

TOP (7) TEN

JURY VERDICTS OF 2010

\$90.8 MILLION

Fla. jury awards \$90.8M to smoker's widow

By Nora Lockwood Toohar
Contributing writer

In April, a Florida jury awarded \$90.8 million to the wife of a longtime smoker who died of lung cancer.

A jury of five women and one man in Gainesville, Fla. deliberated seven hours before unanimously finding R.J. Reynolds Tobacco Co. liable for negligence, manufacturing an unreasonably dangerous and defective product, fraud and conspiracy to commit fraud.

The plaintiff's husband, Frank Townsend, started smoking at about age 13 and continued until he died in 1995.

In the 1950s, the tobacco industry launched an aggressive advertising campaign that promoted filtered cigarettes as



Plaintiff's attorneys Gregory Prysock and Keith Mitnik represented the smoker's widow.

a safer alternative. Townsend switched to filtered cigarettes, but remained hooked.

"The defendants have engaged in youth marketing for the last 50 years, and they know two-thirds of smokers start before the age of 18," charged co-plaintiff's trial counsel Gregory Prysock, of Jacksonville, Fla.

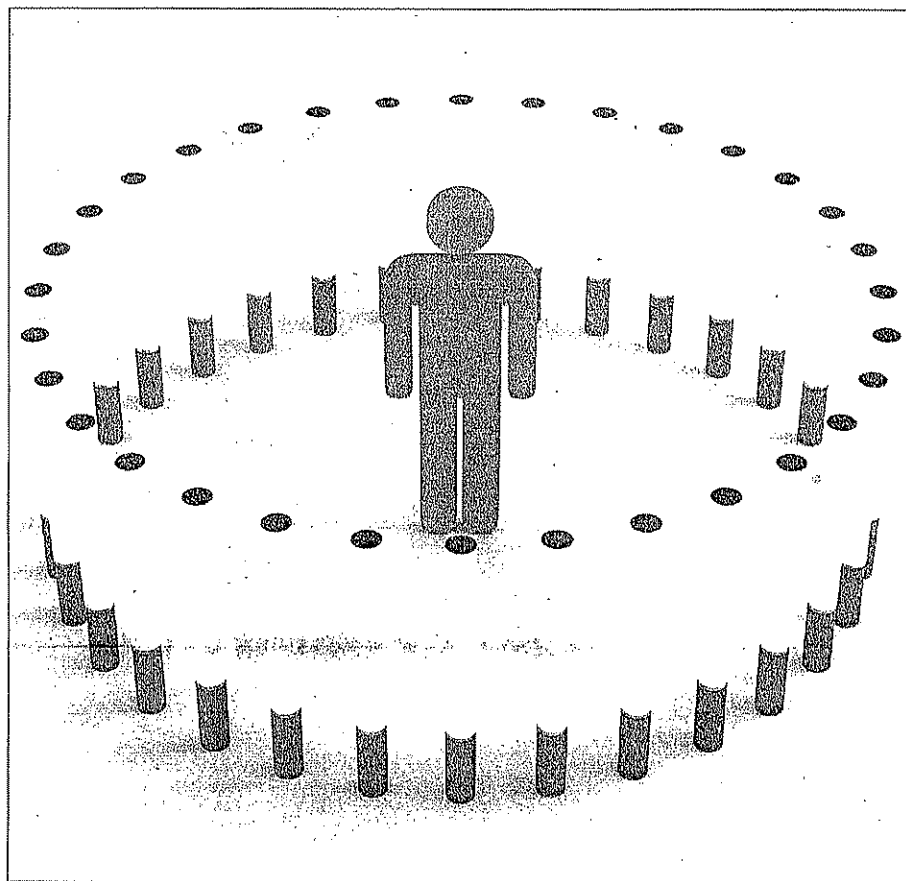
In later years, when Townsend realized the health hazards of smoking, he unsuccessfully tried three times to quit.

Jurors awarded his widow a total of \$10.8 million in compensatory damages and \$80 million in punitive damages.

The jury determined that the tobacco-maker was 51 percent at fault, and Townsend was 49 percent liable. Florida does not require punitive damages to be reduced by comparative negligence, but Prysock said his client agreed to apportion damages based on the assignment of fault.

That means that the total award for Lyantie Townsend, 71, of Ocala, Fla., was \$46.3 million.

Co-plaintiff's counsel Keith Mitnik added, "It is my client's hope and my law firm's hope that by bringing these cases the cu-



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this case," Prysock said.

After the verdict, David Howard, a spokesman for R.J. Reynolds, said: "We believe the trial plan adopted by the Florida state court is fatally flawed and will be overturned by the appellate courts."

Proving addiction is key

In the *Engle* cases, individual trials are held to determine if the plaintiff was addicted to cigarettes and whether that addiction caused his or her injury. If a jury answers affirmatively, they are presented with

the *Engle* findings: that cigarettes are defective, unreasonably dangerous and addictive, and that the tobacco companies conspired to conceal health and addiction information with the intention of consumer reliance on the misinformation.

Even though the tobacco company did not dispute that Townsend's cancer was caused by smoking, the plaintiff's lawyers "still had to prove the [defendant's] negligence was something that affected Mr. Townsend, and that he relied on the fraud and concealment," Prysock explained.

During the two-week trial, the plaintiff's lawyers showed jurors about 80 company documents, as well as print, TV ads and news interviews to show how the tobacco industry tried to minimize and conceal the health risks of cigarettes.

In addition, medical experts testified about the addictive nature of cigarettes.

Prysock said the defense argued that Townsend was not addicted.

"It's the same defense they've been speling out for 15 years now - that it was his choice to smoke, even at the age of 13 or 14," he said.

In arguing for hefty punitive damages, Prysock said he had to combat a "natural reaction" among jurors that the tobacco industry has "already paid" for its misdeeds.

The plaintiff's lawyers told jurors about the industry's ongoing advertising efforts and its lucrative revenues.

"Once [jurors] see the depths of it, they realize [the tobacco industry] hasn't paid anything, and how much money they are still making today," Prysock said.

In his closing argument, Mitnik told jurors that "they [had] a rare opportunity to really make a difference."

"There is a public health epidemic with 440,000 people a year dying of smoking-related diseases," he said.

Additional reporting by Kimberly Atkins.

Questions or comments can be directed to the news editor at: reni.gertner@lawyersusaonline.com

AT-A-GLANCE

Verdict: \$10.8 million in compensatory damages and \$80 million in punitive damages

State: Florida

Type of case: Wrongful death

Status: An appeal by R.J. Reynolds is pending before the Florida Court of Appeal.

Case name: *Townsend v. R.J. Reynolds Tobacco Co.*

Date: April 21, 2010

Plaintiff's attorneys: Gregory Prysock, Keith Mitnik and John Dill of Morgan & Morgan in Jacksonville, Fla.

Defense attorneys: James Johnson and Jason Keehufus of Jones Day in Atlanta; Charles Trippe of Mosely, Prichard, Parrish, Knight & Jones in Jacksonville, Fla.

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-- Gregory Prysock

mulative effect will force this industry to rethink the way it does business."

R.J. Reynolds has appealed the verdict to the Florida Court of Appeal, and the case is currently in the briefing stage. Prysock said he is encouraged by that court's recent ruling upholding a \$30 million verdict in favor of a widow of a chronic cigarette smoker. (*R.J. Reynolds Tobacco Co. v. Martin*, No. 1D09-4934 (Fla.App. 1 Dist. 2010).)

In that case, Prysock said, R.J. Reynolds raised many of the same arguments as in the *Townsend* case.

"It was a clean sweep in favor of the plaintiff on all the appellate issues that will affect