was not asked to contribute.