

'Billion' With a 'B': Jurors Put Philip Morris on the Hook With Hefty Punitive Damages

by Michael A. Mora

A Miami attorney led the litigation for the estate of a deceased smoker against Big Tobacco and walked away from a Massachusetts state court after a 14-day trial with a billion-dollar plus jury award consisting of punitive and compensatory damages.

Among the most damning parts of the trial was when Randy Rosenblum—a partner at Dolan Dobrinsky Rosenblum Bluestein who represented the estate of Barbara Ellen Fontaine—pointed out that defendant Philip Morris USA Inc. had “de-nicotinized” cigarettes for insiders. These cigarettes allegedly reduced the likelihood of addiction,



Randy Rosenblum, a partner at Dolan Dobrinsky Rosenblum Bluestein, was among the attorneys who represented the estate of Barbara Ellen Fontaine.

making it easier to quit, the attorney argued.

“This is at a period in history when Philip Morris is denying that nicotine is addictive, that Philip Morris is denying that [the] cigarette causes lung cancer,” Rosenblum said during closing arguments. “And yet

internally, secretly, they’re making de-nicotinized cigarettes for the president of that company.”

But Philip Morris argued that customers “didn’t like” those cigarettes, which is why it did not sell them to the public, and continued to market and distribute the

nicotine cigarettes to the public.

The jury, who sat before Massachusetts Superior Judge Shannon Frison, returned \$1 billion in punitive damages and \$8.14 million in compensatory damages.

'CLEARLY EXCESSIVE?'

The compensatory damages consisted of \$2.5 million for Fontaine's pain and suffering; \$514,000 for reasonable and necessary medical bills; \$1 million to compensate her spouse; \$2.5 million to pay her daughter; and \$1.5 million to compensate her son.

Now, the tobacco giant has vowed to challenge the Massachusetts Superior Court jury verdict.

Steve F. Callahan, a spokesman, said the sum was "clearly excessive and unconstitutional," and the company will "promptly challenge this verdict, including on appeal if necessary."

"No award of this magnitude has ever withstood constitutional scrutiny, a

fact the plaintiffs themselves recognized when they asked the judge to allow the jury to reconsider its punitive damages award," Callahan said in an emailed statement.

Meanwhile, the Massachusetts jury cleared grocery chain Demoulas, a co-defendant in the case.

Fontaine began smoking cigarettes at age 15, starting with those from the Marlboro brand before she switched to Parliament, according to the amended complaint. She would smoke Parliament over the next 40 years, until doctors diagnosed her with lung cancer in May 2015.

However, she did not quit soon enough—and died in January 2017. And her attorneys presented expert testimony that Fontaine was addicted to the nicotine in the Philip Morris cigarettes she smoked, which caused her lung cancer and her estate to later file it's lawsuit.

Rosenblum was joined by Kevin Donovan, a partner at Rubenstein Law in

Westwood, Massachusetts, as well as Mark Gottlieb, Meredith Lever and Andrew Rainer of the Public Health Advocacy Institute.

They declined to comment.

Plaintiffs counsel presented expert testimony that the cigarettes she smoked were defective and unreasonably dangerous, and there were reasonable safer alternative designs.

In addition, plaintiffs argued that Philip Morris was negligent, engaged in fraud in connection with the sale of Marlboro and Parliament cigarettes and that Philip Morris engaged in a conspiracy with other tobacco manufacturers and organizations to commit fraud.

And ultimately, jurors found against Philip Morris, including on negligent design, breach of warranty, fraud and conspiracy claims, according to the verdict form.

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